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Lone Tree at the Top by Glenda Jensen (see page 5) Weems Gallery, Albuquerque
Legal professionals know that growing a future begins now. A good start is selecting the right resource for a retirement plan for your firm. Your best option may be the cost-effective program that was created by lawyers for lawyers, and run by experts.

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2007-2008
Bench & Bar Directory

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• Firms will be listed geographically in alphabetical order

• Firm logos can be used

• Firm Listings will be accepted through March 31, 2007

Cost $100 per listing

To purchase a Firm Listing contact:
Marcia Ulibarri
Account Executive
Direct: (505) 797-6058
Cell: (505) 400-5469
E-mail: mulibarri@nmbar.org
ACCOUNTING FOR LAWYERS
Wednesday, March 28, 2007
State Bar Center, Albuquerque
6.0 General CLE Credits
Presenter: Douglas R. Smith, CPA

☐ Standard Fee $199
Please Note: No auditors permitted

DEFENDING COMPUTER CRIME CASES
Friday, March 30, 2007
State Bar Center, Albuquerque
4.2 General CLE Credits

☐ Standard Fee $189
Please Note: No auditors permitted

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PHONE: (505) 797-6020, Monday - Friday, 9 a.m. - 4 p.m. (Please have credit card information ready)
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MAIL: CLE, PO Box 92860, Albuquerque, NM 87199
Please Note: For all WEBCASTS, you must register online at www.nmbarcle.org

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City/State/Zip ____________________________________________________________________________________
Phone ___________________________ Fax ___________________________
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Credit Card # ___________________________________________________________________ Exp. Date ___________________
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2007-NMCA-027, No. 26,155: Nakashima v. State Farm Mutual Automobile
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Professionalism Tip

With respect to my clients:
I will counsel my client that initiating or engaging in settlement discussions is consistent with zealous and effective representation.

Meetings

March

19
Legal Services and Programs Committee,
11 a.m., State Bar Center

20
Solo and Small Firm Practitioners Section
Board of Directors, 11:30 a.m.
Section meeting, noon, State Bar Center

21
Committee on Women and the Legal Profession, noon,
Lewis and Roca, Jontz Dawe LLP

21
Law Office Management Committee,
noon, State Bar Center

21
Prosecutors Section Board of Directors,
noon, Doubletree Hotel/Convention Center

22
Senior Lawyers Division Board of Directors, 4:30 p.m., State Bar Center

State Bar Workshops

March

22
Consumer Debt/Bankruptcy Workshop
5:30 p.m., Branigan Library, Las Cruces

28
Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center, Albuquerque

April

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

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

May

15
Common Legal Issues Affecting Seniors
10:30 a.m., Truth or Consequences Senior Center

23
Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center, Albuquerque

Cover Artist: Glenda Jensen paints in pastel the bright, clean, sunny and glorious vistas of New Mexico. To see the cover art in its original color, visit www.nmbar.org and click on Bar Bulletin.
**NOTICES**

**COURT NEWS**

**N.M. Supreme Court Law Library**

Open Monday–Friday, 8 a.m.–6 p.m.
Closed Saturdays and Sundays
Phone: (505) 827-4850; fax: (505) 827-4852; e-mail: libref@nmcourts.com; Website: www.supremecourtlawlibrary.com.

**Notice of Vacancies**

**Supreme Court Committee**

Two attorney vacancies exist on the UJI-Criminal Committee due to the resignation of two members. The deadline for attorneys interested in volunteering time on this committee is April 2.

Send letters of interest and/or resumes to:
Kathleen Jo Gibson, Chief Clerk
New Mexico Supreme Court
PO Box 848
Santa Fe, NM 87504-0848.

**Santa Fe Municipal Court Brown-Bag Lunch**

Santa Fe Municipal Judge Ann Yalman invites all attorneys who practice in the Santa Fe Municipal Court to meet with her at Municipal Court at 11:30 a.m., March 21, for a discussion of practice and procedures in the Municipal Court.

**U.S. Bankruptcy Court Brown-Bag Presentations**

The U.S. Trustee will present brown-bag presentations in Roswell and Las Cruces on completing the means test form (Official Form 22A).

The first presentation will be held at 11:30 a.m. or immediately following the conclusion of the §341 docket, April 19, at 500 N. Richardson, Roswell.

The second presentation will be held at 1:30 p.m. or immediately following the conclusion of the §341 docket, April 25, at the Staybridge Suites, Suite 137, 2651 Northrise Drive, Las Cruces. Contact Tamara Barner, bankruptcy analyst, Tamara.L.Barner@usdoj.gov, for more information.

**STATE BAR NEWS**

**Address Changes for Bench & Bar Directory**

State Bar staff is updating information for the 2007–08 Bench & Bar Directory. Address changes will be accepted through April 2. Information submitted beyond that date is not guaranteed to be in the new membership directory. To verify attorney information, go to www.nmbar.org, Attorney/Firm Finder and search by name. If changes are necessary, submit in writing to Address Changes, PO Box 92860, Albuquerque, NM 87199-2860; fax to (505) 797-6019; or e-mail address@nmbar.org.

**Annual Meeting**

According to its bylaws, the State Bar is required to hold an annual meeting of its members. As part of this year’s annual meeting, which will be held at the Inn of the Mountain Gods in Mescalero, the State Bar will conduct a CLE session on discussion topics from 3 to 4:45 p.m., July 12. Possible discussion topics include non-partisan judicial elections, reciprocity, tort reform and electronic filing. Members who have suggestions on other possible topics or are interested in speaking to a specific topic or moderating a discussion, contact Joe Conte, (505) 797-6099 or jconte@nmbar.org.

**Attorney Support Group**

The next Attorney Support Group meeting will be held at 5:30 p.m., April 2, 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 Meetings with Bar President**

State Bar of New Mexico President Dennis E. Jontz will meet with local attorneys in five locations April 15–17 to discuss the state of the State Bar and issues facing the profession. More information will be forthcoming. Contact jconte@nmbar.org with any questions.

- **Hobbs**: 6 p.m., April 15, Cattle Baron Restaurant
- **Roswell**:* Noon, April 16, Roswell Country Club
- **Carlsbad**: 5 p.m., April 16, Best Western Stevens Inn
- **Alamogordo**: *Noon, April 17, TBA
- **Las Cruces**: 5 p.m., April 17, Hotel Encanto de Las Cruces

*Held in conjunction with the regular local bar meeting.

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** Destruction of Exhibits and Tapes**

Pursuant to the Judicial Records Retention and Disposition Schedules, exhibits or tapes filed with the court in criminal, civil, children’s court, domestic, incompetency/mental health, adoption and probate cases for the years and courts shown below, including but not limited to cases that have been consolidated, are to be destroyed. Cases on appeal are excluded. Counsel for parties are advised that exhibits and tapes can be retrieved by the dates shown below. Attorneys who have cases with exhibits, or who have cases with tapes and wish to have duplicates made, may verify exhibit or tape information with the Special Services Division at the numbers shown below. Plaintiff(s) exhibits will be released to counsel of record for the plaintiff(s), and defendant(s) exhibits will be released to counsel of record for defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits and tapes not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

<table>
<thead>
<tr>
<th>District Court</th>
<th>Exhibits for years</th>
<th>May be retrieved through</th>
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<tr>
<td>1st Judicial District (505) 827-4687</td>
<td>years 1970–1990</td>
<td>April 27</td>
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<td>2nd Judicial District Court (505) 841-7596/5452</td>
<td>civil cases, 1987–1994</td>
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<td>civil cases, 1995</td>
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<td>civil cases, 1996</td>
<td>May 3</td>
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<tr>
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<td>May 3</td>
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<td>criminal cases, 1987–1992</td>
<td>May 3</td>
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<td>2nd Judicial District Court (505) 841-7596/5452</td>
<td>LR (Metro Court Appeals) cases, 1996</td>
<td>May 3</td>
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<tr>
<td>2nd Judicial District Court (505) 841-7596/5452</td>
<td>civil cases, 1997</td>
<td>May 17</td>
</tr>
</tbody>
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Board Appointment
Access to Justice Commission
The Board will make one appointment to the New Mexico Access to Justice Commission for the remainder of an unexpired term through December 2008.

Members wishing to serve should send a letter of interest and brief resume by April 13 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to (505) 828-3765; or e-mail jconte@nmbar.org.

Board Appointment
DNA–People’s Legal Services, Inc.
The Board will make two appointments to the board of DNA–People’s Legal Services, Inc. for two-year terms. Board members agree to provide direction, leadership and stewardship that ensure DNA’s ability to provide high quality legal services to its clients. The function of the board is to provide governance for DNA, represent the organization in the community and accept ultimate legal authority for the organization.

Members wishing to serve should send a letter of interest and brief resume by April 13 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to (505) 828-3765; or e-mail jconte@nmbar.org.

Casemaker Training and Technology Workshop
Free Training Available
Casemaker, the State Bar’s newest membership service, is free online legal research that includes New Mexico and federal materials as well as access to 25 other state libraries.

Training on using Casemaker will be held from 3 to 4 p.m., March 26, at the State Bar Center.

In addition, Getting Real Good! Intermediate MS Word Skills, a hands-on technology workshop on Word 2003, will immediately follow from 4:15 to 5:15 p.m. The presenter will be Leigh Ann Chavez. Seating is limited.

Call (505) 797-6000 to register for either program.

Elder Law Section
Annual Meeting, CLE and Reception
The Elder Law Section will hold its annual meeting at 11:30 a.m., April 13, at the State Bar Center prior to the 4th Annual Elder Law Seminar. Details on the CLE program may be found in the March 12 (Vol. 46, No. 11) Bar Bulletin, CLE At-A-Glance. Send agenda items to Chair Amanda Hartmann, ahhlaw@comcast.net, or call (505) 401-7832. Lunch will be provided and reservations are required. E-mail membership@nmbar.org or call (505) 797-6033.

Employment and Labor Law Section
Board Meetings Open to Section Members
The Employment and Labor Law Section board of directors welcomes section members to attend its meetings on the first Wednesday of each month. The next meeting will be held at noon, April 4, at the State Bar Center. Lunch is not provided. For information about the section, visit the State Bar Web site, www.nmbar.org, or call S. Charles Archuleta, section chair, (505) 346-4646.

Paralegal Division
Compensation, Utilization and Benefits Survey
The Paralegal Division of the State Bar is conducting a Paralegal Compensation, Utilization and Benefits Survey from March 1 to April 15. The division is urging every paralegal practicing in New Mexico to take just a few minutes to complete this very important survey. An easy link to the online version of the survey can be found on the State Bar Web site, www.nmbar.org; a printed survey is available in the March 5 (Vol. 46, No. 10) issue of the Bar Bulletin; or e-mail PD@nmbar.org. Send the completed printed surveys to Paralegal Division Survey, PO Box 1923, Albuquerque, NM 87103. The deadline for submission of the survey is April 15. Confidentiality of all personally identifiable information will be strictly maintained at all times.

Prosecutors Section
Annual Meeting
The Prosecutors Section will hold its annual meeting at noon, March 21, during the AODA Conference at the Doubletree Hotel/Albuquerque Convention Center. Agenda items should be sent to Chair Stephen Kovach, skovach@da.state.nm.us or (505) 622-4121.

Solo and Small Firm Practitioners Section
Luncheon Presentation
Public Regulation Commissioner Jason Marks, District 1 (Albuquerque area), will speak before the Solo and Small Firm Practitioners Section on Update on the PRC, Renewable Energy and Climate Change. The PRC regulates the utilities, telecommunications, motor carriers and insurance industries to ensure fair and reasonable rates and reasonable and adequate services to the public as provided by law. Marks, who holds a law degree from the UNM School of Law, also has extensive experience in health care financing.

The meeting will be held at noon, March 20, at the State Bar Center, and lunch will be served to those who RSVP by March 19 to Tony Horvat, thorvat@nmbar.org, or (505) 797-6033. Each attendee should bring a $5 check made payable to the State Bar Solo and Small Firm Practitioners Section to help defray the cost of the lunch. The board of directors will meet at 11:30 a.m.

Young Lawyers Division
2007 Summer Fellowships
The Young Lawyers Division is currently accepting applications for its 2007 Summer Fellowships. Two fellowships will be awarded by the YLD to two law students who are interested in working in the public interest or government sector during the summer of 2007. The fellowship awards are intended to provide the opportunity for law students to work in positions that might not otherwise be possible because the positions are unpaid. The fellowship awards, depending on the circumstances of the position, could be up to $3,000 for the summer. In order to be eligible, applicants must be a current law student in good standing with their school. Applications for the fellowship must include: (1) a letter of interest that details the student’s interest in public interest law or the government sector; (2) a résumé; and (3) a written offer of employment for an
unpaid legal position in public interest law or the government sector for the summer of 2007. Submit applications to:
Brent Moore, Deputy Superintendent
Insurance Division
Public Regulation Commission
1120 Paseo de Peralta
PO Box 1269
Santa Fe, New Mexico 87504-1269
Applications must be postmarked by March 31. Direct questions to J. Brent Moore, (505) 476-3783.

Brown-Bag Luncheon
The Young Lawyers Division will host a brown-bag judicial luncheon with members of the federal judiciary: the Honorable Judith C. Herrera, the Honorable James O. Browning, the Honorable William P. Johnson, and the Honorable Lorenzo F. Garcia. Luncheon will take place from noon to 1:30 p.m., March 27, at the U.S. District Courthouse, Albuquerque, sixth floor judges library. Topics will include practice advice to new attorneys from the perspective of the federal bench. Lunch will be provided. Space is limited. R.S.V.P. by March 20 to Martha Chicoski, mmchicoski@gmail.com.

Junior Judges Community Service Program
The Young Lawyers Division is seeking volunteer attorneys for its 2nd Annual Junior Judges Program. Volunteer attorneys will lead discussions with third, fourth and fifth grade students about judging for themselves what the right choice may be in difficult situations, as well as the potential consequences of bad behavior. Topics include stealing, bullying, cheating, drugs and alcohol, and gangs and weapons. The program will take place in Albuquerque elementary schools April 13 in approximately one-hour units. Volunteer attorneys will show a brief video to the class and then engage students in discussion about the possible choices and consequences of particular situations. A full curriculum and teaching video will be provided as well as a brief orientation which will be held during the week of April 2. For more information or to volunteer, contact Martha Chicoski, mmchicoski@gmail.com, or (505) 550-6446 by March 23.

OTHER BARS
American Bar Association 2007 Midyear Meeting
Any member who would like information on the action taken at the ABA Midyear Meeting should contact State Delegate Mary Torres, mtorres@modrall.com. The Select Committee Report may be viewed at http://www.abanet.org/leadership/2007/midyear/docs/SelectCommitteeReport.DOC on the House of Delegates Web site.

N.M. Defense Lawyers Association 2007 Outstanding Civil Defense Lawyer Nominations
Nominations are being accepted for the 2007 Outstanding Civil Defense Lawyer. The award will be presented at the 2007 DLA Annual Meeting on October 18 in Albuquerque. This award is given to one or more attorneys who, over long and distinguished legal careers, have, by their ethical, personal, and professional conduct, exemplified for their fellow attorneys the epitome of professionalism and ability.

Letters of nomination should be sent to: NMDLA, PO Box 94116, Albuquerque, NM 87199; fax to (505) 858-2597; or e-mail nmdefense@nmdla.org
Deadline for submissions is May 31.

UNM School of Law Fellowship Fund-Raiser
The Association for Public Interest Law cordially invites all members of the State Bar to attend the 7th Annual Public Interest Law Fellowship Fund-Raiser from 6 to 9 p.m., April 5, at the Carom Club, 301 Central NW, Albuquerque. APIL will host a live and silent auction. The funds raised at this event will benefit APIL’s summer fellowship fund for students who are working in the public interest during the summer of 2007. All donations are tax deductible. For more information about the event or to make a donation to the auction or the fellowship fund, contact Robert Lara, lararo@law.unm.edu, or (505) 610-1374.

Library Spring Hours
Building and Circulation
Monday–Thursday 8 a.m. to 11 p.m.
Friday 8 a.m. to 6 p.m.
Saturday 9 a.m. to 6 p.m.
Sunday Noon to 11 p.m.
Reference
Monday–Friday 9 a.m. to 6 p.m.
Saturday Closed
Sunday Noon to 4 p.m.
Phone: (505) 277-6236

OTHER NEWS
N.M. Christian Legal Aid Information and Training Opportunities
New Mexico Christian Legal Aid announces two free information and training opportunities on April 13 and May 4 for lawyers and law students who are either providing or are interested in providing help for the poor and homeless. The April 13th training will be conducted from noon to 4 p.m. at the Albuquerque Rescue Mission, 525 Second Street, SW, Albuquerque. The May 4th training will be conducted from 11 a.m. to 3 p.m. at the State Bar Center. A free lunch will be provided at each session. Reservations are required. These nationally approved free training programs are offered only once or twice annually. Contact Jim Roach, (505) 243-4419, or roachlawfirm@yahoo.com, for further information or to R.S.V.P.

N.M. Guardianship Association Panel Discussion
The N.M. Guardianship Association will sponsor a panel discussion on limited guardianship from 1:30 to 3 p.m., May 18. The panel will be composed of the Hon. Ted Baca, 2nd Judicial District Court; Neuropsychiatrist Alya Reeve, MD, UNM HSC; Tom Day, P & A Systems; and Lori Millet, JD. The event is free of charge. The location is to be determined. R.S.V.P. to (505) 350-3848 or sbennett@swcp.com.
Call for Nominations

State Bar of New Mexico

2007 Annual Awards

Nominations are being accepted for the 2007 annual awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2006 or 2007. The awards will be presented during a special reception at the 2007 Annual Meeting, July 13–15, at the Inn of the Mountain Gods in Mescalero, N.M.

A letter of nomination for each nominee should be sent to: Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; faxed to (505) 828-3765; or e-mailed to sbnm@nmbar.org. Deadline for nomination submissions is April 27.

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

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

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

3. Outstanding Judicial Service Award: This award is given to judges whose recent activities have significantly advanced the administration of justice or improved the relations between the bench and the State Bar. This award is limited to one per year and is not necessarily given annually. Previous recipients: The Honorable James W. Counts, The Honorable John W. Pope, The Honorable Grace B. Duran, The Honorable Anne Kass, The Honorable Lynn Pickard and The Honorable Geraldine E. Rivera.

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

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

6. Distinguished Bar Service Award—Lawyer: This award is given to attorneys who have given long and valuable service to the State Bar over a significant period of time. It is intended to recognize long-term commitment to State Bar services and significant contributions to the legal profession. This award is not necessarily given annually. Previous recipients: Andrew G. Schultz, Norman S. Thayer, Briggs F. Cheney, Russell D. Mann, Michael T. Murphy, Joyce Stowers, James R. Crouch, Robert J. Desiderio and Jan B. Gilman-Tepper.

7. Distinguished Bar Service Award—Nonlawyer: This award is given to one or more nonlawyers who, over a period of time, have served or assisted the legal profession of the State Bar in a significant way. This award is not necessarily given annually. Previous recipients: Kay L. Homan, Michelle Giger, Edwina Logan Hambor, Carol Herrera and Louise Kodituwakku.
8. Outstanding Contribution Award: This award is given annually to those members of the State Bar who have made outstanding and extraordinary contributions of their time and talents to State Bar activities during the past year. Previous recipients (for last three years): 2006–Mary Ann Romero; 2004–Leigh Anne Chavez and Rosemary Maestas-Swazo; 2003–Daniel J. Behles, Michael F. Hacker, Ronald E. Holmes, Thomas J. “Budd” Mucci and Jason Neal.

9. Outstanding Local/Voluntary Bar Award: This award is given to one or more local/voluntary bar associations that have had the most outstanding programs and activities for their members and for the public at large. This award is not necessarily given annually. Previous recipients: New Mexico Black Lawyers Association, Sandoval County State Bar, San Juan County State Bar, Colfax-Union County State Bar and Curry-Roosevelt County State Bar.

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

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

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

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

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

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

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

17. Outstanding Advocacy for Women Award (New award created in 2007): This award recognizes attorneys who have distinguished themselves during the prior year by providing legal assistance to women who are underrepresented or underserved or by advocating for causes that will ultimately benefit and/or further the rights of women. The award is intended to reflect the goals of the Committee on Women and the Legal Profession, which will review the nominations and make recommendations to the Board of Bar Commissioners for selection. This award is not necessarily given annually.
**LEGAL EDUCATION**

**MARCH**

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<th>Date</th>
<th>Program Name</th>
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# OPINIONS

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

Gina M. Maestas, Chief Clerk
New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • (505) 827-4925

**Effective March 9, 2007**

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

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<td><strong>James R. Alsup</strong>&lt;br&gt;13076 Quate Lane&lt;br&gt;Woodbridge, VA 22192&lt;br&gt;(703) 580-0788</td>
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<td><strong>Joyce A. Anderson</strong>&lt;br&gt;337 Day Dreamer Dr.&lt;br&gt;Las Cruces, NM 88005&lt;br&gt;(505) 541-9470&lt;br&gt;<a href="mailto:joanderson@zianet.com">joanderson@zianet.com</a></td>
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<td><strong>Rudolph Preston Arnold</strong>&lt;br&gt;Office of the District Attorney&lt;br&gt;520 Lomas Blvd., NW&lt;br&gt;Albuquerque, NM 87102&lt;br&gt;(505) 841-7299&lt;br&gt;(505) 841-7076 (telecopier)&lt;br&gt;<a href="mailto:ARNold@da2nd.state.nm.us">ARNold@da2nd.state.nm.us</a></td>
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<td><strong>Francis S. Barikor</strong>&lt;br&gt;PO Box 36115&lt;br&gt;Albuquerque, NM 87176-6115&lt;br&gt;(505) 280-6827&lt;br&gt;<a href="mailto:FBarikor@msn.com">FBarikor@msn.com</a></td>
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<td><strong>Meshell Anne Bell</strong>&lt;br&gt;1310 Picacho Hills Dr., Ste. 2&lt;br&gt;Las Cruces, NM 88007&lt;br&gt;(505) 525-0077&lt;br&gt;(505) 523-1725 (telecopier)&lt;br&gt;<a href="mailto:mbaposf@ymail.com">mbaposf@ymail.com</a></td>
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<td><strong>Hon. Steven L. Bell</strong>&lt;br&gt;Finfth Judicial District Court&lt;br&gt;PO Box 1776&lt;br&gt;Roswell, NM 88202-1776&lt;br&gt;(505) 624-7518&lt;br&gt;(505) 624-9510 (telecopier)&lt;br&gt;<a href="mailto:div10@fifthdistrictcourt.com">div10@fifthdistrictcourt.com</a></td>
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<td><strong>Robert Beyer</strong>&lt;br&gt;PO Box 507&lt;br&gt;Mesilla, NM 88046-0507&lt;br&gt;(505) 977-4378&lt;br&gt;(800) 889-1659 (telecopier)&lt;br&gt;<a href="mailto:robertabeyer@comcast.net">robertabeyer@comcast.net</a></td>
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<td><strong>John Gary Biddle</strong>&lt;br&gt;2 Sombra Court&lt;br&gt;Santa Fe, NM 87508-8783&lt;br&gt;(505) 466-1439&lt;br&gt;(505) 466-4602 (telecopier)</td>
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<td><strong>Peggy Ann Big Eagle</strong>&lt;br&gt;PO Box 75&lt;br&gt;Tonkawa, OK 74653-0075&lt;br&gt;(580) 628-3239&lt;br&gt;<a href="mailto:peggybig@scgglobal.net">peggybig@scgglobal.net</a></td>
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<td><strong>Anne K. Bingaman</strong>&lt;br&gt;5028 Overlook Rd., NW&lt;br&gt;Washington, DC 20016&lt;br&gt;(202) 293-2252&lt;br&gt;(202) 463-0229 (telecopier)&lt;br&gt;<a href="mailto:anne@bingaman.com">anne@bingaman.com</a></td>
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<td><strong>David Dayog Black</strong>&lt;br&gt;N.M. General Services Department&lt;br&gt;Risk Management Division&lt;br&gt;PO Drawer 26110&lt;br&gt;Albuquerque, NM 87102-2118&lt;br&gt;(505) 841-7017&lt;br&gt;(505) 841-7076 (telecopier)&lt;br&gt;<a href="mailto:fbalearivera@da2nd.state.nm.us">fbalearivera@da2nd.state.nm.us</a></td>
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<td><strong>Hon. Bruce D. Black</strong>&lt;br&gt;U.S. District Court&lt;br&gt;District of New Mexico&lt;br&gt;PO Box 1776&lt;br&gt;Roswell, NM 88202-1776&lt;br&gt;(505) 984-0121&lt;br&gt;(505) 984-2084 (telecopier)&lt;br&gt;<a href="mailto:rboyd@cybermesa.com">rboyd@cybermesa.com</a></td>
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<td><strong>Paul C. Blodgett</strong>&lt;br&gt;PO Box 2336&lt;br&gt;Poulsbo, WA 98370-9344&lt;br&gt;(360) 697-7755</td>
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<td><strong>Julie Bishop</strong>&lt;br&gt;David G. Crum &amp; Associates, P.C.&lt;br&gt;1005 Marquette Ave., NW&lt;br&gt;Albuquerque, NM 87102&lt;br&gt;(505) 843-7303&lt;br&gt;(505) 244-8731 (telecopier)&lt;br&gt;<a href="mailto:jibishop@nmlawyers.com">jibishop@nmlawyers.com</a></td>
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<td><strong>Susan M. Boe</strong>&lt;br&gt;707 E. Palace, #13&lt;br&gt;Santa Fe, NM 87501-6403&lt;br&gt;(505) 982-8255&lt;br&gt;<a href="mailto:susannboe@msn.com">susannboe@msn.com</a></td>
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<td><strong>Michael C. Boltz</strong>&lt;br&gt;Boltz Law&lt;br&gt;1400 Woodloch Forest, Ste. 75&lt;br&gt;The Woodlands, TX 77380&lt;br&gt;(281) 367-6555&lt;br&gt;(281) 367-3705 (telecopier)&lt;br&gt;<a href="mailto:michaelboltz@houston.rr.com">michaelboltz@houston.rr.com</a></td>
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<td><strong>Richard E. Bowman</strong>&lt;br&gt;416 Ridge Pl., NE&lt;br&gt;Albuquerque, NM 87106&lt;br&gt;(505) 246-0574&lt;br&gt;<a href="mailto:vocalion788@comcast.net">vocalion788@comcast.net</a></td>
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<td><strong>Stephan K. Bowman</strong>&lt;br&gt;268 Rivera Lane&lt;br&gt;Corrales, NM 87048-9158&lt;br&gt;(505) 890-0540&lt;br&gt;(505) 890-0539 (telecopier)&lt;br&gt;<a href="mailto:steve49bowman@aol.com">steve49bowman@aol.com</a></td>
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<td><strong>J. Ronald Boyd</strong>&lt;br&gt;238 Griffin St.&lt;br&gt;Santa Fe, NM 87501-1803&lt;br&gt;(505) 984-0121&lt;br&gt;(505) 984-2084 (telecopier)&lt;br&gt;<a href="mailto:rboyd@cybermesa.com">rboyd@cybermesa.com</a></td>
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<td><strong>Duncan Lee Bradley</strong>&lt;br&gt;115 La Luz Lane&lt;br&gt;Ruidoso, NM 88345&lt;br&gt;<a href="mailto:DBradley@da.state.nm.us">DBradley@da.state.nm.us</a></td>
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<td><strong>Rebecca Claire Branch</strong>&lt;br&gt;Law Offices of Rebecca C. Branch&lt;br&gt;PO Box 27406&lt;br&gt;Albuquerque, NM 87125-7406&lt;br&gt;(505) 263-4579&lt;br&gt;<a href="mailto:rbranch1@comcast.net">rbranch1@comcast.net</a></td>
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<td><strong>Kimberly Ann Eaton Brawley</strong>&lt;br&gt;Office of the U.S. Attorney&lt;br&gt;PO Box 507&lt;br&gt;201 Third St., NW, Ste. 900&lt;br&gt;Albuquerque, NM 87103-0607&lt;br&gt;(505) 346-7274&lt;br&gt;(505) 346-7296 (telecopier)&lt;br&gt;<a href="mailto:Kimberly.Brawley@usdoj.gov">Kimberly.Brawley@usdoj.gov</a></td>
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<td><strong>J. Richard Brown</strong>&lt;br&gt;PO Box 1328&lt;br&gt;606 Weleka&lt;br&gt;Carlsbad, NM 88221-1328&lt;br&gt;(505) 361-5573&lt;br&gt;(505) 887-9011 (telecopier)&lt;br&gt;<a href="mailto:JBrownprop@yahoo.com">JBrownprop@yahoo.com</a></td>
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<td><strong>Michele M. Clark</strong>&lt;br&gt;PO Box 41452&lt;br&gt;905 W. Oltorf St., Ste. D&lt;br&gt;Austin, TX 78704-1452&lt;br&gt;(512) 535-0253&lt;br&gt;(512) 535-0260 (telecopier)&lt;br&gt;<a href="mailto:mmt02@earthlink.net">mmt02@earthlink.net</a></td>
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<td><strong>Kristen Lockwood Cline</strong>&lt;br&gt;8420 E. Welsh Trl.&lt;br&gt;Scottsdale, AZ 85258&lt;br&gt;(480) 773-6533</td>
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<td><strong>Stephen P. Comeau</strong>&lt;br&gt;Meyners + Company, L.L.C.&lt;br&gt;500 Marquette, NW, Ste. 800&lt;br&gt;Albuquerque, NM 87102&lt;br&gt;(505) 222-3550&lt;br&gt;(505) 842-1568 (telecopier)&lt;br&gt;<a href="mailto:scomeau@meyners.com">scomeau@meyners.com</a></td>
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<td><strong>Thomas Gillette Cornish, Jr.</strong>&lt;br&gt;Entrega General&lt;br&gt;Boquete, Chiriqui&lt;br&gt;Republic of Panama 0413&lt;br&gt;011-507-6614333&lt;br&gt;<a href="mailto:boguide@hotmail.com">boguide@hotmail.com</a></td>
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IN THE MATTER OF THE AMENDMENT OF RULE 15-203 NMRA OF THE RULES GOVERNING ADMISSION TO THE BAR

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation from the Board of Bar Examiners to amend Rule 12-203 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 15-203 NMRA of the Rules Governing Admission to the Bar hereby is APPROVED;

IT IS FURTHER ORDERED that the amendment of Rule 15-203 NMRA of the Rules Governing Admission to the Bar shall be effective for the July 2007 bar examination;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of Rule 15-203 NMRA of the Rules Governing Admission to the Bar by publishing the same in the *Bar Bulletin* and NMRA.

DONE at Santa Fe, New Mexico, this 1st day of March, 2007.

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

15-203. Subjects for examination.

A. Selection of subjects. In the selection of subjects for bar examination questions, the emphasis shall be upon the basic and fundamental subjects which are ordinarily taught in law schools accredited by the American Bar Association.

B. Testable subjects. The subjects which may be tested include:

(1) The six (6) multistate subjects; constitutional law, contracts and sales, criminal law and procedure, evidence, real property and torts;
(2) administrative law;
(3) agency;
(4) business entities, including corporations and partnerships;
(5) equitable remedies;
(6) family law, including New Mexico community property;
(7) federal jurisdiction and procedure;
(8) Indian law, including subjects such as federal Indian law, criminal and civil jurisdiction in Indian country and Indian child welfare act under state and federal law;
(9) secured transactions; and
(10) wills, estates and trusts.

C. Performance test questions. Performance test questions may be given which are designed to test applicants on the following skills: problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task and recognition and resolution of ethical dilemmas. Performance test questions may contain subject areas other than those specified in Paragraph B of this rule, however, the applicants shall be provided with the substantive information necessary to answer the question.

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation from the Probate Forms Committee to amend Probate Forms 4B-011, 4B-012, 4B-021, 4B-022, 4B-101, 4B-102, 4B-103, 4B-104, 4B-105, 4B-106, 4B-107, 4B-201, 4B-202, 4B-301, 4B-302, 4B-401, 4B-501, 4B-502, 4B-503, 4B-504, 4B-601, 4B-602 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Probate Forms 4B-011, 4B-012, 4B-021, 4B-022, 4B-101, 4B-102, 4B-103, 4B-104, 4B-105, 4B-106, 4B-107, 4B-201, 4B-202, 4B-301, 4B-302, 4B-401, 4B-501, 4B-502, 4B-503, 4B-504, 4B-601, 4B-602 NMRA hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Probate Forms 4B-011, 4B-012, 4B-021, 4B-022, 4B-101, 4B-102, 4B-103, 4B-104, 4B-105, 4B-106, 4B-107, 4B-201, 4B-202, 4B-301, 4B-302, 4B-401, 4B-501, 4B-502, 4B-503, 4B-504, 4B-601, 4B-602 NMRA shall be effective immediately;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced probate forms by publishing the same in the Bar Bulletin and the NMRA.

DONE at Santa Fe, New Mexico, this 1st day of March, 2007.

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

4B-011. General instructions for probates when there is no will.

A. Determine if there is a will. First, determine whether the deceased person had a will or not. Different probate forms are used if there is a will (and the person died “testate”) and if there is not a will (and the person died “intestate”). This set of instructions should be used if you have not been able to find a will signed by the deceased person.

B. Overview of steps. There are essentially six steps to an informal probate:

1. Start the process and have the court appoint you as personal representative;
2. Send out notice that you have been appointed as personal representative and that a probate action is in process;
3. Notify creditors that you are in the process of probating the estate. To do this you must send a notice to creditors of whom you are aware. In addition, if you want to shorten the time period that unknown creditors have to make claims, you may publish a notice in the newspaper. You must notify the creditors that you know of and may publish a notice in the newspaper;
4. Gather and list the assets of the estate;
5. Determine the debts of the estate and pay the valid ones. Distribute the remaining assets of the estate to the decedent’s heirs; and
6. Close the estate and probate action.

C. Completion and filing of forms.

1. Print or type information. Please print or type the information on all forms. You will want to keep copies of all documents that you file in the court file and that the judge orders in the case. If typewritten, type or print using pica (10 pitch) type style or a twelve (12) point typeface. All forms and other papers filed with the court shall be: clearly legible; printed on one side of the page, on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size.

2. Copies you will need. Remember to take with you an original and as many copies as you want to have when you file papers or take an order to the judge to sign. The court clerk will stamp each copy as “Endorsed” (which shows it is a copy of the original), but only at the time of filing. If you do not get an endorsed copy at the time of filing, you will likely have to pay a fee for a copy later.

3. Required filing fee. There is a filing fee that you must pay to start the case. In very limited situations the judge may waive the filing fee. If you want to ask the judge to waive the filing fee, ask the court clerk for the appropriate forms.

4B-012. Explanation of forms and how to complete; specific steps if no will has been found.

A. Step 1. Start the process and have the court appoint you as personal representative. In order to begin the probate process, you must file the following forms in the probate court in the county where the deceased person lived, or where that person owned property. For Step 1 you will need to use Probate Forms 4B-101, 4B-103, 4B-105 and 4B-106 NMRA.

1. Probate Form 4B-101 NMRA. Application for Informal Appointment of Personal Representative; No Will (“Application”) (See Sections 45-3-203 and 45-3-301 NMSA 1978). This form generally shows the judge that:
   a) the case is ready to be probated;
   b) the case is appropriate for probate court; and
   c) you are the appropriate person to act as personal representative.

Before you file the application, Probate Form 4B-101 NMRA, you must go to the district court in the district where the deceased person lived and ask if anyone has filed a demand for notice. If someone has filed a demand for notice, that person is entitled to get a copy of all documents you file in the case, including the application and all orders signed by the judge.

If you were married to the deceased person and are not disqualified to act as personal representative, you have the first priority to act as personal representative. If you were not married to the deceased person and you are not an heir or are not the only heir, each of the other heirs must consent to your appointment as personal representative. For example, if you have two brothers, your mother is no longer living and you want to probate your father’s estate, each of your brothers must sign the consent section of the application, Probate Form 4B-101 NMRA. If any of the heirs object to your appointment as personal representative, a formal proceeding is required. (See Section 45-5-205 NMSA 1978.) If a formal proceeding is required you may not use these forms and should seek the advice of an attorney.
(2) Probate Form 4B-103 NMRA, Order of Informal Appointment of Personal Representative (No Will). You must submit the Probate Form 4B-103 NMRA, Order of Informal Appointment of Personal Representative (No Will), for the judge’s consideration. If the judge approves the application, the judge will sign this order. (See Section 45-3-308 NMSA 1978.) The Order of Informal Appointment of Personal Representative (No Will): 
(a) appoints you as the personal representative; and 
(b) allows the probate to begin once you have accepted your appointment.

(3) Probate Form 4B-105 NMRA, Acceptance of Appointment as Personal Representative (Will (No Will). This form proves that you agree to follow the law when you act as personal representative. You must sign this form in the presence of a notary public. You may submit this form at the same time you submit your application and order. After the judge has signed and filed the Order of Appointment of Personal Representative, (No Will),Probate Form 4B-105 NMRA, the court will file your notarized acceptance and issue Letters of Administration (No Will), Probate Form 4B-105 NMRA, to you.

(4) Probate Form 4B-106 NMRA, Letters of Administration (No Will). The court clerk will issue this form after you submit it. This form has two general purposes:
(a) to begin officially your appointment as personal representative; and 
(b) to prove to others that the judge has appointed you as personal representative and that you are qualified to make decisions about the decedent’s estate.

You may want to have several copies of the Letters of Administration (No Will), Probate Form 4B-106 NMRA. This is the document that shows people that you are the personal representative. You might even consider getting several certified copies of this document. A “certified copy” is a document in which the court clerk formally indicates on the document that it is the same as the original. There is typically a charge to get a certified copy.

B. Step 2. Send out notice that you have been appointed as personal representative and that a probate action is in process. Section 45-3-705 NMSA 1978. For Step 2 use Probate Forms 4B-201 and 4B-202 NMRA.

(1) Probate Form 4B-201 NMRA, Notice of Informal Appointment of Personal Representative. Once the judge has appointed you as personal representative, you must send out Probate Form 4B-201 NMRA, Notice of Informal Appointment of Personal Representative, within ten (10) days to the heirs of the deceased person.

(2) Probate Form 4B-202 NMRA, Proof of Notice. Once you have completed the mailing, complete and file Probate Form 4B-202. Proof of Notice. See Subsection D of Section 45-3-705 NMSA 1978.

C. Step 3. Notify creditors that you are in the process of probating the case. Sections 45-3-801, 45-3-802 and 45-3-803 NMSA 1978. For Step 3 use Probate Forms 4B-301 and 4B-302 NMRA.

(1) Probate Form 4B-301 NMRA, Notice to Known Creditors. Within three (3) months after your appointment as personal representative, you must mail a notice to all creditors that you know of or that you can reasonably find out about. The notice must tell the creditors to present a claim within two (2) months of the later of the mailing to the creditor or the optional publication in the newspaper.

A known creditor who does not receive notice has one (1) year from the date of the decedent’s death to present a claim.

(2) Probate Form 4B-302 NMRA, Notice to Creditors. An unknown creditor also has one (1) year to submit a claim unless you publish notice in the newspaper. If you publish a notice in the newspaper in the county that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to two (2) months after the first day you publish the notice. See Section 45-3-801 NMSA 1978. In order to shorten the time period for claims of unknown creditors, 4B-302 NMRA, Notice to Creditors must:
(a) be published once a week for two (2) successive weeks 
(b) in a newspaper of general circulation in the county.

Once you publish the notice to creditors in the paper for two (2) weeks and pay the newspaper for the publication, the newspaper will give you an affidavit of publication that indicates that the notice was published. This affidavit of publication is given to the probate court clerk for filing.

You should not give any notice to creditors if it is over one (1) year from the date of the decedent’s death. If these claims have not been paid, it is too late to have them paid.

D. Step 4. Gather and list the assets of the estate, pay debts and distribute assets. For Step 4 use Probate Form 4B-401 NMRA for the inventory. The other two parts of the fourth step in the probate process are the primary steps that the forms do not address. Because these steps are at the heart of the probate process, you should ensure that they are properly completed. You should consider seriously consulting with an attorney knowledgeable about the probate process about these steps. Additionally, your local library may have resources for you to look at about this process.

(1) Probate Form 4B-401 NMRA, Inventory. Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. Sections 45-3-706 to 45-3-708 NMSA 1978. Probate Form 4B-401 NMRA, Inventory, is provided as a model. The inventory must list the items owned by the decedent in reasonable detail and give the estimated value on the date of death of the decedent for each item. It must also give the type and amount of any debt owed for the item, such as debt secured by a lien or mortgage. The personal representative mails the inventory to interested people who request it. See Section 45-3-706 NMSA 1978. You do not need to file this document with the court if you want to keep this information private and not part of the public record unless the court orders you to file it.

(2) Pay debts. Determine the debts of the estate and pay the valid ones. Distribute the remaining assets of the estate to the appropriate heirs. Within ninety (90) days of your appointment as personal representative, you must determine the debts of the estate and pay the valid ones. If a creditor makes a claim that you do not think is valid, there is a specific process for objecting to the claim with specific time deadlines. Section 45-3-801 NMSA 1978 et seq. It is best to seek the advice of an attorney in this case, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(3) Distribute assets. When you have paid all of the decedent’s debts, you should distribute the assets that are left to the heirs of the decedent. The heirs and the proper share that each gets are described in Sections 45-2-101 to 45-2-104 NMSA 1978. Distribution of real estate (land) requires a deed from the personal representative to the distributee. It is best to seek a lawyer’s advice about how to prepare a deed.
E. Step 5. Close the estate and probate action. Section 45-3-1003 NMSA 1978. For Step 5 use Probate Forms 4B-501, 4B-502, 4B-503 and 4B-504 NMRA. Once you have completed all of your work as personal representative and it is at least three (3) months since the appointment of the personal representative, you may close the estate. In order to do this first you must:

(1) Probate Form 4B-501 NMRA, Accounting. Send an accounting of everything that you did in your administration of the estate to all of the deceased person’s heirs. Probate Form 4B-501 NMRA, Accounting, is provided as a model. The accounting should list all assets in and all assets out of the estate. Therefore, the list of assets and cash into the estate should equal a list of distributions from the estate. You do not need to file this document with the court if you want to keep this information private and not part of the public record unless the court orders you to file it.

(2) Probate Form 4B-502 NMRA, Verified Statement of the Personal Representative. Complete and mail a copy of Probate Form 4B-502 NMRA, Verified Statement of Personal Representative, to all heirs and to any creditors or other claimants whose claims are neither paid nor barred; and file the verified statement, Probate Form 4B-502 NMRA, with the court.

(3) Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien. Your appointment as personal representative will automatically terminate in one (1) year if there are no pending proceedings involving you as personal representative.

(a) Taxes. You should ensure that you have complied with all state and federal tax requirements. Closing of the estate with the court does not necessarily close the estate with the tax authorities. Contact a tax advisor, the Internal Revenue Service or the New Mexico Taxation and Revenue Department about this issue.

(b) Bond. If you have given the court a lien on your property instead of filing a bond as personal representative and a year has passed since you filed the Verified Statement of the Personal Representative that closed the estate, you may file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien.

(4) Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien. At the time you file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien, you should also provide the judge with a completed copy of Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien. Once the judge signs Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien, you should obtain a certified copy of the certificate from the court clerk and record it with the clerk of the court where your property is located.

C. Completion and filing of forms.

(1) Print or type information. Please print or type the information on all forms. You will want to keep copies of all documents that you file in the court file and that the judge orders in the case. If typewritten, type or print using pica (10 pitch) type style or a twelve (12) point typeface. All forms and other papers filed with the court shall be: clearly legible; printed on one side of the page, on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size.

(2) Copies you will need. Remember to take with you an original and as many copies as you want to have when you file papers or take an order to the judge to sign. The court clerk will stamp each copy as “Endorsed” (which shows it is a copy of the original), but only at the time of filing. If you do not get an endorsed copy at the time of filing, you will likely have to pay a fee for a copy later.

(3) Required filing fee. There is a filing fee that you must pay to start the case. In very limited situations the judge may waive the filing fee. If you want to ask the judge to waive the filing fee, ask the court clerk for the appropriate forms.

4B-022. Explanation of forms and how to complete; specific steps to probate a will.

A. Step 1. Start the process and have the court appoint you as personal representative. In order to begin the probate process, you must file the following forms in the probate court in the county where the deceased person lived, or where that person owned property. For Step 1 use Probate Forms 4B-102 and 4B-104 NMRA, as appropriate.

(1) Probate Form 4B-102 NMRA, Application for Informal Appointment of Personal Representative (Will) (“application”) (See Sections 45-3-203 and 45-3-301 NMSA 1978). This form generally shows the judge that:

(a) the case is ready to be probated;
(b) the case is appropriate for probate court; and
(c) you are the appropriate person to act as personal representative.

Before you file the application, Probate Form 4B-102 NMRA, you must go to the district court in the district where the deceased person lived and ask if anyone has filed a demand for notice. If someone has filed a demand for notice, that person is entitled to get a copy of all documents you file in the case, including the application, Probate Form 4B-102 NMRA and any orders the judge signs in the case.
If you are designated in the will to act as personal representative, you have the first priority to act as personal representative. If you are not the first person designated in the will or are not listed in the will to act as personal representative, each of the devisees must consent to your appointment as personal representative. For example, if you are the second person listed to act as personal representative but every one listed in the will wants you to act as personal representative, each person with a higher priority to serve as personal representative must sign the consent section of the application.

(2) **Probate Form 4B-104 NMRA, Order of Informal Probate of Will and Appointment of Personal Representative (Will).** You must submit the Probate Form 4B-104 NMRA, Order of Informal Probate of Will and Appointment of Personal Representative (Will), for the judge’s consideration. If the judge approves the application, the judge will sign this order. (See Section 45-3-308 NMSA 1978.) The Order of Informal Probate of Will and Appointment of Personal Representative:

(a) appoints you as the personal representative; and

(b) allows the probate to begin once you have accepted your appointment.

(3) **Probate Form 4B-105 NMRA, Acceptance of Appointment as Personal Representative (Will) (No Will).** This form proves that you agree to follow the law when you act as personal representative. You must sign this form in the presence of a notary public. You may submit this form at the same time you submit your application and order. After the judge has signed and filed the Order of Informal Probate of Will and Appointment of Personal Representative (Will), Probate Form 4B-104 NMRA, the court will file your notarized acceptance and issue Letters Testamentary (Will), Probate Form 4B-107 NMRA, Letters of Testamentary (Will), to you.

(4) **Probate Form 4B-107 NMRA, Letters Testamentary (Will).** The court clerk will issue this form after you submit it. This form has two general purposes:

(a) to begin officially your appointment as personal representative; and

(b) to prove to others that the judge has appointed you as personal representative and that you are qualified to make decisions about the decedent’s estate.

You may want to have several copies of this document. This is the document that shows people that you are the personal representative. You might even consider getting several certified copies of this document. A “certified copy” is a document in which the court clerk formally indicates on the document that it is the same as the original. There is typically a charge to get a certified copy.

B. **Step 2. Send out notice that you have been appointed as personal representative and that a probate action is in process.** Section 45-3-705 NMSA 1978. For Step 2 use Probate Forms 4B-201 and 4B-202 NMRA.

(1) **Probate Form 4B-201 NMRA, Notice of Informal Appointment of Personal Representative.** Once the judge has appointed you as personal representative, you must send out Probate Form 4B-201 NMRA, Notice of Informal Appointment of Personal Representative, within ten (10) days to the heirs of the deceased person and the devisees of the estate.

(2) **Probate Form 4B-202 NMRA, Proof of Notice.** Once you have completed the mailing, complete and file Probate Form 4B-202, Proof of Notice. See Subsection D of Section 45-3-705 NMSA 1978.

C. **Step 3. Notify creditors that you are in the process of probating the case.** Sections 45-3-801, 45-3-802 and 45-3-803 NMSA 1978. For Step 3 use Probate Forms 4B-301 and 4B-302 NMRA.

(1) **Probate Form 4B-301 NMRA, Notice to Known Creditors.** Within three (3) months after your appointment as personal representative, you must mail a notice to all creditors that you know of or that you can reasonably find out about. The notice must tell the creditors to present a claim within two (2) months of the later of the mailing to the creditor or the optional publication in the newspaper.

A known creditor who does not receive notice has one (1) year from the date of the decedent’s death to present a claim.

(2) **Probate Form 4B-302 NMRA, Notice to Creditors.** An unknown creditor also has one (1) year to submit a claim unless you publish notice in the newspaper. If you publish a notice in the newspaper in the county that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to two (2) months after the first day you publish the notice. See Section 45-3-801 NMSA 1978. In order to shorten the time period for claims of unknown creditors, 4B-302 NMRA, Notice to Creditors must:

(a) be published once a week for two (2) successive weeks

(b) in a newspaper of general circulation in the county.

Once you publish the notice in the paper for two (2) weeks and pay the newspaper for the publication, the newspaper will give you an affidavit of publication that indicates that the notice was published. This affidavit of publication is given to the probate court clerk for filing.

You should not give any notice to creditors if it is over one (1) year from the date of the decedent’s death. If these claims have not been paid, it is too late to have them paid.

D. **Step 4. Gather and list the assets of the estate, pay debts and distribute assets.** For Step 4 use Probate Form 4B-401 NMRA for the inventory. The other two parts of the fourth step in the probate process are the primary steps that the forms do not address. Because these steps are at the heart of the probate process, you should ensure that they are properly completed. You should consider seriously consulting with an attorney knowledgeable about the probate process about these steps. Additionally, your local library may have resources for you to look at about this process.

(1) **Probate Form 4B-401 NMRA, Inventory.** Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. Sections 45-3-706 to 45-3-708 NMSA 1978. Probate Form 4B-401 NMRA, Inventory, is provided as a model. The inventory must list the items owned by the decedent in reasonable detail and give the estimated value on the date of death of the decedent for each item. It must also give the type and amount of any debt owed for the item, such as debt secured by a lien or mortgage. The personal representative mails the inventory to interested people who request it. You do not need to file this document with the court if you want to keep this information private and not part of the public record. See Section 45-3-706 NMSA 1978.

(2) **Pay debts.** Pay the costs of administration of the estate. Next, determine the debts of the estate and pay the valid ones. Distribute the remaining assets of the estate to the devisees designated in the will. Within ninety (90) days of your appointment as personal representative, you must determine the debts of the estate and pay the valid ones. If a creditor makes a claim that you do not think is valid, there is a specific process for objecting to...
the claim with specific time deadlines. Section 45-3-801 NMSA 1978 et seq. It is best to seek the advice of an attorney in this case, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(3) **Distribute assets.** When you have paid all of the decedent’s debts, you should distribute the assets that are left to the devisees listed in the will. Distribution of real estate (land) requires a deed from the personal representative to the distributee. It is best to seek a lawyer’s advice about how to prepare a deed.

**E. Step 5. Close the estate and probate action.** Section 45-3-1003 NMSA 1978. For Step 5 use Probate Forms 4B-501, 4B-502, 4B-503 and 4B-504 NMRA. Once you have completed all of your work as personal representative and it is at least three (3) months since the appointment of the personal representative, you may close the estate. In order to do this you must:

1. **Probate Form 4B-501 NMRA, Accounting.** Send an accounting of everything that you did in your administration of the estate to all of the devisees. Probate Form 4B-501 NMRA, Accounting, is provided as a model. The accounting should list all assets in and all assets out of the estate. Therefore, the list of assets and cash into the estate should equal a list of distributions from the estate. You do not need to file this document with the court if you want to keep this information private and not part of the public record;

2. **Probate Form 4B-502 NMRA, Verified Statement of the Personal Representative.** Complete and mail a copy of Probate Form 4B-502 NMRA, Verified Statement of Personal Representative, to all devisees and to any creditors or other claimants whose claims are neither paid nor barred; and file the verified statement, Probate Form 4B-502 NMRA, with the court;

3. **Probate Form 4B-503 NMRA Application for Certificate of Full Administration and Release of Property Lien.** Your appointment as personal representative will automatically terminate in one (1) year if there are no pending proceedings involving you as personal representative.

(a) **Taxes.** You should ensure that you have complied with all state and federal tax requirements. Closing of the estate with the court does not necessarily close the estate with the tax authorities. Contact a tax advisor, the Internal Revenue Service or the New Mexico Taxation and Revenue Department about this issue.

(b) **Bond.** If you have given the court a lien on your property instead of filing a bond as personal representative and a year has passed since you filed the Verified Statement of the Personal Representative that closed the estate, you may file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien.

4. **Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien.** At the time you file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien, you should also provide the judge with a completed copy of Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien. Once the judge signs Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien, you should obtain a certified copy of the certificate from the court clerk and record it with the clerk of the court where your property is located.

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**APPLICATION FOR INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE (NO WILL)**

I, __________________________, state that:

1. I have the following relationship with __________________________, the person who died (the decedent), that qualifies me to act as personal representative of the estate;

(Choose one. Note: Review the priorities for appointment set out in the instructions to this form, step 1, Probate Form 4B-012 NMRA.)

[ ] I am the surviving spouse of the decedent; or
[ ] I am one of the heirs of the estate; or
[ ] I am an interested person, including a creditor of the decedent, and forty-five (45) days have elapsed since the date of death of the decedent.

Because of this relationship, I have an interest in the estate, and I am willing to serve as personal representative of the decedent’s estate. I am not disqualified to act as personal representative. I do not know of anyone else who is interested in serving as personal representative who has priority to serve.

(If I have equal or higher priority to serve, have consented below to my appointment by signing this form.)

2. The decedent died on ____________ (date), at the age of _____________. At death, the decedent

(Choose one)

[ ] lived in _________ County, New Mexico or
[ ] did not live in New Mexico, but lived in _________ County, State of _________ and owned property in _________ County, New Mexico.

3. I have carefully searched for all of the names and addresses of the decedent’s spouse, children and other heirs [including myself]. I have discovered the following information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Relationship to Decedent</th>
<th>Age (if minor)</th>
</tr>
</thead>
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<td></td>
</tr>
</tbody>
</table>

4. I have looked carefully and thoroughly for a will of the decedent and did not find one. I believe that the decedent died without a will.

5. A personal representative has not been appointed in New Mexico or anywhere else.

6. I do not know of any other probate action either in New Mexico or anywhere else.

7. (Choose one)

[ ] I have checked with the district court clerk about a demand for notice and found no such demand. I have not received, and do not know of, any demand from anyone for notice of any probate or related proceeding; or

[ ] I am aware of a demand for notice and have sent the required notice to each person who demanded notice;
8. (Choose one)

[ ] The decedent died more than one hundred twenty (120) hours ago and less than three (3) years ago.
[ ] The decedent died more than three (3) years ago, but an informal appointment is necessary to confirm title in the successors to the estate.

WHEREFORE, I ask this court to:
A. Appoint me as the personal representative of the decedent’s estate;
B. Allow me to serve without posting a bond, in an unsupervised administration;
C. Ask the court clerk to issue Letters of Administration to me; and
D. Order such other relief as this court believes to be appropriate.

__________________________
Signature of applicant
__________________________
Printed name
__________________________
Street address
__________________________
City, state and zip code
__________________________
Telephone number

STATE OF NEW MEXICO )
COUNTY OF __________, ss.

I, ______________, am the applicant. I state, upon oath, that the application, and the statements in it, are true and correct as far as I know and believe.

__________________________
Signature of applicant
__________________________
Notary Public

 моим комиссионным сроком истекает:

(If anyone has an equal or higher priority than you for appointment as personal representative, as discussed in the instructions for this form, Step 1, have each sign below to show that person’s consent to your serving as personal representative.)

I consent to the appointment of the personal representative listed above.

Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

APPLICATION FOR INFORMAL PROBATE OF WILL AND FOR INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE (WILL)¹

I, ____________________ state that:
1. I had the following relationship with ____________________, the person who died (the decedent), that qualifies me to act as personal representative of the estate.

(Choose one.)

(Review the priorities for appointment set out in the instructions to this form.
Step 1, Probate Form 4B-022 NMRA.)

[ ] I have been nominated in the will of the decedent.
[ ] I am the surviving spouse of the decedent and am listed in the will as a devisee.
[ ] I am one of the devisees of the estate as listed in the will.
[ ] I am the surviving spouse of the decedent, but am not listed in the will as a devisee.
[ ] I am one of the heirs of the estate, but am not listed in the will as a devisee.
[ ] I am an interested person, including a creditor of the decedent and forty-five (45) days have elapsed since the date of death of the decedent.

Because of this relationship, I have an interest in the estate, and I am willing to serve as personal representative of the decedent’s estate. I am not disqualified to act as personal representative. I do not know of anyone else who is interested in serving as personal representative who has priority to serve as set out in the Uniform Probate Code.

2. The decedent died on ________ (date), at the age of ________.

At death, the decedent

(Choose one.)

[ ] lived in ________ County, New Mexico or
[ ] did not live in New Mexico, but lived in ________ County, State of ________ and owned property in ________ County, New Mexico.

3. I am filing the original of the will of the decedent, dated ________, at the same time I am filing this application.

I believe that this is the current and correct will.

4. The following is a list of the devisees named in the will, [including myself]², together with a list of the decedent’s spouse, children and heirs who may not be named in the will, if any:

__________________________
Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

__________________________
Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

__________________________
Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

__________________________
Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

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Street address: ________________________
City, state and zip code: ________________________

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Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

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Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

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Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

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Relationship to decedent: ________________________
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City, state and zip code: ________________________

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Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

__________________________
Name: ________________________
Signature: ________________________
Relationship to decedent: ________________________
Street address: ________________________
City, state and zip code: ________________________

[Note: The form continues with more sections, but the above text is a sample of the format.]
I consent to the appointment of the personal representative listed above.
Name:
Signature: ____________________________________________
Relationship to decedent: ________________________________
Street address: ________________________________________
City, state and zip code: _________________________________
Name: ____________________________________________________________________________
Signature: ____________________________________________
Relationship to decedent: ________________________________
Street address: ________________________________________
City, state and zip code: _________________________________

USE NOTE
1. See Section 45-3-203 NMSA 1978 for priority among persons seeking appointment as personal representative and Section 45-3-301 NMSA 1978 for informal appointment of a personal representative.
2. If the applicant is an “heir”, as defined in 4B-002 NMRA, use the bracketed language.

4B-103
STATE OF NEW MEXICO
IN THE PROBATE COURT
_________________________ COUNTY

IN THE MATTER OF THE ESTATE
OF __________________, DECEASED.

ORDER OF INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE
(NO WILL)

This matter comes before the court on the Application for Informal Appointment of Personal Representative of the Estate and the court having considered the application, FINDS THAT:
1. The Application for Informal Appointment of Personal Representative is complete;
2. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant’s knowledge and belief;
3. On the basis of the statements in the application, this court has jurisdiction;
4. On the basis of the statements in the application, venue is proper;
5. Applicant has made oath or affirmation that after the exercise of reasonable diligence, applicant is unaware of any unrevoked last will and testament or other testamentary instrument relating to property in this state or under the laws of New Mexico, and the request for the appointment does not relate to any will;
6. On the basis of the statements in the application, the applicant gave notice of the filing of the application to each person demanding notice, if any;
7. It appears from the application that this proceeding was commenced within the time limitations prescribed by the laws of the State of New Mexico;
8. The applicant is an interested person as defined by law, and is not disqualified to serve as personal representative of the estate of the decedent;
9. From the statements in the application, the applicant has priority entitling applicant to be appointed as personal representative of the estate of the decedent;
10. According to the application, no other personal representative has been appointed in New Mexico or in any other state.

THEREFORE, THIS COURT ORDERS that:
A. The application is granted.
B. The applicant ____________________ (name of applicant) is informally appointed as the personal representative of the estate of the decedent, without bond, in an unsupervised administration;
C. Letters of Administration shall be issued to applicant upon applicant’s acceptance of the office of personal representative.

Probate Judge

Submitted by:

Signature of applicant

Printed name

Street address

City, state and zip code

Telephone number

USE NOTE
1. See Section 45-3-308 NMSA 1978 for proof and findings required prior to appointment of personal representative and Section 45-3-307 NMSA 1978 for informal appointment of personal representative.

4B-104
STATE OF NEW MEXICO
IN THE PROBATE COURT
_________________ COUNTY

IN THE MATTER OF THE ESTATE
OF __________________, DECEASED.

ORDER OF INFORMAL PROBATE OF WILL
AND APPOINTMENT OF PERSONAL
REPRESENTATIVE
(WILL)

This matter comes before the court on the application for informal probate of the will of the decedent and for informal appointment as personal representative of the estate. The court having considered the application, FINDS THAT:
1. The Application for Informal Probate of Will and for Informal Appointment of Personal Representative is complete;
2. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant’s knowledge and belief;
3. On the basis of the statements in the application, this court has jurisdiction;
4. On the basis of the statements in the application, this court has venue;
5. An original, duly executed and apparently unrevoked will of the decedent is in the possession of this court;
6. On the basis of the statements in the application, the applicant gave notice of the filing of the application to each person demanding notice, if any;
7. It appears from the application that this proceeding was commenced within the limitations prescribed by the laws of the State of New Mexico;
8. The applicant is an interested person as defined by law, and is not disqualified to serve as personal representative of the estate of the decedent;
9. From the statements in the application and from the contents of the will, the applicant has priority entitling applicant to be appointed as personal representative of the estate of the decedent;
10. According to the application, no other personal representative has been appointed in New Mexico or in any other state.

THEREFORE, THIS COURT ORDERS that:
A. The application is granted;
B. The will of the decedent is informally probated;
C. The applicant ____________________ (name of applicant) is informally appointed as the personal representative of the estate of the decedent, without bond, in an unsupervised administration;
D. Letters Testamentary shall be issued to applicant upon applicant’s acceptance of the office of personal representative.

Probate Judge

Submitted by:

Signature of applicant

Printed name

Street address

City, state and zip code

Telephone number

USE NOTE
1. See Section 45-3-308 NMSA 1978 for proof and findings required prior to appointment of personal representative and Section 45-3-307 NMSA 1978 for informal appointment of personal representative.

4B-105
STATE OF NEW MEXICO
IN THE PROBATE COURT
_________________ COUNTY

IN THE MATTER OF THE ESTATE
OF __________________, DECEASED.

ACCEPTANCE OF APPOINTMENT AS
PERSONAL REPRESENTATIVE
(WILL) (NO WILL)

STATE OF NEW MEXICO )
COUNTY OF __________________ )ss.

I, __________________________, accept the duties of personal representative of the Estate of ______________________ (name of decedent), and agree to perform the duties of the office to the best of my abilities according to the law.

________________________________
Signature of applicant

________________________________
Printed name

________________________________
Street address

________________________________
City, state and zip code

________________________________
Telephone number

SIGNED AND SWORN TO before me this ___ day of __________, __________ by ___________________________.

___________________________
Notary Public

My commission expires:_________________

USE NOTE
1. See Section 45-3-307 NMSA 1978 and Section 45-3-601 NMSA 1978 for acceptance of appointment of personal representative.

4B-107
STATE OF NEW MEXICO
IN THE PROBATE COURT
_______________ COUNTY

IN THE MATTER OF THE ESTATE
OF ______________________, DECEASED.

LETTERS TESTAMENTARY
(WILL)¹

TO WHOM IT MAY CONCERN:
Notice is now given that ______________________ (name of personal representative), has been appointed to serve as the personal representative of the estate of ______________________, and has qualified as the decedent’s personal representative by filing with the court a statement of acceptance of the duties of that office.
The personal representative has all of the powers and authorities provided by law and specifically, by Section 45-3-715 NMSA 1978.
Issued this ___ day of __________, __________.

___________________________
Clerk of the Probate Court
By: _______________________
Deputy Clerk

(Seal)

USE NOTE
1. See Section 45-3-103 NMSA 1978 and Section 45-3-601 NMSA 1978 for issuance of letters.

4B-201
STATE OF NEW MEXICO
IN THE PROBATE COURT
_______________ COUNTY

IN THE MATTER OF THE ESTATE
OF ______________________, DECEASED.

NOTICE OF INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE¹

YOU ARE HEREBY NOTIFIED THAT:
1. This notice is being sent to the heirs and devisees of the decedent.
2. On __________, _______ (date), ______________________ (personal representative’s name) was appointed the personal representative of the estate of the decedent in an informal proceeding under the Uniform Probate Code.
3. No bond has been filed.
4. All documents relating to the estate are on file with the Probate Court of __________ County. They are available for your inspection.
5. The estate is being administered by the personal representative according to the terms of the Uniform Probate Code without supervision from the court. You are entitled to information regarding the administration of the estate from the personal representative. You may also petition the Court in any matter relating to the estate, including distribution of assets and expenses of administration.

___________________________
Clerk of the Probate Court
By: _______________________
Deputy Clerk

(Seal)

USE NOTE
1. See Section 45-3-103 NMSA 1978 and Section 45-3-601 NMSA 1978 for issuance of letters.
STATE OF NEW MEXICO
IN THE PROBATE COURT
_______________ COUNTY
No. ____________

IN THE MATTER OF THE ESTATE
OF _____________, DECEASED.

NOTICE TO KNOWN CREDITORS¹

NOTICE IS HEREBY GIVEN that the undersigned has been
appointed personal representative of this estate. All persons hav-
ing claims against this estate are required to present their claims
within two (2) months after the date of the first publication of
any published notice to creditors or the date of mailing or other
delivery of this notice, whichever is later, or the claims will be
forever barred. Claims must be presented either to the undersigned
personal representative at the address listed below, or filed with
the Probate Court of _____________ County, New Mexico,
located at the following address: _____________ County, New Mexico,
located at the following address: _____________.

Dated: ____________, ______.

__________________________
Signature of personal representative

__________________________
Printed name

__________________________
Street address

__________________________
City, state and zip code

__________________________
Telephone number

USE NOTE
1. See Sections 45-3-801 to 45-3-803 NMSA 1978 for notice to
creditors.

NOTICE TO CREDITORS¹

NOTICE IS HEREBY GIVEN that the undersigned has been
appointed personal representative of this estate. All persons having
claims against this estate are required to present their claims within
two (2) months after the date of the first publication of this notice,
or the claims will be forever barred. Claims must be presented
either to the undersigned personal representative at the address
listed below, or filed with the Probate Court of __________
County, New Mexico, located at the following address: __________
Dated: ____________, ______.

__________________________
Signature of personal representative

__________________________
Printed name

__________________________
Street address

__________________________
City, state and zip code

__________________________
Telephone number

USE NOTE
1. See Section 45-3-705 NMSA 1978 for proof of notice of ap-
pointment.

4B-301

__________________________
Signature of personal representative

__________________________
Printed name

__________________________
Street address

__________________________
City, state and zip code

__________________________
Telephone number

4B-302

__________________________
Signature of personal representative

__________________________
Printed name

__________________________
Street address

__________________________
City, state and zip code

__________________________
Telephone number

USE NOTE
1. See Section 45-3-705 NMSA 1978 for proof of appointment.
I, __________________________, the personal representative of the estate, have prepared an accounting of the administration of the estate.

I am sending a copy of this document to the distributees whose interests are affected by this accounting. The accounting is as follows:

Signature of personal representative

Printed name

Street address

City, state and zip code

Telephone number

**USE NOTE**

1. See Sections 45-3-706 to 45-3-708 NMSA 1978 for preparation of inventory of property owned by the decedent.

**ACCOUNTING**

I, __________________________, the personal representative of the estate, have prepared an accounting of the administration of the estate.

I am sending a copy of this document to the distributees whose interests are affected by this accounting. The accounting is as follows:

Signature of personal representative

Printed name

Street address

City, state and zip code

Telephone number
IN THE PROBATE COURT

STATE OF NEW MEXICO

IN THE PROBATE COURT

IN THE MATTER OF THE ESTATE

OF ____________, DECEASED.

VERIFIED STATEMENT OF THE PERSONAL REPRESENTATIVE

I, ____________, state that:

1. I am the personal representative of the decedent’s estate;
2. The probate was filed more than three (3) months ago and the time for the presentation of creditor’s claims has expired;
3. I have completed my work on this estate. In order to do this, I:
   A. inventoried and estimated the value in writing of all of the decedent’s property and encumbrances on this property;
   B. resolved all claims that were presented to me, either by paying them or otherwise taking care of them;
   C. paid all the expenses of administration;
   D. paid federal and state taxes that were due, including estate tax, inheritance or other death taxes and income taxes; and
   E. distributed all the remaining assets, including decedent’s real property, if any, to the people who were entitled to receive them, taking into account the family and personal property allowances allowed by law. The distributions were in the appropriate amounts;
4. I mailed a copy of this document to anyone entitled to a distribution from the estate. I also mailed a copy of the accounting of this estate to anyone entitled to a distribution from this estate whose interests were affected by the accounting;
5. As far as I know, there are no other actions pending in any court;
6. By this closing statement, I am indicating to the court that I am closing the estate.

Signature of personal representative

Printed name

Street address

City, state and zip code

Telephone number

STATE OF NEW MEXICO

COUNTY OF ____________

I, ____________, being first duly sworn, on oath state that I have read the foregoing application and that the statements in it are true to the best of my knowledge.

Applicant

SUBSCRIBED AND SWORN TO before me this ____ day of ____________, by __________________.

Notary Public

(Seal)

My commission expires: ____________
CERTIFICATE OF FULL ADMINISTRATION AND RELEASE OF PROPERTY LIEN

The personal representative has filed an application stating that the appointment of the personal representative of this estate has terminated, no action concerning this estate is pending in any court and one (1) year has passed since the personal representative filed the closing statement. The court certifies that the personal representative appears to have fully administered this estate.

This certificate discharges any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

________________________
Probate Judge
Submitted by:
________________________
Signature of personal representative
________________________
Printed name
________________________
Street address
________________________
City, state and zip code
________________________
Telephone number

ORDER ALLOWING FREE PROCESS

The court, having read the Affidavit of Poverty and Indigency and having considered the application, FINDS that the applicant is entitled to free process.

IT IS THEREFORE ORDERED THAT

The applicant shall not pay any of the costs associated with the process of this action in this court. The applicant shall pay any costs associated with publishing notice to creditors if the applicant chooses to publish.

________________________
Probate Judge
Submitted by:
________________________
Signature of applicant
________________________
Printed name
________________________
Street address
________________________
City, state and zip code
________________________
Telephone number
LAURA NAKASHIMA, for herself and all others similarly situated, Plaintiff-Appellant, versus STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee. No. 26,155 (filed: January 18, 2007)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
TED BACA, District Judge

Certiorari Denied, No. 30,234, March 1, 2007
From the New Mexico Court of Appeals

Opinion Number: 2007-NMCA-027

LYNN PICKARD, JUDGE

{1} Plaintiff appeals from the district court’s grant of summary judgment in favor of Defendant on Plaintiff’s breach of contract claim. Plaintiff represents a yet-uncertified class of automobile insurance policyholders who elected to pay their automobile insurance premiums in installments. Defendant is an automobile insurance company that entered into a contract with Plaintiff to provide insurance for her automobile. Plaintiff argues that the installment fees charged to those policyholders who pay their premiums in installments are considered part of the premium and therefore should be described as such in their insurance policies. Because the fees were not included in the stated premium, Plaintiff argues that Defendant breached its insurance contract with her and that she is entitled to damages. We hold that the installment fees in this case are not premium and therefore conclude that the district court did not err in granting summary judgment in favor of Defendant.

BACKGROUND

{2} The material facts of this case are undisputed. Over twenty years ago, Plaintiff entered into a contract for automobile insurance with Defendant. Plaintiff’s policy provided her with continuous insurance coverage for a six-month period. Initially, Plaintiff’s parents paid the premium in a lump sum amount and renewed the policy every six months.

{3} A few years later, Plaintiff took sole responsibility for paying her automobile insurance premiums. Plaintiff soon realized that she could not afford to pay her premium in a lump sum payment as her parents had done. Plaintiff contacted her insurance agent and asked whether she could pay her premium in installments. The insurance agent then sent a form to Plaintiff so that she could sign up for Defendant’s payment plan, which allowed her to pay her premium in monthly installments. The payment plan also included an installment charge, which has varied throughout the years, but is currently three dollars per month. Although not stated in the policy issued to Plaintiff, both the amount of the monthly premium and the installment fee were included in the
form signed by Plaintiff when she agreed to the payment plan. Plaintiff then began paying her automobile insurance premiums in monthly installments and continued to do so for nearly twenty years.

\{4\} In 2004, Plaintiff filed suit against Defendant alleging breach of contract and seeking classwide relief. Plaintiff argued that the installment fees charged by Defendant were actually considered premium and therefore should have been included in the “total premium” stated on her policy. According to Plaintiff, Defendant’s failure to include such fees in the premium constituted a breach of contract. Upon both parties’ motions for summary judgment, the district court concluded that Defendant’s installment fees were not considered premium and granted Defendant’s motion for summary judgment. Plaintiff appeals.

**STANDARD OF REVIEW**

\{5\} We review a district court’s grant of summary judgment de novo. *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. “Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.” *Id.* We will “view the facts in the light most favorable to the party opposing summary judgment, drawing all inferences in favor of that party.” *Stieber v. Journal Publ’g Co.*, 120 N.M. 270, 271-72, 901 P.2d 201, 202-03 (Ct. App. 1995). In this appeal, we are asked to construe the meaning of an insurance contract, as well as various statutory law provisions. These are both questions of law that we review de novo. See *Cerrillos Gravel Prods., Inc. v. Bd. of County Comm’rs*, 2004-NMCA-096, ¶ 4, 136 N.M. 247, 96 P.3d 1167, aff’d, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932; *Nearburg v. Yates Petroleum Corp.*, 1997-NMCA-069, ¶ 7, 123 N.M. 526, 943 P.2d 560.

**DISCUSSION**

\{6\} In granting Defendant’s motion for summary judgment, the district court observed that this is a modal premium case “with a twist.” According to the district court, unlike other modal premium cases being litigated throughout the country, the installment fee in this case was disclosed to Plaintiff, and both parties agreed that Plaintiff was aware of the fee. Despite this, Plaintiff argues that because the policy issued by Defendant did not include the installment fees in the “total premium” amount, Defendant has breached its contract with Plaintiff. According to Plaintiff, installment fees are premium and should have been included in the policy. We disagree and affirm the district court’s dismissal of Plaintiff’s claims.

\{7\} We will begin this opinion with a discussion of Plaintiff’s argument that the policy itself requires that installment fees be described as part of the premium. Second, we address Plaintiff’s argument that state law mandates that installment fees be stated in the policy and, in doing so, will consider case law from other jurisdictions bearing on the question.

**Defendant Not Liable for Breach of Contract Based on the Policy Language**

\{8\} Plaintiff asserts that Defendant breached the insurance contract by charging her more than the “total premium” specified in her policy. The term “total premium” is not defined in the policy. Plaintiff argues that the common and ordinary meaning of the term “total premium” includes installment fees and that such fees must therefore be included in the premium stated on the policy. The district court concluded that Plaintiff expressly agreed to the installment fees by entering into a separate contract with Defendant to pay her premium in installments and further that the fees associated with paying in installments are not premium. We agree and conclude that Defendant is not liable for breach of contract based upon the language of the policy.

\{9\} Initially we observe that “[t]he insurance contract was agreed upon, and the premium set, before any installment arrangement was offered.” *Sheldon v. Am. States Preferred Ins. Co.*, 95 P.3d 391, 393 n.10 (Wash. Ct. App. 2004). This suggests, as the district court concluded, that the payment plan agreement constituted a separate agreement between the parties. To the contrary, Plaintiff argues that because her insurance policy allows for policyholders to pay in installments, the later payment plan agreement signed by Plaintiff was only an administrative detail that confirmed an already existing right.

\{10\} Plaintiff agrees that the legal effect of the separate document allowing her to pay her premium in installments hinges on whether the insurance policy itself permits installment payments. Specifically, Plaintiff’s insurance policy provides that “[t]he policy period is shown under ‘Policy Period’ on the declarations page and is for successive periods of six months each for which you pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page. Plaintiff argues that Defendant’s use of the word “payments” in the plural allows policyholders to pay on an installment basis. We reject Plaintiff’s interpretation of this term, as the plain meaning of this contractual provision suggests a different meaning. *See Christmas v. Cimarron Re Chy Co.*, 98 N.M. 330, 332, 648 P.2d 788, 790 (1982) (“[C]ourts will apply the plain meaning of the contract language as written in interpreting terms of a contract.”); see also *Rummel v. Lexington Ins. Co.*, 1997-NMCA-041, ¶ 20, 123 N.M. 752, 945 P.2d 970 (stating that a court should examine the language of the policy itself, including punctuation, grammar, and syntax, in order to resolve any ambiguities within the policy). We believe that “payments” in the plural refers to the possibility of successive policy periods mentioned in the previous sentence and not the possibility of multiple payments within a single policy period. We agree with the district court that the term “payments” in this context means that each payment for each renewal period must be made before the end of the current policy period. We therefore disagree with Plaintiff’s assertion that the term “payments” in this context allows for the payment of premium in installments.

\{11\} In further support of her assertion that the policy itself allows for installment payments, Plaintiff argues that because the declarations page of her policy references her payment plan, the policy must allow for installment payments. We disagree. We observe that if Plaintiff had not entered into a separate agreement to pay her premium in installments, such references to a payment plan would not have appeared on her policy. Such language therefore cannot be construed as allowing for installment payments because it only appears on the policy after a policyholder has entered into an agreement with Defendant regarding installment payments.

\{12\} Plaintiff argues that even if the insurance policy does not allow for installment payments, an integration clause within the insurance policy bars any additional agreements. The integration clause within Plaintiff’s insurance policy provides that “this policy contains all of the agreements between [the policyholder] and [Defendant] or any of [Defendant’s] agents.” However, as Defendant correctly observes, an integration clause only covers antecedent and
contemporaneous agreements; it does not foreclose the possibility of future agreements. 6 Arthur Linton Corbin, *Corbin on Contracts* §§ 573-74 (interim ed. 2002); *cf.* Bell v. Lammon, 51 N.M. 113, 118, 179 P.2d 757, 760 (1947) (“[A] complete, valid, written contract merges all prior and contemporaneous negotiations and agreements within its purview[,]” (internal quotation marks and citation omitted)), overruled on other grounds by Wilburn v. Stewart, 110 N.M. 268, 269-70, 794 P.2d 1197, 1198-99 (1990). Moreover we reject Plaintiff’s argument that the payment plan agreement should be considered an antecedent agreement because Plaintiff has renewed her policy numerous times and each renewal contains the same integration language. We observe that Plaintiff did not have to reapply for insurance coverage after each six-month period; instead, she “renewed” her existing policy. Such renewals are therefore best characterized as extensions of the original policy agreement. *Cf.* Vigil v. Rio Grande *Ins. of Santa Fe*, 1997-NMCA-124, ¶ 14, 124 N.M. 324, 950 P.2d 297. Similarly, we note that Plaintiff did not have to sign a new payment plan agreement each time she renewed her policy. We therefore do not believe that the integration clauses within these policy renewals somehow prevented the installment payment plan from constituting a separate agreement between the parties. Moreover, it appears the method of payment is separate from the coverage and cost of coverage contained in the policy. Accordingly, an agreement regarding how the premium is to be paid would not be covered by the integration clause.

{13} Plaintiff next argues that the payment plan agreement cannot be considered a contract because the agreement was not supported by adequate consideration. “Consideration adequate to support a promise is essential to enforcement of the contract and must be bargained for by the parties.” *Romero v. Earl*, 111 N.M. 789, 791, 810 P.2d 808, 810 (1991). Adequate consideration is present in a contract where something “‘is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.’” *Id.* (quoting Restatement (Second) of Contracts § 71 (1979)). Plaintiff argues that because both parties had pre-existing duties stemming from the insurance policy with respect to installment payments, there is no consideration to support the second contract. See *Jaynes v. Strong-Thorne Mortuary, Inc.*, 1998-NMSC-004, ¶ 11, 124 N.M. 613, 954 P.2d 45. As we previously discussed, the insurance policy itself does not allow for payment of premium in installments but, instead, requires full payment before the end of the current policy period to ensure coverage for the successive periods. The payment plan agreement, or second contract, constituted a separate agreement between the parties with respect to an alternative way to pay the policy premium. In terms of consideration, Defendant gave up its right to obtain the payment of premium in a lump sum, whereas Plaintiff obtained the right to pay her premium in installments in exchange for a fee. We therefore conclude that the payment plan agreement was a second contract between the parties supported by adequate consideration.

{14} Additionally, Plaintiff argues that because Defendant cancels policies for failure to pay the installment fees, such fees must be considered premium. Conversely, the district court concluded that Defendant does not cancel policies for failure to pay installment fees. Plaintiff argues that this conclusion is contrary to the record. In support of her assertion, Plaintiff points to the deposition testimony of one of Defendant’s employees. The deposition testimony reveals that when a policyholder submits an installment payment that does not cover the amount due, Defendant first applies the payment to the installment fee and then the remaining amount to the premium. Depending on the remaining balance owed on the premium, Defendant may send out a cancellation notice, or it may simply indicate the shortage on the next bill. Plaintiff argues, based on this practice, failure to pay the installment fees will inevitably result in cancellation. While hypothetically this may be true, we observe that the policy is not actually cancelled for failure to pay the installment fees, but for failure to pay the premium. Moreover, we do not perceive the payment of installment fees to be “optional,” as policyholders do enter into a separate agreement with Defendant for installment payments and failure to pay the installment fees when due would be a breach of that agreement. We are therefore not convinced that Defendant’s procedures for dealing with short payments somehow make its installment fees part of the premium.

{15} Finally, Plaintiff argues that the meaning of the term “total premium” on the insurance policy clearly encompasses installment fees and that such fees should therefore have been included in the premium stated on the policy. We disagree.

{16} Where, as here, a contract does not define a term, we will give the term its “common and ordinary meaning.” *Battishill v. Farmers Alliance Ins. Co.*, 2006-NMSC-004, ¶ 8, 139 N.M. 24, 127 P.3d 1111. Plaintiff argues that the common meaning of “premium” is “the consideration paid in money or otherwise for a contract of insurance in the form of an initiation fee, an admission fee, an assessment, or a stipulated single or periodic payment according to the nature of the insurance.” *Webster’s Third New International Dictionary* 1789 (1981). Even accepting Plaintiff’s proffered definition, we conclude that installment fees are not considered part of the total premium stated in the policy.

{17} We agree with the district court’s conclusion that the installment fees are not consideration for a contract of insurance but, instead, cover the expense of allowing policyholders to pay their premiums in installments. A number of considerations support this conclusion.

{18} First, payment of installment fees is not a prerequisite to obtaining automobile insurance coverage from Defendant. We observe that an individual can obtain insurance coverage without paying the installment fees by paying his or her premium in a lump sum. Indeed, if Plaintiff had not contacted her insurance agent regarding installment payments, she would have paid Defendant solely the premium as stated on the policy. Because individuals are in no way obligated to pay the installment fees, Aside from their own financial and/or personal preference, the installment fees cannot be considered consideration for the procurement of insurance and are therefore not premium. Compare *Blanchard v. Allstate Ins. Co.*, 774 So. 2d 1002, 1005-06 (La. Ct. App. 2000) (concluding that installment fee was not part of premium where not a prerequisite to obtaining insurance coverage), with *State Farm Mut. Auto. Ins. Co. v. La. Ins. Rating Comm’n*, 79 So. 2d 888, 894 (La. Ct. App. 1955) (holding that a membership fee was part of premium where policyholder was required to pay the fee in order to obtain coverage).

{19} Second, Defendant’s cancellation policy lends further support to our conclusion that installment fees are not premium. We observe that when a policyholder cancels his or her insurance, he or she is refunded any unearned premiums. However, the installment fees paid by the policyholder are not refunded.

{20} Finally, we observe that insurance rates are associated with the transfer of
risk. 5 Lee R. Russ and Thomas F. Segalla, Couch on Insurance § 69:1, at 69-5 (3d ed. 2005) (“The amount of the premium varies in proportion to the risk assumed.”); see also NMSA 1978, § 59A-1-5 (1984) (“‘Insurance’ is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit in connection with ascertainable risk contingencies[.]”). Installment fees, on the other hand, are not associated with any sort of transfer of risk but, instead, cover the costs associated with a payment plan. We therefore hold that installment fees are not considered premium under the language of Plaintiff’s insurance policy.

21 It is for these reasons that we conclude that the district court correctly ruled that Defendant is not liable for breach of contract based on the policy language. Defendant Not Liable for Breach of Contract Based on the Insurance Code

22 Plaintiff argues that even if the policy itself does not evidence a breach of contract by Defendant, the Insurance Code, interspersed throughout NMSA 1978, §§ 59A-1-1 to -59-4 (1984, as amended through 2006), clearly demonstrates that Defendant has breached its contract with Plaintiff. Under the Insurance Code, “[n]o person shall wilfully collect as premium, administration fee or other charge for insurance or coverage any sum in excess of the premium or charge applicable thereto as specified in the policy.” Section 59A-16-24(B). Plaintiff argues that because the Insurance Code definition of “premium” clearly encompasses installment fees, Defendant has violated New Mexico law by not including its installment fees as part of the “total premium” stated in the policy. Additionally, Plaintiff argues that even if the installment fees are not “premium,” Section 59A-16-24(B) also requires administration fees to be specified in the policy and that this term must include installment fees. The district court concluded that the Insurance Code’s definition of “premium” does not include installment fees and that Defendant’s fully disclosed installment fees comport with the requirements of the Insurance Code. We agree.

23 The Insurance Code defines “premium” as “the consideration for insurance or for an annuity, by whatever name called. Any ‘assessment,’ or any ‘membership,’ ‘policy,’ ‘survey,’ ‘inspection,’ ‘service’ or similar fee or other charge in consideration for an insurance or annuity contract or procurement thereof is part of the premium.” Section 59A-18-3. Plaintiff argues that the installment fees charged by Defendant are indeed service fees associated with the procurement of insurance, which constitute “premium” as defined in Section 59A-18-3. We agree with the district court that Defendant’s installment fees are not consideration for insurance and that such fees are not charged in connection with the procurement of insurance. Rather, as discussed previously, the installment fees are associated with the privilege of paying a premium in installments and are not for the actual purchase of insurance itself. 24 There are only two published cases addressing the question of whether installment fees constitute premium in the insurance law context. In Blanchard, policyholders sought review of an insurance commissioner’s opinion that installment fees were not premium and therefore did not need to be included on automobile insurance policies. 774 So. 2d at 1003. The court agreed with the analysis of the insurance commissioner and held that such fees were not paid to obtain insurance “but for the privilege of paying the premium over time.” Id. at 1006. Therefore, the court concluded that such fees were not premium under Louisiana insurance law. Id.

25 Four years later, a different circuit of the Louisiana Court of Appeal was presented with the same issue. See Cacamo v. Liberty Mut. Fire Ins. Co., 885 So. 2d 1248, 1250 (La. Ct. App. 2004). Although three judges had dissented in the Blanchard decision and the court was not bound by the decision, the court in Cacamo found the reasoning of Blanchard persuasive. Cacamo, 885 So. 2d at 1256. The court observed that the ability to pay premiums in installments, rather than in lump sums, was not required by law and was therefore a privilege. Id. Moreover, the court noted that because not all policyholders utilize the installment plan option, “it would be inequitable to increase the quoted premium for all policyholders in order to accommodate those persons who are unable or unwilling to pay the premium in one lump sum.” Id.

As in Blanchard, the court in Cacamo held that installment fees were not included in the statutory definition of premium. 885 So. 2d at 1256.

26 We find the reasoning in Blanchard and Cacamo both persuasive and helpful to our analysis. Further, we are not persuaded by Plaintiff’s argument that New Mexico’s statutory definition of “premium” is so materially different from Louisiana’s as to warrant a different outcome in New Mexico. In Louisiana, “premium” is defined as all sums charged, received, or deposited as consideration for the purchase or continuance of insurance for a definitely stated term, and shall include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as a part of the consideration for the purchase or continuance of insurance.

La. Rev. Stat. Ann. § 22:5(13) (West, Westlaw through 2006 Sess.). Plaintiff argues that the key difference between Louisiana’s definition and New Mexico’s is that Louisiana does not define “premium” as consideration for insurance “by whatever name called,” as New Mexico does. See § 59A-18-3. Although the Louisiana statute does not use the same catchall phrase as the New Mexico statute does, the language of the Louisiana statute does not suggest that “premium” is limited to only those types of charges described in the statute. This is demonstrated by the fact that the statute includes the phrase “or similar fee or charge” after listing the possible charges or fees included in the term “premium.” See La. Rev. Stat. Ann. § 22:5(13). Moreover, the pertinent language in both statutes states that “premium” includes any fees or charges that are consideration for insurance. See § 59A-18-3; La. Rev. Stat. Ann. § 22:5(13). Indeed, both statutes define “premium” in this manner. See § 59A-18-3; La. Rev. Stat. Ann. § 22:5(13). We are therefore not persuaded that the reasoning in Blanchard and Cacamo is somehow limited by the uniqueness of Louisiana’s statutory definition of “premium.”

27 Plaintiff urges us to rely on case law and administrative decisions from other jurisdictions that purportedly recognize that installment fees are considered premium. Plaintiff first points to a recent California Insurance Commissioner’s opinion dealing with a lawsuit similar to the case at bar. The district court in that lawsuit referred the question of whether finance charges imposed on policyholders who pay insurance in installments constituted “premium” to the California Department of Insurance (“DOI”). The DOI then allowed briefing by interested parties and held hearings on the subject. After considering the various arguments on the issue, the DOI decided that installment fees are considered part of the premium under California law. Plaintiff
asks this Court to adopt the reasoning of the DOI.

{28} Initially we observe that the term “premium” is not defined in the California Code. The DOI was therefore not limited by statutory language when determining the meaning of “premium.” Interestingly, the DOI did consider a definition of “premium” quite similar to our own and concluded that if California had such a definition, installment fees would not be considered “premium” in California. The DOI, however, rejected this definition and concluded that it was not how “premium” should be defined in California, choosing instead to rely on policy concerns in defining “premium.” With respect to the rejected definition, the DOI noted that in the actuarial context, “premium” means “consideration paid an insurer for undertaking to indemnify the insured against a specific peril.” As previously mentioned, in New Mexico “premium” is “the consideration for insurance or for an annuity, by whatever name called.” Section 59A-18-3. Moreover, “insurance” is defined by our statutes as “a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils.” Section 59A-1-5. Given the similarities between the actuarial definition rejected by the DOI and our own statutory definition of premium, we are not persuaded that an insurance commissioner in New Mexico would come to the same conclusion regarding installment fees as an insurance commissioner in California would. It is for these same reasons that we do not find the two California district court decisions cited by Plaintiff and relying on the DOI opinion persuasive.

{29} Additionally, although we are mindful of the fact that, like California’s, New Mexico’s Insurance Code serves to protect consumers, see N.M. Life Ins. Guar. Ass’n v. Quinn & Co., 111 N.M. 750, 761, 809 P.2d 1278, 1289 (1991), we disagree with Plaintiff’s assertion that the district court’s decision disregards such purposes. We observe that neither party disputes the fact that Plaintiff was fully informed of the installment fee and expressly acquiesced to it by deciding to pay her premium in installments and by signing up for Defendant’s payment plan. Although not stated on the policy, Defendant’s installment fees are clearly disclosed to its policyholders before policyholders enter into an agreement to pay premiums in installments. We fail to see how policyholders could be more protected under our Insurance Code if insurers were required to embed the installment fees in the premium stated on the policy, especially since nearly half of Defendant’s policyholders choose not to pay their premiums in installments.

{30} Plaintiff also argues that a line of cases, mostly in California, dealing with the definition of “gross premiums” for tax purposes supports her assertion that installment fees are premium. As Plaintiff asserts, a number of state court decisions have held that installment fees are considered “gross premiums” for tax purposes. See, e.g., Metro. Life Ins. Co. v. State Bd. of Equalization, 652 P.2d 426, 432 (Cal. 1982) (in bank); Interinsurance Exch. of Auto. Club of S. Cal. v. State Bd. of Equalization, 203 Cal. Rptr. 74, 77 (Ct. App. 1984); Allstate Ins. Co. v. State Bd. of Equalization, 336 P.2d 961, 967 (Cal. Ct. App. 1959); Liberty Mut. Ins. Co. v. State Tax Comm’n, 312 N.E.2d 559, 562 (Mass. 1974); State ex rel. Ins. Comm’r v. Allstate Ins. Co., 351 P.2d 433, 437-38 (Or. 1960), overruled on other grounds by Paur v. Dep’t of Revenue, 553 P.2d 1051, 1052-53 (Or. 1976) (en banc). We agree with the district court that these cases are not applicable. “Premium” for tax purposes has a specialized meaning that allows the state to tax the entire benefit received by insurance companies for doing business within the state. See 84 C.J.S. Taxation § 217, at 290 (2001) (“[T]he purpose of taxing provisions is to exact payments from insurers doing business in the state[.]”). The term “premium,” therefore, necessarily must have broader application in the tax context than in the insurance context.

{31} Additionally, Plaintiff argues that the district court’s decision conflicts with a line of New Mexico cases. We disagree. In Nellis v. Farmers Insurance Co. of Arizona, No. CV-2003-02564, slip op. at 4-6 (2d Jud. Dist. Jan. 28, 2005), the district court granted the plaintiff’s motion for summary judgment based on breach of contract and found that service charges constituted premium under the plaintiff’s insurance policy. What is significant in that case is that the monthly payment agreement did not mention a service fee and there was no evidence that the plaintiff understood that a fee would be charged and/or acquiesced to the fee. Id. at 2-3. Moreover, the insurance policy had only a one-month term, and the district court found it unclear as to why a service charge would be imposed where the plaintiff was not offered an installment plan. Id. at 4. This case is therefore distinguishable from the case at bar, and we are not persuaded by the former case’s reasoning.

{32} Similarly, Plaintiff’s reliance on Azar v. Prudential Insurance Co. of America, 2003-NMCA-062, 133 N.M. 669, 68 P.3d 909, and Smoot v. Physicians Life Insurance Co., 2004-NMCA-027, 135 N.M. 265, 87 P.3d 545, is unavailing. Both cases involved suits dealing with a failure to disclose material facts relating to premium payment options. See Smoot, 2004-NMCA-027, ¶ 3; Azar, 2003-NMCA-062, ¶ 10. In the instant case, Plaintiff does not allege that she was not aware of the installment fees or that Defendant failed to disclose such fees to her. Plaintiff’s only complaint is that such fees were not stated on the policy itself. Notably, neither of the other cases directly addressed the question of whether installment fees are considered premium, either under Defendant’s policy or under the Insurance Code. We agree with the district court that both cases are irrelevant for our purposes.

{33} Finally, Plaintiff argues that even if the installments are not considered “premium” under the Insurance Code, such fees must be deemed an “administration fee” that, like the premium, must be stated on the policy. See § 59A-16-24(B). We observe, however, that the administration fee mentioned in Section 59A-16-24(B) is specifically defined as a “charge for insurance or coverage.” As we have previously discussed, the installment fees in the instant matter are not charges for insurance, but rather separate fees related to the payment option selected by the policyholder. Such fees are not a prerequisite to obtaining coverage, and it is certainly possible to obtain insurance coverage from Defendant without having to pay the fees. We therefore conclude that the installment fee is not an “administration fee” as described by Section 59A-16-24(B). Defendant has therefore not violated the Insurance Code, and we hold that the district court correctly granted summary judgment in favor of Defendant.

CONCLUSION

{34} The district court’s grant of summary judgment in favor of Defendant and dismissal of Plaintiff’s claim are affirmed.

{35} IT IS SO ORDERED.

LYNN PICKARD, Judge

WE CONCUR:

CYNTIIA A. FRY, Judge

CEILIA FOY CASTILLO, Judge
New Mexico State Bar Foundation

LAWYERS NEEDED

HOMELESS LEGAL CLINIC - LAS CRUCES

Mesilla Valley Community of Hope Shelter, 999 W. Amador Ave.

The Clinic is open every Wednesday from 12:30 p.m. to 2:30 p.m. Volunteer attorneys who staff the Clinic meet with an average of three to four homeless persons each 1–2 hour session and provide on the spot legal information and advice, as well as referrals to low income/pro bono legal service programs in Las Cruces. The Clinic is covered by a malpractice insurance policy through the State Bar of New Mexico and there is training available for the volunteers before they begin. Staffing the Clinic is a gratifying experience and a rewarding way to volunteer your time. Even if you are a new lawyer, you will be surprised at how much you have to offer these clients, how your help can make a major difference in their lives, and how grateful they are. Also note that time spent volunteering at the Clinic counts towards fulfilling the attorneys’ obligation under the Supreme Court’s Rules of Professional Conduct.

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☐ Staff the Homeless Legal Clinic on Wednesdays from 12:30 p.m. to 2:30 p.m. **This service is most needed and without on-site attorneys, the Clinic doesn’t exist.** In many instances, the problems of the interviewees can be resolved at the Clinic, which is fully equipped with a telephone, computer with internet access, printer, and standard office supplies, as well as resource materials and manuals that address specific issues that the homeless face. Volunteers contribute two hours roughly every six weeks. I am available to staff the clinic. Call me to schedule a date.

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The 2006 Annual Compliance Reports have been mailed to all active licensed New Mexico attorneys. The reports include all information for courses taken by 12/31/06.

All noncompliant attorneys have been assessed a late compliance fee, and the invoice for payment of the fee is included with the Annual Report. Noncompliant attorneys must complete their requirements immediately. On April 1, 2007 a second late compliance fee will be assessed for those attorneys who continue to be in noncompliance.

On May 1, 2007 the MCLE office will submit to the Supreme Court a list of all attorneys who have not completed their 2006 requirements and/or failed to pay assessed late compliance fees. The Supreme Court will then begin to initiate the suspension process for those attorneys on the list. For more information, call MCLE at (505) 821-1980; e-mail mcle@nmmcle.org, or write to MCLE, PO Box 93070, Albuquerque, NM 87199.
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Guebert, Bruckner & Bootes, P.C. seeks an attorney with one to three years of experience and the desire to work in tort and commercial litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner & Bootes, P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

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Assistant Trial Attorney - Sandoval County

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

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Attorney

The New Mexico Aging & Long-Term Services Department is accepting resumes for the position of Attorney in Santa Fe. Applicants must have a valid New Mexico Bar Membership. Applicants must have the following qualifications: Juris Doctorate plus five (5) years of experience in the practice of law in the public or private sector of which two (2) must have been experience in Adult Protective Services or related adult advocacy. This position will provide senior level professional legal services for Adult Protective Services in litigation, counsel, interpretation of law, research, analysis, mediation, development of policies and procedures and legislation. The position will also provide legal support to the General Counsel in numerous areas of state and federal law such as The Older Americans Act, HIPPA, ADA, Inspection of Public Records Act, State Procurement Code, Medicaid, and Social Security. Starting salary will range from min $20.70 to max $36.80 per hour. Applicants must apply with State Personnel Office, (http://www.state.nm.us/spo/). Please reference job ID# 5437. In addition please submit a hard copy of your resume to: ALTSD, Patrick Lopez, General Counsel, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, 87505. The deadline for submitting resume is March 25, 2007.

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Attorney

The New Mexico Aging & Long-Term Services Department is accepting resumes for the position of Attorney in Santa Fe. Applicants must have a valid New Mexico Bar Membership. Applicants must have the following qualifications: Juris Doctorate plus five (5) years of experience in the practice of law in the public or private sector of which two (2) must have been experience in elder law. The position will provide high-level legal support to the Department’s statutorily created Long-Term Care Ombudsman program with regard to regulatory issues, client services, public policy, legislative advocacy and quality standards. The position will also provide legal support to the General Counsel in numerous areas of state and federal law such as The Older Americans Act, HIPPA, ADA, Inspection of Public Records Act, State Procurement Code, Medicaid, and Social Security. Starting salary will range from min $20.70 to max $36.80 per hour. Applicants must apply with State Personnel Office, (http://www.state.nm.us/spo/). Please reference job ID# 5436. In addition please submit a hard copy of your resume to: ALTSD, Patrick Lopez, General Counsel, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, 87505. The deadline for submitting resume is March 25, 2007.

Assistant Trial Attorney - Valencia County

The Thirteenth Judicial District Attorney’s Office is accepting applications for an experienced attorney to fill the position of Assistant Trial Attorney in the Valencia County Office, Los Lunas, NM. This position requires a felony caseload and at times some misdemeanor prosecutions. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please send resumes to Filemon Gonzalez, District Office Manager, 333 Rio Rancho Blvd., Suite 303, Rio Rancho, New Mexico 87124, or via E-Mail to: Fgonzalez-da.state.nm.us. Deadline for submission of resumes: Immediate opening until filled.
Attorney
The New Mexico Aging & Long-Term Services Department is accepting resumes for the position of Attorney in Santa Fe. Applicants must have a valid New Mexico Bar Membership. Applicants must have the following qualifications: Juris Doctorate plus five (5) years of experience in the practice of law in the public or private sector of which two (2) must have been in contract or employment and labor law. The position will provide high-level legal support in the areas of contract, employment and labor law. The position will also provide legal support to the General Counsel in numerous areas of state and federal law such as The Older Americans Act, HIPPA, ADA, Inspection of Public Records Act, State Procurement Code, Medicaid, and Social Security. Starting salary will range from min $20,70 to max $36.80 per hour. Applicants must apply with State Personnel Office, (http://www.state.nm.us/spo/). Please reference job ID# 5434. In addition please submit a hard copy of your resume to: ALTSD, Patrick Lopez, General Counsel, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, 87505. The deadline for submitting resume is March 25, 2007.

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8:30 a.m.  Registration
9:00 a.m.  Truck Accident Litigation In A Nutshell
1:00 p.m.  Lunch (provided at the State Bar Center)

Please note: There will be a 15 minute break during this seminar at approximately 10:30 a.m. Topics to be covered include the following:

De-mystifying Interstate Commerce Law
The Language and Documents of Trucking
One Tractor-Trailer, Nine Possible Defendants
Statutory Employees and Placard Liability
Liability for Accidents Under Federal Motor Carrier Safety Regulations
Standard of Care
Analysis of Common Types of Accidents: Jackknifing to Unsecured Loads
Underrides, Defective Brakes, and Other Products Liability Theories
Violation of Federal Safety Standards and Federal Pre-emtion

Federal Safety Regulations as Basis of Negligence
Liability by Spillage or Explosion of Hazardous Cargo
Loading Docks, Forklifts, and Duty to Provide A Safe Workplace
Negligent Hiring, Deliberately Unsafe Equipment, and Other Employer Liability Punitive Damages
Understanding Commercial Truck Insurance Policies and the Al- Important MCS-90 Endorsement
Document and Log Retention Requirements
Driver Qualifications and Competence
Liability of Truck Owners and Equipment Lessors
Expanding Sources of Discovery
Recent Judicial Decisions Affecting Trucking Company Liability

Please Note: No auditors permitted
We are pleased to announce that

Danielle Her Many Horses

is now an associate with the firm

Ms. Her Many Horses is the former Legislative Director for the National Indian Gaming Association in Washington DC. She previously served as an attorney with the Navajo Nation Department of Justice, Economic Development Unit. A member of the Oglala Lakota Nation, she received her BA in finance from Chadron State College and her JD from the University of New Mexico. Ms. Her Many Horses is licensed to practice in New Mexico and the Navajo Nation.

Ms. Her Many Horses will continue her practice in Indian law focusing on Indian gaming, legislative advocacy, tribal law development, general business and litigation.

Luebben Johnson & Barnhouse LLP represents tribes, businesses and individuals in all aspects of law affecting Native peoples and Indian Nations.