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Special Insert:
Annual Meeting
Firm Finder
2007-2008
Bench & Bar Directory

Firm Listings are now available in the upcoming Directory

• 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
FAIR HOUSING* TRAINING FOR ATTORNEYS
April 17-18, 2007

10.0 General CLE Credits
1.0 Ethics CLE Credit
1.0 Professionalism CLE Credit

Alamosa Community Center
6900 Gonzales Rd. SW, Albuquerque, NM

Presenters: Carnis Salisbury, long-time local civil rights activist
Richard Weiner, Fair Housing Coordinator, Albuquerque Human Rights Office
Reed Colfax, Fair Housing attorney, Relman & Associates, Washington, DC
Rebecca Bond, Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice
James Chavez, landlord rights attorney, Vance, Chavez & Associates
Christopher Brancart, Fair Housing attorney, Brancart & Brancart, Pescadero, CA

* “Fair Housing” refers to the body of civil rights laws that prohibit discrimination in housing. The training is free of charge, except for the MCLE’s $1-per-CLE-credit fee, to be paid during registration to the New Mexico Human Rights Coalition.

To sign up or to obtain more information, call the Albuquerque Human Rights Office at (505) 924-3380, NM Relay: 1-800-659-8331, or e-mail: rweiner@cabq.gov.

The Albuquerque Human Rights Office provides education, training, and technical assistance in Fair Housing and also accepts and investigates discrimination complaints in the areas of housing, employment, and public accommodation.

Co-sponsored by the New Mexico Human Rights Coalition.
VIDEO REPLAYS - APRIL 3RD

Lawyer As Problem Solver: 2007 Professionalism
9 a.m.
1.0 Professionalism CLE Credit
☐ $49

What Every Lawyer Should Know About IP
10:15 a.m.
2.7 General CLE Credits
☐ $109

Santa Clara Pueblo v. Martinez
1:30 p.m.
2.7 General CLE Credits
☐ $109

How to Win Your Next Jury Trial Using the Power Trial Method
9:00 a.m.
6.0 General CLE Credits
☐ $209

FOUR WAYS TO REGISTER

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

Please Note: For all WEBCASTS, you must register online at www.nmbarcle.org

Name ___________________________________________________________ NM Bar # _______________________
Street __________________________________________________________________________________________________________
City/State/Zip _____________________________________________________________________________________________________
Phone ___________________________ Fax ___________________________
E-mail _____________________________________________________________

☐ Purchase Order (Must be attached to be registered)  ☐ Check enclosed $ ___________ Make check payable to: CLE

Credit Card # ___________________________ Exp. Date ___________

Authorized Signature _____________________________________________

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

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From the New Mexico Court of Appeals

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• Professionalism Tip •

With respect to my clients:
I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees.

Meetings

March
27 Technology Committee,
4 p.m., State Bar Center
29 Committee on Diversity in the Legal Profession, noon, State Bar Center
30 Black Law Student Association Reception,
3:30 p.m., State Bar Center

April
2 Attorney Support Group,
5:30 p.m., First United Methodist Church
4 Employment and Labor Law Section
Board of Directors, noon, State Bar Center
5 Natural Resources, Energy and Environmental Law Section,
noon, State Bar Center

State Bar Workshops

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

April
11 Common Legal Questions Affecting Seniors
10:15 a.m., Ruidoso Downs Zia Senior Center, Ruidoso
12 Common Legal Questions Affecting Seniors
10 a.m., Alamogordo Senior Center, Alamogordo
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

Cover Artist: Santa Fe artist and teacher Jakki Kouffman has exhibited her brightly colored acrylic and pastel landscape paintings nationally for more than 20 years. One of her paintings was selected as the City of Santa Fe poster in 2003-04. Her work has also been published in Pasatiempo, Cowboys & Indians, and The Santa Fean, among others. Kouffman will have a solo exhibition at the Las Cruces Museum of Art in November. 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; Web site: 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.

First Judicial District Court
Family Law Brown-Bag
The 1st Judicial District Court will host its family law brown-bag meeting at noon, April 10, in the Grand Jury Room, second floor, Steve Herrera Judicial Complex, Santa Fe. First Judicial District Judge Raymond Ortiz will be presenting on the The Pro Se Crisis. For more information or to suggest agenda items to be discussed, contact Elege Simons Harwood, (505) 988-5600, or esimonsharwood@simonsfirm.com. Provide one dollar, name and State Bar number and receive 1.0 CLE general credit.

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, are interested in speaking to a specific topic or moderating a discussion, should 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

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.

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<th>Judicial District</th>
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<td>April 27</td>
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<td>May 17</td>
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</tbody>
</table>
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.

**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.

**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.

**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 resume; 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.

**Other Bars**

**American Bar Association**

**E. Smythe Gambrell Professionalism Awards**

Nominations are now being accepted for the 17th Annual E. Smythe Gambrell Professionalism Awards, recognizing projects that enhance professionalism among lawyers. Bar associations, law schools, law firms and other not-for-profit law-related organizations are eligible for the awards. Three awards of $3,500 each will be presented during the 2007 ABA Annual Meeting in San Francisco. The deadline for entries is March 30. Entry forms, guidelines and information about previous award recipients are available online at www.abanet.org/cpr/gambrell.html. Questions regarding the awards should be directed to Kathleen Maher, (312) 988-5307, or e-mail: maherk@staff.abanet.org. See the Jan. 15 (Vol. 46, No. 1) issue of the Bar Bulletin for more details.

**Paul G. Herne Award**

The American Bar Association Commission on Mental and Physical Disability Law is pleased to announce that nominations for the seventh annual Paul G. Herne Award for Disability Rights are now being accepted. The award is presented to an individual or an organization that has performed exemplary service in furthering the rights, dignity and access to justice for people with disabilities. The 2006 award went to Louise A. McKown, a disability rights advocate and systems change analyst. Other past...
recipients include The Honorable Rhonda J. Brown, Anil Lewis, Robert Perske, Professor Stan Herr, Maryloy Breslin and Professor Jim Ellis.

Submit a nomination form and all related documents electronically. The form can be completed at http://www.abanet.org/disability or download the print version and e-mail it to Jonathan Simeone, simeonej@staff.abanet.org. Direct questions to (202) 622-1576. Nominations must be received by April 1.

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, lalaro@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 5 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.

We’re Looking for a Few Good Writers

Have you an idea for a Bar Bulletin article? We encourage submissions for consideration. The primary purpose of articles is to educate or inform the reader on issues of substantive law and practical concern to lawyers. Analysis, opinion and criticism of the current state of the law are also encouraged and should be clearly identified by sufficient legal authority on all sides of an issue to enable the reader to assess the validity of the opinion. Criticism should be directed to issues only.

Submitted articles should be e-mailed to the editor at dseago@nmbar.org. Articles should be no longer than 1500 words, including endnotes, and will be reviewed by the board of editors. For more information on submission guidelines, contact Dorma Seago, (505) 797-6030, or dseago@nmbar.org.
**Virginia R. Dugan**, an attorney and shareholder practicing divorce and family law with Atkinson & Kelsey PA, has been named a fellow of the American Academy of Matrimonial Lawyers. AAML fellows, currently some 1,600 across the United States, are generally recognized by judges and attorneys as preeminent family law practitioners with a high level of knowledge, skill and integrity.

**Stephen P. Comeau** has rejoined the accounting and consulting firm of Meyners + Company LLC as director of Litigation and Valuation Services. Comeau formerly owned Equity Valuation Consultants, Inc., and was employed by Meyners + Company from 1992 to 2003. Comeau will primarily provide business valuation reporting and consulting services and will assist in the firm’s forensic accounting practice.

**Daniel J. O’Brien** was recently elected to membership in the American Board of Trial Advocates and the New Mexico Chapter of ABOTA, a national organization of more than 6,000 experienced civil trial attorneys representing both plaintiffs and defendants in civil cases. ABOTA is dedicated to preserving the right to a civil jury trial. O’Brien was admitted as an advocate member (50 or more jury trials).

**Richard C. Civerolo**, of the Civerolo, Gralow, Hill & Curtis law firm, has been re-appointed by the State Bar to serve as chairman of the Medical Legal Liaison Committee, the Medical Legal Grievance Committee and the New Mexico Medical Review Committee, a committee established for attorneys and physicians to select attorney and physician panel members whose purpose is to screen potential medical malpractice claims. Civerolo has served as chairman of these committees for 24 years.

**Christopher M. Wolpert** has been appointed by the Article III judges of the U.S. District Court for the District of New Mexico to serve a three-year term on the Court’s Pro Se Civil Litigants Committee. Wolpert is an associate in Rodey’s Litigation Department practicing in the area of labor and employment law. The Pro Se Civil Litigants Committee reviews cases brought by citizens not represented by counsel, to determine whether such cases should be referred to attorneys who may be willing to represent them.

**Caren I. Friedman** was recently appointed chair of the Appellate Rules Committee by the New Mexico Supreme Court. She will serve in that capacity until further order of the Court. Friedman is also serving as chair of the Appellate Practice Section of the State Bar.

**Linda L. Ellison** has joined Garcia Kelley & Kelley PC, The Family Law Firm™. Ellison received her B.A. in psychology and English literature from Saint Mary's College in Notre Dame, Indiana, and her law degree from the UNM School of Law. She has over 15 years experience and will continue to concentrate her practice exclusively in all areas of family law, including collaborative practice.

**Stephen P. Comeau**

**David F. Cunningham**, a shareholder with the Rubin Katz Law Firm, was named to the 2007 BTI Client Service All-Star Team. According to BTI, the list is made up of a group of 113 attorneys from 93 law firms. Members are singled out by corporate counsel, by name and unprompted, as delivering the absolute best client service. BTI interviewed more than 250 corporate counsel at large and Fortune 1000 companies, surveying clients on their needs and priorities, the law firms they rely on and the quality of service they receive.

The National Business Institute (NBI) has invited **Jon A. Feder**, an attorney and shareholder practicing divorce and family law with Atkinson & Kelsey PA, to co-present a full-day seminar titled, Successful Financial Settlements for Your Divorce Client, at the State Bar Center on May 16. The seminar offers continuing education credits to attorneys, financial planners and members of NASBA and PACE.

**The Hon. M. Monica Zamora** and **Lisa Olewine**, PC, JD, MSW, have been admitted into the Academy of American Adoption Attorneys, a national association of approximately 330 attorneys and jurists who practice, or have otherwise distinguished themselves, in the field of adoption law. The academy’s work includes promoting the reform of adoption laws and disseminating information on ethical adoption practices. Olewine is a New Mexico adoption attorney in private practice. Judge Zamora was appointed to the 2nd Judicial District Court by Governor Bill Richardson in 2005 and is assigned to the Children’s Court Division.

**Randilynn Lord** has been hired as legal counsel for the New Mexico State Treasurer’s Office. Lord received her J.D. from Washington, D.C.’s Howard University School of Law. Lord served as an assistant attorney general with the New Mexico Attorney General’s Office in the Litigation Division and the Consumer Protection Division.
Robert Nordhaus, a prominent American Indian law attorney who helped launch skiing in the high desert and founded the Sandia ski area and tram company with Ben Abruzzo, died Feb. 22. Nordhaus was born in 1909 in Las Vegas, New Mexico Territory, before statehood. He grew up in Albuquerque and graduated with an economics degree from Yale College. He earned his law degree in 1935 from Yale Law School. He practiced law and ran the family business in New Mexico. Nordhaus and his friends spent their winters sliding down Sandia Mountain’s slopes. They formed the Albuquerque Ski Club. The group hiked and skied with primitive skis using toe straps and inner-tube bindings. A World War II veteran, Nordhaus served in Italy and helped organize the newly formed 10th Mountain Division, a cadre that was trained specifically for mountain combat. In 1955 he established the law firm of Nordhaus and Moses. He specialized in water and oil and gas law and represented over 40 Indian communities, litigating cases of national significance for the Jicarilla Apache Tribe, Laguna Pueblo and the Council of Energy Resource Tribes. He formed the Sandia Peak Ski and Tram Company in 1962 and completed construction of the Sandia Peak Tramway, one of Albuquerque’s major tourist attractions.

Charles Milton “Bud” Tansey, Jr., 91, died March 4 in Farmington. He was born in 1915 in Kansas City, Kan., to Charles M. Tansey and Grace M. Scheer Tansey. He attended Kansas University and UNM. He earned his law degree at the University of Kansas Law School. Tansey began his practice in Carlsbad where he met and married Marjorie Shafer, daughter of a local ranching family. He practiced law there until 1947, taking time out to serve as a U.S. Naval aviator during World War II. After a short term teaching law at Washburn University Law School in Topeka, the family returned to New Mexico and Tansey set up a practice in Farmington where he was one of the few lawyers before the oil and gas boom of the 1950s. He built a nine-lawyer practice and served as associate general counsel for the Navajo Nation. He was instrumental in helping the tribe retain the water rights that are the basis for the irrigated lands south of Farmington. He served one term in the state legislature and as secretary to the Constitutional Revision Commission throughout its existence from 1963 to 1968. He also served in the Constitutional Convention in 1969 as chairman of the Committee on the Executive Branch. He was a member of the Board of Bar Commissioners, chairman of the Board of Bar Examiners and counsel to the Interstate Streams Commission. In addition, Tansey was active in many community organizations. He is survived by his wife Marjorie; daughter Mary Pendergrass; sons Charles and wife Jo, John and wife Patti and Robert; four granddaughters one grandson and one great-granddaughter. Tansy wanted to be remembered as the most honest, best lawyer he was capable of being.

Richard S. Wiles, longtime resident of Rio Rancho, passed away Feb. 19. Judge Wiles was born in 1909 in Omaha, Neb., the son of T. F. and Gertrude Fletcher Wiles. He married Alice Thorin and served in the Citizens Military Training Corp. Wiles graduated from the University of Nebraska at Omaha with LL.B. and juris doctorate degrees and was admitted to practice law in 1934. He practiced law until 1959. Judge Wiles was a member of the Nebraska State Bar Association and the American Bar Association. He served in many elected or appointed Nebraska offices and served as a municipal, county and federal judge. He was president of the Nebraska County Judges Association, the Nebraska Juvenile Court Judges Association and the Platte Valley Community Theater Inc. and was a member of numerous boards and organizations in Nebraska. Judge Wiles’ efforts in New Mexico helped establish Rio Rancho and its new departments. He was a member of the incorporation committee, the charter review committee, vice chairman of the city’s first Planning and Zoning Commission, member of the police chief search committee, and a member of the building committee for the Meadowlark Senior. Throughout the city’s infant years, he was in the middle of its affairs. He supervised the creation of Rio Rancho’s first city code and prepared the municipal court’s first “bench book,” which outlined rules of evidence and procedures. It was later approved by all 82 of New Mexico’s municipal court judges. In 1990, he returned to the bench to serve seven years as municipal court judge. After leaving the bench, he continued to be involved with various theater groups. He wrote and published the History of Rio Rancho (three volumes). Judge Wiles is survived by his son, “Rick” T Wiles of Rio Rancho; two grandchildren, Richard R. Wiles and Allyson Frederick; and one great-grandchild, April Paulus.
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G = General  E = Ethics  P = Professionalism  VR = Video Replay

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### WRITS OF CERTIORARI

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

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

**Effective March 26, 2007**

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<td>3/7/07</td>
</tr>
<tr>
<td>29,058</td>
<td>Sanchez v. Pellicer</td>
<td>COA 25,082</td>
<td>9/29/05</td>
</tr>
<tr>
<td>29,160</td>
<td>Benavidez v. City of Gallup</td>
<td>COA 25,373</td>
<td>9/30/05</td>
</tr>
<tr>
<td>29,218</td>
<td>Montoya v. Ulbarri</td>
<td>(12-501)</td>
<td>10/16/05</td>
</tr>
<tr>
<td>29,476</td>
<td>Salazar v. Torres</td>
<td>COA 23,841</td>
<td>10/16/05</td>
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<tr>
<td>29,286</td>
<td>State v. Gutierrez</td>
<td>COA 25,279</td>
<td>10/16/05</td>
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<tr>
<td>29,712</td>
<td>Smith v. City of Santa Fe</td>
<td>COA 24,801</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,336</td>
<td>State v. Kerby</td>
<td>COA 24,350</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,624</td>
<td>Maes v. Audubon Indemnity Ins. Group</td>
<td>COA 25,598</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,699</td>
<td>Wood v. Educational Retirement Board</td>
<td>COA 24,819</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,513</td>
<td>State v. Grogan</td>
<td>COA 25,699</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,344</td>
<td>State v. Hughey (on rehearing)</td>
<td>COA 24,732</td>
<td>10/20/05</td>
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<tr>
<td>29,768</td>
<td>Luna v. Lewis Casing Crew</td>
<td>COA 26,338</td>
<td>10/20/05</td>
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<tr>
<td>29,725</td>
<td>McMinn v. MBF Operating Acquisition Corp.</td>
<td>COA 25,006</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,257</td>
<td>State v. Kirby</td>
<td>COA 24,845</td>
<td>10/20/05</td>
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<tr>
<td>29,857</td>
<td>State v. Lucero</td>
<td>COA 24,819</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,752</td>
<td>Campos v. Bravo</td>
<td>(12-501)</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,803</td>
<td>State v. Lopez</td>
<td>COA 24,566</td>
<td>10/20/05</td>
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<tr>
<td>29,938</td>
<td>Cruz v. FTS Construction</td>
<td>COA 25,708</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,790</td>
<td>Board of Veterinary Medicine v. Rieger</td>
<td>COA 25,610</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,943</td>
<td>State v. Trujillo</td>
<td>COA 25,583</td>
<td>10/20/05</td>
</tr>
<tr>
<td>30,005</td>
<td>State v. Neal</td>
<td>COA 25,864</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,580</td>
<td>State v. Graham</td>
<td>COA 25,836</td>
<td>10/20/05</td>
</tr>
<tr>
<td>29,931</td>
<td>Hydro Resources Corp. v. Gray</td>
<td>COA 24,012</td>
<td>10/20/05</td>
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<tr>
<td>29,223</td>
<td>State v. Ransom</td>
<td>COA 25,171</td>
<td>10/20/05</td>
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</tbody>
</table>

**Certiorari Granted and Submitted to the Court:**

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

<table>
<thead>
<tr>
<th>NO.</th>
<th>Case Name</th>
<th>Court Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>30,019</td>
<td>State v. Lizzol</td>
<td>COA 25,794</td>
<td>3/12/07</td>
</tr>
<tr>
<td>29,801</td>
<td>State v. Lopez</td>
<td>COA 25,110</td>
<td>3/13/07</td>
</tr>
<tr>
<td>29,806</td>
<td>State v. Walters</td>
<td>COA 24,585</td>
<td>3/13/07</td>
</tr>
<tr>
<td>29,783</td>
<td>Gardiner v. Galles Chevrolet</td>
<td>COA 26,560</td>
<td>3/13/07</td>
</tr>
<tr>
<td>29,997</td>
<td>Stennis v. City of Santa Fe</td>
<td>COA 25,549</td>
<td>3/14/07</td>
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<tr>
<td>29,941</td>
<td>Baldonado v. El Paso Natural Gas Co.</td>
<td>COA 24,821</td>
<td>3/14/07</td>
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<tr>
<td>30,020</td>
<td>Moriarty Schools v. Thunder Mountain Water</td>
<td>COA 26,031</td>
<td>3/14/07</td>
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<tr>
<td>29,919</td>
<td>State v. Moya</td>
<td>COA 25,546</td>
<td>3/26/07</td>
</tr>
<tr>
<td>29,988</td>
<td>State v. Young</td>
<td>COA 26,096</td>
<td>3/26/07</td>
</tr>
<tr>
<td>29,505</td>
<td>State v. Bocanegra</td>
<td>COA 25,382</td>
<td>3/26/07</td>
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<td>29,922</td>
<td>Street v. Alpha Construction</td>
<td>COA 25,540</td>
<td>3/26/07</td>
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<tr>
<td>29,745</td>
<td>State v. Salazar</td>
<td>COA 24,468</td>
<td>3/26/07</td>
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<tr>
<td>29,973</td>
<td>Monks Own v. Monastery of Christ</td>
<td>COA 25,787</td>
<td>3/26/07</td>
</tr>
<tr>
<td>29,953</td>
<td>State v. Day</td>
<td>COA 25,290</td>
<td>4/9/07</td>
</tr>
<tr>
<td>29,174</td>
<td>State v. Vincent</td>
<td>COA 23,832</td>
<td>4/9/07</td>
</tr>
<tr>
<td>29,895</td>
<td>Davis v. Farmers Insurance</td>
<td>COA 25,312</td>
<td>4/9/07</td>
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<tr>
<td>30,021</td>
<td>Helen G. v. Mark J.H.</td>
<td>COA 25,877</td>
<td>4/11/07</td>
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<td>30,027</td>
<td>Helen G. v. Mark J.H.</td>
<td>COA 25,877</td>
<td>4/11/07</td>
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<tr>
<td>29,835</td>
<td>State v. Rogers</td>
<td>COA 25,950/25,968</td>
<td>4/13/07</td>
</tr>
<tr>
<td>29,105</td>
<td>State v. Cook</td>
<td>COA 25,137</td>
<td>4/30/07</td>
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<tr>
<td>29,687</td>
<td>State v. Worrick</td>
<td>COA 24,557</td>
<td>4/30/07</td>
</tr>
<tr>
<td>29,990</td>
<td>Heimann v. Kinder</td>
<td>COA 25,735</td>
<td>4/30/07</td>
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<td>29,521</td>
<td>State v. Parra</td>
<td>COA 25,484</td>
<td>4/30/07</td>
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**Petition for Writ of Certiorari Denied:**

<table>
<thead>
<tr>
<th>NO.</th>
<th>Case Name</th>
<th>Court Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>30,243</td>
<td>Esparza v. Arthur</td>
<td>COA 27,060</td>
<td>3/12/07</td>
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<tr>
<td>30,241</td>
<td>Padilla v. NM Gaming Division</td>
<td>COA 27,163</td>
<td>3/12/07</td>
</tr>
<tr>
<td>30,213</td>
<td>Rosette v. United States</td>
<td>COA 26,013</td>
<td>3/19/07</td>
</tr>
<tr>
<td>30,251</td>
<td>Williams v. State</td>
<td>COA 25,819</td>
<td>3/19/07</td>
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**Writ of Certiorari Quashed:**

<table>
<thead>
<tr>
<th>NO.</th>
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<th>Court Name</th>
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<tbody>
<tr>
<td>29,478</td>
<td>State v. Monteolone</td>
<td>COA 24,811/24,795</td>
<td>3/16/07</td>
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**Unpublished Decision:**

<table>
<thead>
<tr>
<th>NO.</th>
<th>Case Name</th>
<th>Court Name</th>
<th>Date</th>
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<tbody>
<tr>
<td>29,588</td>
<td>State v. Busey</td>
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<td>3/14/07</td>
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</table>
**PUBLISHED OPINIONS**

<table>
<thead>
<tr>
<th>No.</th>
<th>Case Description</th>
<th>Date Filed</th>
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<tbody>
<tr>
<td>25752</td>
<td>1st Jud Dist Santa Fe CV-02-1279, M LOHMAN v DAIMLER-CHRYSLER CORP (affirm and remand)</td>
<td>3/15/2007</td>
</tr>
<tr>
<td>25753</td>
<td>1st Jud Dist Santa Fe CV-02-1279, M LOHMAN v DAIMLER-CHRYSLER CORP (affirm and remand)</td>
<td>3/15/2007</td>
</tr>
<tr>
<td>26382</td>
<td>WCA-04-54897, C MOYA v CITY OF ALBUQUERQUE (affirm in part, reverse in part)</td>
<td>3/16/2007</td>
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**UNPUBLISHED OPINIONS**

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<tr>
<th>No.</th>
<th>Case Description</th>
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<tr>
<td>26529</td>
<td>9th Jud Dist Curry CR-04-335, STATE v D GUTIERREZ (affirm)</td>
<td>3/12/2007</td>
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<tr>
<td>27280</td>
<td>2nd Jud Dist Bernalillo CV-03-5424, D ANAYA v MIDNIGHT RODEO (reverse and remand)</td>
<td>3/12/2007</td>
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<tr>
<td>26359</td>
<td>5th Jud Dist Eddy JQ-03-55, CYFD v YOLANDA G (affirm)</td>
<td>3/14/2007</td>
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<tr>
<td>25865</td>
<td>1st Jud Dist Santa Fe CV-04-305, STATE v R HOUSTON (affirm)</td>
<td>3/15/2007</td>
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<tr>
<td>25904</td>
<td>1st Jud Dist Santa Fe CV-03-7, J BROWN v BURLINGTON RESOURCE (affirm)</td>
<td>3/15/2007</td>
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<tr>
<td>26023</td>
<td>1st Jud Dist Santa Fe CV-03-7, J BROWN v BURLINGTON RESOURCE (affirm)</td>
<td>3/15/2007</td>
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<tr>
<td>27155</td>
<td>12th Jud Dist Otero PB-02-17, J ASHORN v L WHITE (affirm)</td>
<td>3/15/2007</td>
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</table>

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

Progress into Practice: Lawyers Lead the Way

Inn of the Mountain Gods Resort and Casino
Mescalero, NM
July 12 - 15, 2007
### Thursday, July 12

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 – 8 pm</td>
<td>Registration/Exhibits/Silent Auction to benefit Equal Access to Justice</td>
</tr>
<tr>
<td>3 – 4:45 pm</td>
<td>State Bar Annual Meeting (President Dennis E. Jontz)</td>
</tr>
<tr>
<td></td>
<td>State of the Bar/Discussion Topics (CLE Session)</td>
</tr>
<tr>
<td></td>
<td>(Possible topics to include Non-Partisan Judicial Elections, Reciprocity, Tort Reform, Electronic Filing)</td>
</tr>
<tr>
<td>5 – 6 pm</td>
<td>Order in the Court: Chief Judge William Lang, Charles Fisher and Peter Kierst (1.0 P)</td>
</tr>
<tr>
<td>6 – 7:30 pm</td>
<td>Welcoming Reception</td>
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</tbody>
</table>

### Friday, July 13

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>7 – 8:30 am</td>
<td>Continental Breakfast</td>
</tr>
<tr>
<td>7 am – 3:30 pm</td>
<td>Registration/Exhibits</td>
</tr>
<tr>
<td>7 am – 8 pm</td>
<td>Silent Auction to benefit Equal Access to Justice</td>
</tr>
<tr>
<td>8 am</td>
<td>Welcome by President Dennis E. Jontz/Introductory Remarks by Chief Justice Edward L. Chavez</td>
</tr>
<tr>
<td>8:30 am</td>
<td>Break</td>
</tr>
<tr>
<td>9 am</td>
<td>CLE Tracks</td>
</tr>
<tr>
<td>10 am</td>
<td>Break</td>
</tr>
<tr>
<td>10:15 am</td>
<td>Keynote Address by Justice Sandra Day O’Connor</td>
</tr>
<tr>
<td>11:15 am</td>
<td>Break</td>
</tr>
<tr>
<td>11:30 am</td>
<td>CLE Tracks</td>
</tr>
<tr>
<td>12:30 pm</td>
<td>Lunch and Section Meetings</td>
</tr>
<tr>
<td>2 pm</td>
<td>CLE Tracks</td>
</tr>
<tr>
<td>3 pm</td>
<td>Afternoon Free Time</td>
</tr>
<tr>
<td>5:30 – 7 pm</td>
<td>Senior Lawyers Division Reception</td>
</tr>
<tr>
<td>6 – 7 pm</td>
<td>SBNM Annual Awards Ceremony</td>
</tr>
<tr>
<td>6 – 9 pm</td>
<td>Kids’ Event</td>
</tr>
<tr>
<td>6:30 – 7:30 pm</td>
<td>Atkinson &amp; Kelsey Reception Honoring NM Lawyers Listed in “Best Lawyers in America”</td>
</tr>
<tr>
<td>7 – 7:15 pm</td>
<td>CLE Awards</td>
</tr>
<tr>
<td>7 – 8:30 pm</td>
<td>President’s Reception/Wine Tasting</td>
</tr>
</tbody>
</table>

### Saturday, July 14

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30 – 8:30 am</td>
<td>Continental Breakfast</td>
</tr>
<tr>
<td>7:30 am – 12:30 pm</td>
<td>Registration/Exhibits/Distribution of Silent Auction Items</td>
</tr>
<tr>
<td>8 am</td>
<td>JPEC (Felix Briones)</td>
</tr>
<tr>
<td>8:15 am</td>
<td>Judicial Elections (Norman S. Thayer, Sutin Thayer &amp; Browne P.C.) (1.0 E)</td>
</tr>
<tr>
<td>9:15 am</td>
<td>Break</td>
</tr>
<tr>
<td>9:45 – 10:45 am</td>
<td>CLE Tracks</td>
</tr>
<tr>
<td>10 – 11 am</td>
<td>Young Lawyers Division Annual Meeting</td>
</tr>
<tr>
<td>10:45 – 11 am</td>
<td>Break</td>
</tr>
<tr>
<td>11 am</td>
<td>CLE Tracks</td>
</tr>
<tr>
<td>Noon</td>
<td>Lunch (on own)/Afternoon Free Time</td>
</tr>
<tr>
<td>1:30 – 4:30 pm</td>
<td>Video Replays</td>
</tr>
<tr>
<td>5:30 – 10:30 pm</td>
<td>Kids’ Event</td>
</tr>
<tr>
<td>6 – 10:30 pm</td>
<td>Private Reception and Performance by “MASS” (Music, Architecture, Sonic, Sculpture) at the Spencer Theater (transportation provided) (ticketed)</td>
</tr>
</tbody>
</table>

### Sunday, July 15

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 am – Noon</td>
<td>Video Replays</td>
</tr>
<tr>
<td>Noon</td>
<td>Convention ends</td>
</tr>
</tbody>
</table>

*Please Note: Schedule is subject to change without notice.*


Welcoming Reception, Thursday, July 12, 6 – 7:30 p.m.
Join fellow associates, judges, old friends and new at the Annual Meeting “kick off” reception.

Equal Access to Justice Campaign Silent Auction,
Thursday, July 12, 2 – 8 p.m. and Friday, July 13, 7 a.m. - 8 p.m.
A fantastic array of items will be on display for attendees to place bids on those “must have” items. EAJ funds Civil Legal Services for low income New Mexicans.

Keynote Speaker, Justice Sandra Day O’Connor, Friday, July 13

President’s Reception/Wine Tasting, Friday, July 13, 7 - 8:30 p.m.

Atkinson & Kelsey Reception honoring New Mexico lawyers listed in “Best Lawyers in America,” Friday, July 13, 6:30 - 7:30 p.m.

Senior Lawyers Division Reception, Friday, July 13, 5:30 – 7 p.m.

Spencer Theater for the Performing Arts, Airport Highway 220, Alto, NM,
Private Reception and Performance by “MASS,” Saturday, July 14, 6 – 10:30 p.m. (ticketed)
(You must have pre-purchased by June 11 - tickets will not be available for sale after that date)
MASS (Music, Architecture, Sonic, Sculpture) is an internationally renowned musical performance group that combines unique sculptures and site-specific installations with traditional instrumentation. (Included in the ticket price are a private reception at the Spencer Theater and transportation from the Inn of the Mountain Gods to the Spencer Theater.)

Eighteen-hole Golf Tournament, Inn of the Mountain Gods, July 12-14 (ticketed)
(You must have pre-purchased by June 29 - tickets will not be available for sale after that date)
The Inn of the Mountain Gods championship golf course is one of the most spectacular golf courses in the country, nestled among tall pine trees under the majestic Sierra Blanca Peak. The tournament package includes a cart, range ball setup, bag tag, divot tool, yardage book and tees. The tournament will take place over Thursday, Friday and Saturday, and you can arrange your own team (players need to be listed on registration form) or request to be placed on a team. If you want to be placed on a team, please indicate that on the registration form as well as your handicap or average 18-hole score. Team assignments and tee times will be available at the conference registration desk.

Recreational/Sporting/Free Time Activities (on own)
(Contact the Inn of the Mountain Gods Concierge at 505-464-7089 for information on any of the following or to arrange a tour or visit www.goruidoso.com): Golf, Fishing, Shopping, Horseback Riding, Museums, Race Track, White Sands, etc.

Special Kids’ Events/Child Care, Friday, July 13, 6-9 pm and Saturday, July 14, 5:30-10:30 pm
Age appropriate kids’ events will be available Friday and Saturday evenings for a nominal fee. The events will coincide with organized Annual Meeting social activities. Tentatively, age groups will be 4 years and under; 5-11; 12-16. Activities will include arts and crafts, movie and pizza event, games and more. For daytime activities, contact the Concierge at 505-464-7089.

Hotel Information

| Inn of the Mountain Gods | 287 Carrizo Canyon Road, Mescalero - $159 (1-800-545-9011) |
| The Lodge at Sierra Blanca | 107 Sierra Blanca Drive, Ruidoso - $119 – $149 (1-866-211-7727) |
| The Holiday Inn Express | 400 West Highway 70, Ruidoso - $109 (1-505-257-3736) |

Be sure to mention the “State Bar of New Mexico” to receive special discounted rates.
**Name:** __________________________________________________________________________

**NM Bar No.:** _________________

**Name for Badge (if different than above):** __________________________________________________________________________

**Address:** ____________________________________________________________________________________________________

**City** _______________________________________________________________ **State** _______________ **Zip** _________________

**Phone** _______________________________ **Fax** _____________________________ **Email** _________________________________

**Guest 1** ______________________________ **Guest 2** ____________________________ **Guest 3** ____________________________

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**Name badge required to attend all functions. Additional security measures in effect. No exceptions.**

**REGISTRATION FEES**

<table>
<thead>
<tr>
<th>Description</th>
<th>Price</th>
<th>Qty.</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Early Registration Fee <em>(Must be postmarked by May 1st)</em></td>
<td>$275</td>
<td></td>
<td></td>
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<tr>
<td>After May 1st Fee</td>
<td>$395</td>
<td></td>
<td></td>
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<tr>
<td>YLD, Paralegal, Government &amp; Legal Services Attorney</td>
<td>$175</td>
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<td></td>
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<tr>
<td>After May 1st, YLD, Paralegal, Government &amp; Legal Services Attorney</td>
<td>$275</td>
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</tr>
<tr>
<td>Guest <em>(includes name badge, continental breakfasts, breaks, silent auction and receptions)</em></td>
<td>$65</td>
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<td></td>
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</tbody>
</table>

**Conference Materials - I would like:**

- [ ] CD Version
- [ ] Printed Version
- [ ] Both CD and Printed Version

**Both Versions Add $50**

**SEPARATELY TICKETED EVENTS**

- [ ] Luncheon, Friday, July 13: $20
- [ ] Spencer Theater, Saturday, July 14 *(You must pre-purchase by June 11—tickets will not be available for sale after that date.)* *(ticket price includes transportation from Inn of the Mountain Gods and a private VIP reception at Spencer Theater)*: $85
- [ ] Golf Tournament *(18-hole)* *(You must pre-purchase by June 29—tickets will not be available for sale after that date.)*: $95

**I will set up my own team and the players are:** __________________   __________________   __________________

**I would like to be placed on a team** *(Handicap/Average Golf Score ________)*

**I want to play on:**

- [ ] Thursday
- [ ] Friday
- [ ] Saturday

**Friday, July 13, Kids' Event (6-9 pm) Ages:_______ ________ ________**: $10

**Saturday, July 14, Kids' Event (5:30-10:30 pm) Ages:_______ ________ ________**: $10

**Total**

**PAYMENT OPTIONS**

- [ ] Enclosed is my check in the amount of $ __________________ *(Make Checks Payable to: State Bar of NM)*
- [ ] VISA
- [ ] Master Card
- [ ] American Express
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NO. 07-8300-06

IN THE MATTER OF THE AMENDMENTS OF RULE 22-209 NMRA OF THE RULES GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation from the Rules Governing the Recording of Judicial Proceedings Committee to amend Rule 22-209 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 Rule 22-209 NMRA of the Rules Governing the Recording of Judicial Proceedings hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rule 22-209 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 Rule 22-209 NMRA by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 9th 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

22-209. Continuing education requirements for certified court reporters.

A. Hours required. Each certified court reporter shall complete five hours of continuing education credits during each calendar year. For court reporters initially certified during a calendar year, the initial compliance year shall be the first full compliance year following the date of first certification.

B. Earning continuing education credits. The following categories of activities are acceptable for the earning of continuing education credits:

   (1) attending an annual National Court Reporters Association or New Mexico Court Reporters Association seminar as a registrant, instructor or panelist or attending a continuing legal education seminar that is approved for continuing legal education credits by the Minimum Continuing Legal Education Board. Continuing education credits awarded are based on review and prior approval of seminar speakers by the National Court Reporters Association or, in the case of continuing legal education, are the number of continuing legal education credits approved for the program;

   (2) attending a National Court Reporters Association approved seminar as a registrant, instructor or panelist. Continuing education credits based on prior approval of seminar by the National Court Reporters Association;

   (3) attending a National Court Reporters Association approved videotape workshop as a registrant, instructor or panelist. Continuing education credits based on prior approval of seminar by National Court Reporters Association;

   (4) proof from the National Court Reporters Association of qualifying on any one section of the certificate of merit test for the first time — five continuing education credits;

   (5) proof from the National Court Reporters Association of qualifying on any one section of the National Court Reporters Association speed contests for the first time — five continuing education credits;

   (6) successfully completing an adult education course in an academic subject at an accredited school; one continuing education credit for every four class hours. A transcript from the accredited school must be provided in addition to the continuing education activities reporting form. The board may, at its discretion, decline to award points for the class taken, based on content;

   (7) the viewing of a videotape or listening to an audiotape of a National Court Reporters Association or New Mexico Court Reporters Association approved continuing education activity and successful completion of a questionnaire regarding content of the videotape or audiotape;

   (8) proof from the National Court Reporters Association of having earned continuing education points during the applicable one (1) year period through the performance of a continuing education activity not enumerated above;

   (9) speaking for an accredited continuing education course shall enable the speaker to apply these credits toward the speaker’s continuing education requirements;

   (10) other comparable educational activities, with the prior permission of the board or its delegate, the points for which shall be determined by the board or its delegate.

C. Excess credits. Court reporters may carry forward a maximum of five hours of continuing education credits from one year to the next.
From the New Mexico Supreme Court

Opinion Number: 2007-NMSC-008

Topic Index:
Indian Law: Indian Law, General; Tribal Court Jurisdiction; Tribal Gaming, Indian Gaming Regulatory Act; and Tribal and State Authority and Jurisdiction
Jurisdiction: District Court
Statutes: Interpretation; and Legislative Intent

JANE DOE, by and through her parents and next friend, J.H., Plaintiffs-Respondent,
versus
SANTA CLARA PUEBLO, SANTA CLARA DEVELOPMENT CORPORATION, d/b/a BIG ROCK CASINO, Defendants-Petitioners.

Consolidated with:

No. 29,351
IVAN LOPEZ and LUCY LOPEZ, Plaintiffs-Respondents,
versus
SAN FELIPE PUEBLO d/b/a SAN FELIPE CASINO HOLLYWOOD and CIS INSURANCE GROUP, Defendants-Petitioners.
No. 29,350 (filed: February 23, 2007)

ORIGINAL PROCEEDINGS ON CERTIORARI
CAROL VIGIL, DISTRICT JUDGE
LOUIS P. MCDONALD, DISTRICT JUDGE

RICHARD W. HUGHES
ROTHSTEIN, DONATELLI, HUGHES, DAHLSTROM, SCHOENBERG & BIENVENU, L.L.P.
Santa Fe, New Mexico

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San Felipe, New Mexico for Petitioners

MERIT BENNETT
BENNETT & KOSH
Santa Fe, New Mexico for Respondent Doe

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MARY Y. C. HAN
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Albuquerque, New Mexico for Respondents Lopez

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Albuquerque, New Mexico for Amicus Curiae
Pueblo of Acoma

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RODINA COLE CAVE
NORDHAUS, HALTOM, TAYLOR, TARADASH & BLADH
Albuquerque, New Mexico for Amici Curiae
Jicarilla Apache Nation, Pueblo of Laguna, Pueblo of Santa Ana, Taos Pueblo

From the New Mexico Supreme Court and Court of Appeals
www.supremecourt.nm.org

Bar Bulletin - March 26, 2007 - Volume 46, No. 13 17
OPINION

RICHARD C. BOSSON, JUSTICE

1 In Gallegos v. Pueblo of Tesuque, 2002-NMSC-012, ¶ 10 n.3, 132 N.M. 207, 46 P.3d 668, this Court left unanswered the question whether gaming compacts between the State of New Mexico and various New Mexico Pueblos that created concurrent jurisdiction in state courts over personal injury actions against tribal-owned casinos were valid and enforceable in light of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 (2000). We now answer that question in the affirmative, holding that state courts have jurisdiction over personal injury actions against Pueblos arising from negligent acts alleged against casinos owned and operated by the Pueblos and occurring on pueblo lands. In so doing, we affirm the majority opinion of the Court of Appeals below. See Doe v. Santa Clara Pueblo, 2005-NMCA-110, 138 N.M. 198, 118 P.3d 203.

BACKGROUND

2 This appeal involves two separate incidents, each resulting in a personal injury lawsuit filed by a non-tribal member against a respective Pueblo. In the first action, Jane Doe, a fifteen-year-old girl, filed suit through her mother against Santa Clara Pueblo and several individuals for injuries that occurred after she was abducted by three men from Santa Clara’s Big Rock Casino and sexually assaulted. Doe alleges the Pueblo failed to take reasonable safety measures to protect her while she was a guest at the casino. Specifically, the complaint alleges that Santa Clara was negligent in not providing proper lighting and security in the casino’s parking lot and then in failing to make attempts to locate Doe after it became apparent that she was missing.

3 In the second action, Lucy Lopez and her son Ivan Lopez filed suit against San Felipe Pueblo for injuries that occurred on the premises of San Felipe’s Casino Hollywood. Plaintiffs were walking arm-in-arm into the casino when Ivan Lopez tripped on the corner of an unsecured floor mat causing both he and his mother to fall. Their complaint alleges that the Pueblo failed to adequately secure the floor mat thereby causing their injuries.

4 Both sets of plaintiffs, Doe and Lopez, chose to sue the respective Pueblo in state court instead of tribal court based on a jurisdiction shifting provision contained in the gaming compact negotiated by the State and the Pueblos (the Compact) which, as will be discussed shortly, permits personal injury suits against the Pueblos to be brought in state court under certain circumstances. Doe filed suit in the First Judicial District and Lopez filed suit in the Thirteenth Judicial District. Both Santa Clara and San Felipe moved to dismiss the claims, arguing that state court lacked subject matter jurisdiction. Each district court denied the motions to dismiss, relying on the express jurisdiction shifting language in the Compact.

5 Both Pueblos then requested interlocutory appeal. Santa Clara’s request was granted, and in a formal written opinion the Court of Appeals affirmed the district court with Judge Sutin dissenting. Doe, 2005-NMCA-110. One week later, based on its decision in Doe, the Court of Appeals denied San Felipe Pueblo’s request for interlocutory appeal. Both Pueblos then petitioned this Court for a writ of certiorari to determine whether the Compact between the State and each Pueblo validly confers state court jurisdiction over these personal injury claims occurring on pueblo lands. We granted certiorari to decide this important question.

DISCUSSION

The Compact

6 The Compact1 was negotiated under the comprehensive scheme of IGRA, a seminal federal statute, which “established the framework under which Indian tribes and states could negotiate compacts permitting . . . gaming on Indian reservations located within state territory.” Gallegos, 2002-NMSC-012, ¶ 9 (footnote omitted); see S.J. Res. 37, 45th Leg., 1st Sess. (N.M. 2001). Both the Pueblos and the State were involved in negotiating the terms of the Compact under the Compact Negotiation Act. NMSA 1978, §§ 11-13A-1 to -5 (as amended 2005). That negotiation process led to the various provisions of the Compact, including Section 8, with which we are concerned in this case. 2

7 Section 8 of the Compact, entitled “Protection of Visitors,” acknowledges that the “safety and protection of visitors to a Gaming Facility is a priority of” the parties, and that a purpose of the Compact is “to assure that any such [visitors] who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation.” The Pueblo, therefore, “waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of fifty million dollars ($50,000,000) per occurrence asserted.” Doe, 2005-NMCA-110, ¶ 6. The Pueblo promises to carry liability insurance in that amount.

8 Following up on this concern over “safety” and an “effective remedy” for visitors, Section 8 addresses subject matter jurisdiction over personal injury claims against the Pueblos resulting from incidents occurring on Indian land in connection with Class III gaming. The pertinent language

---

1For purposes of IGRA and for ease of reference, Tribes and Pueblos are referred to interchangeably. New Mexico has entered into gaming compacts with eleven Pueblos and two Tribes. See http://www.nmgcb.org/tribal/casinos.htm.

2All of our citations to the text of the Compact were taken from the Record Proper. For reference, the text of the Compact can be found at www.nmgcb.org/tribal/2001compact.pdf.
of Section 8(A) allows for personal injury actions against a Pueblo to “proceed either in binding arbitration . . . or in a court of competent jurisdiction.” Section 8(A) defines a court of competent jurisdiction to include state courts subject to the following condition: [A]ny such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court. (Emphasis added.) As this language demonstrates, for the limited purpose of personal injury actions involving visitor safety, the parties to the Compact agreed to state court jurisdiction unless IGRA does not permit it. Therefore, our initial inquiry is whether Congress, in IGRA, “does not permit” tribes and states to do as the Pueblos and New Mexico have done here; that is, to negotiate provisions in a tribal-state compact for “the shifting of jurisdiction over visitors’ personal injury suits to state court,” including “claims arising on tribal land.” This is a question of law that we review de novo. Gallegos, 2002-NMSC-012, ¶ 6. Accordingly, we turn our analysis to IGRA.

**IGRA’s Class III Gaming Compact Provision**

{9} “IGRA was Congress’ compromise solution to the difficult questions involving Indian gaming.” Artichoke Joe’s Cal. Grand Casino v. Norton, 353 F.3d 712, 715 (9th Cir. 2003). As part of this solution, Congress defined three separate classes of gaming in IGRA. See State ex rel. Clark v. Johnson, 120 N.M. 562, 566, 904 P.2d 11, 15 (1995). Each class is subject to a different level of regulation. The issue before us pertains exclusively to Class III gaming, “the most heavily regulated and most controversial form of gambling under IGRA.” Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 715.

{10} Class III gaming includes banking card games (where the house has a monetary stake in the game because players bet against the house, not just against one another); casino games such as roulette, craps, and keno; slot machines and electronic games of chance; pari-mutuel horse or dog wagering; and lotteries. 25 C.F.R. § 502.4 (1992). IGRA permits Class III gaming if it is (1) authorized by ordinance or resolution of the governing body of the tribe and the Chair of the National Indian Gaming Commission, (2) located in a state that permits such gaming, and (3) covered by a tribal-state compact approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1)(A), (B), (C) (2000). We are only concerned here with the third requirement.

{11} IGRA’s compact provisions require the state and tribes to negotiate a compact governing Class III gaming. 25 U.S.C. § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities . . . [and] the State shall negotiate with the Indian tribe in good faith to enter into such a compact.”). The compacts may include terms related to the application of state law and the allocation of civil jurisdiction between the states and the tribes. IGRA specifically allows the parties to negotiate, regarding

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations.


{12} Therefore, under IGRA a tribal-state gaming compact may apply state laws that are “directly related to, and necessary for, the licensing and regulation” of Class III gaming, and may then allocate criminal and civil jurisdiction to the state when it is “necessary for the enforcement” of those laws. IGRA makes no other reference to jurisdiction shifting. Applying the mandate of Section 8(A) of the Compact, we must determine if IGRA “does not permit” the negotiating parties to transfer subject matter jurisdiction to state court over personal injury claims arising on Indian lands.

**Reading the Compact and IGRA Together**

{13} The Pueblos correctly note that this language in IGRA does not expressly grant the state and the tribes authority, as part of a Class III gaming compact, to shift jurisdiction to state courts over personal injury suits arising on Indian lands. Indeed, the language makes no mention of personal injury lawsuits. However, this point is inconsequential to the initial issue before us. The language the Pueblos agreed to in the Compact gave state courts jurisdiction over personal injury claims, conditioned not upon IGRA allowing such jurisdiction shifting, but upon IGRA not prohibiting jurisdiction shifting. See Section 8(A) (“any such claim may be brought in state district court . . . unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court”). Nothing in the language of IGRA prohibits jurisdiction shifting.

{14} The Pueblos argue for a different interpretation. Judge Sutin, in his thoughtful dissent to the Court of Appeals’ majority opinion, wrote that the parties to the Compact did not actually come to any agreement on jurisdiction shifting, but rather that they “expected the issue to be litigated.” Doe, 2005-NMCA-110, ¶ 28 (Sutin, J., dissenting). That observation is further developed in Justice Minzner’s dissent. True, litigation may have been what the parties anticipated, and perhaps they only agreed to disagree later on in court. See Rebecca Tsoie, Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act, 29...
The Pueblos assert that under general principles of Indian law “there is no basis for state court jurisdiction” in this case, unless Plaintiffs “can show that there is a governing act of Congress that authorizes such jurisdiction.” In other words, regardless of the compact language and their consent therein, the Pueblos take the position that compact language granting the state courts jurisdiction is “ineffective” absent an affirmative grant of authority from Congress to do so. To address this issue we must first examine whether of congressional authority to do so tribes can agree to state court jurisdiction over claims that would traditionally fall to tribal courts. Second, to ensure that our inquiry is as comprehensive as possible, we address whether Congress, via IGRA, authorized the Pueblos to consent to state court jurisdiction.

We agree that, as a general proposition of Indian law derived from the sovereign status of Indian tribes, tribal courts have exclusive jurisdiction over claims arising on tribal lands against tribes, tribal members, or tribal entities. See Williams v. Lee, 358 U.S. 217, 219-20 (1959); Found. Reserve. Ins. Co. v. Garcia, 105 N.M. 514, 516, 734 P.2d 754, 756 (1987). New Mexico courts recognize this general principle. DeFeo v. Ski Apache Resort, 120 N.M. 640, 642, 904 P.2d 1065, 1067 (Ct. App. 1995) (holding injured skier suing tribal-owned ski resort limited to tribal court because injury occurred on portion of the ski resort located within tribal boundaries). However, this principle and the cases that give rise to it do not usually involve the kind of express consent to jurisdiction shifting that the Pueblos have given by compact in the context of casino gaming.

The question in Kennerly was whether a Montana state court had jurisdiction over a civil suit arising on Indian land and involving tribal members. Id. at 424. All location of civil jurisdiction between the tribes and the state was governed by a federal statute, Public Law No. 280 (PL 280), 18 U.S.C.A. § 1162 (1970, promulgated in 1953), which gave states the option of assuming “jurisdiction over . . . civil causes of action in Indian country.” Washington v. Confederated Bands & Tribes of Yakima Indian Nation, 439 U.S. 463, 472-74 (1979). PL 280 prescribed a specific course of action for tribes and states to follow to create civil jurisdiction in state courts over claims arising on Indian land and involving tribal members. See Kennerly, 400 U.S. at 424-25; 18 U.S.C.A. § 1162. In Kennerly, the Blackfeet tribal council had adopted a provision in its laws giving concurrent jurisdiction to Montana state courts over suits against tribal members, but neither the state nor the tribe had followed the specific requirements of PL 280. 400 U.S. at 425 (recognizing the state had not taken formal legislative action and the tribe had not consented to state court jurisdiction by a majority vote of its enrolled members). Because the prerequisites set forth in the federal statute were not met, the Supreme Court disavowed concurrent jurisdiction in state courts notwithstanding tribal consent. Id. at 429-30.

According to some, Kennerly stands for the proposition that a tribe can never consent to state court jurisdiction over civil matters arising on tribal lands without the express consent of Congress. There is authority for this proposition. See State ex rel. Peterson v. Dist. Court, 617 P.2d 1055, 1066 (Wyo. 1980) (stating that the Kennerly majority emphasized “a very vivid federal policy mandating the exclusive jurisdiction of tribal courts in cases involving internal tribal affairs or tribal self-government unless there has been an express delegation by Congress allowing the state to assume jurisdiction”). See generally Cohen’s Handbook of Federal Indian Law § 6.05 (5th ed. 2005) (“Because of federal supremacy over Indian affairs, tribes and states may not make agreements altering the scope of their jurisdiction in Indian country absent congressional consent.” (Citation omitted)).

The Pueblos appear to take this position. Reasoning that IGRA is like a modern day equivalent of PL 280, the Pueblos assert that they have no authority to cede jurisdiction to state courts beyond what is specifically and expressly allowed in IGRA. Because IGRA does not refer expressly to jurisdiction shifting for visitors’ personal injury suits, the Pueblos conclude, as in Kennerly, that their contractual consent in the Compact was unauthorized, and is therefore ineffective.

Other authority suggests that Kennerly does not reach quite so far. See Williams v. Clark, 742 F.2d 549, 554 (9th Cir. 1984) (“[T]he Supreme Court has implied that a tribe may not unilaterally relinquish jurisdiction absent explicit congressional authorization and strict compliance with statutory requirements.” (Emphasis added.)); Lewis v. Sac & Fox Tribe of Okla.
However, it does not follow from this distinction that immunity waivers and consent to state court subject matter jurisdiction that a tribe has the authority to waive immunity but not necessarily what they must do when Congress remains reticent.

Arguably, Congress’ decision to adopt legislation, such as IGRA, that specifically allows states and tribes to enter into jurisdictional agreements, but leaves the circumstances up to the parties to define, is markedly different from the global, one-size-fits-all jurisdiction shifting involved in PL 280. See Cohen’s, supra § 6.05 (noting that the Indian Child Welfare Act and IGRA are such pieces of legislation). The Kennerly court simply may not have envisioned anything like IGRA. Thus, based on the different ways courts interpret its holding, and the added confusion of IGRA’s impact, it seems far from clear that Kennerly is controlling here.

Kennerly did not involve a comprehensive compact, entered into in furtherance of federal legislation, and painstakingly negotiated between the tribes and the states, in which the tribes conceded state court civil jurisdiction in exchange for substantial benefits—in this case the ability to conduct Class III gaming on tribal lands. A separate body of federal case law has developed interpreting tribal authority in the context of consensual contracts. One recent case, C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411 (2001), addresses a tribe’s ability to waive its immunity by contract and consent to state court jurisdiction.

In C & L Enterprises, the tribe entered into a construction contract with a private contractor to install a roof on a building owned by the tribe. Id. at 414. In the contract, the tribe consented to arbitration and agreed that the contract was to be “governed by the law of the place where the Project is located,” in that case outside tribal boundaries within the state of Oklahoma. Id. at 415 (quoted authority omitted). The Supreme Court was asked to determine “whether the Tribe waived its immunity from suit in state court” based on the contractual agreement. Id. at 414 (emphasis added). In a unanimous decision, making no reference to Kennerly, the Supreme Court found that the tribe had consented to arbitration and had included a choice-of-law clause that had the effect of authorizing jurisdiction in the Oklahoma state courts, and therefore, the tribe had waived its immunity. Id. at 419. Thus, by agreement and entirely without congressional authority, the tribe waived its sovereign immunity, and more importantly, was “amenable to a state-court suit” to enforce an arbitration award. Id. at 414.

Taken in context, C & L Enterprises suggests that when a sovereign tribe waives its immunity from suit, it may also choose the forum in which the resulting litigation will occur, including state court, whether or not it has express congressional authority to do so. In the context of similar business agreements, other courts appear to agree. See Bradley v. Crow Tribe of Indians, 67 P.3d 306, 308, 311-12 (Mont. 2003) (holding that tribe had waived its sovereign immunity and could be sued in state court by agreeing to state law and to state court jurisdiction in a standard construction contract provision on choice of law and venue); Rush Creek Solutions, Inc. v. Ute Mountain Ute Tribe, 107 P.3d 402, 404, 406 (Colo. Ct. App. 2004) (holding the tribe had waived its immunity and state court had jurisdiction based on a legally enforceable contract in which tribe consented to state court jurisdiction).

However, no federal statute was involved in C & L Enterprises, unlike IGRA here and PL 280 in Kennerly. Also, in C & L Enterprises the lawsuit arose from activity outside of tribal boundaries. Thus, there appear to be two separate lines of authority addressing a tribe’s ability to consent to state court jurisdiction: (1) the Kennerly line, where a specific federal statute pre-
scribes a course of action that must be followed to shift jurisdiction, but without any comprehensive agreement between the tribes and the state; and (2) the C & L Enterprises line, where a consensual business agreement exists between the tribe and another party, but there is no federal statute that governs jurisdiction shifting. Our case seems to fit somewhere in between.

{29} In the context of casino gaming, we have a tribal-state contract, like C & L Enterprises, and also a federal statute, like Kennerly. Thus, to determine if the Pueblos had the authority to consent to state court jurisdiction in the Compact, we cannot focus solely on the C & L Enterprises line of cases and look no further than the Compact language. For the reasons stated earlier, Kennerly is not exactly on point either in answering the specific inquiry before us. Nonetheless, in line with Kennerly, 400 U.S. at 425-29, we will look beyond the language of the Compact to determine if IGRA authorizes the Pueblos to shift jurisdiction over personal injury suits to state court. In so doing, we assume, without deciding, that IGRA is similar to PL 280 in the sense that it provides a comprehensive scheme governing tribal gaming which includes some allowance for jurisdiction shifting, and like PL 280 must be followed. Therefore, we turn to whether IGRA authorizes jurisdiction shifting in the context of personal injury suits.

**Does IGRA authorize jurisdiction shifting to state court?**

{30} As noted earlier, IGRA expressly authorizes the application of state laws “that are directly related to, and necessary for, the licensing and regulation” of gaming. IGRA also authorizes compacting parties to allocate jurisdiction between the state and the tribe (jurisdiction shifting) that is “necessary for the enforcement of such laws and regulations.” 25 U.S.C. § 2710(d)(3)(C). Unfortunately, Congress did not define what it meant by “regulating” gaming activity and what might be “necessary for the enforcement” of such laws and regulations. Therefore, we look to evidence of congressional intent to decide whether jurisdiction over visitors’ personal injury suits is something that tribes and states may negotiate in a gaming compact.

**Legislative History**

{31} The history leading up to the passage of IGRA illustrates what Congress intended when it included the compact provision in IGRA. Although IGRA was passed in 1988, similar legislation had been contemplated for at least five years. See Doe, 2005-NMCA-110, ¶ 12 (citing 129 Cong. Rec. 34,184 (1983)). See generally Roland J. Santoni, *The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?*, 26 Creighton L. Rev. 387, 395 (1993). During that time, seven different bills addressing Indian gaming were introduced in Congress. See Santoni, supra, at 396-403 (these bills included H.R. 4566, H.R. 1920, H.R. 2404, S. 902, H.R. 2507, S. 1303, and S. 555 that became IGRA). In each version, Congress struggled with the question of where regulatory authority over gaming on Indian lands would lie with the federal government, the states, or the tribes. The major dispute involved the reach of the state’s regulatory authority over gaming on Indian land. *See id.* at 398. The tribes had serious concerns about any law that would impose state regulation over tribal activity on Indian land. *See id.* at 402-03 (noting that S. 1303 was favored by tribes because it did not apply state law to Class III gaming but rather allowed the tribes and the federal government to govern gaming while incorporating state law into its regulations). The states, on the other hand, wanted complete regulatory control over Class III gaming. *See id.* at 398 (noting, that in discussing S. 902, the Arizona Attorney General felt that gaming should be governed strictly by state law).

{32} Congress devised the compact provision to resolve this dispute over regulation of Class III gaming. The version of S. 555 that ultimately became IGRA was introduced in August 1988, and was the first version to include the concept of a tribal-state gaming compact. See Santoni, supra. See generally Sidney M. Wolf, *Killing the New Buffalo: State Eleventh Amendment Defense to Enforcement of IGRA Indian Gaming Compacts*, 47 Wash. U. J. Urb. & Contemp. L. 51, 85-86 (1995) (noting the sudden appearance of the tribal-state compact provision). By relying upon a compact negotiated by tribes and states, Congress was able to take into account the diverse interests of tribes and states without directly answering the difficult question of where regulatory jurisdiction over gaming on Indian lands would lie. *See State ex rel. Clark*, 120 N.M. at 566 120 N.M. at 566, 904 P.2d at 15 (“Congress attempted to strike a balance between the rights of tribes as sovereigns and the interests that states may have in regulating sophisticated forms of gambling.”). {33} Thus, instead of Congress allocating jurisdiction between the tribes and states, the compact provision allowed the tribes and states to negotiate and decide for themselves the division of civil, criminal, and regulatory responsibility. See 25 U.S.C. § 2710(d)(3); *see also* Santoni, supra, at 407 (“Congress introduced the Tribal-State compact concept, rather than require tribes to accept state law and jurisdiction, as a condition to conducting Class III gaming.”); Wolf, supra, at 86 (“In sum, Congress ‘punted’ the issue of deciding state versus tribal jurisdiction to the states and tribes to negotiate amongst themselves on a case-by-case basis.”). This history strongly suggests that the Class III compacting provision was intended to be broad enough to allow the tribes and the states to work out between themselves solutions to the jurisdictional issues that had eluded Congress.

{34} The Pueblos take a narrower view of IGRA. They argue that while Congress intended the parties to negotiate gaming compacts, Congress also put limitations on what could be included in these compacts. Specifically, the Pueblos assert that Congress only intended to permit jurisdiction shifting as it related to controlling organized crime, and that Congress did not intend to broaden the reach of jurisdiction shifting to include such extrinsic matters as personal injury actions against casinos.

{35} We agree with the Pueblos that one of the primary purposes behind IGRA’s Class III gaming provisions was to thwart organized crime by allowing the introduction of state regulation, state laws, and state venue. There is ample support for this conclusion. IGRA itself states that one of its intended purposes is to protect tribal gaming from infiltration by organized crime. 25 U.S.C. § 2702(2). The legislative history of IGRA, as contained in the Senate Select Committee on Indian Affairs (Senate Committee) report, reflects the fear that allowing tribal gaming would open the door to infiltration by organized crime. *See S. Rep. No. 100-446*, at 2 (1988) (“The need for Federal and/or State regulation of gaming, in addition to, or instead of, tribal regulation, has been expressed by various State and Federal law enforcement officials . . . .”); *see also* Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 715 (IGRA was passed in part to “shield [tribal gaming] from organized crime”); *Pueblo of Santa Ana v. Kelly*, 932 F. Supp. 1284, 1292 (1996) (*Kelly I*) (examining purpose behind Class III gaming compact provision and stating that the central purpose is “to protect against the infiltration of organized crime into high-stakes gaming”).
While preventing criminal infiltration into tribal gaming was certainly one purpose behind the Class III compact, it was clearly not the sole purpose. See S. Rep. No. 100-446, at 5 (noting the views of Senator McCain that “in 15 years of gaming activity on Indian reservations, there has never been one clearly proven case of organized criminal activity”). “Congress looked to the compacting process primarily as a means of balancing state and tribal interests.” Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 726. The Senate Committee identified several state interests beyond concerns over organized crime that factor into this balance. A state’s governmental interests with respect to class III gaming on Indian lands include the interplay of such gaming with the State’s public policy, safety, law, and other interests, as well as impacts on the State’s regulatory system, including its economic interest in raising revenue for its citizens. S. Rep. No. 100-446, at 13 (emphasis added). The inclusion of broad state interests such as “safety,” “law,” and “public policy”—references that could easily encompass the future of personal injury suits against tribal casinos—in the discussion of regulatory authority over gaming, suggests that the Senate Committee did not intend to confine the scope of compact negotiations on jurisdiction shifting to the prevention of organized crime. See Kelly I, 932 F. Supp. at 1296 (“IGRA’s provisions reveal that Congress took great pains to provide its economic interest in raising revenue for its citizens.”).

The legislative history indicates that Congress took a more expansive view toward IGRA’s compact provision, one that would afford tribes and states both control and flexibility in shaping the fundamental aspects of regulatory authority over gaming. See 134 Cong. Rec. S12643-01 (1988) (“The Tribal/State compact language intends that two sovereigns will sit down together in a negotiation on equal terms and at equal strength and come up with a method of regulating Indian gaming.”); see also Doe, 2005-NMCA-110, ¶ 4 (“Ultimately, Congress adopted a flexible solution that allowed competing state and tribal interests to be balanced on a case-by-case basis.”).

As Senator Inouye, then-Chair of the Senate Committee, explained, “the idea is to create a consensual agreement between the two sovereign governments and it is up to those entities to determine what provisions will be in the compacts.” 134 Cong. Rec. S12643-01 (emphasis added). The Senate Committee explicitly advanced a broad reading of the jurisdiction shifting provisions, observing that the “subparts of each of the broad areas may be more inclusive,” and the tribal-state compact “may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between.” S. Rep. No. 100-446, at 14. The Senate Committee thus revealed its intent to leave the negotiating parties free to define the scope of state regulatory jurisdiction as narrowly or as broadly as they may see fit. See S. Rep. No. 100-446, at 6 (stating the intention “that to the extent tribal governments elect to relinquish rights in a tribal-State compact that they might have otherwise reserved, the relinquishment of such rights shall be specific to the tribe so making the election” (emphasis added)). By allowing the compact parties ample room to negotiate matters of regulatory jurisdiction, Congress intended to ensure that the compact process was “a viable mechanism for setting various matters between two equal sovereigns.” S. Rep. No. 100-446, at 13 (emphasis added); see also Kelly II, 104 F.3d at 1554 (“The legislative history of [IGRA] is replete with references to the need to accommodate tribal and state interests . . . .”).

The broad compact negotiating process by which Congress sought to ensure that states could protect their interests in public policy, safety, and laws, may reasonably be interpreted to include the issue of jurisdiction over personal injury suits. See Doe, 2005-NMCA-110, ¶ 17 (“Redressing injuries sustained by the Casino’s visitors is sufficiently related to the regulation of tribal gaming . . . .”). Issues of safety, law, and public policy play a significant role in tort suits. Personal injury law is meant, in part, to expose weaknesses in safety procedures and protect the public from safety hazards. See generally Dan B. Dobbs, The Law of Torts § 5, at 8 (2000) (indicating tort law “can be seen as [a] means of imposing a degree of social control by preventing injury or compensating it”); id. § 6, at 10 (“Tort law is . . . one of a number of ways in contemporary American society aimed at creating incentives for safety or at providing compensation for loss or both.”). Tort suits are thus related to gaming activity in helping ensure that gaming patrons are not exposed to unwarranted dangers, something that inures to the benefit of the Tribes.

In drafting IGRA, Congress was aware that the “vast majority of consumers of [tribal gaming] would be non-Indian citizens of the State and tourists to the state.” 134 Cong. Rec. H8146-01 (1988). Protecting the personal safety of those outside visitors and consumers would seem to be of mutual concern to both the state and the tribes. See Section 8 (providing under section entitled “Protection of Visitors” for the application of New Mexico tort law and jurisdiction shifting). This protection necessarily extends to personal injuries sustained by those patronizing the casinos and providing assurances of an effective remedy. Congress could rationally conclude that tribes ought not be foreclosed from negotiating such provisions perceived to be in their own interest, and as “directly related to, and necessary for, the licensing and regulation” of gaming.

In this case, the State of New Mexico and the Pueblos agreed to apply New Mexico tort law, instead of Pueblo law, to lawsuits arising out of those personal injuries. By that action, the State and the Pueblos agreed that the application of New Mexico state law was authorized by IGRA; that it was, in the language of IGRA, “directly related to, and necessary for, the licensing of and regulation of such activity.” It follows that providing a forum or a choice of more than one forum is, in the language of IGRA, “necessary for the enforcement of such [state tort] laws,” which cannot be enforced in the context of a lawsuit without a forum. Thus, in IGRA, Congress foresaw that the states and the tribes may want to negotiate a choice of forum along with a choice of law to accommodate visitors’ personal injury lawsuits. As part of the broad language utilized in IGRA, we are satisfied that Congress envisioned such a choice. See Gallegos, 2002-NMSC-012, ¶ 36 (“No one disputes that the parties to the gaming compacts sought to ensure a forum and compensation for those injured at the tribal casinos.” (Emphasis added.)).

Again, the Pueblos dispute such a
broad interpretation, arguing instead that the phrase “directly related to, and necessary for” the regulation of Class III gaming was meant to be language of limitation on what the tribes and states could agree to in the Class III compacts regarding jurisdiction. See Doe, 2005-NMCA-110, ¶ 30 (stating provision of IGRA at issue in this case is “permissive and limited”) (Sutin, J., dissenting). We agree that the states could not take unfair advantage of this jurisdiction-shifting authority to pressure tribes into surrendering rights in other areas. See id. ¶ 17. Certainly, there are limits. However, the legislative history exposes exactly what those limits are. The Committee report states that “[i]n no instance, does [IGRA] contemplate the extension of State jurisdiction or the application of State laws for any other purpose.” S. Rep. No. 100-446, at 6. As demonstrated by the legislative history, the “other purposes” that Congress intended to exclude from state jurisdiction in the Compact were those patently unrelated to gaming. Senator Inouye listed these areas which could not be negotiated as “taxation, water rights, environmental regulation, and land use.” 134 Cong. Rec. S12643-01. Thus, by inference, when Congress tells us what is off-limits to jurisdiction shifting because not sufficiently related to regulation, we can fairly presume that other subjects falling outside those express categories are not excluded from state court jurisdiction. See, e.g., Andrus v. Glover Const. Co., 446 U.S. 608, 616-17 (1980) (“Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”).

¶ 43 We also find persuasive the Court of Appeals’ discussion of other provisions in the Compact that on their face do not seem to be directly related to the regulation of gaming activity. See Doe, 2005-NMCA-110, ¶ 18. For example, if the Compact can include provisions on alcohol service, labor conditions, employment discrimination, and liability insurance, then it would not make sense to read IGRA so narrowly as to exclude provisions related to jurisdiction over personal injury claims. Id. Those provisions were included in the Compact, just as the jurisdiction shifting provision was included, because the State and the Pueblos understood their importance, and IGRA allows the two interested parties to work such matters out for themselves. ¶ 44 We find further support for our conclusion that Congress intended tribes and states to negotiate the issue of state court jurisdiction over civil claims in the fact that many tribal-state compacts in other states arising out of IGRA do include specific provisions on this issue. See Diepenbrock v. Merkel, 97 P.3d 1063, 1068 (Kan. Ct. App. 2004) (compact giving the tribe civil jurisdiction over tort claims arising from injuries to patrons of gaming facilities); Bonnette v. Tunica-Biloxi Indians, 873 So. 2d 1, 6 (La. Ct. App. 2003) (compact requiring the tribe to “adopt reasonable procedures for the disposition of tort claims” of gaming facility patrons (quoted authority omitted)); Kizis, 794 A.2d at 504 (Conn. 2002) (tribal compact providing that the tribe will create a remedial system for disposition of tort claims against it). While all these compacts give subject matter jurisdiction over personal injury claims to the tribes, unlike the Compact here which grants concurrent jurisdiction to the State, the inclusion of a provision granting jurisdiction, regardless of what party it is given to, indicates that personal injury suits are sufficiently related to gaming to be included in the tribal-state compacts.

¶ 45 For all of these reasons, we are persuaded that Congress intended the compacting provision of IGRA to allow the states and the tribes broad latitude to negotiate regulatory issues. There is no question that when Congress sets forth specific conditions for jurisdiction shifting, as it did over fifty years ago in PL 280, then, as in Kennerly, those necessary steps must be followed. However, while IGRA resembles PL 280 in the sense that Congress did envision jurisdiction shifting for gaming purposes, it is unlike PL 280 in that it does not set forth a specific roadmap of how such jurisdiction shifting should be accomplished. Rather, IGRA leaves the issue to negotiation subject only to broad guidelines. That was Congress’ choice. It is not for us to demand of Congress a specificity it was unwilling or unable to provide. We need only satisfy ourselves that Congress envisioned, and authorized, tribes to contract for jurisdiction shifting, if they wished, as part of a much larger, global settlement of complex issues that was necessary to make tribal gaming work. IGRA and its history satisfies our inquiry.

Traditional Indian Law Canons of Construction

¶ 46 The Pueblos further argue that their interpretation of IGRA should prevail based on the Blackfeet presumption, which requires ambiguities found in statutes enacted for the benefit of an Indian tribe to be interpreted in favor of the tribe. See Montana v. Blackfeet Tribe of Indians, 411 U.S. 759, 766 (1985); Bryan v. Itasca County, 426 U.S. 373, 392 (1976); Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 729. The Pueblos assert that this canon should be applied here because the Senate Committee acknowledged this standard of statutory construction. In its report on IGRA, the Senate Committee explicitly stated that, when construing IGRA, courts should “interpret any ambiguities on these issues in a manner that will be most favorable to tribal interests.” S. Rep. No. 100-446, at 15. However, “ambiguity is a prerequisite” for application of the Blackfeet presumption. Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 729. To determine ambiguity courts can look beyond the text of the federal statute and also examine its “context, purpose, and legislative history.” Id. at 731; see also Cohen’s, supra § 7.02(1)(b) (suggesting canons should be applied if Congress’ intent is not clear “either through express language or through clear and reliable evidence in the language or legislative history”).

¶ 47 Although the text of IGRA is open to some interpretation, we are convinced after examining the legislative history that Congress’ intent is clear. For the reasons stated earlier, Congress intended this particular

“authorization for the allocation of civil jurisdiction would not extend to a patron’s tort claim because it is an area that is not directly related to, and necessary for, the licensing and regulation of class III gaming activity.” It is true that the judiciary should usually afford deference to the responsible agency’s interpretation of a statute. See Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 843 (1984). However, interpretations found in opinion letters “lack the force of law” and thus “do not warrant Chevron-style deference.” Christensen v. Harris County, 529 U.S. 576, 587 (2000). Chevron involved an agency regulation promulgated based on the agency’s interpretation. 467 U.S. at 842-44. This letter was not a regulation promulgated by the Office of Indian Gaming Management. The United States Supreme Court has made clear that opinion letters do not deserve the deference afforded to agency regulations and interpretations “arrived at after . . . a formal adjudication or notice-and-comment rulemaking.” Christensen, 529 U.S. at 587. Thus, while we may give that opinion letter such consideration as it deserves, but not “Chevron-style deference.” Id.
provision of IGRA to give the tribes and states ample room to negotiate. The states and the tribes were to resolve regulatory jurisdiction issues for themselves. For the reasons discussed earlier, we are persuaded that Congress intended the parties to negotiate, if they wished, the choice of laws for personal injury suits against casinos as well as a choice of venue for the enforcement of those laws. Nothing in IGRA required the tribes to negotiate the subject, nor does anything in IGRA prevent them from doing so. Congress unambiguously left that subject to the parties to determine for themselves. Without an ambiguity, the Blackfeet presumption does not apply.

CONCLUSION

For the foregoing reasons, we affirm the Court of Appeals and remand to the respective state district courts for further proceedings consistent with our holding.

IT IS SO ORDERED.

RICHARD BOSSON, Justice

WE CONCUR:

EDWARD L. CHÁVEZ, Chief Justice

PATRICIO M. SERNA, Justice

PETRA JIMENEZ MAES, Justice

PAMELA B. MINZNER, Justice (dissenting)

MINZNER, Justice (dissenting).

I respectfully dissent. I agree with Judge Sutin, who dissented from the Court of Appeals' majority opinion, that the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 (2000), does not permit tribes and the tribes were to resolve regulatory jurisdiction issues for themselves. For the reasons discussed earlier, we are persuaded that Congress intended the parties to negotiate, if they wished, the choice of laws for personal injury suits against casinos as well as a choice of venue for the enforcement of those laws. Nothing in IGRA required the tribes to negotiate the subject, nor does anything in IGRA prevent them from doing so. Congress unambiguously left that subject to the parties to determine for themselves. Without an ambiguity, the Blackfeet presumption does not apply.

Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations . . .

(vii) any other subjects that are directly related to the operation of gaming activities.

25 U.S.C. § 2710(d)(3)(C)(i), (ii), (vii). In his dissent, Judge Sutin noted the significant absence of any discussion “regarding whether IGRA was to permit an allocation of jurisdiction beyond that necessary for the enforcement of laws and regulations directly related to and necessary for licensing and regulation of Class III gaming activities.” Doe, 2005-NMCA-110, ¶ 34 (Sutin, J., dissenting). I agree with Judge Sutin’s observation that allocating jurisdiction over visitors’ personal injury claims would not seem to be “necessary for the enforcement of laws and regulations that are directly related to, and necessary for licensing and regulation of Class III gaming activities.” See id. ¶ 26. Had Congress intended for such claims to be included, I think IGRA would have been explicit, and we would not need to parse its legislative history for indicia of legislative intent. Even allowing for the fact that there were many issues to be resolved in negotiating compacts, IGRA seems to me to take a narrow view of what jurisdiction shifting, if any, was likely to occur. The phrase “directly related to and necessary for the licensing and regulation” of gaming activities seems restrictive rather than expansive.

As Judge Sutin argued, because IGRA does not expressly grant jurisdictional authority over these claims, we cannot evade the Williams rule of exclusive tribal jurisdiction over general tort actions arising on Indian land. See Williams, 358 U.S. 217. At best, in light of IGRA’s silence on the matter and the Williams rule, we are obliged to adhere to the Blackfeet presumption and hold the apparent ambiguities in IGRA should be construed in favor of the tribes. If we do not accept the tribes’ argument that shifting jurisdiction is prohibited because IGRA does not plainly provide for it, we should hold that silence to be, at the very least, ambiguous, and then apply the Blackfeet presumption.

Doe v. Santa Clara Pueblo, 2005-NMCA-110, ¶ 28 (Sutin, J., dissenting). Section 8(A) of the Compact says,

[A]ny such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or
federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court. Therefore, I cannot reconcile the majority opinion’s conclusion that “we will not ignore the clear language of the Compact,”

with the language of Section 8(A), which explicitly leaves the issue unresolved. Maj. Op. ¶ 15. {56} I would conclude the Compact’s shifting jurisdiction is not authorized by IGRA in unambiguous terms, and because shifting jurisdiction over visitors’ personal injury claims was not explicitly authorized by IGRA, presume the tribes’ exclusive jurisdiction over such claims must prevail. My colleagues being of a different view, I respectfully dissent. PAMELA B. MINZNER, Justice

2I would note the clarity of Section 8(A) of the Indian Gaming Compacts entered into in 1997, see NMSA 1978, § 11-13-1, in comparison with the text of Section 8(A) of the Compact entered into in 2001. See generally Doe v. Santa Clara Pueblo, 2005-NMCA-110, ¶ 5 (discussing the history of the 2001 Compact). Section 8(A) of the 1997 Compact provides explicitly for jurisdiction shifting. “[C]oncurrent civil jurisdiction in the State courts and the Tribal courts shall apply to a visitor’s claim for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise.” Section 11-13-1.

Certiorari Denied, No. 30,248, March 6, 2007

From the New Mexico Court of Appeals

Opinion Number: 2007-NMCA-028

ANDRE GRIMES,
Worker-Appellant,
versus
WAL-MART STORES INC. and
AMERICAN HOME ASSURANCE
COMPANY,
Employer/Insurer-Appellees.
No. 26,634 (January 29, 2007)

APPEAL FROM THE WORKERS’ COMPENSATION ADMINISTRATION
HELEN STIRLING, Workers’ Compensation Judge

PATRICK LARKIN FOGEL
Albuquerque, New Mexico
for Appellant

KELLY A. GENOVA
KELLY A. GENOVA, P.C.
Albuquerque, New Mexico
for Appellees

Opinion

JONATHAN B. SUTIN, CHIEF JUDGE

1] Because of work restrictions based on a prior compensable injury while working for Employer, Wal-Mart Stores Inc., Worker Andre Grimes accepted employment as a “greeter” for Employer. In that capacity, Worker apprehended a customer carrying a box after a security alarm went off indicating that the customer was leaving the store without having paid for the merchandise. Allegedly injured in the process of apprehending the customer, whom Worker took to the floor and handcuffed, Worker sought workers’ compensation benefits.

2] The workers’ compensation judge

(WCJ) specifically found:

25. Worker’s primary duties were to greet customers on their way into the store, help them with directions and returns, say good-bye to them when they left, and check receipts periodically, primarily of larger items not in bags.

26. If greeters suspected a shoplifter, or had a customer go by without showing a receipt, they were first to call security or management; most greeters had radios, but there was also a “house” phone just a few feet away as well as cashiers.

27. Greeters were not trained in security issues, including the four elements of apprehension, because they were not part of the security chain-of-command, nor did they have responsibility for security.

28. Louis R. Maez, a fellow greeter who provided some orientation for Worker, told him he should use his judgment, be courteous, not confrontational, and never touch the customer.

29. A written description of greeter job duties was provided to Worker when he accepted his return to work offer, as shown in [the job description for people greeter].

30. While it may be true that no one specifically told Worker not to use handcuffs and not to tackle customers, Employer had a right to expect that Worker would perform within the assignment provided to him.

31. Handcuffs were not part of the equipment issued to greeters, including Worker, and the use of them was prohibited by store policy except by certain trained personnel, of which Worker was not one.

32. Greeters were not to follow the customers; if Worker really believed it was part of his job to keep the product from leaving the store, when the box fell he could have retrieved the box and let the man go, but he did not.

3] The written description Worker was given of the job of people greeter reads in pertinent part as follows: Primary job responsibilities and functions are listed below: An
Associate in this position will be expected to perform additional job-related responsibilities and duties throughout the facility as assigned and/or as necessary.

Operations
* Greets, communicates, and responds to Customer questions; locates merchandise; provides shopping and motorized carts; provides requested assistance with merchandise returns; deactivates security tags; and checks receipts.
* Stops Customers whose merchandise activates the alarm, compares merchandise to purchase receipt, and accurately maintains a log of the event.
* Monitors entrances and exits for signs of shrink and potential security risks and contacts management and/or In-Store Loss Prevention when problems are identified. Responds appropriately to emergency codes.
* Ensures a safe and clean environment by maintaining safety standards, performing maintenance, and cleaning as needed.
* Distributes Company-approved marketing or promotional materials, such as smiley face stickers.
* Demonstrates knowledge and understanding of appropriate responses to emergency codes.

One of a greeter’s “Essential Functions” of the job was: “Constantly monitors entrances and exits for signs of shrink and potential security risks,” involving “[m]onitoring areas for signs of shrink or potential security risks and contacting management or In-Store Loss Prevention when appropriate.” “Shrink” is a term for loss of merchandise through shoplifting.

[4] Employer had a written shoplifter apprehension policy. Worker submitted a requested finding of fact stating that he had never been shown Employer’s shoplifter apprehension policy. Employer’s “Shoplifter Apprehension” policy states, in pertinent part: “Only the Store or Club Manager, Co-Manager, Assistant Manager, Support Team Member acting in the capacity of management, or approved Loss Prevention personnel are authorized to apprehend a shoplifter.”

[5] Worker appeals the finding of the WCJ that “Worker’s accident did not arise out of his employment with Employer; it did not occur within the course and scope of his employment with Employer as a greeter.”

**Standard of Review**

[6] On appeal from workers’ compensation cases decided by the Workers’ Compensation Division, we review the sufficiency of evidence to support conclusions according to the whole record review standard. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The reviewing court views the evidence in the light most favorable to the agency decision, but it may not view favorable evidence with total disregard to contravening evidence.


**Legal Requirements**

[7] “In order for an injured employee to receive compensation under the [Workers’ Compensation] Act, the employee must be performing a service arising out of and in the course of his employment at the time of the accident, and the injury must arise out of and in the course of his employment.”

**Id.** “[A]n injury occurs in the course of employment when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is reasonably fulfilling the duties of employment or doing something incidental to it.”

**Id.** at 511, 828 P.2d at 423 (internal quotation marks and citation omitted).

[8] “Violation of specific instructions which limit the scope or sphere of work which an employee is authorized to do bars recovery of [workers’] compensation for an injury so sustained.” **Gough v. Famariss Oil & Refining Co.,** 83 N.M. 710, 714, 496 P.2d 1106, 1110 (Ct. App. 1972) (internal quotation marks and citation omitted); see also **Stebens v. K-Mart Corp.,** 99 N.M. 720, 721, 663 P.2d 379, 380 (Ct. App. 1983) (“The fact that a worker, at the time of injury, was disobeying an instruction from his employer may, under some circumstances, deprive him of the right to compensation, either on the ground that the injury did not arise out of or in the course of employment, or on the ground that the doing of the prohibited act constitutes ‘willful’ misconduct.” (citation omitted)).

**Employer’s Policies and Instructions, and Worker’s Conduct**

[9] We see nothing in the record indicating that Worker was given, shown, or knew about specific instructions as to Employer’s written policy on apprehension of shoplifters. Worker testified that his job instructions were to stop customers and check receipts and merchandise if the security system at the store exit beeping, or if the merchandise was not in a bag. He further testified that he was never told about any regulation in regard to permitting shoplifters to leave the store and was never trained in any procedures on stopping shoplifters. He testified about a “Code 99,” which was an Employer procedure that obligated male employees to leave their stations and assist other employees when there was a security-type event involving a shoplifter. He also testified that another employee first stopped the customer in question. Defendant was not given a radio for use to call store security personnel. Although Worker has not specifically attacked the WCJ’s finding that Maez told Worker to be courteous, not confrontational, and never touch a customer, our review of Maez’s deposition testimony and of Worker’s testimony indicates that there is no such evidence.

[10] Maez testified that he did not receive training from Employer in security procedures and policies, that “[w]e had to use our own judgment as far as security,” and that using your own judgment was the standard. As a greeter, he did not let suspected shoplifters through the door without a receipt. As a greater, Maez would approach a suspected shoplifter and ask to check the person’s receipt. Security personnel were not always available to deal with shoplifters that greeters stopped. Maez was unaware of any rules regarding instances in which a suspected shoplifter evades or attacks. If Maez was positive he was dealing with a shoplifter, he would call a store manager. Maez had never seen Employer’s shoplifter apprehension policy. The WCJ found that Maez provided “some orientation for Worker,” and “told [Worker] he should use his judgment.”

[11] When asked by Employer’s counsel what a greeter was supposed to do when somebody tried to leave with merchandise and no receipt, Employer’s loss prevention supervisor and head of security stated: “It’s kind of one of those interesting kind of things, they have to ask for a receipt — if they cannot produce the receipt, they are supposed to not let the merchandise leave, but the catch 22 in that is that they can’t
physically touch the person if this person is going to walk out.”

[12] Neither the job description of “greet-
er” nor the head of security’s statement clearly indicates that it is a policy of Em-
ployer that a greeter is not to apprehend a shoplifter as Worker did in this case. Noth-
ing in the written job description states that a greeter must first or only call security or
management when a customer sets off the security alarm indicating that the customer
needs to show a receipt. Nothing in the record shows that Worker was told about
or trained with respect to any such greeter policy or procedure.

[13] On the record as a whole, we fail to
see sufficient evidentiary support for a find-
ing or conclusion that Worker disobeyed or
violated any clear and specific Employer
policy or instruction given to Worker, or
any clear and specific policy or procedure
of which Worker was aware that limited the
scope or sphere of work he was authorized
do as a greeter that prohibited him from
apprehending a shoplifter as he did in this
case. Nor do we see any evidentiary basis
in the record to support a finding or conclu-
sion that Worker’s actions were anything
other than a good faith exercise of judg-
ment in attempting to serve Employer’s
interests.

CONCLUSION

[14] We reverse the compensation order
of the WCJ and hold that, on the record as
a whole, Worker’s accident did arise out of
and occurred within the course and scope
of his employment.

[15] IT IS SO ORDERED.

JONATHAN B. SUTIN,
Chief Judge

WE CONCUR:

CYNTHIA A. FRY, Judge
MICHAEL E. VIGIL, Judge
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Common problems in dealing with the earliest stages of a criminal investigation into business, corporate and professional clients, including document production issues, document retention policies, and obstruction of justice pitfalls

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**Positions**

**Assistant District Attorney**
The 11th Judicial District Attorney's office, Division I, in Farmington, NM is accepting resumes for positions of Assistant District Attorney. Salary DOE. New Mexico has a 1 year temporary license available until you have taken the New Mexico bar either in July or February. Please send resume to: Mr. Lyndy Bennett, 710 E. 20th St., Farmington, NM 87401. Equal Opportunity Employer.

**Attorney**
The New Mexico Environmental Law Center, a non-profit public interest law office seeks an attorney to represent New Mexico community and environmental groups and Pueblos in their efforts to protect the environment. Minimum of five years of experience, preferably in litigation before administrative agencies and courts, and New Mexico bar membership preferred. Salary DOE; generous benefits. Send applications (a resume, writing sample, and three references) to Juana Colón at nmelc@nmelc.org or at Suite 5, 1405 Luisa Street, Santa Fe, N.M. 87505. Applications will be received until the position is filled. Telephone inquiries discouraged. The Law Center is an equal opportunity employer; women and minorities encouraged to apply. www.nmenvirolaw.org

**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.state.nm.us. Deadline for submission of resumes: Immediate opening until filled.

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**Experienced Trial Attorney**
NM Federal Public Defender seeks full time experienced trial attorney for Albuquerque office. Applicants must have three years minimum criminal law trial experience, be team-oriented, exhibit strong writing skills, and have a commitment to criminal defense work, including those that may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court and immigration law experience will be given preference. Private practice of law is prohibited. Membership in NM bar required within first year of employment. Background check required. Federal salary and benefits apply. EOE Submit statement of interest, detailed resume, and three references by March 30, 2007 to: Stephen P. McCue, Federal Public Defender, 111 Lomas Blvd. NW, Suite 501, Albuquerque, NM 87102. Writing samples will be required only from those selected for interview. Position subject to availability of funding.

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**Attorney**
The State of New Mexico Workers’ Compensation Administration (WCA) is requesting proposals for an attorney to hold and act on assigned hearings entrusted by law to the WCA Director and/or certain adjudication hearings and mediations. Parties interested in submitting proposals must be licensed to practice law in the State of New Mexico. Parties interested in receiving a copy of the Request for Proposals (RFP) should contact: Joyce Ortiz, Procurement Manager, New Mexico Workers’ Compensation Administration, 2410 Centre Ave. SE, Albuquerque, NM 87125-7198. (505) 841-6076; (505) 841-6866 (fax). The amended date to submit proposals is no later than 5:00 p.m. on Friday, March 30, 2007.

**Associate Attorney**
The law firm of Jacobvitz, Thuma & Walker, P.C. is seeking an associate attorney with zero to three years’ experience in the areas of commercial law, commercial litigation, and commercial bankruptcy. The applicant must be intelligent, well educated, sensible, and hard working, and must have good writing skills. Salary DOE. Pleasant working environment, good benefits. Send cover letter with resume to Jacobvitz, Thuma & Walker, P.C., 500 Marquette, NW #650, Albuquerque, NM 87102, or tdwalker@jtwlawfirm.com.

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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.

Spanish-speaking Attorney for Domestic Violence Non-profit

Enlace Comunitario, a non-profit agency providing holistic services (case management, therapy, parenting and children’s groups) seeks a FT attorney to provide civil legal representation on family law/ order of protection to immigrant victims of domestic violence. Salary $38,000-$42,000, DOE. Will consider recent law graduate or third-year student who will be taking July bar exam. Must be fully bilingual in Spanish (interview will be conducted in Spanish) and must demonstrate a serious commitment to social justice issues and immigrant rights. Please send resume with names & telephone numbers of 3 references, & law school transcript (if graduating this year) to: ELIZABETH ROURKE, PO BOX 8919, ALBUQUERQUE, NM 87198. Equal Opportunity Employer.

Small Contracts

The Public Defender Department is in need of contract attorneys to handle conflict cases in the Albuquerque felony, habeas, and appellate divisions. If you are a criminal defense attorney with a minimum of three years experience in any of the specified areas, please send a letter of interest, resume, and references to Marlene Foster, Contract Counsel Legal Director, Public Defender Department, 301 N. Guadalupe, Santa Fe, NM 87501 or call 827-3931 for additional information. Contracts will be awarded in amounts not to exceed $30,000 for the remainder of the current contracting period which expires October 31, 2007.

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Assistant District Attorneys:
The Fourth Judicial District Attorney’s Office, Las Vegas, New Mexico, has two (2) assistant district attorney positions available for immediate employment. Salary is dependent on experience and pursuant to the New Mexico District Attorney’s Personnel and Compensation Plan. Please send Resume and Letter of Interest to Richard D. Flores, Fourth Judicial District Attorney, P.O. Box 2025, Las Vegas, New Mexico 87701, or via e-mail to: rflores@da.state.nm.us

Public Notice

Request for Proposals

The New Mexico State Investment Office (SIO) is seeking proposals from qualified vendors interested in providing legal counsel to the SIO regarding existing and potential civil actions arising from the default by Region III Housing Authority, New Mexico Inc. on two bonds purchased by the SIO. The Request for Proposals will be available beginning on Monday, March 26, 2007. Responses are due no later than 2:30 p.m. Mountain Daylight Time on Monday, April 11, 2007. To obtain a copy of the RFP, please visit the SIO’s website at: www.state.nm.us/nmsic/rfps.htm. If you have any questions, please submit them via email to nmsic_rfpo@state.nm.us.

Associate Attorney

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

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1:05 p.m. Science, Ethics, and Law at the End of Life (1.0 E)
David A. Bennahum, MD, Professor Emeritus of Medicine, Family and Community Medicine, and Law, UNM Health Sciences Center Institute of Ethics
2:05 p.m. Elder Law and Long-Term Care Issues: An Agency Perspective
Deborah Ann Armstrong, Esq., Agency Director, NM Aging & Long-Term Services Department

2:55 p.m. Break
3:00 p.m. Overview of the 2007 Legislative Session & Impact On the Elderly
Angelica Anaya-Allen, Esq., Executive Director, Senior Citizens Law Office
3:55 p.m. Bench View of Cases Involving the Elderly: Proceedings for Guardian and Conservatorships & Other Matters
Hon. Richard J. Knowles, 2nd Judicial District Court
4:55 p.m. Adjourn and Reception (State Bar Center Lobby)

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