Legal Education Calendar
Writs of Certiorari
List of Court of Appeals' Opinions
Clerk Certificates

2006-NMCA-115, No. 25,027: Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission
2006-NMCA-116, No. 25,787: Monks Own Ltd. v. Monastery of Christ in the Desert
2006-NMCA-117, No. 25,085: K.R. Swerdfeger Construction, Inc. v. UNM Board of Regents

2007 State Bar Budget Disclosure
Available online at www.nmbar.org
Printed copies available upon request
See the Oct. 30 Bar Bulletin

Special Insert
Solo & Small Firm Practitioners Section
Attorney Referral Directory Update
GROW YOUR FUTURE WISELY

As a law professional, you know that growing your future wisely isn’t just choosing the right plan for your firm—it’s also choosing the right resource. So when you’re ready for retirement planning, choose the program created by lawyers for lawyers, and run by experts.

ABA Retirement Funds has been providing tax qualified plans such as 401(k)s for over 40 years. Today, our program offers full service solutions including plan administration, investment flexibility and advice. You just couldn’t make a wiser choice for your future.

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"High Net Worth/High Net Risk: Meeting Retirement Goals"
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For a copy of the Prospectus with more complete information, including charges and expenses associated with the Program, or to speak to a Program consultant, call (800) 826-8901, or visit www.abaretirement.com or write ABA Retirement Funds P.O. Box 5142 • Boston, MA 02206-5142 • abaretirement@citistreetonline.com. Be sure to read the Prospectus carefully before you invest or send money. The Program is available through the State Bar of New Mexico as a member benefit. However, this does not constitute, and is in no way a recommendation with respect to any security that is available through the Program. 02.2006.
Learn how to use Casemaker – a free online legal research tool

November 13, 2006
3:30 to 4:30 p.m.

State Bar Center • 5121 Masthead NE • Albuquerque, NM 87109

Limited seating is available, so please call (505) 797-6000 to reserve your place.

The contents of the New Mexico Library will be accessed, and specific legal research terms will be used to demonstrate search and browse options.

Review of the library will include:
• case law
• statutes and session law
• administrative code
• state court rules
• attorney general opinions
• uniform jury instructions.

Basic and advanced search queries will include:
• phrases • proximity settings
• exclusions • search by groups
• wildcard • word forms
• thesaurus • order of results

Attendees will also be introduced to the Federal Library and additional library contents.

Casemaker training is approved for 1.0 CLE General Credits
Animals: Our Laws Their Lives!
5.4 General CLE Credits
9:00 a.m. – 3:00 p.m.
$179

The Ethical Use of Paralegals in New Mexico
1.0 Ethics CLE Credits
9:30 – 10:30 a.m.
$49

Lurking Dangers and What Lawyers Should Know About the New Mexico Real Estate Contract
1.0 General CLE Credits
11:00 a.m. – Noon
$49

Avoiding and Resolving Fee Disputes: What You Must Do; What You Should Do
1.0 General, 1.0 Ethics, 1.0 Professionalism CLE Credits
1:00 – 4:00 p.m.
$109

Legislative Process Review in New Mexico
9:00 a.m. – 3:30 p.m
6.5 General CLE Credits
$199

THREE 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
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 ________________________

SEMINAR REGISTRATION FORM
CLE PROGRAMS - State Bar Center

NOVEMBER 14 - VIDEO REPLAYS
Contributions and announcements to the Bar Bulletin are welcome but the right is reserved to select material to be published. Unless otherwise specified, publication of any announcement or statement is not deemed to be an endorsement by the State Bar of New Mexico of the views expressed therein, nor shall publication of any advertisement be considered an endorsement by the State Bar of the product or service involved. Editorial policy is available upon request.

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Professionalism Tip
With respect to parties, lawyers, jurors and witnesses:
I will make all reasonable efforts to decide cases promptly.

Meetings

November

6
Attorney Support Group,
5:30 p.m., First United Methodist Church

8
Children’s Law Section Board of Directors,
noon, Juvenile Justice Center

9
Public Law Section Board of Directors,
noon, Risk Management Division

9
Business Law Section Board of Directors,
4 p.m., State Bar Center

11
Ethics Advisory Committee,
10 a.m., State Bar Center

13
Taxation Section Board of Directors,
noon, via teleconference

15
Bankruptcy Law Section Board of Directors, noon, U.S. Bankruptcy Court, 10th floor conference room

15
Law Office Management Committee,
noon, State Bar Center

State Bar Workshops

November

13
Consumer Debt/Bankruptcy Workshop,
6 p.m., State Bar Center Center, Albuquerque

December

6
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,
NOTICES

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 Governing the Recording of Judicial Proceedings

Reporter/Monitor Problems

The Supreme Court Board Governing the Recording of Judicial Proceedings ensures that outstanding reporting/recording services are provided to members of the Bar and to hearing agencies. If any user of recording services encounters a reporter/monitor problem, the board requests counsel notify it with the following information: the date and type of hearing, the person or service that recorded the hearing and the nature of the problem. E-mail notifications to Board Administrator Linda McGee, ccr@ccrboard.com; mail to PO Box 92648 Albuquerque, NM 87199-2648; or call (505) 821-1440.

Children's Court Rules Committee Vacancy

One attorney vacancy exists on the Children's Court Rules Committee due to the resignation of one member. Deadline for letters/resumes is Nov. 20. Attorneys interested in volunteering time may send a letter of interest and/or resume to: Kathleen Jo Gibson, Chief Clerk PO Box 848 Santa Fe, NM 87504-0848.

Commission on Access to Justice Vacancy

One attorney vacancy exists on the Commission on Access to Justice due to the resignation of one member. Deadline for letters/resumes is Nov. 13. Attorneys interested in volunteering their time may send a letter of interest and/or resume to: Kathleen Jo Gibson, Chief Clerk PO Box 848 Santa Fe, NM 87504-0848.

Law Library

Open Monday–Friday, 8 a.m.–6 p.m. Closed Saturdays and Sundays

Holiday Closings:

- Nov. 23 and 24
- Dec. 22 at 1 p.m.
- Dec. 25
- Dec. 29 at 1 p.m.
- Jan. 1, 2007

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

First Judicial District Court

Destruction of Exhibits

Criminal, Civil, Children's Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1974 to 1989

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy exhibits filed with the court in criminal, civil, children's court, domestic, incompetency/mental health, adoption and probate cases for years 1974 to 1989, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved beginning Oct. 12 to Dec. 21. Attorneys who have cases with exhibits should verify exhibit information with the Archives and Special Services Division, at 841-7596/5452, from 8 a.m. to 6 p.m. and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Second Judicial District Court

Destruction of Exhibits

Pursuant to the Supreme Court Ordered Judicial Records Retention and Disposition Schedules, the 2nd Judicial District Court will destroy exhibits filed with the Court in DOMESTIC, CIVIL, CHILDREN’S COURT, and PROBATE CASES for years 1974 to 1989, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved beginning Oct. 12 to Dec. 21. Attorneys who have cases with exhibits should verify exhibit information with the Archives and Special Services Division, at 841-7596/5452, from 8 a.m. to 6 p.m. and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

STATE BAR NEWS

2006 Section Election Results

Over the past several months, information has been published that described the annual election process for State Bar sections, announced the appointment of nominating committees for specific sections, and subsequently identified nominees for positions subject to election.

The 2006 section elections concluded on Oct. 31. Since none of the elections produced more than one candidate for any single position, there are no contested section elections. The nominees are deemed
elected by acclamation, and their terms will begin Jan. 1, 2007.

For reference, the roster of each incoming board of directors follows. Where a vacancy exists, the section board may fill the position by appointment until next year’s election. Attorneys who join sections in 2007 and are interested in filling an existing vacancy on that particular board, should contact the chair.

Appellate Practice Section
2007 Board of Directors
Caren I. Friedman, Chair 2006-2008
Sue A. Herrmann 2005-2007
Andrew S. Montgomery 2005-2007
Lee W. Huffman 2005-2007
Shannon C. Bacon 2006-2008
Jonathan Evans Sperber 2006-2008
Kathleen McGarry 2007-2009
Anastasia S. Stevens 2007-2009
Bryan P. Biedscheid, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Bankruptcy Law Section
2007 Board of Directors
James C. Jacobsen, Chair 2007-2009
Ronald E. Holmes 2005-2007
Thomas D. Walker 2005-2007
Karen H. Bradley 2006-2008
Manuel Lucero 2006-2008
Robert H. Jacobvitz 2006-2008
James A. Askew 2007-2009
Nancy S. Cusack 2007-2009
Alfred M. Sanchez, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Business Law Section
2007 Board of Directors
Nicole V. Strauser, Chair 2005-2007
Jean-Nickel Wells 2005-2007
Sara K. Berger 2006-2008
James H. Bozarth 2006-2008
Dana M. Kyle 2006-2008
Evans S. Hobbs 2007-2009
Gordon S. Little 2007-2009
Susan M. McCormack 2007-2009
Collin L. Adams, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Children’s Law Section
2007 Board of Directors
Rebecca J. Liggitt, Chair 2007-2009
Sara Seymour Crecca 2005-2007

Commercial Litigation Section
2007 Board of Directors
No election held.

Criminal Law Section
2007 Board of Directors
Louis Elias Lopez, Chair 2006-2008
Lisa A. Torrace 2005-2007
Dawn T. Adrian 2005-2007
Peter M. Ossorio 2006-2008
Cynthia M. Payne 2006-2008
Mark H. Donatelli 2007-2009
Brian A. Pori 2007-2009
S. Matthew Torres 2007-2009
Ousama M. Miresheh, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Elder Law Section
2007 Board of Directors
Amanda H. Hartmann, Chair 2005-2007
Deborah Ann Armstrong 2005-2007
Brian E. Jennings 2005-2007
M. Dwight Hurst 2006-2008
Mary Ann Green 2006-2008
Robert F. Rosebrough 2006-2008
Mary Ann R. Baker-Randall 2007-2009
Mary H. Smith, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Employment and Labor Law Section
2007 Board of Directors
S. Charles Archuleta, Chair 2006-2007
Eleanor Katherine Bratton 2006-2007
J. Edward Hollington 2006-2007
Gregory P. Williams 2006-2007
Danny William Jarrett 2007-2008
K. Lee Peifer 2007-2008
Rita G. Siegel 2007-2008
Aaron Charles Viets 2007-2008
Carlos M. Quinones, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

Family Law Section
2007 Board of Directors
Farrah Elege Simons, Chair 2006-2008

Health Law Section
2007 Board of Directors
George F. Koinis, Chair 2007-2009
J. Doug Compton, Past Chair 2007
YLD Liaison (Appointment Pending) 2007
Robert L. Schwartz (Ex Officio) 2007

Indian Law Section
2007 Board of Directors
Karl E. Johnson, Chair 2007-2009
Aaron Charles Viets 2007-2008
Rita G. Siegel 2007-2008
Danny William Jarrett 2007-2008
Gregory P. Williams 2006-2007
K. Lee Peifer 2007-2008
Rita G. Siegel 2007-2008
Aaron Charles Viets 2007-2008
Carlos M. Quinones, Past Chair 2007
YLD Liaison (Appointment Pending) 2007

International and Immigration Law Section
2007 Board of Directors
No election held.

Natural Resources, Energy and Environmental Law Section
2007 Board of Directors
Steve Hattenbach, Chair 2005-2007
Cheryl L. Bada 2005-2007
Steven L. Hernandez 2005-2007
Karen L. Fisher 2006-2008
Jennifer J. Pruett 2006-2008
Charles E. Roybal 2006-2008
J. Brent Moore 2007-2009

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Christopher Graham Schatzman  2007-2009
William C. Scott  2007-2009
A. Kyle Harwood, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007
Law Student
(Appointment Pending)  2007

Producers Section
2007 Board of Directors
Stephen D. Kovach, Chair  2006-2008
Heidi M. Pircher  2005-2007
Alan R. Rackstraw  2005-2007
Janice B. Schryer  2005-2007
Michael Patrick Sanchez  2006-2008
Phyllis Huang Bowman  2007-2009
Michael D. Cox  2007-2009
Barbara A. Romo  2007-2009
James R.W. Braun, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007

Public Law Section
2007 Board of Directors
Helen P. Nelson, Chair  2007-2009
Douglas W. Decker  2006-2008
Deborah A. Moll  2006-2008
Robert M. White  2006-2008
Douglas Meiklejohn  2007-2009
Stephen C. Ross  2007-2009
Albert James Lama, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007
Law Student
(Appointment Pending)  2007

Real Property, Probate and Trust Section
2007 Board of Directors
No election held.

Solo and Small Firm Practitioners Section
2007 Board of Directors
George Wright Weeth, Chair  2006-2008
Donald D. Becker, Jr.  2005-2007
Mark A. Keller  2005-2007
Beate Boudro  2006-2008
James Brian Smith  2006-2008
Brian E. Jennings  2007-2009*
Barbara Ann Michael  2007-2009
Edward B. Reinhardt, Jr.  2007-2009
John F. Moon Samore, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007

*No nomination made. Board member will continue to serve until a successor is elected.

Taxation Section
2007 Board of Directors
Dean B. Cross, Chair  2005-2007
Frank K. Bateman, Jr.  2005-2007
Steven Pacitti  2005-2007
Eric Lyon Burton  2006-2008
Elizabeth A. Glenn  2006-2008
R. Tracy Sprouls  2006-2008
Curtis W. Schwartz  2007-2009
John M. Hickey  2007-2009
Edward B. Hymson  2007-2009
Marjorie A. Rogers, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007

Trial Practice Section
2007 Board of Directors
Robert L. Cole, Chair  2007-2009
Lawrence H. Hill  2005-2007
Michael R. Jones  2005-2007
Raul Abad Page Sedillo  2006-2008
Patrick J. Rogers  2006-2008
Christina Calderwood Vigil  2006-2008
Eric D. Dixon  2007-2009
David M. Houlston  2007-2009
Martin Diamond, Past Chair  2007
YLD Liaison
(Appointment Pending)  2007

Attorney Support Group
The next Attorney Support Group meeting will be held at 5:30 p.m., Nov. 6, at the First United Methodist Church at Fourth and Lead SW, Albuquerque. The group meets regularly on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

Board of Bar Commissioners
Commission on Access to Justice
Appointment
The Board of Bar Commissioners will make one appointment to the New Mexico Commission on Access to Justice for a three-year term. The appointment will be made at the Dec. 15 Board of Bar Commissioners meeting. Members wishing to serve on the commission should send a letter of interest and brief resume by Dec. 1 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 29860, Albuquerque, NM 87199-2860; or fax to (505) 828-3765.

Fair Judicial Elections Committee
Appointments
The Board of Bar Commissioners has created a Fair Judicial Elections Committee. The functions of the committee are to: 1) monitor judicial election campaigns for compliance with the Code of Judicial Conduct; 2) assist judges, candidates for judicial office, all citizens, citizen groups, advocacy groups, political action organizations and others to understand the standards and expectations of the Code of Judicial Conduct as they relate to statements and advertising in election campaigns for judicial office; and 3) receive, review and investigate statements and advertisements emanating from incumbent judges and lawyers who are candidates in elections for judicial offices, made in or made for the purpose of affecting judicial election campaigns, and to comment privately to those candidates and their campaign committees on statements and advertising that are deemed to violate or fall below the requirements of the Code of Judicial Conduct or that are destructive of or inconsistent with the standards of independence, integrity, impartiality, dignity and decorum that are the philosophical, legal and historical heritage of the judicial branch of government. The board will be appointing eight members to the committee for one-year terms to expire Dec. 31, 2007. Anyone interested in serving should send a letter of interest and resume by Nov. 10 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 29860, Albuquerque, NM 87199-2860, or fax to (505) 828-3765.

Legal Aid (NMLA) Board
Appointments
The Board of Bar Commissioners will make two appointments to the New Mexico Legal Aid (NMLA) Board at its next meeting on Dec. 15. Both of the appointments are for one-year terms to end December 2007, with one of the positions being recommended by the Indian Law Section. Members wishing to serve on the NMLA Board should send a letter of interest and brief resume by Dec. 1 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; or fax to (505) 828-3765.
Board of Editors

Vacancies

Four attorney positions on the State Bar Board of Editors will expire at the end of 2006. The editorial board reviews and approves articles submitted for publication in the Bar Bulletin. All vacancies are two-year terms, beginning Jan. 1, 2007 and ending Dec. 31, 2008. Interested attorneys should have previous publishing/editing experience, be available to review articles regularly, and attend quarterly board meetings in person or by teleconference. Send resumes by Nov. 30 to Dorma Seago, dseago@nmbar.org, or by mail to PO Box 92860, Albuquerque, NM 87199.

Indian Law Section

Annual Meeting, Scholarship Awards and CLE

The Indian Law Section will hold its annual meeting at 1 p.m., Nov. 9, in conjunction with Santa Clara Pueblo v. Martinez: Past and Present Day Consequences. During the annual meeting, two law students will be awarded bar preparation scholarships. Each student will receive $2,000 to defray the costs of the bar exam and preparation courses. Agenda items for the annual meeting should be sent to Chair Levon Henry, lhenry@dnalegalsservices.org or (928) 871-4151. The cost of the CLE program is $95; $90 for section members, government attorneys and paralegals. Attendees will receive 2.7 general CLE credits. Native American cuisine will be provided for lunch. 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.

NREEL Section

Annual Meeting and CLE

The Natural Resources, Energy and Environmental Law Section will hold its annual meeting at 12:15 p.m., Dec. 15, in conjunction with the CLE program, Climate Change Impacts, Laws and Policies. Agenda items should be sent to Chair Kyle Harwood, ksharwood@ci.santa-fe.nm.us or call (505) 955-6511. Attendees will earn 3.8 general, 1.0 ethics and 1.0 professionalism CLE credits. The cost of the CLE program is $169 ($159 for section members, government and legal services attorneys and paralegals). Lunch will be provided. See the CLE Ad-a-Glance insert in the Oct. 23 (Vol 45, No. 43) 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.

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 The Nuts and Bolts of the D.A.’s Office, presented by Kari Brandenburg of the Bernalillo County District Attorney’s Office. The program will be held from noon to 1 p.m., Nov. 8, at the State Bar Center and offers 1.0 general CLE credit. Registration begins at the door at 11:30 a.m. The cost is $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.

OTher BArS

Albuquerque Bar Association

Monthly Luncheon and CLE

The Albuquerque Bar Association’s monthly luncheon will be held at noon, Nov. 7, at the Albuquerque Petroleum Club. Members of the State Bar Ethics Advisory Committee will present the annual ethics CLE. The presentation will qualify for 1.0 CLE ethics credit and will be presented from 12:30 to 1:30 p.m. Forward questions to the ethics committee to the Albuquerque Bar Association at abqbar@abqbar.com. The committee will address as many specific concerns as possible. Otherwise, committee members will address compelling inquiries regarding participation in Internet advertising/referal schemes and representation of clients who develop mental illness. The committee will also express opinions about candidates for judgeships and legal offices.

Lunch only: $20 Members/$25 Non-Members. Lunch and CLE: $40 Members/$55 Non-Members.

Register for lunch by noon, Nov. 3. Those who register at the door will be charged an additional $5.

To register:
• Log on to www.abqbar.com.
• E-mail abqbar@abqbar.com
• Call (505) 243-2615 or (505) 842-1151
• Mail request to 400 Gold SW, Suite 620, Albuquerque, NM 87102.

Nominations Being Solicited for Outstanding Attorney and Outstanding Judge

The Albuquerque Bar Association is entertaining nominations for the outstanding attorney and outstanding judge of 2006. Criteria to be considered by the committee include the following: personal integrity, legal skills and professional competence, contributions to the Bar, contributions outside the profession (e.g., service to the community or a civic organization), a legal achievement particularly noteworthy or courageous and any other accomplishment that improves the image of the legal profession. The deadline for nominations is Nov.
10. Submit nominations with supporting information to abqbar@abqbar.com or mail to 400 Gold SW, Suite 620, Albuquerque, NM 87102-3260. The awards will be presented at the Dec. 5 luncheon meeting.

American Bar Association Commission on Women in the Profession

The ABA Commission on Women in the Profession is seeking nominations for the 17th Annual Margaret Brent Women Lawyers of Achievement Awards. These awards will be presented at a luncheon on Aug. 5, 2007, during the ABA Annual Meeting in San Francisco. The deadline to submit the nomination form and supporting materials is the close of business, Nov. 27. Previous nominations, which are on file, may be re-submitted. Send a letter stating the renomination and update supporting material. Direct questions to Julia Gillespie, (312) 988-5668 or e-mail gillespj@staff.abanet.org. For more information, go to http://www.abanet.org/women/margaret-brent/nominationinformation.html.

N.M. Women’s Bar Association

Bi-Monthly Networking Lunch

The next networking luncheon of the New Mexico Women’s Bar Association will be held from noon to 1:30 p.m., Nov. 8, at NYPD Pizza, 215 Central Avenue, NW, Albuquerque. Cheryl Fairbanks, Esq., will give a brief presentation about the basics of Indian law 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 Nov. 6 with Patricia Baca at pjb@sutinfirm.com. The luncheons are open to all interested persons.

UNM School of Law

OWLS Association Panel Discussion

The UNM School of Law OWLS (Older and/or Wiser Law Students) Association and the State Bar of New Mexico are co-sponsoring a panel discussion of second career lawyers with a reception immediately following at the State Bar Center, 5121 Masthead Road NE in Albuquerque, on Nov. 13, from 5-7:30 p.m. (panel discussion 5-6 p.m.; reception 6-7:30 p.m.). All members and law students are invited to attend.

OTHER NEWS

N.M. High School Mock Trial Program

Attorney-Coach Needed

East Mountain High School needs an attorney to provide legal expertise and coaching for the 2007 New Mexico High School Mock Trial Program. The amount of time invested will be decided by the coach and the teacher advisor, but teams usually meet at least once each week. Regionals are Feb. 16–17, state finals are March 16–17, and nationals are May 10–13. Contact Michelle Giger, (505) 764-9417, ext. 11.

Workers’ Compensation Administration

Notice of Public Hearing

Notice is hereby given that at 1:30 p.m., Nov. 8, the New Mexico Workers’ Compensation Administration will conduct a public hearing on amendments to the in-patient hospital data collection provisions contained in Part 7 of the Workers’ Compensation Rules, the safety rules, the rules governing OCIPs and the individual and group self-insurance rules. The hearing will be conducted at the Workers’ Compensation Administration, 2410 Centre Avenue SE, Albuquerque. The proposed rule changes and copies of proposed changes to the fee schedule were made available on Oct. 25. Comments made in writing and at the public hearing will be taken into consideration. Written comments pertaining to these issues will be accepted until the close of business on Nov. 15. Oral comments will be limited to five minutes per speaker. For further information, call (505) 841-6000. Inquire at the WCA Clerk’s Office, 2410 Centre Avenue SE, Albuquerque, NM, 87106, (505) 841-6000, for copies of the fee schedule. For a copy by mail, inquire at the WCA clerk’s office about the postage cost and the envelope size needed. Include a post-paid, self-addressed envelope with each request. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any form of auxiliary aide or service to attend or participate in the hearing or meetings should contact Renee Blechner at (505) 841-6083 or inquire about assistance through the New Mexico relay network at (800) 659-8331.
Board of Bar Commissioners Election

The 2006 election of commissioners for the State Bar of New Mexico Board of Bar Commissioners will be held on Nov. 30. Only the First Bar Commissioner District has a contested election. Where provided, candidate responses and brief biographies are printed below. Ballots for the contested election are currently being mailed to members of the First Bar Commissioner District and must be returned by noon, Nov. 30. The other four districts with vacancies were uncontested; therefore, the candidates won by acclamation. All terms are for three years except as indicated.

Third Bar Commissioner District (uncontested)
Jessica A. Perez
Carolyn A. Wolf (one-year term)

Fourth Bar Commissioner District (uncontested)
Gary D. Alsup (one-year term)

Sixth Bar Commissioner District (uncontested)
Andrew J. Cloutier (one-year term)
Stephen S. Shanor

Seventh Bar Commissioner District (uncontested)
Hans W. Voss

First Bar Commissioner District
Candidate Biographies and Statements

Henry A. Alaniz graduated from the University of New Mexico from the Dual Degree Program with a J.D. and an M.B.A. He received a bachelor’s degree in business administration with a concentration in accounting from Eastern New Mexico University in Portales. He has had a law practice in Albuquerque from 2002 to the present and was an assistant district attorney for the 2nd Judicial District in Bernalillo County from 1997 to 2002. Alaniz is a faculty member of the Central New Mexico Community College (formerly Albuquerque Technical Vocational Institute).

Q: State your view of what the mission of the Bar should be and how well it is filling that objective.
A: I believe that the Bar has a number of missions. It must provide a forum for each member to provide input into the topic/issues it believes is a concern to their particular area of practice. When issues come up, we have asked the membership its position through either direct contact or a survey. The board takes the time to carefully review the responses and implement the courses of action recommended by the majority.

Q: Give your perspective of how the Bar is viewed by the public and what you would do to either maintain that view or improve it.
A: This will always be a challenge to the Bar. In the press, attorneys do not always get favorable publicity which shapes public opinion of attorneys and the Bar. I do believe that the Bar has, in the last few years, increased its public image. We attempt to provide positive activities so that the public can see that we are vital members of the community, providing programs that help citizens. We are involving more and more local bars in our decisions, and we continue to reach out to every segment of the community on how we can best serve. We will endeavor to improve the image, but it will be a continuing task of the current Bar and the future leadership.

Q: If elected to the BBC (or those elected by acclamation), how do you intend to communicate with members of your district and how would you respond to your district’s concerns?
A: I am very active in the legal profession, making personal contact with many attorneys on a daily basis. During my term as a commissioner, I have had calls from members in my district regarding general issues facing the Bar and personal issues they are facing. I have been easy to find and prompt to respond to their requests. We publish in the Bar Bulletin the various Bar and board issues. I believe that with my reputation, those who know me, know that I listen to an individual’s needs and that I follow through on their requests.

Q: What role, if any, do you think the Bar should have in handling substance abuse issues among the Bench and Bar?
A: The Bar is and needs to continue to assist attorneys with substance abuse issues. As many of you should know, the Bar has programs to assist attorneys with substance abuse problems. Unfortunately, we sometimes do not recognize when a friend and a fellow attorney needs help and/or is afraid to step forward when he or she needs a hand. This is a very touchy subject to the attorney with the abuse problem and is a difficult time for us to step forward. We need to educate our members on the programs we offer and provide the leadership and the guidance to give a helping hand discreetly to our fellow attorney in need.

Q: What has been your involvement in the State Bar and/or other law related organizations, such as local and voluntary bars?
A: From the day I graduated from law school, I joined the Young Lawyers Division, becoming its chair. As a chair, I was the liaison to the Board of Bar Commissioners, and when a vacancy opened on the board, I ran for the position. I have served as a commissioner, I am currently the secretary/treasurer and recently I was elected vice president. Given the vote of confidence by the membership by re-electing me and gaining the confidence of the board, I will serve as the president of the State Bar in 2009.
Daniel W. Jarrett is a native New Mexican and a 1996 graduate of the UNM School of Law where he was a staff editor of the New Mexico Law Review. He was vice-president and corporate counsel for a national healthcare company as well as an attorney in private practice. Currently, he is the president of Noeding & Jarrett, P.C. Jarrett counsels and represents public and private employers regarding labor and employment disputes. He represented the State Bar of New Mexico and set national precedent concerning NLRB jurisdiction in a representation election involving State Bar employees. Jarrett is a member of several practice committees in the ABA Labor and Employment Section. He serves on the board of directors of the State Bar's Employment and Labor Section. He is an appointee to a local public employer labor relations board and an arbitrator. Contact Jarrett at (505) 878-0515 or jarrett@nm-law.com.

Q State your view of what the mission of the Bar should be and how well it is filling that objective.

A The Bar's primary mission is to provide service to and oversight of the legal community. The Bar should also strive to educate the general public about how the legal community can provide services to individuals and businesses that assist in resolving problems and add value to their personal and commercial activities. The Bar is currently doing a better job in fulfilling its primary mission and I would like to assist in these efforts. I have seen substantial progress in the last five years in the areas of financial oversight and more structure for individual Sections. The Bar has also enhanced the services to its members most notably with the recent addition of Casemaker and the weekly E-News email newsletter. Other valuable services include publishing and archiving the Bar Bulletin in electronic format.

Q Give your perspective of how the Bar is viewed by the public and what you would do to either maintain that view or improve it.

A I believe that the Bar has little or no visibility in the general community. As a result, the public's perception of lawyers is too often unfavorable. There is little or no active communication of the value that the legal industry provides. I also believe that the Bar has relatively low visibility to students at New Mexico's only law school. There are a number of ways that the Bar could create increased visibility and demonstrate its value to the community as well as to future members of the profession. Three initiatives that I believe the Bar should consider include: 1) educational programs that address typical problems involving legal issues that individuals and small businesses have to deal with; 2) regular seminars at the School of Law to introduce future attorneys to the different areas of practice they may want to consider and the realities of practicing law; and 3) a regular program to introduce high school students to the variety of professions available to them in the legal industry.

Q If elected to the BBC (or those elected by acclamation), how do you intend to communicate with members of your district and how would you respond to your district's concerns?

A I plan to use as many communication avenues as possible for members to communicate their concerns and ideas on how the Bar can better serve their needs and add value to their practices. I will be available to all members by e-mail, mail, phone, or in-person meetings. I have established an online bulletin board that will be made available to all members. The bulletin board will allow members to interact with me and each other so that we can create an ongoing discussion on how I can best represent their interests and how we can increase the value of their Bar membership. I will also use the bulletin board as a vehicle to provide information of value to the members such as how to more effectively use technology in their practices and to meet the new federal court requirement for mandatory electronic filing that starts in January 2007.

Q What role, if any, do you think the Bar should have in handling substance abuse issues among the Bench and Bar?

A The Bar has a primary mission to regulate its members. As such, the Bar must take action in any situation where there is indication of an unaddressed substance abuse problem. The Bar must ensure that the affected member seeks and obtains assistance to deal with the problem before it creates public concern or adversely affects the affected member's clients. It seems that there are some very good programs and initiatives in place and the Bar should seek to achieve and maintain direct input and some level of oversight for any programs used by Bar members.

Q What has been your involvement in the State Bar and/or other law related organizations, such as local and voluntary bars?

A I have been a member of the Bar since 1996. I was a Board member of the Young Lawyers Division for two terms and held some national-level American Bar Association/Young Lawyers Division positions during my tenure. I am currently a member of the Employment and Labor Law Section and am in my second term as a board member of the section. I am a member of the New Mexico Defense Lawyers Association, the Albuquerque Bar Association and of several specialty practice areas within the American Bar Association. I have provided pro bono representation of the State Bar on labor issues. I am a regular contributing editor to the ABAs Fair Labor Standards Act and Family and Medical Leave Act treatises.
State your view of what the mission of the Bar should be and how well it is filling that objective.

I believe the mission of the State Bar Association is to be a service organization to the entire New Mexico bar. In my experience, the State Bar has served as a great service organization in many capacities including providing space when needed for different legal organizations and law firms, providing CLE programs and partnering with other legal organizations to provide CLEs. The State Bar has been progressive in providing a Leadership Training Institute for attorneys wishing to develop stronger leadership skills. The State Bar has also been active in providing mentorship programs for attorneys. I do believe, however, that there is a lack of understanding as to the spectrum of services the State Bar does provide. I do think there is a better understanding in more recent years, but I think there still needs to better stronger efforts of educating the members and legal bar associations on the services provided by the State Bar.

Give your perspective of how the Bar is viewed by the public and what you would do to either maintain that view or improve it.

I think the State Bar is viewed by some in the legal community as an organization that focuses its services on certain sections of the legal community. Again, I think stronger efforts to educate our legal community on not only the services provided by the State Bar but the composition of the Board of Bar Commissioners. I am encouraged to see that the Board of Bar Commissioners is comprised of individuals representing different areas of practice including governmental, public interest, criminal and civil.

If elected to the BBC (or those elected by acclamation), how do you intend to communicate with members of your district and how would you respond to your district’s concerns?

Foremost, I would communicate with the members of my district via email. I think that is the most efficient way to communicate to a larger group of individuals. I also would be available by phone and person on an individual basis or as a group. I would not hesitate to organize a forum to have dialogue with the members if the desire and need was there.

What role, if any, do you think the Bar should have in handling substance abuse issues among the Bench and Bar?

As a service organization, I think the State Bar should provide assistance in helping attorneys and judges find the means necessary to handle substance abuse issues. I do not feel it is the State Bar’s role to determine if the individual should continue as a practicing attorney or judge but rather provide assistance in dealing with the substance abuse issue.

What has been your involvement in the State Bar and/or other law related organizations, such as local and voluntary bars?

I am currently serving the unexpired term for one year of the past president of the State Bar. I am a board member of the New Mexico Hispanic Bar Board and have been since 1998. During that time I served for three years on the executive committee of the New Mexico Hispanic Bar. I also serve as a board member for the New Mexico Board of Bar Examiners. Additionally, I serve on several advisory committees for Central New Mexico Community College relating to judicial and paralegal studies. I have also served on the board of the Hispanic National Bar Association as their national Treasurer and Deputy Regional President.
My name is Sandra Rotruck. I am a native of Albuquerque who has practiced law in New Mexico for 20 years. I have been practicing family law since 1999, currently with Atkinson & Kelsey, P.A., and previously with Moore & Golden, P.A., in Santa Fe. Prior to my focus on family law, I worked with several government agencies: prosecuting criminal cases such as child abuse, rape and homicide with the 2nd Judicial District Attorneys Office; establishing and enforcing child support orders with the N.M. Child Support Enforcement Division; and representing county departments with the County of Los Alamos. I have a Bachelor of Social Work from NMSU and a J.D. from UNM. I currently serve as a member of the Supreme Court’s Statewide Alimony Guidelines Committee and Disciplinary Board. I am a member of the Family Law Section and have served as a settlement facilitator in family law cases.

Q State your view of what the mission of the Bar should be and how well it is filling that objective.

A The mission of the Bar should be to assist members so that we have highly functioning Bar members and the Court system functions well. This mission includes a broad range of activities such as increasing services available to pro se litigants, offering support services to individual practitioners in out-lying areas, developing collegiality among the members throughout the State, encouraging members to participate in the special Bar Sections and identifying ways to foster good relations between attorneys and their clients/communities. The Bar has already begun addressing many of these activities but will need to continue improving current programs and identifying and addressing new problems as they arise.

Q Give your perspective of how the bar is viewed by the public and what you would do to either maintain that view or improve it.

A The public has a mixed view of attorneys and the Bar. Some take their cues from television and newspaper articles addressing misbehavior by attorneys. Some have bad experiences with attorneys or the judicial system. The Bar has already taken steps to address the poor image of the Bar through programs including, but not limited to, ethics and professionalism education, referral services, services to the public, and encouraging Bar members to get involved with the Bar and public service. The programs that are working should continue and new programs should be developed as specific problem areas are identified.

Q What role, if any, do you think the Bar should have in handling substance abuse issues among the bench and bar?

A The Bar should continue to offer services to attorneys that will help them avoid substance abuse problems such as the Lawyers Care Program and to address such problems. It is important for the Bar to communicate and work with the Judicial Standards Commission and the Disciplinary Board to determine the best ways in which to try to prevent and address such problems.

Q What has been your involvement in the State Bar and/or other law related organizations, such as local and voluntary bars?

A I am a member of the New Mexico Collaborative Law Group and the Albuquerque Collaborative Group. I was previously a member of the First Judicial District Collaborative Group. I currently serve as a member of the Supreme Court’s Statewide Alimony Guidelines Committee and the Supreme Court Disciplinary Board. I am a member of the Family Law Section. I made presentations to pro se litigants through the Pro Se Law Clinic and served as a pro bono settlement facilitator in the First Judicial District. As an assistant district attorney, I also made presentations to Santa Fe Rape Crisis, law enforcement officers from numerous agencies and other district attorneys regarding the prosecution of child abuse cases.
Feliz Angelica Rael has joined the Harvey Law Firm. Rael, a New Mexico native, earned her bachelor's degree in political science from Grinnell College in Iowa and her law degree from the UNM School of Law. Prior to joining the Harvey Law Firm, she was a defense attorney working primarily on railroad and business tort litigation. She clerked for the New Mexico Court of Appeals in Santa Fe.

C. Joseph Lennihan has rejoined the firm of Sutin, Thayer and Browne at its Santa Fe office, practicing in the areas of taxation, Indian law and litigation. Lennihan served as the chief legal counsel to the New Mexico Taxation and Revenue Department from 1999 to January 2003. He received his B.A. from St. Johns College, his J.D. from the University of Maryland, and his LL.M. from Georgetown University Law School.

William P. Gralow of Civerolo, Gralow, Hill and Curtis, P.A., has been named outstanding Civil Defense Lawyer of the year by the New Mexico Defense Lawyers Association.

Morris “Mo” J. Chavez was named state insurance superintendent by the Public Regulation Commission. Chavez was the state’s tribal gaming representative, worked as corporate counsel and surety consultant for Manuel Lujan Insurance Inc. of Albuquerque and was vice president of operations and a board member of the Santa Fe-based National Guaranty Insurance Company. Morris was named the “Outstanding Young Lawyer of the Year” in 2005 by the State Bar of New Mexico. He graduated from the UNM School of Law and received his undergraduate degree from the University of San Diego.

The Honorable Linda S. Rogers took the oath of office administered by New Mexico Appellate Judge Roderick Kennedy on Oct. 5 in the Metropolitan Court rotunda. Looking on is the judge’s mother, Dr. Patricia C. Wilkins. Judge Rogers will hear a docket in the newly-created Criminal Division XIX for the Metro Court. She is a graduate of the University of Colorado School of Law. Most recently, Judge Rogers worked in the 2nd Judicial District Attorney’s Office in the probation violation division.

Elege Simons Harwood has joined Simons and Slattery, L.L.P. Harwood will practice in family law including divorce, custody, domestic violence, divorce mediation, settlement facilitation and collaborative law. She is the chair-elect for the State Bar's Family Law Section, a member of the 1st Judicial District Bar Association and the Santa Fe Collaborative Law Group. She has a law degree from UNM.

Five members of the law firm of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenbrug, and Bienvenu, L.L.P., have been selected to be included in the 2007 edition of Best Lawyers in America.

Robert R. Rothstein of the firm’s Santa Fe office was selected for the specialties of personal injury litigation, labor and employment law, and criminal defense. He has been listed in all editions since 1987.

Mark Donatelli of the Santa Fe office and Peter Schoenbrug of the firm’s Albuquerque office were selected to be honored in criminal defense. Donatelli has been listed in this category for over ten years.

Sarah E. Bennett of the Santa Fe office was selected in the area of family law.

Richard Hughes of the Santa Fe office was selected in Indian law and gaming law.

Albuquerque lawyer Daniel J. Macke has been appointed to the seven-member New Mexico Lottery Authority Board by Gov. Bill Richardson.

Bruce Hall, a partner with the Rodey Law Firm, will be featured as one of the top 500 lawyers in America in the fall issue of Lawdragon Magazine. Hall, who is a practicing litigator and mediator, was chosen by the magazine from thousands of nominated lawyers nationwide.

Four attorneys at the Santa Fe law firm of Scheuer, Yost and Patterson have been selected for inclusion in the 2007 edition of Best Lawyers in America: Ralph H. Scheuer, Mel E. Yost, John N. Patterson and Reverdy Johnson.

Leslie M. Padilla recently joined Modrall Sperling as an associate, practicing in the litigation departments and lobbying group. Padilla served as a foreign service officer with the U.S. Department of State, serving as a consular officer in Guatemala, a political and economic officer in Macedonia and in several assignments in Washington, D.C. She worked for the New Mexico State Legislature at both the Legislative Council Service and the Legislative Finance Committee and was appointed to lead the Science and Technology Division of the New Mexico Economic Development Department. Padilla received her J.D. from the University of California at Los Angeles School of Law.
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G = General  
E = Ethics  
P = Professionalism  
VR = Video Replay  
Programs have various sponsors; contact appropriate sponsor for more information.
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**WRITS OF CERTIORARI**

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

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

**Effective November 6, 2006**

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(Parties preparing briefs)

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# Opinions

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

Patricia C. Rivera Wallace, Chief Clerk New Mexico Court of Appeals  
PO Box 2008 • Santa Fe, NM 87504-2008 • (505) 827-4925  
**Effective October 27, 2005**

## Published Opinions

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## Unpublished Opinions

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8:45 a.m. How to Make Clients Happy, Get Paid, and Stay Out of Trouble:
        7 Habits and 2 Rules of a Successful Law Practice
10:30 a.m. Break
10:45 a.m. The ‘Of Counsel’: A New World For Lawyers Who Do Not Want To Work Full-Time
Noon Lunch (provided at the State Bar Center)
1:00 p.m. Managing Your Trust Accounts to Avoid Ethical and Financial Problems (1.0 E)
2:00 p.m. Avoiding Unnecessary Stress Caused By Other Lawyers, Judges,
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Certiorari Denied, No. 29,962, September 11, 2006
Certiorari Denied, No. 29,963, September 5, 2006

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-115

PHELPS DODGE TYRONE, INC.,
Plaintiff-Appellant,
versus
NEW MEXICO WATER QUALITY
CONTROL COMMISSION and
NEW MEXICO ENVIRONMENT DEPARTMENT,
Defendants-Appellees.
No. 25,027 (filed: July 19, 2006)

APPEAL FROM THE NEW MEXICO
WATER QUALITY CONTROL COMMISSION

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OPINION

JAMES J. WECHSLER, JUDGE

{1} The opinion filed in this case on June 15, 2006 is hereby withdrawn and the following substituted therefor. The joint motion for rehearing of the New Mexico Water Control Commission and the New Mexico Environment Department is denied.

{2} This appeal concerns a groundwater discharge permit, No. DP-1341, issued by the New Mexico Environment Department (NMED) to Phelps Dodge Tyrone, Inc., and raises important issues under the Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (1967) (amended 2005) (the Act). The permit requires Tyrone to take certain steps when mining operations are completed at its Tyrone copper mine. Among other things, the permit requires Tyrone to regrade its leach ore and waste rock piles to slopes no steeper than 3:1 and to completely cap the piles with three feet of alluvium (i.e., silt, clay, gravel, or similar material). The Water Quality Control Commission upheld these conditions. Tyrone contends that NMED has no authority to impose these conditions and that the conditions are invalid because NMED and the Commission misinterpreted the Act. Tyrone also raises several due process issues related to the composition of the Commission and conduct of the Commission hearing.

{3} We hold that NMED has the authority to impose reasonable permit conditions. However, we hold that the Commission failed to use a proper analysis in determining whether the conditions are reasonable and remand for further, limited proceedings. We also hold that Tyrone’s due process claims do not require reversal.

BACKGROUND

A. THE TYRONE MINE

{4} Some context is required to understand the permit conditions and the issues presented by this appeal. The Tyrone mine is extremely large. It covers approximately

1 We use “Tyrone” throughout the opinion to refer to Plaintiff in this case. We refer to Tyrone’s parent company as “Phelps Dodge.”

2 We cite the current version of the Act because recent amendments do not affect the issues in this case.
9400 acres and includes eight open mining pits and six pits that were previously mined. The main pit is 1400 feet deep. Waste rock from the pit excavations has been deposited in piles near and adjacent to the open pits. Leachable-grade ore has also been placed in stockpiles near and adjacent to the pits. The leach ore stockpiles and waste rock piles cover approximately 2800 acres and contain about 1.7 billion tons of rock. The leach ore stockpiles and waste rock piles cover approximately 2800 acres and contain about 1.7 billion tons of rock. 

The leach ore stockpiles and waste rock piles cover approximately 2800 acres and contain about 1.7 billion tons of rock.

According to Tyrone, this method does not require Tyrone to regrade the piles to the same extent and limits the covers that will be required. Tyrone proposes to cover only some of the piles, to cover with two feet of material, and to cover the tops of the piles but not the sides.

NMED’s expert testified that Tyrone’s method was flawed for several reasons. He indicated that the pit capture zone might only protect one aquifer, while another aquifer became contaminated and allowed the contamination to move offsite. In addition to that problem, he indicated that there existed uncertainty about the actual location of the pit capture zone. Finally, NMED’s expert testified that if contamination still exists after the pumping and treatment stop, nothing would prevent it from moving offsite and contaminating water elsewhere. The Commission denied Tyrone’s appeal and upheld the permit conditions.

STANDARD OF REVIEW

10. Under the Act, we set aside an action of the Commission only if it is “(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law.” Section 74-6-7(B)(1)-(3); Regents of the Univ. of Cal. v. N.M. Water Quality Control Comm’n, 2004-NMCA-073, ¶ 8, 136 N.M. 45, 94 P.3d 788. “An action is arbitrary or capricious if it is unreasonable, irrational, willful, and does not result from a sifting process” or “if there is no rational connection between the facts found and the choices made.” Regents of the Univ. of Cal., 2004-NMCA-073, ¶ 35 (internal quotation marks and citations omitted).

NMED’S AUTHORITY TO IMPOSE REASONABLE PERMIT CONDITIONS

11. The first issue we address is whether NMED may include conditions that specify the methods of controlling pollution in a discharge closure permit when those conditions were not proposed by the applicant. Because NMED’s authority is derived from statute, we review this issue de novo. See Morgan Keegan Mortgage Co. v. Candelaria, 1998-NMCA-008, ¶ 5, 124 N.M. 405, 951 P.2d 1066 (applying de novo review to construction of a statute). We give little or no deference to agencies engaged in statutory construction because they have no expertise in that area. Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm’n, 1999-NMSC-040, ¶ 14, 128 N.M. 309, 992 P.2d 860.

12. Tyrone argues that the Act limits NMED’s authority to impose permit conditions and that the Act does not authorize the conditions Tyrone challenges in this case. Tyrone relies on two sections of the Act. First, it relies on Section 74-6-4(D), which states that regulations adopted by the Commission may not specify the method to be used:

Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants.

(Emphasis added.) Second, it argues that NMED may only impose the conditions listed in Section 74-6-5(J). That section provides that “[b]y regulation, the commission may impose reasonable conditions upon permits requiring permittees” to take various steps dealing with monitoring, sampling, and reporting of water quality. Id.

13. Reading these two sections together, Tyrone argues that the legislature has expressed its intention that NMED and the Commission may impose a standard of water quality, but may not dictate to an operator the specific method to be used to meet that standard. Tyrone argues that Section 74-6-5(J) strictly limits permit conditions to those addressing monitoring, sampling, and providing information. It also argues that Section 74-6-5(D) addresses only the authority of the Commission to regulate the time periods for processing and acting on permits.

14. NMED and the Commission argue that the statutes relied on by Tyrone demonstrate that the legislature intended them to have broad power and flexibility to carry out their mission. They rely on Section 74-6-5(D), which reads:

The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to
conditions or deny the permit.

{15} As a general matter, we agree with Tyrone that NMED’s authority must be derived from statute. See In re Application of PNM Elec. Servs., 1998-NMSC-017, ¶ 10, 125 N.M. 302, 961 P.2d 147. We therefore address NMED’s authority under the Act as an issue of legislative intent. See Key v. Chrysler Motors Corp., 121 N.M. 764, 768-69, 918 P.2d 350, 354-55 (1996). The “plain language of a statute is the primary indicator” of such intent, and we refrain from further interpretation if the language is clear and unambiguous. High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMCA-087, ¶ 26, 122 N.M. 350, 924 P.2d 1362. We attempt to harmonize statutes “in a way that facilitates their operation and the achievement of their goals.” State ex rel. Quintana v. Schendler, 115 N.M. 573, 575-76, 855 P.2d 562, 564-65 (1993).

{16} In the context of the Act, we agree with NMED that Section 74-6-5(D) provides the authority to impose the permit conditions at issue. Generally, the Act grants the Commission the authority to issue regulations that are to be carried out by the Commission and its constituent agencies. Section 74-6-4. The Act allows the Commission to adopt regulations requiring that permits for discharge of a water contaminant be obtained from a constituent agency. Section 74-6-5(A). With regard to a permit, however, the Act grants authority directly to constituent agencies. A constituent agency may require an applicant to submit data selected by the constituent agency and may deny a permit application if the constituent agency makes certain findings. Section 74-6-5(C), (E). Section 74-6-5(D) addresses the authority of a constituent agency to grant a permit. No other section does so. When we read Section 74-6-5(D) in the context of surrounding subsections that grant constituent agencies authority to require information in connection with an application and deny an application if it is inappropriate, it becomes apparent that Section 74-6-5(D) contains the legislative authority to a constituent agency to grant an application for a permit. See Quintana, 115 N.M. at 575-76, 855 P.2d at 564-65. This authority is distinct from the authority given the Commission to act by regulation. We therefore disagree with Tyrone that Section 74-6-5(D) only grants the Commission authority to regulate the time for processing and acting on permits.

{17} In connection with its authority to grant a permit, the plain language of Section 74-6-5(D) allows a constituent agency to attach conditions to the permit. Accepting this language, Tyrone contends that this statutory authority refers solely to the conditions listed in Section 74-6-5(J) concerning monitoring, sampling, and reporting. We do not read Section 74-6-5(D) to have such a limitation. First, as we have observed, Section 74-6-5(D) contains express authority that is granted directly to constituent agencies in connection with the permit process. In contrast, Section 74-6-5(J), by its express language, grants authority to the Commission, not to constituent agencies.

{18} Additionally, Section 74-6-5(D) does not refer to Section 74-6-5(J) or in any way state that the Section 74-6-5(J) conditions are the only conditions that may be imposed. If the legislature intended that NMED have only the power to impose the conditions in Section 74-6-5(J), it knew how to clearly impose such a limitation. We believe that the failure to express such a limitation indicates the legislature’s intent that NMED should retain sufficient discretion to carry out its mission. See Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm’n, 2003-NMSC-005, ¶ 27, 133 N.M. 97, 61 P.3d 806 (noting that “[i]f the legislature intended to prohibit the expansion of a permit area, it certainly could have expressly stated so,” but the Mining Act did not contain such a restriction).

{19} We further do not consider Section 74-6-5(D) to be limited by Section 74-6-5(J) because of the distinction between permits and regulations that we consider significant to our interpretation of the Act. This distinction also bears on our analysis of Tyrone’s argument that Section 74-6-4(D) prohibits NMED from specifying the method for Tyrone to use for pollution control. There is a distinction between permits and regulations with regard to scope. Regulations, by their nature, are general requirements. They are designed to apply to all situations and can apply to any site. In contrast, a constituent agency’s action in connection with a permit application is specific to the site in the application. It is designed to address the circumstances of the particular site.

{20} For example, Section 74-6-4(D) deals only with regulations adopted by the Commission. Tyrone is correct that under Section 74-6-4(D) regulations shall not specify the method to be used to meet water quality standards. Tyrone reads this language to mean that NMED and the Commission may impose water quality standards, but have no power to impose a particular method to meet those standards. The Mining Association characterizes this legislative scheme as meaning that companies are given the power to select the method of pollution control, and NMED’s role is limited to giving “thumbs up or down.”

{21} But there is a sensible reason why the legislature would draw a distinction between permit conditions and regulations. The legislature did not want regulations to specify a particular method because it understood the inflexibility in specifying a particular method in a regulation. Section 74-6-4(D) illustrates the legislature’s intention to avoid a required approach and, instead, to grant flexibility in determining the appropriate method to use for each site. Section 74-6-4(D) is consistent with the idea that each site is unique, different in scale, different in impact, and different in geology and hydrology. The unique nature of a site requires flexibility for both operators and regulators. This need for flexibility explains the legislature’s intent that regulations not dictate a specific method to be used in all situations. Consequently, we believe that Section 74-6-4(D) and Section 74-6-5(J) can be harmonized with Section 74-6-5(D) in a sensible way to facilitate their operation and to achieve the goals of the Act. See Cerrillos Gravel Prods., Inc. v. Bd. of County Comm’rs, 2005-NMSC-023, ¶ 11, 138 N.M. 126, 117 P.3d 932; Quintana, 115 N.M. at 575-76, 855 P.2d at 564-65.

{22} Similarly, Section 74-6-5(J) addresses the authority of the Commission to act by regulation. The conditions listed in Section 74-6-5(J) are general requirements that can apply to any site. We believe that in adopting Section 74-6-5(J) the legislature wanted to emphasize the importance of monitoring, sampling, and reporting by allowing the Commission to impose these conditions through regulation. When interpreted in harmony with Sections 74-6-4(D) and 74-6-5(D), Section 74-6-5(J) is a grant of authority, not a limitation.

{23} The Mining Association further encourages us to interpret the Act to allow industry to select the methods necessary, assuring us that its members view “environmental stewardship as a critical
component of their respective business missions, with the primary imperative of ensuring that their operations do not pose an unacceptable health risk to employees and neighbors.” Allowing industry to select the method of pollution control, and limiting NMED to granting or denying a permit, is one choice the legislature could have made. That choice, however, does not necessarily advance the Act’s purpose of protecting ground and surface water from pollution, and, from the language of Section 74-6-5(D), we do not believe that the legislature chose that path. See *Res. Corp. v. N.M. Water Quality Control Comm’n*, 93 N.M. 546, 555, 603 P.2d 285, 294 (1979) (affirming an agency interpretation of the Act because it was not “clearly incorrect” given the objective of preventing water pollution). Rather, the intent of the legislature as described in the purposes of the Act is best achieved if NMED is an active participant in imposing conditions and in addressing identified problems. See *State ex rel. Helman v. Gallegos*, 117 N.M. 346, 353, 871 P.2d at 1352, 1359 (1994) (stating that statutes should be interpreted to achieve the legislature’s purpose). Although NMED has the ultimate power to deny a permit if it does not agree with the method selected by the operator, such power does not remove NMED’s need to impose permit conditions, as Tyrone argues, because of the inefficiency attendant to such a process.

{24} For these reasons, we conclude that NMED’s construction of the Act is supported by the legislature’s expression that the “constituent agency” may “either grant the permit, grant the permit subject to conditions or deny the permit.” Section 74-6-5(D) (emphasis added). Consequently, we hold that the Act grants NMED the power to impose reasonable permit conditions. That interpretation is consistent with the plain language of the Act and advances its underlying policies. Our interpretation of the Act gives NMED power, but it is not unchecked power. NMED’s imposition of conditions is not final. An aggrieved party may always appeal to the Commission and to our appellate courts. These avenues of review provide an incentive for the NMED to craft permit conditions that are reasonable and that can withstand review.

**REASONABLENESS OF PERMIT CONDITIONS**

{25} Although we are not bound by an agency’s interpretation of statutes and rules because “it is the function of the courts to interpret the law,” *Sierra Club*, 2003-NMSC-005, ¶13 (internal quotation marks and citation omitted), we afford administrative agencies considerable discretion to carry out the purposes of their enabling legislation, see id. ¶ 25, and we give deference to an agency’s interpretation of its own regulations. See *Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n*, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995).

{26} Tyrone argues that it is impossible to determine the reasonableness and effectiveness of the permit conditions if points of compliance have never been established and that neither NMED nor the Commission ever selected points where the effectiveness of the permit conditions could be measured. Tyrone further contends that the Commission’s decision that the “Tyrone mine facility” is the “place of withdrawal . . . for present or reasonably foreseeable future use” cannot stand because an entire mine site cannot be a “place of withdrawal” and that the Commission’s designating the entire mine site as the relevant measuring point requires Tyrone to meet water quality standards at every place on the mine site. Section 74-6-5(E)(3). It argues that, taken to its extreme, this case sets precedent requiring industry to ensure that water at the bottom of a huge mine pit will be drinkable and that the legislature could not have intended such an impractical result. Tyrone asserts that this overly broad and incorrect interpretation of the water to be protected under the Act in turn led the Commission into an incorrect determination that the permit conditions were reasonable and lawful.

{27} Tyrone’s argument requires us to consider the legislature’s intent in using the phrase “at any place of withdrawal of water for present or reasonably foreseeable future use” in Section 74-6-5(E)(3). The phrase is one of “beguiling simplicity.” *Helman*, 117 N.M. at 353, 871 P.2d at 1359 (recognizing that the language of a statute, “apparently clear and unambiguous on its face, may . . . give rise to legitimate . . . differences of opinion concerning the statute’s meaning”). Certainly, the legislature meant to capture the concept that clean water that is currently being withdrawn for use, or clean water that is likely to be used in the reasonably foreseeable future, must be protected. When the Commission was grappling with the meaning of the phrase, one commissioner’s apt comment was that “we are darn sure obligated to make sure that the water that isn’t contaminated outside of [the currently contaminated] area is protected.”

{28} The standard chosen by the legislature is necessarily broad and simple in the abstract. The problem is that it is difficult to apply to a situation such as the one before us, and the standard’s apparent simplicity leads to genuine uncertainty about the legislative intent for a site like Tyrone. See id. (stating that a seemingly clear statute may present genuine uncertainty about the legislature’s goal). For example, it raises the question in this case as to the point at which the legislature intended to measure compliance for a mine like Tyrone. That is, should water quality be measured at the bottom of a waste rock pile, at the bottom of the mine pit, at wells located at the perimeter boundary of the mine property, or at some other point or points?

{29} This difficult question is essential to this appeal. The critical phrase suggests that the legislature meant for impacts to be measured in a practical and sensible fashion, but the issue is complicated by the fact that groundwater and surface water systems are interconnected. Contaminated waters migrate into areas that were previously pristine. We have no doubt that the legislature intended to limit that kind of migration. On the other hand, mining is a necessary and important component of our economy and our modern way of life. We believe that the legislature intended that our laws, regulations, and any interpretation of them, strike a wise balance between these competing interests. Cf. NMSA 1978, § 69-36-2 (1993) (recognizing that mining is vital to the welfare of New Mexico); § 74-6-4(D) (stating that, in adopting regulations, the Water Quality Commission should consider, among other things, the economic impact of the regulations); *Sierra Club*, 2003-NMSC-005, ¶ 28 (stating that “the overall purpose of the Mining Act [is] to strike a balance between the economic and environmental impacts of mining”).

{30} NMED tailored its Commission presentation to meet the broad standard of Section 74-6-5(E)(3). During closing argument, NMED argued that the “Tyrone Mine” is a place of withdrawal because the mine currently obtains potable water from on-site wells, the Fortuna wells. NMED also argued that reasonably foreseeable future use was established because there are fifty domestic wells within a two-mile radius of the mine. It argued that the post-mining use of the mine site would be wildlife habitat and industrial use and that the industrial use would require potable water. NMED also noted that the issue was not a “point” of compliance, because wells can draw contaminated water from a...
large area around the well. NMED counsel argued, “So when we talk about a place of withdrawal, we don’t mean one dot on a facility map.” On appeal, the attorney general makes a similarly broad statement that “[t]he mine site is a place of withdrawal of water for present use, because Tyrone currently uses ground water pumped from the mine property.”

The Commission had difficulty deciding the meaning of the standard, and the transcript of the Commission’s deliberations reveals the ambiguity of the critical phrase. One commissioner said that the Commission had to ensure that “the water that isn’t contaminated outside of that area is protected.” That general assessment appears correct, but applying the test to the Tyrone mine proved difficult. The transcript of the deliberations reflects that the commissioners could not agree on whether a point of compliance had to be selected and that they admitted they were unsure whether the place of withdrawal was the entire mine site, or just certain points.

In the end, the commissioners’ divergent interpretations of the statute were never satisfactorily reconciled. The Commission ended up voting ten to one on a motion stating that “there is present and reasonably foreseeable future use of water on the Tyrone Mine facility.” The Commission accepted NMED’s arguments and entered them as findings. The Commission then relied on all of these facts to reach its conclusion that the “Tyrone Mine Facility” was a place of withdrawal of water for present or future use. This decision could not have been more broad. As an indication of the overbreadth of the standard that may have been applied by the Commission, at the evidentiary hearing there was evidence that it was “possible” that someday someone might drill a well into the side of, or adjacent to, waste rock piles. The Commission relied, in part, on this possibility to support its conclusion that the entire facility was a place of withdrawal of water. This speculative scenario appears to stretch the statutory language too far, does not appear to represent reasonable future use, and cannot support the conclusion that the entire facility was a place of withdrawal of water. See Sierra Club, 2003-NMSC-005, ¶ 17.

The potential environmental impacts from a mine the size of Tyrone are enormous, both in scope and duration. Although the mine is a place where water is withdrawn for present use, it would be incorrect to conclude that, as a consequence, the entire mine is a measuring point and must meet water quality standards everywhere. Not only is such a conclusion overbroad, it is also unrealistic to require all water at the Tyrone mine site to meet drinkable water standards. See Medina, 1996-NMCA-087, ¶ 26. Thus, even though it is a conclusion that is arguably within the plain language of the statute, we reject such a broad and impractical interpretation of the Act; so interpreted, it would not reflect a balance between the competing policies of protecting water and yet imposing reasonable requirements on industry. Cf. § 74-6-4(D); Sierra Club, 2003-NMSC-005, ¶ 28 (stating that the New Mexico Mining Act attempts “to strike a balance between the economic and environmental impacts of mining”). A conclusion reached using an overly broad legal standard is arbitrary and capricious and not in accordance with law. See Archuleta v. Santa Fe Police Dep’t, 2005-NMSC-006, ¶ 18, 137 N.M. 161, 108 P.3d 1019 (stating that a ruling that is not in accordance with the law should be reversed “if the agency unreasonably or unlawfully misinterprets or misapplies the law”); Atlixco Coalition v. Maggiore, 1998-NMCA-134, ¶ 24, 125 N.M. 786, 965 P.2d 370 (stating that “an agency’s action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand”).

We understand the Commission’s struggle to determine the meaning of the statute and the contours of its task that ultimately resulted in its overly broad and impractical conclusion. The legislative standard is broad and there are no regulations providing any interpretive guidance. Our review of the transcript indicates that the Commission worked diligently to decide all aspects of this complex case. Unfortunately, the statute and existing regulations did not give the Commission adequate information about the decision it was obligated to make.

We believe the appropriate course is to reverse the Commission’s decision only as to conditions 4 and 17 and to remand for further, limited proceedings. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 119 N.M. 29, 39-40, 888 P.2d 475, 485-86 (Cl. App. 1994) (suggesting that remand to an administrative agency, and deference to the agency, is warranted when the agency’s knowledge and expertise play a role in the decision-making process); cf. McDowell v. Napolitano, 119 N.M. 696, 700, 895 P.2d 218, 222 (1995) (recognizing that, under the doctrine of comity, a “court may choose to defer to the administrative agency where the interests of justice are best served by permitting the agency to resolve factual issues within its peculiar expertise”). Because the Commission made findings of fact and conclusions that the entire mine is a place of withdrawal for the purposes of Section 74-6-5(E)(3), we must assume that it considered its findings and conclusions to affect its determination to affirm the conditions. The Commission, in the first instance, must create some general factors or policies to guide its determination. We offer no opinion as to whether the Commission should do so by way of rule-making or by simply deciding the factors as a part of this specific case, or both.

We discuss some possible factors that the Commission might consider. As a court, we are hampered in this task because we do not have technical expertise in hydrology, geology, or other applicable scientific topics. See State ex rel. Norvell v. Ariz. Pub. Serv. Co., 85 N.M. 165, 172, 510 P.2d 98, 105 (1973) (noting that it is unrealistic to assume that appellate judges can unravel complex scientific issues, and therefore such matters are better left to agencies with special expertise). However, the unique geology and hydrology of the area and the particular site (including the mining or other operations and its scale) may be appropriate factors. A federal EPA regulation, 40 C.F.R. § 264.95(a) (2005), defining a point of compliance as “a vertical surface located at the hydraulically downstream limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units” also may be appropriate for consideration insofar as it addresses the spread of contamination into groundwater outside the mine boundary. In this connection, we note that, although we share Tyrone’s and the Mining Association’s concern that water at the bottom of a mine pit should not have to be drinkable, we do not necessarily agree with the Mining Association’s position that water “underneath” a mine site need not be protected. We can conceive of a situation in which an aquifer underneath a mine site may be negatively impacted, and consequently it might be appropriate to protect that water.

Additionally, at this point we decline to adopt the standard as “point of compliance,” or to engage in the wholesale adoption of cases and federal regulations dealing with “point of compliance.” It is possible that “point of compliance” is a reasonable
proxy for “any place of withdrawal . . . for present or reasonably foreseeable future use,” Section 74-6-5(E)(3), and that authorities dealing with “point of compliance” can and should be used in a case like this one. However, there may be reasons, such as differences in statutory language, that may make federal law or law from other jurisdictions inapplicable or inappropriate in New Mexico. These arguments were not well developed below or on appeal. Further, our opinion does not preclude the Commission, on remand, from reaching the same result that it previously reached and affirming conditions 4 and 17. See High Ridge Hinkle Joint Venture, 119 N.M. at 40, 888 P.2d at 486 (stating that “[a] decision identical to the original decision may well be affordable, but because the process . . . is of high importance, sometimes it is the process . . . that justifies remand and reconsideration”). Moreover, NMED may demonstrate that Section 74-6-5(E)(3) does not affect the permit’s closure conditions—an issue that was not before us. The Commission may adopt appropriate factors to guide its discretion, apply them, and conclude that NMED has established reasonable conditions that are based on a reasonable place, or reasonable places, of withdrawal. The Commission may want to take additional evidence addressing the issue of a reasonable place or places of withdrawal and may want to accept briefing and legal argument, but we leave such a determination to the Commission’s discretion.

{38} On the record before us, however, we cannot affirm conditions 4 and 17. We reject an interpretation that is so broad that if there is any potable water being used at the mine then the entire mine site is a “place of withdrawal” and therefore NMED may impose any permit requirements to protect every drop of water at the mine facility. FAIRNESS OF THE HEARING

{39} Tyrone argues several reasons why the Commission hearing was unfair and violated due process. It claims that Commissioner Maxine Goad should have been disqualified because of bias and that Commissioner Greg Lewis should have been disqualified because he had prior knowledge about the technical issues presented at the site. Additionally, it claims that a number of changes in the composition of the Commission between the time of the evidentiary hearing, including a change in the Chair, and the deliberations that occurred months later require reversal. Finally, it raises a claim that Commissioner Jim Norton may have been unduly influenced.

{40} “At a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case.” Reid v. N.M. Bd. of Exam’rs in Optometry, 92 N.M. 414, 416, 589 P.2d 198, 200 (1979) (noting that this due process requirement also prohibits the appearance of bias and that it applies even “more strictly” to administrative tribunals). We review due process claims de novo. See Cordova v. LeMaster, 2004-NMSC-026, ¶ 10, 136 N.M. 217, 96 P.3d 778.

A. COMMISSIONER BIAS

{41} Tyrone contends that Commissioner Goad’s bias infected the Commission’s decision. It argues that, as a member of the Sierra Club’s mining committee, she had previously taken a position, in another case and in another forum, that demonstrated her bias against Phelps Dodge. Specifically, Tyrone argues that Commissioner Goad had participated, as a Sierra Club representative, at a hearing in December 2002 before the New Mexico Mining Commission. That hearing involved Phelps Dodge’s failure to have a closeout permit. Tyrone asserted that its motion to disqualify Commissioner Goad had nothing to do with the fact that she was a member of the Sierra Club, but was made because she took a position unfavorable to Phelps Dodge in the Mining Commission hearing. The Commission denied Tyrone’s request to disqualify Commissioner Goad. Resolution of this claim requires a consideration of its context. The composition of the Commission is statutory. See § 74-6-3(A). It includes various agency heads (or their designees) and three public members appointed by the Governor. By design, the Commission represents a variety of philosophies and perspectives, and it is common for the Governor to appoint public members with different backgrounds in order to create balance and to give various groups a voice.

{42} In selecting public members, the Governor will likely select those members from pools consisting of people who have been politically and publicly active, people from industry, and people who have expressed their views and who have been engaged in the regulatory process. It is unrealistic to expect that the public members will be people who have not taken positions, or people who come “with a clean slate.” Las Cruces Prof’l Fire Fighters v. City of Las Cruces, 1997-NMCA-031, ¶ 26, 123 N.M. 239, 938 P.2d 1384 (noting that members of courts and agencies “cannot avoid having histories or opinions [and] may well have been selected for their offices in part on that basis”). Commissioner Goad was an active member of the Sierra Club and had a certain philosophy on environmental issues. Those facts alone would not disqualify her. See id. ¶ 29 (stating that “[m]embers of tribunals are entitled to hold views on [policies] that are pertinent to the case”).

{43} According to Tyrone, during the December 2002 Mining Commission meeting, Commissioner Goad had ratified statements made by her fellow Sierra Club panel member, Mr. Larson, that Phelps Dodge should be required to post a cash bond (to guarantee that the closeout plan would be carried out if the company was unable to do so itself), that a parent company guarantee does not suffice under the law, and that Phelps Dodge had made a number of “untrue or unwarranted” assertions. Tyrone also claims that Commissioner Goad had ratified statements, made by Mr. Larson, to the effect that Phelps Dodge had not acted in good faith during the Mining Commission proceeding, had mischaracterized the discussions that had taken place previously, and was not to be trusted.

{44} The prior proceeding involved a failure to meet the deadline for submitting a closeout plan under the Mining Act. The Sierra Club naturally took the position that Phelps Dodge’s failure to meet a statutory deadline was unacceptable. Any reasonable person could legitimately take the position that a mining company should comply with deadlines set by the legislature. We do not agree that taking such a position indicates bias sufficient to warrant disqualification.

{45} Tyrone also relies on the statements suggesting that Phelps Dodge had not acted in good faith and was not to be trusted. It is difficult to evaluate the statements without having the precise context. The statements may indicate a deep-seated animosity, may be nothing more than hyperbole, or may be supported by facts and be accurate. In any event, even if the statements are taken at face value, they were made by Mr. Larson, not by Commissioner Goad. We cannot attribute every statement made by Mr. Larson at the prior hearing to Commissioner Goad. Commissioner Goad herself answered only a single question during the Mining Commission proceeding. We conclude that Mr. Larson’s statements are too attenuated to support Tyrone’s allegations of bias and that Tyrone has not demonstrated personal bias or prejudice sufficient to require disqualification. See Las Cruces Prof’l Fire Fighters, 1997-NMCA-031, ¶ 24 (sug-
sisting that a personal bias or personal prejudice may require disqualification if it is strong enough).

{46} We have required disqualification when there is evidence that a particular commissioner has made comments indicating that he or she has prejudged the case to be heard. See Reid, 92 N.M. at 415-16, 589 P.2d 199-200. Unlike in Reid, there is nothing in this case indicating that Commissioner Goad had prejudged this case. At most, we have evidence that her membership in the Sierra Club indicated that she held a particular philosophy on environmental issues and had taken a position in a prior proceeding that Phelps Dodge should be required to meet the deadlines in the Mining Act. This evidence is insufficient to require disqualification. See Las Cruces Prof’l Fire Fighters, 1997-NMCA-031, ¶ 26, 29.

B. OTHER PROCEDURAL ISSUES

1. COMMISSIONER LEWIS

{47} According to Tyrone, Commissioner Lewis appeared and sat as the State Engineer’s representative during closing arguments and voted on the merits of Tyrone’s appeal. Tyrone objected, contending that Commissioner Lewis should not deliberate because he worked for NMED during a time when it was considering Tyrone’s permit application and had made decisions on those matters. Tyrone also argues that the fact that Commissioner Lewis previously worked as a consultant for Tyrone “means that he was positioned to gain knowledge of matters outside the record in this appeal,” and that he “also may have gained knowledge of matters outside the record while he was an NMED regulator of the Tyrone Mine.”

{48} Commissioner Lewis said that he was the director of the Water Waste Management Division between 1999 and the end of 2002. During that time he had recused himself from participating in any decisions regarding Tyrone because of his “past interactions” with Tyrone. He admitted that he knew some of the technical aspects of the site because there had been “casual technical discussion,” but asserted that he was not a decision maker on any permitting decisions.

{49} Tyrone stated that Commissioner Lewis participated in technical studies that are part of the record in the case and may have had knowledge that he acquired while working with Tyrone that is not part of the record in this case. Tyrone identified some documents it claimed included his work. Tyrone asserted that, during Commissioner Lewis’s tenure with Tyrone as a consultant, it was the company’s “understanding that he was an author, and perhaps the principal author, of technical reports that, in essence, went into Tyrone’s application for the closure permit.”

{47} Tyrone’s attorney stated, “I’m not pointing to any one particular document. I’m just saying there are a number of things in there that may have a bearing on this very case, and, in essence, [Commissioner] Lewis could be asked to be—to pass judgment on some work that he actually did on this case.” Commissioner Lewis said he would decide the case “with the maximum amount of integrity that I have in me.” The Commission denied Tyrone’s motion to disqualify him.

{50} Our review of the transcript of the Commission’s deliberations persuades us that Commissioner Lewis brought significant expertise on the technical issues in the case. We do not doubt that his prior employment gave him some knowledge about the Tyrone mine and these technical issues. But, as we have noted, it is impractical to require commissioners to sit with an entirely clean slate. See Las Cruces Prof’l Fire Fighters, 1997-NMCA-031, ¶ 26. Commissioners are appointed because of their knowledge and expertise. One commissioner commented, “I would hate to think that I would be disqualified because I was familiar with the physical plant itself.”

{51} Moreover, the degree of Commissioner Lewis’s knowledge of matters outside the record is not well developed. Rather, the suggestion is that he “was positioned to gain knowledge” or “may have gained knowledge.” Tyrone referred to the fact that Commissioner Lewis may have participated in some studies and documents, but it did not specifically identify the relationship of that prior work to the specific technical issues being decided by the Commission, or indicate whether it was favorable or unfavorable to Tyrone’s position. If anything, Commissioner Lewis’s prior work as a consultant for Tyrone may have been favorable to Tyrone. For all of these reasons, we conclude that Tyrone has not made a sufficient showing that Commissioner Lewis’s participation denied it due process. See Jones v. N.M. State Racing Comm’n, 100 N.M. 434, 437, 671 P.2d 1145, 1148 (1983) (stating that the appellant has a duty to overcome the presumption of integrity in those serving as administrative adjudicators).

2. CHANGES IN COMPOSITION OF THE COMMISSION

{52} The evidentiary portion of the hearing was held during a ten-day period between October 27, 2003 and November 13, 2003, but closing arguments and deliberations did not occur until April 13-14, 2004, approximately five months later. Tyrone objects to the fact that the composition of the Commission had changed somewhat between the time evidence was taken and the time of deliberations and to the fact that Commissioner Derrith Watchman-Moore, who had acted as Chair, was no longer acting as Chair and did not attend deliberations. Commissioner Norton served as Chair during closing arguments and deliberations.

{53} Commissioner Watchman-Moore did not serve as Chair in April 2004 because the Governor had named her interim head of the Office of Indian Affairs. There was a hope that she would split time between her new job and her work at the Environment Department, but she did not because she was devoting all of her time to her new position. The Commission declined to continue the hearing until Commissioner Watchman-Moore could attend.

{54} We agree with Tyrone that it would seem best to retain the same composition of the Commission from start to finish. However, this case was complex and lengthy, and it appears that the proceedings were broken into separate blocks of time because it was difficult to have all the commissioners, whose service is in addition to regular employment, commit large blocks of time to their Commission duties. Additionally, over time, people change jobs, and consequently commissioners must be replaced. These practical realities make it virtually impossible to maintain the same composition of a commission throughout a lengthy process such as this one. We are reluctant to impose any requirement that a commission, once it begins to hear a lengthy case, must not change composition until the case is finally determined.

{55} Our review of the transcript of the Commission’s deliberation convinces us that both Commissioner Norton and Commissioner Lewis were very well versed in the evidence and the issues presented. Commissioner Norton, who had replaced Commissioner Watchman-Moore, said that he had “spent hours familiarizing [himself] with the record.” Tyrone has not argued that these commissioners were not familiar with the record, nor has it made any specific argument that matters of credibility required the same commissioners who heard the testimony to be the decision makers. Under the facts of this case, we are
not persuaded that Tyrone’s due process rights were violated.

{56} We are also unpersuaded that the change in the Chair requires reversal. In judicial proceedings, the judge may change throughout the course of a case, and we do not require the litigation to begin over again just because a different person had made earlier rulings. Moreover, as we have stated, our review of the transcript of the deliberations persuades us that Commissioner Norton had familiarized himself with the record and was conversant with the issues. Tyrone has demonstrated no prejudice, and we conclude that, under the facts in this case, the fairness of the hearing was unaffected by the change in the Chair. See Jones, 100 N.M. at 436, 671 P.2d at 1147 (rejecting the appellants’ due process claim where they failed to demonstrate prejudice).

C. UNDUE INFLUENCE

{57} Tyrone has also objected to the fact that when NMED presented its closing argument, NMED counsel informed the Commission that NMED’s Cabinet Secretary agreed with NMED’s position. Because the Cabinet Secretary had designated Commissioner Norton, an NMED employee, to sit on the Commission, and Commissioner Norton was deliberating on the case, Tyrone argues that undue influence existed that would call into question the fairness of the proceeding. We agree that these relationships make administrative proceedings different from a standard judicial proceeding, but without more than is shown by this record, we decline to conclude that Tyrone has overcome the presumption that commissioners will decide the case with integrity. See id. at 437, 671 P.2d at 1148.

CONCLUSION

{58} We hold that NMED is authorized to impose reasonable permit conditions. We hold, however, that the method used by the Commission to determine whether those standards were reasonable was flawed. We remand this matter to the Commission for the limited purpose of addressing the issues raised by Section 74-6-5(E)(3). The Commission has broad discretion to consider the manner in which it wishes to determine appropriate factors defining the relevant standard and need not reopen the entire case. It may take additional evidence, but it is not required to do so. Finally, we hold that Tyrone’s arguments related to the composition of the Commission do not demonstrate a violation of due process.

{59} IT IS SO ORDERED.

JAMES J. WECHSLER,
Judge

WE CONCUR:
A. JOSEPH ALARID, Judge
CELIA FOY CASTILLO, Judge

Opinion

MICHAEL E. VIGIL, Judge

{1} Appellant Montastery of Christ in the Desert’s motion for rehearing is denied. The opinion filed in this case on June 27, 2006, is withdrawn and this opinion is substituted in its place.

{2} This case requires us to address an issue of first impression: whether a default judgment rendered in a Canadian court against a New Mexico corporation is subject to domestication in New Mexico under the New Mexico Uniform Foreign Money-Judgments Recognition Act (UFMJRA), NMSA 1978, §§ 39-4B-1 to -9 (1991). Concluding that sufficient contacts between the New Mexico corporation and Canada support a finding that the Canadian court had personal jurisdiction over the New Mexico corporation, we affirm the order of the district court domesticating the Canadian judgment in New Mexico.

BACKGROUND AND PROCEDURAL HISTORY

{3} This case arises out of a breach of contract action. Defendant Monastery of Christ in the Desert (the Monastery), a New Mexico corporation, agreed to purchase a Canadian trade name for $150,000 from Plaintiff Monks Own Limited, a Canadian corporation. Prior to the sale, Monks Own operated an internet business of selling goods, and the Monastery purchased goods from Monks Own via the internet and e-mail. Plaintiff St. Benedict Biscop

Certiorari Granted, No. 29,973, September 13, 2006

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-116

MONKS OWN LIMITED and ST. BENEDICTINE BISHOP BENEDICTINE CORPORATION,
Plaintiffs-Appellees,
versus
MONASTERY OF CHRIST IN THE DESERT,
Defendant-Appellant.
No. 25,787 (filed: July 25, 2006)

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

ROBERT E. TANGORA
ROBERT E. TANGORA, L.L.C.
Santa Fe, New Mexico
B. CULLEN HALLMARK
GARBER & HALLMARK, P.C.
Santa Fe, New Mexico
for Appellees

CARLA SKEEN
LAW OFFICE OF CARLA SKEEN, P.A.
Santa Fe, New Mexico
for Appellant

We are also unpersuaded that the change in the Chair requires reversal. In judicial proceedings, the judge may change throughout the course of a case, and we do not require the litigation to begin over again just because a different person had made earlier rulings. Moreover, as we have stated, our review of the transcript of the deliberations persuades us that Commissioner Norton had familiarized himself with the record and was conversant with the issues. Tyrone has demonstrated no prejudice, and we conclude that, under the facts in this case, the fairness of the hearing was unaffected by the change in the Chair. See Jones, 100 N.M. at 436, 671 P.2d at 1147 (rejecting the appellants’ due process claim where they failed to demonstrate prejudice).

C. UNDUE INFLUENCE

Tyrone has also objected to the fact that when NMED presented its closing argument, NMED counsel informed the Commission that NMED’s Cabinet Secretary agreed with NMED’s position. Because the Cabinet Secretary had designated Commissioner Norton, an NMED employee, to sit on the Commission, and Commissioner Norton was deliberating on the case, Tyrone argues that undue influence existed that would call into question the fairness of the proceeding. We agree that these relationships make administrative proceedings different from a standard judicial proceeding, but without more than is shown by this record, we decline to conclude that Tyrone has overcome the presumption that commissioners will decide the case with integrity. See id. at 437, 671 P.2d at 1148.

CONCLUSION

We hold that NMED is authorized to impose reasonable permit conditions. We hold, however, that the method used by the Commission to determine whether those standards were reasonable was flawed. We remand this matter to the Commission for the limited purpose of addressing the issues raised by Section 74-6-5(E)(3). The Commission has broad discretion to consider the manner in which it wishes to determine appropriate factors defining the relevant standard and need not reopen the entire case. It may take additional evidence, but it is not required to do so. Finally, we hold that Tyrone’s arguments related to the composition of the Commission do not demonstrate a violation of due process.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:
A. JOSEPH ALARID, Judge
CELIA FOY CASTILLO, Judge

Opinion

MICHAEL E. VIGIL, Judge

Appellant Montastery of Christ in the Desert’s motion for rehearing is denied. The opinion filed in this case on June 27, 2006, is withdrawn and this opinion is substituted in its place.

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BACKGROUND AND PROCEDURAL HISTORY

This case arises out of a breach of contract action. Defendant Monastery of Christ in the Desert (the Monastery), a New Mexico corporation, agreed to purchase a Canadian trade name for $150,000 from Plaintiff Monks Own Limited, a Canadian corporation. Prior to the sale, Monks Own operated an internet business of selling goods, and the Monastery purchased goods from Monks Own via the internet and e-mail. Plaintiff St. Benedict Biscop...
Benedictine Corporation, another Canadian corporation that was associated with Monks Own, took over the internet business, and the Monastery also agreed in the contract to continue purchasing those goods from St. Benedict. Alleging that the Monastery paid only half of the purchase price, Plaintiffs filed a breach of contract suit in the Ontario Superior Court of Justice in Ontario, Canada. The Monastery was personally served with process in New Mexico and had actual knowledge of the Canadian proceedings. The adequacy of service of process pursuant to Rule 1-004 NMRA is not an issue in this case. Notwithstanding valid service and knowledge of the suit, the Monastery refused to defend or acknowledge jurisdiction of the Canadian court. Plaintiffs therefore obtained a default judgment against the Monastery in the Canadian court for $75,431.51 in U.S. dollars, plus $600 for costs in Canadian currency. Plaintiffs then filed a petition in the New Mexico district court to domesticate the judgment under the UFMJRA. The Monastery filed a motion to dismiss the petition contending that the Canadian judgment was not entitled to recognition under the UFMJRA because the Canadian court lacked personal jurisdiction of the Monastery under New Mexico long-arm jurisprudence. The district court disagreed with the Monastery and entered its order domesticking the Canadian court judgment in New Mexico. The Monastery appeals.

DISCUSSION

I. Preservation and Waiver of In Personam Jurisdiction Objection in Foreign Courts

{4} Plaintiffs argue that the Monastery waived its right to contest personal jurisdiction by the Canadian court when it failed to appear and defend itself in that court. We address this argument first.

{5} Whether the failure to appear before a foreign court to argue that it lacks personal jurisdiction itself constitutes a waiver of personal jurisdiction is an issue of first impression. Plaintiffs cite to Society of Lloyd’s v. Reinhart, 402 F.3d 982 (10th Cir. 2005) for the proposition that “[w]hen a party does an action in a foreign jurisdiction voluntarily ignores the foreign court, the party has waived any claim for lack of due process.” Reinhart is not applicable. The defendants in Reinhart did not argue that the English court lacked personal jurisdiction. Instead, they asserted that various procedures of the English court were unfair and therefore violated their due process rights. Id. at 994. The Reinhart court stated that it rejected “the due process complaint of a party who was given, and... waived, the opportunity of making the adequate presentation in the [foreign forum].” Id. To the extent that Reinhart is considered for the proposition that failure to appear in a foreign court constitutes a waiver of personal jurisdiction, we reject its reasoning.

{6} We hold that a party is not required to raise an objection to personal jurisdiction before the foreign forum in order to preserve the issue for our appellate review. The issue is preserved under the UFMJRA by raising it before the district court in a proceeding seeking to domesticate the foreign judgment. See Electrolines, Inc. v. Prudential Assurance Co., 677 N.W.2d 874, 878, 885-86 (Mich. Ct. App. 2003) (holding that where Liberian court entered a default judgment against defendants who failed to appear, the defendants did not waive their defense of lack of personal jurisdiction because they raised the issue in their first responsive pleading submitted to the Michigan trial court from whom domestication of the judgment was sought). This comports with our principle that in order “[t]o preserve an issue for review on appeal, it must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court.” Woolwine v. Furr’s, Inc., 106 N.M. 492, 496, 745 P.2d 717, 721 (Ct. App. 1987). The Monastery invoked the district court’s ruling on personal jurisdiction at its earliest opportunity by filing its motion to dismiss foreign money judgment. Therefore, the issue was preserved for our review.

II. Enforcement of Foreign Money Judgments

{7} The U.S. Supreme Court case regarding the enforcement of foreign money judgments is Hilton v. Guyot, 159 U.S. 113, 163-64 (1895), which holds that the recognition of foreign judgments and proceedings are governed by principles of comity. These principles prevent cases decided in foreign forums from being retried in this country “upon the mere assertion of [a] party that the judgment was erroneous in law or in fact” absent a showing (1) that the foreign forum did not provide a full and fair trial before a court of competent jurisdiction, (2) that the foreign forum does not follow fair procedures that are akin to the principles governing United States Courts, or (3) the presence of prejudice or fraud. Id. at 202-03; Pariente v. Scott Meredith Literary Agency, Inc., 771 F. Supp. 609, 615 (S.D.N.Y. 1991). These principles of comity have been codified by the UFMJRA.

{8} The parties do not dispute that the judgment in the case at bar is a final, appealable “foreign judgment” under the UFMJRA as it has granted a sum of money and was rendered by a “foreign state.” Section 39-4B-2; Section 39-4B-3. In New Mexico, such judgments are enforceable “in the same manner as the judgment of a sister state that is entitled to full faith and credit.” Section 39-4B-4. Foreign judgments are not entitled to recognition if they are not “conclusive,” and a foreign money judgment is not conclusive under the UFMJRA when “the foreign court did not have personal jurisdiction over the defendant.” Section 39-4B-5(A)(2). The Monastery argues that the Canadian court did not have personal jurisdiction over the Monastery and that the Canadian court’s default judgment is therefore not subject to domestication in New Mexico. We disagree.

III. Exercise of Personal Jurisdiction By a Foreign Court

{9} In order to decide whether the Canadian judgment is subject to domestication in New Mexico, we must interpret the UFMJRA. Interpretation of a statute is a question of law that we review de novo. New Mexicans for Free Enter. v. City of Santa Fe, 2006-NMCA-007, ¶ 11, 138 N.M. 785, 126 P.3d 1149.

{10} The section of the UFMJRA dealing with personal jurisdiction lists several bases for not recognizing a foreign judgment. One such basis is that “[a] foreign judgment shall not be refused recognition for lack of personal jurisdiction if... the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.” Section 39-4B-6(A)(3). Because the contract contains a choice of law provision which states, “[t]his Agreement shall be governed pursuant to the laws of the Province of Ontario,” Plaintiffs argue that this section of UFMJRA is applicable. We reject Plaintiffs’ argument. It is clear that a choice of law clause in a contract, without more, is insufficient to establish that one has agreed in advance to submit to the jurisdiction of the courts in any forum. See Telephonic, Inc. v. Rosenblum, 88 N.M. 532, 537, 543 P.2d 825, 830 (1975) (holding that a clause stating that a contract would be governed by New Mexico laws was insufficient to demonstrate that a California defendant consented in advance to submit to the jurisdiction of New Mexico courts).

{11} The UFMJRA also states that our courts “may recognize other bases of jurisdiction.” Section 39-4B-6(B). It is under this section that we employ a minimum contacts analysis to determine whether the Canadian court had personal jurisdiction over the Monastery.

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The parties disagree over who has the burden of proof on this issue. The Monastery cites to Sanchez v. Church of Scientology, 115 N.M. 660, 663, 857 P.2d 771, 774 (1993), arguing that when jurisdiction is challenged by the defendant, the plaintiff has the burden of proof to demonstrate jurisdiction. Plaintiffs argue that under the UFMJRA, “the party contesting domestication has the burden to prove its defense.” We agree with Plaintiffs that Sanchez is inapplicable because it did not involve domestication of a foreign money judgment in New Mexico and we hold that the Monastery has the burden of proof on this issue. See Pinnacle Arabians, Inc. v. Schmidt, 654 N.E.2d 262, 265 (Ill. App. Ct. 1995) (stating that where an Illinois defendant contested the domestication of a judgment rendered by a Canadian court in favor of a Canadian plaintiff, the Appellate Court of Illinois stated that “[i]t is a strong presumption that the rendering court had jurisdiction and it is defendant’s duty to rebut the presumption”).

The parties disagree about whether the determination of personal jurisdiction is determined by the laws of the enforcing court (New Mexico) or those of the rendering court (Canada). The plain language of the UFMJRA enumerates specific criteria that guides the enforcing court in determining whether personal jurisdiction exists in the rendering court. See § 39-4B-6. We therefore have no difficulty concluding that the New Mexico district court as the enforcing court applies New Mexico law, not Canadian law, to determine whether the Canadian court had personal jurisdiction over the Monastery under the UFMJRA. Other courts have reached the same result. See Pure Fishing, Inc. v. Silver Star Co., 202 F. Supp. 2d 905, 913-17 (N.D. Iowa 2002) (applying the Iowa version of the UFMJRA and federal case law to determine whether an Australian court had jurisdiction over the defendant); Canadian Imperial Bank of Commerce v. Saxony Carpet Co., 899 F. Supp. 1248, 1252 (S.D.N.Y. 1995) (stating that New York law governs actions brought in New York to enforce foreign judgments, including standards governing the exercise of personal jurisdiction by a foreign court).

This brings us to the remaining issue of whether the Ontario court had personal jurisdiction over the Monastery under “other bases of jurisdiction” as articulated by Section 39-4B-6(B). We hold that the Monastery had sufficient minimum contacts with Canada to confer personal jurisdiction under this provision of the UFMJRA.

We are persuaded by the analysis set forth in the factually-similar Canadian Imperial Bank case. Canadian Imperial Bank involved a Canadian bank that obtained a default judgment in Quebec, Canada against a New York corporation. Canadian Imperial Bank, 899 F.Supp. at 1250-51. The New York corporation negotiated with a Canadian corporation and the two parties formed a series of agreements whereby the Canadian corporation would manufacture custom carpet for the New York corporation based upon the designs that the latter commissioned. Id. at 1250. The accounts receivable owed to the Canadian corporation by the New York corporation were assigned to a Canadian bank and the dispute in Canadian Imperial Bank arose when the bank foreclosed on the accounts receivable as security for a loan made to the Canadian corporation. Id. Like the case at bar, the New York corporation received proper service of process but elected not to defend itself in Canada. Id. A default judgment was therefore entered in favor of the Canadian bank who then sought to domesticate the judgment in New York. Id. The New York corporation then argued before the American enforcing court that the Canadian court lacked personal jurisdiction “by reason of the fact that all of the transactions between the parties occurred in the City and State of New York.” Id. at 1251 (internal quotation marks omitted). This argument was rejected. Id. at 1254.

The Canadian Imperial Bank court held that personal jurisdiction existed under both New York’s long-arm statute and the common law. Id. at 1253. In its analysis, the Canadian Imperial Bank court considered “whether a clear nexus existed between business transacted by the defendant and the cause of action.” Id. The court concluded that such a nexus existed based solely on: (1) the collection action underlying the suit brought in the Canadian court arose out of the business relationship between the New York and Canadian corporations, and (2) the business relationship arose out of a contract between the two entities for the manufacture of carpeting at the Canadian corporation’s plant in Quebec. Id.

Additionally, the Canadian Imperial Bank court went on to state that even if the above facts were absent, sufficient contacts existed to require the Canadian Imperial Bank court “to recognize the Canadian judgment as a matter of comity.” Id. The Canadian Imperial Bank court enumerated these contacts with the Canadian forum as follows: (1) the relationship between the corporations involved “a number of purchase orders over a period of years”; (2) substantial portions of the contracts were performed in Canada because that is where the carpeting was manufactured; (3) regardless of the exact nature of a visit paid by the New York executives to Canada, both parties admitted that the visit included a tour of the Canadian corporation’s manufacturing facilities; and (4) the record indicated that the two corporations “may have embarked upon further negotiations regarding a proposal to distribute [the New York corporation’s] designs in Canada.” Id.

We adopt Canadian Imperial Bank’s analytical framework to determine whether the Canadian court in this case had personal jurisdiction over the Monastery. We therefore consider whether personal jurisdiction was valid under our long-arm statute and common law. Id.

Under NMSA 1978, Section 38-1-16(A)(1)(1971), a party submits himself to the jurisdiction of New Mexico courts as to any cause of action arising from “the transaction of any business within this state.” The parties agree that this is the only basis of long-arm jurisdiction that is applicable. Therefore, we determine whether the Monastery transacted any business in Canada within the meaning of this statute.

“Transaction of any business” is defined as “doing a series of similar acts for the purpose of thereby realizing pecuniary benefit, or otherwise accomplishing an object, or doing a single act for such purpose with the intention of thereby initiating a series of such acts.” Sublett v. Wallin, 2004-NMCA-089, ¶ 14, 136 N.M. 102, 94 P.3d 845 (internal quotation marks and citations omitted). The analysis regarding transaction of any business within New Mexico “merges with the inquiry regarding whether such activities constitute minimum contacts sufficient to satisfy due process concerns.” Id. (internal quotation marks and citation omitted). This familiar due process analysis requires this Court to determine whether a non-resident should be subject to the personal jurisdiction of a state court to ascertain whether the non-resident has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Id. (internal quotation marks and citations omitted). “If it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Id. (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

The record before us demonstrates that the Monastery had sufficient minimum contacts with New Mexico to confer personal jurisdiction under the long-arm statute.
contacts with Canada under our own long-arm statute and common law. A breach of contract action underlies the suit brought in the Canadian court by Plaintiffs. The contract was for the purchase of a Canadian trade name by the Monastery. Further, the contract required Monks Own Limited to “file with the Registrar for Trade-marks of the Canadian Intellectual Property Office the Assignment of the Trade-mark for ‘MONKS OWN’ to [the Monastery].” Thus, the Monastery clearly purposefully availed itself of benefits and protections under Canadian law that would be extended to the Canadian trade name which was the subject of the sale. Additionally, as discussed above, the contract contained a choice of law clause stating that Canadian law governed the agreement. While this fact is not sufficient by itself, it is another factor that persuades us that the Monastery knowingly availed itself of the benefits and protections of Canadian law. Therefore a clear nexus existed between the cause of action and the contact the Monastery had to the Canadian forum. Our holding is consistent with those of other jurisdictions who have determined that a minimum contacts test is appropriate in determining other bases of jurisdiction. See Bank of Montreal v. Kough, 430 F. Supp. 1243, 1247-48 (N.D. Cal. 1977) (holding that sufficient minimum contacts existed to give a Canadian court personal jurisdiction over the defendant where the defendant engaged in business in British Columbia, was a director and shareholder of a company operating in British Columbia, and had signed a contract in British Columbia specifically related to his other dealings in that province); Nippon Emo-Trans Co. v. Emo-Trans, Inc., 744 F. Supp. 1215, 1232-33 (E.D.N.Y. 1990) (holding that sufficient minimum contacts existed to give a Japanese court personal jurisdiction over the defendant where the defendant sent shipments of substantial value to Japan and where the plaintiff acted as the defendant’s agent in Japan).

Additionally, sufficient contacts exist to recognize the Canadian judgment as a matter of comity. Representatives of the Monastery visited Canada on its behalf to receive help from Plaintiffs in launching the Monastery’s new retail store in New Mexico to sell Plaintiffs’ products. Moreover, the extensive consultations and negotiations between the parties regarding the contract and launching the Monastery’s New Mexico retail store to sell the products required a great deal of effort on the part of Plaintiffs in Canada no matter what form the communications took, whether in person, via e-mail, facsimile, or telephone. Substantial portions of the contract were clearly performed in Canada when St. Benedict accepted and processed orders from its location in Canada. Finally, the business relationship of the parties involved a number of purchases made by the Monastery over a period of a year or more, and the Monastery paid Plaintiffs via wire transfers from an American bank to a Canadian bank. The Monastery therefore clearly had numerous contacts with Canada related to the contract that is the subject of this appeal to satisfy comity requirements.

Additionally, sufficient contacts exist to recognize the Canadian judgment as a matter of comity. Representatives of the Monastery visited Canada on its behalf to receive help from Plaintiffs in launching the Monastery’s new retail store in New Mexico to sell Plaintiffs’ products. Moreover, the extensive consultations and negotiations between the parties regarding the contract and launching the Monastery’s

CONCLUSION

For the reasons above, we affirm the order of the district court.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

A. JOSEPH ALARID, Judge
RODERICK T. KENNEDY, Judge
OPINION

CYNTHIA A. FRY, JUDGE

{1} Plaintiff K.R. Swerdfer Construction, Inc. (KRSC) appeals the district court’s confirmation of an arbitration award. KRSC seeks to vacate a portion of the arbitration award that denied KRSC damages against the University of New Mexico (UNM), arguing that the award violates New Mexico public policy and is therefore unenforceable. Because we hold that KRSC has failed to establish a public policy basis to vacate the arbitration award, we affirm the district court.

I. BACKGROUND

{2} In March 2001 KRSC entered into a contract with UNM under which KRSC was to construct a new water-line loop on UNM’s Albuquerque campus as part of a large-scale upgrade to the campus’s utility services. The project was referred to as UNM Phase I Domestic Water System Improvements. The construction of the water-line loop required excavation in areas where there were numerous underground facilities owned by UNM. The term underground facilities refers generally to cable television lines, oil and natural gas pipelines, and utility lines. See NMSA 1978, § 62-14-2(C), (L), (N), (O) (2001).

{3} Excavation involving underground facilities is governed by NMSA 1978, §§ 62-14-1 to -10 (1973, as amended through 2001), commonly referred to as the “One-Call Statute.” Pursuant to the One-Call Statute, persons planning to engage in excavation must first notify a call-in center and give notice of the area of planned excavation. § 62-14-3(A), (C). The call-in center in turn notifies the owners and operators of underground facilities in the area of planned excavation. § 62-14-7.1(E). The owners and operators of underground facilities in the area are then required to mark the location of their facilities on the surface before excavation begins. The statute provides:

A. Every person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within twelve inches by some means of location, of the underground facilities in or near the area of excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

§ 62-14-5(A).

{4} The parties’ dispute in this case concerned who was responsible for locating and marking the underground facilities before KRSC commenced excavation. KRSC’s position was that UNM was responsible for locating and marking the underground facilities and that because of delays and additional work caused by UNM’s failure to do so, KRSC was entitled to an additional compensation of $349,000. KRSC relied on Section 62-14-5(C) of the One-Call Statute, which states:

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

{5} UNM’s position was that KRSC had contracted to locate and mark the underground facilities prior to beginning excavation. Pursuant to an arbitration clause in the parties’ contract, the district court entered an order compelling arbitration of all the parties’ claims. KRSC did not appeal the order compelling arbitration.

{6} The parties submitted to the arbitrator several issues, including whether duties under the One-Call Statute are mandatory, whether they are delegable, and whether UNM delegated those duties to KRSC. KRSC argued in part that an owner’s duty under the One-Call Statute to mark its
underground facilities prior to excavation was non-delegable, and that any contractual provision that purported to delegate those duties was a violation of public policy. In the arbitration award, the arbitrator made the following findings:

Although the one-call statute is mandatory, I find and conclude that an owner of underground facilities may delegate the spotting responsibilities under the circumstances presented. I find that the spotting responsibilities were effectively and unambiguously delegated to KRSC for the construction of the UNM Phase I Domestic Water System Improvements Project.

{7} KRSC then moved in the district court to set aside that portion of the arbitration award determining that UNM could delegate its duties under the One-Call Statute. KRSC again argued that the duty to mark the location of underground facilities cannot be delegated by contract, and that a contract delegating those duties is void as contrary to public policy. The district court ruled that none of the grounds for vacating an arbitration award set forth in NMSA 1978, § 44-7-12 (1971), had been met and confirmed the award. KRSC’s appeal is limited to this issue. KRSC is joined on appeal by several amici curiae from the construction industry.

II. DISCUSSION

{8} When we assigned this case to the general calendar, we directed the parties to brief whether the district court’s order compelling arbitration was a final appealable order because it initially appeared that KRSC was appealing the district court’s order compelling arbitration. We raised this issue on our own motion because if KRSC were appealing the order compelling arbitration and that order was a final appealable order, then the appeal would have been untimely. See Lyman v. Kern, 2000-NMCA-013, ¶ 9, 128 N.M. 582, 995 P.2d 504. The arguments made in the briefs, however, clarified that KRSC’s appeal is from the district court’s confirmation of the arbitration award, not from the order compelling arbitration, and the appeal is therefore timely. See NMSA 1978, § 44-7-19(A)(3) (1971). We now proceed to address the merits of the appeal.

{9} As a preliminary matter, we clarify which version of the Uniform Arbitration Act applies.KRSC cites to both the 1971 version of the Uniform Arbitration Act (UAA), NMSA 1978, §§ 44-7-1 to -22 (1971), and the revised version of the Uniform Arbitration Act, NMSA 1978, §§ 44-7A-1 to -32 (2001). The contract at issue was signed on May 8, 2001, prior to the effective date of the 2001 amendments, and it is governed by the 1971 version of the UAA. We therefore confine our analysis to the 1971 Act. See Piano v. Premier Distrib. Co., 2005-NMCA-018, ¶ 3, 137 N.M. 57, 107 P.3d 11 (noting that “[a]rbitration agreements made on or after July 1, 2001, are governed by the current UAA, NMSA 1978, §§ 44-7A-1 to -32 (2001)”); Collier v. Pennington, 2003-NMCA-064, ¶ 2, 133 N.M. 728, 69 P.3d 238 (applying 1971 version of the UAA to a contract signed in 1999).

{10} KRSC argues that the portion of the arbitration award determining that an owner/operator of underground facilities can contractually delegate its duty to mark the facilities’ location in advance of excavation violates New Mexico public policy and must be vacated. KRSC claims that this public policy derives from the One-Call Statute itself, which does not expressly or impliedly permit delegation.

{11} The broad question of whether there is a mechanism that would permit a court to vacate an arbitration award on the basis that it violates public policy is an issue of first impression in New Mexico. KRSC raises two arguments that judicial review of arbitration awards for violations of public policy is permissible. KRSC first argues that Section 44-7-12(A)(3) of the UAA, which requires the district court to vacate an arbitration award where the arbitrators “exceeded their powers,” applies when an arbitration award violates a clear public policy. In the alternative, KRSC argues that we should recognize a judicially created basis to vacate an arbitration award that violates public policy in addition to the statutory grounds for vacatur of arbitration awards contained in the UAA. We address each argument in turn.

A. The Arbitrator Did Not Exceed His Powers

{12} KRSC argues that arbitrators “exceeded their powers” within the meaning of Section 44-7-12(A)(3), when an arbitration award contravenes a clear public policy, and thus, the district court was required to vacate the arbitration award. We disagree.

{13} Under the UAA, there are strict limitations on judicial review of arbitration awards. In re Arbitration Between Town of Silver City & Silver City Police Officers Ass’n., 115 N.M. 628, 631, 857 P.2d 28, 31 (1993) (“The grounds for vacating an arbitration award are limited by statute.”); Fernandez v. Farmers Ins. Co., 115 N.M. 622, 625, 857 P.2d 22, 25 (1993) (“In order to promote judicial economy through the use of arbitration, the finality of arbitration awards is enforced by strict limitations on court review of those awards.”). The UAA provides that the district court shall vacate an arbitration award on application of a party when:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5 [44-7-5 NMSA 1978], as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 [44-7-2 NMSA 1978] and the party did not participate in the arbitration hearing without raising the objection. The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award. § 44-7-12(A).

{14} In the absence of a statutory basis to vacate an arbitration award, the district court must enter an order confirming the award. Fernandez, 115 N.M. at 625, 857 P.2d at 25 (explaining that when there is no statutory ground for vacating or modifying an arbitration award, the district court must confirm the award). “In reviewing the determination of a lower court affirming an arbitration award, this Court is restricted to evaluating whether substantial evidence in the record supports the district court’s findings of fact and application of law[.]” Eagle Laundry v. Fireman’s Fund Ins. Co., 2002-NMCA-056, ¶ 14, 132 N.M. 276, 46 P.3d 1276 (internal quotation marks and citation omitted).

{15} Our case law does not support KRSC’s argument that broad notions of public policy inform the determination of
whether arbitrators “exceeded their powers” within the meaning of Section 44-7-12(A)(3). Generally, the parties’ agreement defines the scope of the arbitrator’s powers. Spaw-Glass Constr. Servs., Inc. v. Vista De Santa Fe, Inc., 114 N.M. 557, 559, 844 P.2d 807, 809 (1992) (“The arbitrator’s powers are determined by the arbitration clause in the contract.”). “Arbitrators exceed their powers when they attempt to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement.” In re Town of Silver City, 115 N.M. at 632, 857 P.2d at 32 (internal quotation marks and citation omitted). In this case, the parties’ arbitration agreement required that “[a]ny controversy or [c]laim arising out of or related to the [c]ontract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association[.]” This broad delineation of the arbitrator’s task does not provide much help to us in our analysis of the issue KRSC raises.

{16} Our Supreme Court provided guidance in this area when it examined Section 44-7-12(A)(3) in Fernandez and held that an arbitrator’s error of law did not equate to the arbitrator’s having exceeded his power. 115 N.M. at 628, 857 P.2d at 28. While recognizing a minority view that interpreted this section of the UAA to allow for judicial review of arbitration awards based on an arbitrator’s legal error, our Supreme Court noted that

[m]ost courts[. . .] read this section of the [UAA] narrowly and will only find that arbitrators have exceeded their powers when the arbitrators rule on a matter that is beyond the scope of the arbitration agreement, . . . removed from their consideration by statute, or removed from their consideration by case law.

Id. (internal citations omitted). The Court found the minority view inconsistent with the express limitations on judicial review of arbitration awards contained in Section 44-7-12(A)(5), which states that “[t]he fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.” Id. In addition, the Court held that allowing for review of arbitration awards on the merits of issues submitted to the arbitrators was inconsistent with the legislature’s purpose in enacting the UAA, which was to reduce litigation in the courts. Fernandez, 115 N.M. at 628, 857 P.2d at 28.

{17} KRSC does not point to any statute or case law that “remove[s] from the arbitrator’s consideration” the delegation of responsibilities for locating and marking underground facilities. Indeed, it is clear from the arbitration award that KRSC asked the arbitrator to decide whether such delegation had in fact occurred. Thus, it appears that KRSC deemed the question to be one within the arbitrator’s power to consider, at least until the arbitrator decided the issue against KRSC.

{18} KRSC rests its argument on an analogy to the contract law doctrine providing that courts will not enforce contracts that violate public policy. See Town of Groton v. United Steelworkers of Am., 757 A.2d 501, 508 (Conn. 2000) (“A challenge that an award is in contravention of public policy is premised on the fact that the parties cannot expect an arbitration award approving conduct which is illegal or contrary to public policy to receive judicial endorsement any more than parties can expect a court to enforce such a contract between them.” (internal quotation marks and citation omitted)). Thus, KRSC’s argument that the arbitration award violates public policy is in essence a claim that the courts should refuse to sanction the arbitration award because the relief granted in the arbitration award would not have been granted by a court. However, Section 44-7-12(A)(5) expressly states that this is not a basis to vacate an arbitration award under the statute.

{19} In summary, KRSC has not convinced us that anything in the UAA permits a court to vacate an arbitration award on public policy grounds. The district court determined that all the disputes between the parties were within the scope of the arbitration agreement. KRSC did not appeal that ruling and proceeded to arbitration. In arbitration, KRSC submitted to the arbitrator the issue of whether UNM had delegated its duties under the One-Call Statute to KRSC. We will not determine that an arbitrator has exceeded his or her powers under Section 44-7-12(A)(3), when the arbitrator fairly decides an issue submitted by the parties for resolution. Fernandez, 115 N.M. at 627, 857 P.2d at 27 (“So long as the award is made fairly and honestly and is restricted to the scope of the submission, it must be confirmed by the district court.”).

B. We Decline to Adopt a Judicially Created Public Policy Exception to the UAA

{20} KRSC also argues that we should recognize a judicially created public policy basis to review arbitration awards in addition to the grounds enumerated in Section 44-7-12(A). The federal courts and some state courts have adopted a “public policy exception” to the normally strict limitation on judicial review of arbitration awards. See, e.g., Greenberg v. Bear, Stearns & Co., 220 F.3d 22, 26-27 (2d Cir. 2000) (noting that judicial decisions have added a public policy basis to vacate arbitration awards in addition to the statutory grounds where enforcement would violate a well-defined and dominant public policy); Seymour v. Blue Cross/Blue Shield, 988 F.2d 1020, 1023 (10th Cir. 1993) (noting that in addition to the grounds contained in the Federal Arbitration Act upon which a court can vacate an arbitration award, the courts have recognized a public policy exception that allows courts to decline to enforce arbitration awards); Garrity v. McCaskey, 612 A.2d 742, 745-46 (Conn. 1992) (recognizing that a common law basis to strike an arbitration award in violation of public policy exists apart from legislative sources of judicial review of arbitration awards); Buzas Baseball, Inc. v. Salt Lake Trappers, Inc., 925 P.2d 941, 951 (Utah 1996) (“Rather than being a statutory ground, the public policy exception is a judicially created ground for vacating an arbitration award.”).

{21} However, even those courts that recognize a public policy basis for vacatur of arbitration awards caution restraint. “[B]ecause the public policy doctrine allows courts to by-pass the normal heavy deference accorded to arbitration awards and potentially to ‘judicialize’ the arbitration process, the judiciary must be cautious about overruling an arbitration award on the ground that it conflicts with public policy.” Bureau of Special Investigations v. Coal. of Pub. Safety, 722 N.E.2d 441, 444 (Mass. 2000) (internal quotation marks and citation omitted). Courts that have recognized a public policy exception vacate an arbitration award only when it violates an explicit and fundamental public policy. See, e.g., City of Highland Park v. Teamster Local Union No. 714, 828 N.E.2d 311, 316 (Ill. App. Ct. 2005) (noting that the public policy exception to enforcement of arbitration awards is extremely narrow and requires that the public policy be “well-defined and dominant and ascertainable by reference to the laws and legal precedents and not from generalized considerations of supposed public interests” (internal quotation marks and citations omitted)); CVN Group, Inc. v. Delgado, 95 S.W.3d 2005).
234, 239 (Tex. 2002) (“[A]n arbitration award cannot be set aside on public policy grounds except in an extraordinary case in which the award clearly violates carefully articulated, fundamental policy.”); Buzas Baseball, Inc., 925 P.2d at 951 (stating that “the court must find a well-defined and dominant policy against the described conduct after a review of the relevant laws and legal precedents” before it vacates an award on the ground that it violates public policy (internal quotation marks, citations, and alterations omitted)).

(22) This public policy exception is based on the contract law doctrine that courts will not enforce a contract that violates public policy. See United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 42 (1987) (“A court’s refusal to enforce an arbitrator’s award under a collective-bargaining agreement because it is contrary to public policy is a specific application of the more general doctrine, rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy.”). Because of this, we find it instructive to review New Mexico law on the standards for determining whether a public policy bars enforcement of a contract.

(23) In light of the strong public policy in favor of freedom of contract, we have held that “agreements . . . are not to be held void as being contrary to public policy, unless they are clearly contrary to what the legislature or judicial decision has declared to be the public policy, or they manifestly tend to injure the public in some way.” Berlangieri v. Running Elk Corp., 2002-NMCA-060, ¶ 11, 132 N.M. 332, 48 P.3d 70 (internal quotation marks and citation omitted), aff’d on other grounds, 2003-NMSC-024, 134 N.M. 341, 76 P.3d 1098; State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M 123, 130, 812 P.2d 777, 784 (1991) (stating that contracts in violation of public policy, as manifest in positive law, are unenforceable). We have recognized public policy violations where a contract expressly violates a statute. See DiGesu v. Weingardt, 91 N.M. 441, 442-43, 575 P.2d 950, 951-52 (1978) (finding a contract for a partial lease of a liquor license to violate public policy where partial leasing of liquor licenses was prohibited by the applicable regulation, and a state statute expressly limited the number of liquor licenses allowed in the state); Weidler v. Big J Enters., Inc., 1998-NMCA-021, ¶ 18, 124 N.M. 591, 953 P.2d 1089 (stating that where an act is forbidden by statute, that is a statement of public policy that can support a common law action for retaliatory discharge).

“Whether a contract is against public policy is a question of law for the court to determine from all the circumstances of each case.” Berlangieri, 2002-NMCA-060, ¶ 11 (internal quotation marks and citation omitted). Thus, even if we were to recognize a judicially created public policy exception to enforcement of arbitration awards, KRSC would have to establish that this arbitration award violated an explicit public policy expressed in a statute or judicial decision.

It has failed to do so.

(24) KRSC argues that “any contractual delegation of One-Call Statute duties is void as being contrary to public policy.” As evidence that a clear public policy exists against contractual delegation of One-Call Statute duties, KRSC argues that the One-Call Statute does not expressly or impliedly allow for delegation of One-Call Statute duties from the owner/operator of underground facilities to excavators. We are not persuaded. We will not read a public policy against contractual delegation of One-Call Statute duties into the statute based simply on the absence of language expressly allowing delegation. Nothing in the language of the One-Call Statute expresses a legislative declaration of a strong public policy against contractual delegation of an owner’s duties to locate and mark underground facilities prior to excavation. Cf. NMSA 1978, § 38-2-9.2 (2001) (stating that “it is the public policy of New Mexico to protect the rights of its citizens to participate in quasi-judicial proceedings before local and state governmental tribunals”); NMSA 1978, § 10-15-1(A) (1999) (stating that “it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them”); N.M. Dep’t of Labor v. Echostar Commc’ns Corp., 2006-NMCA-047, ¶ 12, 139 N.M. 493, 134 P.3d 780 (finding that a contract violated public policy where the contract specifically contradicted provisions of the statute, cert. granted, 2006-NMCERT-004, 139 N.M. 429, 134 P.3d 120.

(25) Both KRSC and Amici argue that a public policy against contractual delegation of One-Call Statute duties can be inferred from the legislature’s allocation of liability for mislocation or failure to locate underground facilities. See § 62-14-5(C) (stating that an owner/operator of underground facilities must reimburse an excavator for reasonable costs incurred as a result of the owner/operator’s failure to correctly mark the facility); § 62-14-6(C) (stating that “[i]f any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 . . ., then the person engaging in the excavation shall have no liability for the damage to that facility”).

Citing Section 62-14-5(C), KRSC argues that interpreting the One-Call Statute to allow for delegation of an owner’s duties to an excavator would lead to illogical results because “[a]n excavator, by contract standing in the shoes of an owner or operator, would face no accountability for damage resulting from its own failure to locate and to mark the underground facility.”

(26) We view this as an argument that the arbitrator incorrectly interpreted the One-Call Statute and an attempt to have us review de novo the arbitrator’s interpretation of the One-Call Statute, which, as discussed above, we will not do. See In re Town of Silver City, 115 N.M. at 632, 857 P.2d at 32 (“De novo review of the merits of arbitration awards by the district court would only serve to frustrate the purpose of arbitration, which seeks to further judicial economy by providing a quick, informal, and less costly alternative to judicial resolution of disputes.”). An arbitrator’s incorrect interpretation of a statute is not sufficient to show that enforcement of the arbitration award would violate public policy. “An alleged error of law is not a violation of public policy.” Lyons v. Sch. Comm. of Dadeham, 794 N.E.2d 586, 590 (Mass. 2003). While the provisions of the One-Call Statute cited by KRSC and Amici reflect a legislative judgment regarding allocation of liability for mislocation or failure to locate underground facilities in advance of excavation, they do not constitute an explicit statement of a fundamental public policy that parties are not free to delegate by contract the duties imposed under the statute.

(27) In contrast, two well-established New Mexico public policies support affirmance of the arbitration award in this case. Our case law has repeatedly recognized that “New Mexico . . . has a strong public policy of freedom to contract that requires enforcement of contracts unless they clearly contravene some law or rule of public morals.” H-B-S P’ship v. Aircopa Hospitality Servs., Inc., 2005-NMCA-068, ¶ 28, 137 N.M. 626, 114 P.3d 306 (internal quotation marks and citation omitted); see also McMillan v.
Allstate Indem. Co., 2004-NMSC-002, ¶ 10, 135 N.M. 17, 84 P.3d 65; Berlangieri, 2003-NMSC-024, ¶ 20. New Mexico also has a “strong public policy encouraging dispute resolution through arbitration and favoring finality and strictly limited court review of arbitration awards.” Spaw-Glass Constr. Servs., Inc., 114 N.M. at 558, 844 P.2d at 808; see also Fernandez, 115 N.M. at 625, 857 P.2d at 25 (noting that there is a strong public policy in New Mexico favoring resolution of disputes through arbitration). Given these longstanding, well-articulated policies and given the absence of any circumstances persuading us that there is a public policy against delegation of duties under the One-Call Statute, we affirm the district court’s order confirming the arbitration award.

C. Other Issues Raised by Amici

{28} Amici make the additional argument that enforcement of the arbitration award would violate public policy as expressed in NMSA 1978, § 56-7-1 (2005), New Mexico’s Anti-Indemnification Statute, because it required KRSC to indemnify UNM for its negligence in failing to locate and mark the underground utilities. Even if we agreed with Amici’s reading of the contract and the Anti-Indemnification Statute, the parties themselves have not made any argument under Section 56-7-1 in the briefs. Since the parties do not raise this issue, we do not address it. “Amic[i] must accept the case before the reviewing court as it stands on appeal, with the issues as framed by the parties, and foregoing presentation of issues under the deficit of lack of preservation.” Crutchfield v. N.M. Dep’t of Taxation & Revenue, 2005-NMCA-022, ¶ 15, 137 N.M. 26, 106 P.3d 1273.

{29} For the same reason, we decline to address Amici’s argument that contractual provisions that delegate duties under the One-Call Statute must be set out clearly and unambiguously to be enforceable. In addition, to the extent that Amici ask us to review the contract in this case to determine whether the delegation was clear and unambiguous, we note that the parties submitted this issue to the arbitrator, and the arbitrator found that the contract “effectively and unambiguously” delegated UNM’s duty under the One-Call Statute to locate and mark its underground facilities to KRSC. The arbitrator’s finding on this issue, even if erroneous, is not subject to judicial review. Fernandez, 115 N.M. at 625-26, 857 P.2d at 25-26 (holding that an arbitrator’s mistake of law is not a basis to vacate an arbitration award if the award is fairly and honestly made and is within the scope of the submission).

III. CONCLUSION

{30} Because KRSC failed to establish a basis for vacating the arbitration award, the district court correctly entered its order confirming the arbitration award. The judgment of the district court is affirmed.

{31} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:
LYNN PICKARD, Judge
CELIA FOY CASTILLO, Judge
In this insurance case, we consider whether the filing of a discrimination charge with state and federal agencies constitutes a “claim” under a type of insurance policy known as a “claims made” policy. The City of Santa Rosa contends that its eventual monetary settlement with a terminated worker (Worker) over allegations of racial discrimination should be covered by a Twin City Fire Insurance (Twin City) policy. Because we conclude that the policy contains clear and unambiguous language, our duty is to enforce that language as written as an expression of the intent of the parties. Battishill v. Farmers Alliance Ins. Co., 2006-NMSC-004, ¶ 20, 139 N.M. 24, 127 P.3d 1111. Enforcing the plain language of the policy, we conclude that coverage was provided only for a demand “for damages” first made during the policy period and that an administrative grievance such as the one at issue here is not a demand for damages as those terms are defined in the policy. Therefore, we affirm the district court’s grant of summary judgment in favor of Twin City.

BACKGROUND

The City terminated Worker’s employment on February 7, 1995. Worker then filed a joint charge of discrimination with the federal Equal Employment Opportunity Commission (EEOC) and the New Mexico Human Rights Division (NMHRD) alleging that his termination was “because of my race.” The City received a “Notice of Charge of Discrimination” from the EEOC in March 1995, in which the EEOC requested a response from the City.

The City had in force a public officials errors and omissions liability policy with Twin City, and this policy was effective from January 27, 1995, to January 27, 1996. This policy was a “claims made” policy, meaning that it covered any claims “for damages” first made against the City during the policy period. In contrast, an occurrence insurance policy generally covers an error or omission regardless of when the claim is made. See St. Paul Fire & Marine Ins. Co. v. Barry, 438 U.S. 531, 535 n.3 (1978); Cont’l Cas. Co. v. Maxwell, 799 S.W.2d 882, 886 (Mo. Ct. App. 1990). Claims made policies often have lower premiums than occurrence policies because the insurer is exposed to a more limited and ascertainable risk. See Am. Cas. Co. of Reading, Pa. v. FDIC, 821 F. Supp. 655, 663 (W.D. Okla. 1993), aff’d, 33 F.3d 62 (10th Cir. 1994) (order and judgment).

After the City received the “Notice of Charge of Discrimination” from the EEOC, the City’s attorney then notified Twin City’s local insurance agent and that agent then notified Twin City in April 1995 about the notice. Less than a month later, Twin City advised the City that coverage under the policy “ha[d] not been triggered” because Worker had “not made a monetary prayer for relief in his EEOC complaint” and asked to be kept informed of the situation. The City or the local insurance agent repeatedly requested both coverage and a defense from Twin City, which it declined to provide under the policy.

The City did not renew its policy with Twin City after the policy expired on January 27, 1996. Ultimately, in 1997 Worker filed a lawsuit in federal district court against the City, which was settled. The City then filed suit against Twin City claiming a breach of the insurance contract due to Twin City’s failure to provide a defense and pay damages for the settlement. The district court granted Twin City’s motion for summary judgment on the ground that there was no coverage under the policy because Insurer “did not receive a claim for damages” from the City within the policy period. The City appeals from this ruling.

DISCUSSION

The question of whether a charge of discrimination filed with the EEOC or NMHRD constitutes a “claim” within the meaning of a claims made insurance policy is a novel question in New Mexico. We begin with a review of the general rules regarding insurance policy interpretation and then examine the express terms of the Twin City policy to determine whether coverage existed. The City notes that examination of the language in any given policy is crucial to the resolution of whether any particular action constitutes a “claim” within the meaning of that policy. We agree and conclude that the express terms of the policy provide a straightforward resolution to this case.

We review the interpretation of an insurance policy de novo. Battishill, 2006-NMSC-004, ¶ 6. “When the terms used have a common and ordinary meaning, that meaning controls in determining the intent of the parties.” Id. ¶ 13. Insurance contracts are not interpreted based on a subjective view of the coverage, but on “the objective expectations the language of the policy would create in the mind of a hypothetical reasonable insured.” Id. (internal quotation marks and citation omitted). In determining whether an insurance policy provision is ambiguous, we consider whether the language “is susceptible to more than one meaning, [whether] the structure of the contract is illogical, [and whether] a particular matter of coverage is not explicitly addressed by the policy.” Rummel v. Lexington Ins. Co., 1997-NMSC-041,

OPINION

CYNTHIA A. FRY, Judge

[1] In this insurance case, we consider whether the filing of a discrimination charge with state and federal agencies constitutes a “claim” under a type of insurance policy known as a “claims made” policy. The City of Santa Rosa contends that its eventual monetary settlement with a terminated worker (Worker) over allegations of racial discrimination should be covered by a Twin City Fire Insurance (Twin City) policy. Because we conclude that the policy contains clear and unambiguous language, our duty is to enforce that language as written as an expression of the intent of the parties. Battishill v. Farmers Alliance Ins. Co., 2006-NMSC-004, ¶ 20, 139 N.M. 24, 127 P.3d 1111. Enforcing the plain language of the policy, we conclude that coverage was provided only for a demand “for damages” first made during the policy period and that an administrative grievance such as the one at issue here is not a demand for damages as those terms are defined in the policy. Therefore, we affirm the district court’s grant of summary judgment in favor of Twin City.

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Commission (EEOC) and the New Mexico Human Rights Division (NMHRD) alleging that his termination was “because of my race.” The City received a “Notice of Charge of Discrimination” from the EEOC in March 1995, in which the EEOC requested a response from the City.

[3] The City had in force a public officials errors and omissions liability policy with Twin City, and this policy was effective from January 27, 1995, to January 27, 1996. This policy was a “claims made” policy, meaning that it covered any claims “for damages” first made against the City during the policy period. In contrast, an occurrence insurance policy generally covers an error or omission regardless of when the claim is made. See St. Paul Fire & Marine Ins. Co. v. Barry, 438 U.S. 531, 535 n.3 (1978); Cont’l Cas. Co. v. Maxwell, 799 S.W.2d 882, 886 (Mo. Ct. App. 1990). Claims made policies often have lower premiums than occurrence policies because the insurer is exposed to a more limited and ascertainable risk. See Am. Cas. Co. of Reading, Pa. v. FDIC, 821 F. Supp. 655, 663 (W.D. Okla. 1993), aff’d, 33 F.3d 62 (10th Cir. 1994) (order and judgment).

[4] After the City received the “Notice of Charge of Discrimination” from the EEOC, the City’s attorney then notified Twin City’s local insurance agent and that agent then notified Twin City in April 1995 about the notice. Less than a month later, Twin City advised the City that coverage under the policy “ha[d] not been triggered” because Worker had “not made a monetary prayer for relief in his EEOC complaint” and asked to be kept informed of the situation. The City or the local insurance agent repeatedly requested both coverage and a defense from Twin City, which it declined to provide under the policy.

[5] The City did not renew its policy with Twin City after the policy expired on January 27, 1996. Ultimately, in 1997 Worker filed a lawsuit in federal district court against the City, which was settled. The City then filed suit against Twin City claiming a breach of the insurance contract due to Twin City’s failure to provide a defense and pay damages for the settlement. The district court granted Twin City’s motion for summary judgment on the ground that there was no coverage under the policy because Insurer “did not receive a claim for damages” from the City within the policy period. The City appeals from this ruling.

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[6] The question of whether a charge of discrimination filed with the EEOC or NMHRD constitutes a “claim” within the meaning of a claims made insurance policy is a novel question in New Mexico. We begin with a review of the general rules regarding insurance policy interpretation and then examine the express terms of the Twin City policy to determine whether coverage existed. The City notes that examination of the language in any given policy is crucial to the resolution of whether any particular action constitutes a “claim” within the meaning of that policy. We agree and conclude that the express terms of the policy provide a straightforward resolution to this case.

[7] We review the interpretation of an insurance policy de novo. Battishill, 2006-NMSC-004, ¶ 6. “When the terms used have a common and ordinary meaning, that meaning controls in determining the intent of the parties.” Id. ¶ 13. Insurance contracts are not interpreted based on a subjective view of the coverage, but on “the objective expectations the language of the policy would create in the mind of a hypothetical reasonable insured.” Id. (internal quotation marks and citation omitted). In determining whether an insurance policy provision is ambiguous, we consider whether the language “is susceptible to more than one meaning, [whether] the structure of the contract is illogical, [and whether] a particular matter of coverage is not explicitly addressed by the policy.” Rummel v. Lexington Ins. Co., 1997-NMSC-041,
The policy also defines “errors and omissions injury” to include injury arising from employment “[d]iscrimination, not committed by or at the insured’s direction.” Thus, the question presented is whether Worker’s charge with the EEOC and the NMHRD is properly construed as a “claim for damages” as defined in the policy.

Because a “claim” must be a “demand received by any insured for damages,” we must decide whether Worker’s charge of discrimination was a “demand” and whether it was a “demand for damages.” The City emphasizes that the complaint Worker filed with the EEOC is titled a “charge” and that it has “the form and intent” similar to a lawsuit; it was signed, it imposed upon the City a deadline to respond, and the filing of such a charge is a required step before one may file a Title VII lawsuit. Twin City, on the other hand, focuses on the language of the policy and claims that the EEOC and NMHRD grievances are not claims for monetary relief and that the first demand for “damages” by Worker as defined in the policy occurred when Worker filed a federal lawsuit twenty-two months after the policy had expired.

We agree with Twin City. First, we are not persuaded that the mere filing of the grievance with the EEOC and NMHRD was a demand because it was unaccompanied by any request for relief, such as an actual demand for reinstatement or compensation. We are not persuaded by the City’s characterization of the administrative charge as “an affirmative legal action against the City.” The City was faced with a request for information in the context of an administrative grievance, and not a specific demand for damages or reinstatement. See Mitchell-Carr v. McLendon, 1999-NMSC-025, ¶¶ 7, 10, 127 N.M. 282, 980 P.2d 65 (describing actions before the NMHRD as an “administrative” or “grievance” procedure).

The City presented an affidavit from Worker’s attorney in which that attorney asserted that the EEOC “does not include nor require a specific claim for monetary damages in the Charge of Discrimination” and that Worker’s intent in filing the EEOC charge and later lawsuit was “to seek any and all damages and remedies against the City.” We do not question the truth of these assertions, but they do not alter the definition of “damages” in the policy; Worker’s subjective intent does not change the fact that, at the time of the EEOC notice, the City was facing a request for information from the EEOC and nothing more.

Similarly, we cannot see how the grievance with the administrative bodies is a demand for “damages” as that term is defined because, again, the City was not being pressed for a “monetary judgment, award or settlement.” The notice from the EEOC is simply not a request for any of these forms of damages. The definition of claim in the policy appears to include more than just the formal commencement of a lawsuit because it is a “demand . . . for damages . . . including the institution of a suit.” Whatever actions short of a lawsuit might constitute a claim for damages, we need not explore because Worker’s actions here clearly did not rise to the level of a demand for damages as the term “damages” is defined. At the time of the notice from the EEOC, Worker was effectively asking administrative bodies to conduct an investigation and conciliation of the issue.

Worker’s charges with the EEOC and NMHRD certainly would have provided the City with notice that a claim for damages could arise in the future if informal dispute resolution failed, but, standing alone, the charge and subsequent administrative requests were not a present demand for damages. We agree with the City that the Human Rights Commission has the power to eventually award a complainant damages. NMSA 1978, § 28-1-11(E) (1969, as amended through 1995) (stating that if a panel of the Commission, upon reviewing a hearing officer’s findings, concludes that a party has engaged in a discriminatory practice, it “may require the respondent to pay actual damages to the complainant”). However, while this possibility is foreseeable and possible, it is certainly not preordained from the simple filing of a charge.

For example, in order for the commission to order a monetary award, (1) the director of the NMHRD would have to find probable cause to believe that discrimination has taken place, (2) attempts at confidential conciliation would have to fail or be deemed futile by the director, and (3) a hearing officer would have to find for the complainant after a formal hearing. § 28-1-10(C) (stating that “[i]f the director determines that probable cause exists for the complaint, the director shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation”); § 28-1-10(F) (providing that the
commission may file a complaint if conciliation fails “or if, in the opinion of the director, informal conference cannot result in conciliation’”); § 28-1-11(E) (stating that commission may order the payment of damages after review of hearing officer’s report). See also 9.1.1.10(D) NMAC (1998) (stating that the director sets the matter for a hearing, and that such occurs after conciliation has failed). A complainant may file suit in district court in lieu of a hearing (conciliation has failed). A complainant may bring a civil action in court, but it has no independent power to award monetary damages. 42 U.S.C. § 2000e-5(b), (f)(1)

In addition, the EEOC only attempts conciliation or, failing acceptable conciliation, may bring a civil action in court, but it has no independent power to award monetary damages. 42 U.S.C. § 2000e-5(b), (f)(1) (2000). See Wayne B. Borgeest, Employment Law Claims: Triggering Coverage Under “Claims Made” Policies, 18 W. New Eng. L. Rev. 179, 181 (1996) (describing the EEOC as an agency with “powers of conciliation only”). We agree with the City that an EEOC complaint is a prerequisite to the granting of a notice of a right to sue from the EEOC and that such notice is necessary in order to file a Title VII lawsuit for employment discrimination. 42 U.S.C. § 2000e-5(f)(1) (stating that an aggrieved party has ninety days to file a civil action after being informed that the government is not taking action on the matter itself).

But this does not mean that a grievance equates to such a lawsuit. These observations all support our conclusion that when the City received notice that Worker had filed charges of discrimination, that notice constitutes neither an actual “suit” nor a “demand for damages” within the meaning of the policy.

{15} The City contends that the policy’s terms are ambiguous because the parties have opposite interpretations of the same language. That contention has been rejected by our Supreme Court. Battishill, 2006-NMSC-004, ¶ 17. We find no ambiguity in the language used in these circumstances, and thus we do not apply the rule that when faced with an ambiguity in coverage a policy should be construed in favor of the insured. Id.

{16} The City also points to the “lengthy” exclusion section in the policy and claims that the failure to exclude EEOC or administrative actions implies coverage. We disagree because the absence of an exclusion does not confer coverage that does not already exist. Davis v. Farmers Ins. Co. of Arizona, 2006-NMCA-099, ¶ 26, ___ N.M. ___, ___ P.3d ___ (cert. granted, No. 29,895, September 13, 2006).

{17} Finally, the City relies on a Michigan case where complaints to the EEOC and a state civil rights agency were held to constitute a claim under a claims made policy. Pinckney Cnty. Schs. v. Cont’l Cas. Co., 540 N.W.2d 748, 752 (Mich. Ct. App. 1995). However, in that case, the term “claim” was not defined in the policy; thus, the court looked at the commonly used meaning of the term, including dictionary definitions and the reasonable expectations of the parties. Id. at 751-52. In the present case, the term “claim” is defined within the policy and incorporates the term “damages,” which is likewise given a specific definition. Thus, Pinckney is inapposite. So too are myriad cases in which courts have interpreted the meaning of the term “claim” when it is left undefined in a policy. Bensalem Twp. v. W. World Ins. Co., 609 F. Supp. 1343, 1347-49 (E.D. Pa. 1985) (holding that notice from the EEOC that a charge of discrimination had been filed was not a claim because it was not a demand for relief based on a legal right, where claim was undefined in the policy); Abifadel v. Cigna Ins. Co., 9 Cal. Rptr. 2d 910, 920-22 (Ct. App. 1992) (evaluating whether a variety of communications and regulatory actions constituted claims where the policy did not define the term); Nat’l Cas. Co. v. Great Sw. Fire Ins. Co., 833 P.2d 741, 744-45 (Colo. 1992) (holding that, where the term was undefined, a demand for reinstatement after a wrongful termination was a claim); City of Marion v. Nat’l Cas. Co., 431 N.W.2d 370, 373-74 (Iowa 1988) (applying dictionary definitions to term claim when it was undefined in the policy). See also Borgeest, supra at 182-87 (describing how courts, in evaluating whether a claim has been made, have focused on whether an agency possesses coercive authority where the policy is silent on what constitutes a claim). Also inapposite are those cases in which the policy definitions of a “claim” included administrative proceedings because the policy in this case does not have such a definition. See Cornett Mgmt. Co. v. Lexington Ins. Co., 2006 WL 898109, *6 (N.D. W. Va. 2006) (considering claims made policy that defined a claim to include “an administrative proceeding”); Lodgenent Entrn’t, Corp. v. Am. Int’l Specialty Lines Ins. Co., 299 F. Supp. 2d 987, 991 (D.S.D. 2003) (examining a claims made policy which defined claim as including an EEOC or similar agency “proceeding or investigation commenced by the filing of a notice of charges”); Specialty Food Sys., Inc. v. Reliance Ins. Co. of Ill., 45 F. Supp. 2d 541, 543-44 (E.D. La. 1999) (concluding that a charge of discrimination with the EEOC constituted a claim when the definition of claim included notice from “any administrative agency advising that it is the intention of a person to hold the [i]nsured responsible” for a wrongful employment practice (internal quotation marks and citation omitted)), aff’d, 200 F.3d 816 (5th Cir. 1999).

{18} We emphasize that the policy language resolves the question in this case, and we express no opinion about whether an EEOC or NMHRD charge of discrimination would constitute a claim where that term is left undefined in a policy or is defined differently. See City of Sunland Park v. Harris News, Inc., 2005-NMCA-128, ¶ 50, 138 N.M. 588, 124 P.3d 566 (noting that this Court does not issue advisory opinions on hypothetical questions), cert. granted, 2005-NMCERT-011, 138 N.M. 587, 124 P.3d 565. Twin City owed no coverage to the City because the City had not received a claim for damages during the policy period.

CONCLUSION

{19} The district court’s summary judgment in favor of Twin City is affirmed.

{20} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:
LYNN PICKARD, Judge
IRA ROBINSON, Judge
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9:45 a.m. Written Discovery
        S. Carolyn Ramos, Esq., Butt Thornton & Baehr, PC
10:45 a.m. Deposition Discovery
           Trent A. Howell, Esq., Holland & Hart LLP
11:45 a.m. Lunch (provided at the State Bar Center)
12:45 p.m. Bridging The Gaps (1.0 Professionalism)
           Moderators: John T. Feldman, Esq. and Bonnie M. Stepleton, Esq., UNM School of Law
           Panelists: Hope Eckert, Esq., Attorney at Law; LLc and Adjunct Professor, UNM School
           of Law; Robert A. Martin, Esq., HR & Employment Law Consultant and Instructor;
           CNM Workforce Training Center Leadership Academy; and Andrew G. Schultz, Esq.,
           Managing Director, Rodey Law Firm
1:45 p.m. Break
2:00 p.m. BREAKOUT SESSIONS
           How to Do Your First Civil Case
           Norman Lee Gagne, Butt Thornton & Baehr PC
           Representing Creditors in Bankruptcy
           Allan L. Wainwright, Esq.
3:00 p.m. Break
3:15 p.m. BREAKOUT SESSIONS
           How to Defend Your First Criminal Case
           LaDonna Giron, Giron Law Office
           How to Do Your First Family Law Case
           Maria Montoya Chavez, Esq., Sutin Thayer & Browne
4:15 p.m. Break
4:30 p.m. Practical Considerations In The Disciplinary System (1.0 Ethics)
           Hon. Edward L. Chavez, NM Supreme Court
5:30 p.m. Adjourn and Reception (State Bar Lobby)

REGISTRATION – Bridge the Gap
State Bar Center, Albuquerque • Friday, November 17, 2006
5.5 General, 1.0 Ethics, and 1.0 Professionalism CLE Credits

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# Real Property Institute 2006

**Friday, December 1, 2006**

**State Bar Center, Albuquerque**

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

<table>
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<td>8:00 a.m.</td>
<td>Registration</td>
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| 8:30 a.m.| **Construction Contract Traps**  
*Tim Sheehan, Esq.*  
1:00 p.m. **Update on Amendments to the**  
*Deed of Trust Act*  
*Catherine Goldberg, Esq.* |
| 9:00 a.m.| **Perfection of Vendor Interests in NM Real Estate Contracts**  
*Brad Tepper*  
1:10 p.m. **Introduction to BOMA International**  
*Jim Peck, Chair, Government Affairs Committee, BOMA New Mexico* |
| 9:20 a.m.| **Non-Title Insurance Issues for Title Companies in Real Estate Transactions**  
*Kevin Peterman, Esq.*  
1:20 p.m. **Real Estate Considerations in the 2005 Bankruptcy Code Amendments**  
*Cheryl Kelly, Esq., Thompson Coburn LLP* |
| 9:50 a.m.| **Access Issues**  
*Charlotte Hetherington, Esq.*  
2:10 p.m. **Energy and Mineral Law Issues in Real Estate Transactions**  
*Speaker TBA* |
| 10:20 a.m.| Break  
2:45 p.m. **Break** |
| 10:35 a.m.| **Business Prenuptial Agreements – The Why’s and How’s of Buy-Sell Agreements**  
*Eric Lyon Burton, Esq.*  
3:00 p.m. **Unique Issues in Farm and Ranch Transactions**  
*Max Best, Esq.* |
| 11:25 a.m.| **Phase I ESA Regulations Update**  
*Paul Karas, CPG, CHMM, Camp Dresser & McKee*  
3:30 p.m. **Professionalism for Real Estate Lawyers**  
*Pat Hurley, Esq., John Patterson, Esq., Charles Price, Esq.* |
| 12:00 p.m.| Lunch (provided at the State Bar Center)  
3:00 p.m. **Annual Section Meeting with election of directors**  
4:30 p.m. Adjourn |

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**REGISTRATION – Real Property Institute 2006**

**State Bar Center, Albuquerque • Friday, December 1, 2006**

*5.5 General and 1.0 Professionalism CLE Credits*

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