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Special Insert:
YLD...In Brief

www.nmbar.org
PROGRESS INTO PRACTICE:
Lawyers Lead the Way
State Bar of New Mexico 2007 Annual Meeting

All events will be held at the Inn of the Mountain Gods, unless otherwise specified.

THURSDAY, JULY 12
2-7:30 p.m.  Registration/Exhibits/Silent Auction
3 p.m.  State of the Bar Hot Topics
4:45 p.m.  BREAK
5 p.m.  Order in the Court - Theatrical Performance (1.0 P)
6-7:30 p.m.  Opening Reception

FRIDAY, JULY 13
7-7:30 p.m.  Continental Breakfast
7 a.m.-3:30 p.m.  Registration/Exhibits
7 a.m.-8 p.m.  Silent Auction to benefit Equal Access to Justice
8 a.m.  Pres. Dennis Jontz; Chief Justice Chavez; Justice Kourlis; Karen Mathis (ABA)
9 a.m.  Plenary: David Gross - “Success as a Lawyer - What It Means and How to Achieve It”
10 a.m.  BREAK
10:30 a.m.  Intro by Pres. Dennis Jontz, Keynote: Justice O’Connor - “Independence of the Judiciary”
11:30 a.m.  Break
12 p.m.  LUNCH
1 p.m.  TRACKS
■ ADR Update: New Law, Court Procedures, & Practices - What You Need to Know!
■ Managing The Transitioning Practice
■ Federal Panel - Independence of the Judiciary
■ Recent Changes to Appellate Rules
■ So You’re Thinking of Going Solo?
2 p.m.  BREAK
2:15 p.m.  TRACKS
■ Effective Use of ADR in Employment Disputes
■ When and How to Get Out of Client Relationships
■ Immigration Law
■ Environmental Justice and Land Use Planning
■ S Corp v. LLC
3:15 p.m.  (Free Time)
5-7 p.m.  Senior Lawyers Division Annual Board Meeting and Reception
6-7 p.m.  SBNM Annual Awards Ceremony
6-9 p.m.  Kids’ Event
6:30-7:30 p.m.  Atkinson & Kelsey Reception honoring NM Lawyers listed in “Best Lawyers in America”
7-7:15 p.m.  CLE Awards (Dennis Jontz, pre-reception)
7-8:30 p.m.  President’s Reception and Wine Tasting

SATURDAY, JULY 14
7-8 a.m.  Continental Breakfast
7:30 a.m.-  Registration/Exhibits/Distribution of Silent Auction items
12:30 p.m.  JPEC
8 a.m.  Judicial Elections (1.0 E)
9:15 a.m.  BREAK
9:45 a.m.  TRACKS
■ New Mexico Mediation Act and Arbitration Act
■ Bankruptcy and Aging
■ Family Law Legislative Update
■ How to Build Your Dream Team
10:45 a.m.  BREAK
11 a.m.  TRACKS
■ Healing Wounds: Bringing Juvenile Offenders and Their Victims Together
■ e-Discovery Part 2

SUNDAY, JULY 15
8:30 a.m.

Please Note: Schedule is subject to change without notice.
**Progress into Practice: Lawyers Lead the Way**

State Bar of New Mexico 2007 Annual Meeting
Inn of the Mountain Gods Resort and Casino
Mescalero, NM • July 12-15, 2007

8.5 General, 1.0 Ethics and 1.0 Professionalism CLE Credits (plus Video Replay opportunities)

<table>
<thead>
<tr>
<th>Name ___________________________________________</th>
<th>NM Bar No. ____________________________</th>
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<tbody>
<tr>
<td>Name for Badge (if different than above) ____________</td>
<td>________________________________</td>
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<tr>
<td>Address ___________________________________________________________________________________</td>
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<tr>
<td>City _______________________________________________</td>
<td>State ___________</td>
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<tr>
<td>Phone ____________________</td>
<td>Fax __________________</td>
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<tr>
<td>Guest 1 ___________________________</td>
<td>Guest 2 __________________________</td>
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</tbody>
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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>Includes CLE tuition, materials, MCLE filing fees, speaker costs, continental breakfasts, breaks, silent auction and Welcoming and President's receptions</td>
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<tr>
<td>Standard Early Registration Fee (Must be postmarked by May 1st)</td>
<td>$275</td>
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<tr>
<td>After May 1st Fee</td>
<td>$395</td>
<td>______</td>
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<tr>
<td>YLD, Paralegal, Government &amp; Legal Services Attorney</td>
<td>$175</td>
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<tr>
<td>After May 1st, YLD, Paralegal, Government &amp; Legal Services Attorney</td>
<td>$275</td>
<td>______</td>
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<tr>
<td>Guest (includes name badge, continental breakfasts, breaks, silent auction and receptions)</td>
<td>$65</td>
<td>______</td>
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</tbody>
</table>

### Conference Materials - I would like:

- CD Version  
- Printed Version  
- Both CD and Printed Version (Materials Included)  
- Both Versions Add $50

### SEPARATELY TICKETED EVENTS

- Luncheon, Friday, July 13  
- Spencer Theater, Saturday, July 14 (You must pre-purchase by June 11—tickets will not be available for sale after that date.)  
- Golf Tournament (18-hole) (You must pre-purchase by June 29—tickets will not be available for sale after that date.)

**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 [ ] Discover [ ] Purchase Order (Must be attached to be registered)

<table>
<thead>
<tr>
<th>Credit Card Acct. No. ______________________________________</th>
<th>Exp. Date ____________</th>
</tr>
</thead>
</table>

**Signature _____________________________________**

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*Register by mail, phone or fax.*  
**Mail:** SBNM, P.O. Box 92860, Albuquerque, NM 87199-2860  
**Phone:** (505) 797-6020; Monday - Friday, 9 a.m. - 4 p.m.  
**Fax:** (505) 797-6071; Open 24 Hours  
(please have credit card information ready).

**Cancellations & Refunds:** If you find that you must cancel your registration, send a written notice of cancellation via fax by 5 p.m., one week prior to the program of interest. A refund, less a $50 processing charge will be issued. Registrants who fail to notify CLE by the date and time indicated will receive a set of course materials via mail following the program.

**MCLE Credit Information:** Courses have been approved by the New Mexico MCLE Board. CLE will provide attorneys with necessary forms to file for MCLE credit in other states. A separate MCLE filing fee may be required.

Hotel information is available on page 3 of this brochure.
# APRIL 24th and 25th VIDEO REPLAYS - STATE BAR CENTER

<table>
<thead>
<tr>
<th>APRIL 24TH</th>
<th>APRIL 25TH</th>
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</thead>
<tbody>
<tr>
<td><strong>Lawyer As Problem Solver:</strong></td>
<td><strong>Lawyer As Problem Solver:</strong></td>
</tr>
<tr>
<td>2007 Professionalism</td>
<td>2007 Professionalism</td>
</tr>
<tr>
<td>8 a.m.</td>
<td>9:00 a.m.</td>
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<tr>
<td>1.0 Professionalism CLE Credit</td>
<td>1.0 Professionalism CLE Credit</td>
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<td>☐ $49</td>
<td>☐ $49</td>
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<tr>
<td><strong>Road and Access Law</strong></td>
<td><strong>Ethical Use of Paralegals in New Mexico</strong></td>
</tr>
<tr>
<td>9:15 a.m.</td>
<td>10:30 a.m.</td>
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<tr>
<td>3.0 General CLE Credits</td>
<td>1.0 Ethics CLE Credit</td>
</tr>
<tr>
<td>☐ $109</td>
<td>☐ $49</td>
</tr>
<tr>
<td><strong>What Every Lawyer Should Know About IP</strong></td>
<td><strong>Defending Computer Crime Cases</strong></td>
</tr>
<tr>
<td>12:30 p.m.</td>
<td>12:30 p.m.</td>
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<tr>
<td>2.7 General CLE Credits</td>
<td>4.2 General CLE Credits</td>
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<tr>
<td>☐ $109</td>
<td>☐ $189</td>
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<tr>
<td><strong>22nd Annual Bankruptcy Year In Review</strong></td>
<td><strong>How To Win Your Next Jury Trial</strong></td>
</tr>
<tr>
<td>9 a.m.</td>
<td>9 a.m.</td>
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<tr>
<td>6.0 General and 1.0 Ethics CLE Credits</td>
<td>6.0 General CLE Credits</td>
</tr>
<tr>
<td>☐ $209</td>
<td>☐ $209</td>
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</tbody>
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## FOUR WAYS TO REGISTER

**PHONE:** (505) 797-6020, Monday - Friday, 9 a.m. - 4 p.m. (Please have credit card information ready)

**FAX:** (505) 797-6071, Open 24 hours  
**INTERNET:** www.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 _______________________________**
Professionalism Tip

With respect to parties and their counsel:

I will be courteous and civil, both in oral and in written communications.

Meetings

Month

17
Solo and Small Firm Practitioners Section
Board of Directors, 11:30 a.m.
Section meeting, noon, State Bar Center

18
Law Office Management Committee,
noon, State Bar Center

19
Health Law Section Board of Directors,
11:30, State Bar Center

20
Family Law Section Board of Directors,
9 a.m., via teleconference

24
Membership Services Committee,
noon, State Bar Center

State Bar Workshops

April

17
Common Legal Issues Affecting Seniors
10:30 a.m., Bonnie Dallas Senior Center, Farmington

17
Common Legal Issues Affecting Seniors
10:30 a.m., Lower Valley Senior Center, Fruitland

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

26
Powers of Attorney and Adult Guardianship
1:15 p.m., Meadowlark Senior Center,
Rio Rancho
**NOTICES**

**COURT NEWS**

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

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

**Fourth Judicial District Court**

**Court Closure**

The 4th Judicial District Court clerk’s offices in Las Vegas and Santa Rosa will be closed from April 18 through April 20 so that staff may attend the Statewide District Court Staff Conference in Albuquerque. In an attempt to meet attorney needs during staff’s absence, both Judge Mathis and Judge Aragon will be available to file emergency pleadings in open court during regular business hours.

All mail and/or fax documents received during that time frame will be file-stamped or received as of April 23. Attorneys should contact the district court clerk’s office, (505) 425-7281 ext. 10, to make prior arrangements if this schedule will interfere with the timeliness of filings. Regular business hours will resume on April 23.

**U.S. Bankruptcy Court**

**Brown-Bag Presentations**

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

**STATE BAR NEWS**

**Annual Meeting**

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

**Meeting with Bar President**

The next Attorney Support Group meeting will be held at 5:30 p.m., May 7, 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 four locations April 16–17 to discuss the state of the State Bar and issues facing the profession. More information will be forthcoming. Contact jconte@nmbar.org with any questions.

**Eighth Annual Golf Outing**

The State Bar Bankruptcy Law Section will host the eighth annual golf outing at 12:30 p.m., May 11, at the Four Hills Country Club. The cost of $65 includes a round of golf, a golf cart and hors d’oeuvres. A cash bar will also be available.

Non-golfing section members are encouraged to attend the reception following the tournament at 5 p.m., also at the Four Hills Country Club, 911 Four Hills Rd. SE, Albuquerque. For more information or to register, contact Gerald Velarde, (505) 248-0500 or gvelarde@mac.com. Reservations must be made by May 7. Participants must provide their own golf clubs.

**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 plaintiff(s), and defendant(s) exhibits will be released to counsel of record for defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits and tapes not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

<table>
<thead>
<tr>
<th>Judicial District Court</th>
<th>Exhibits for years</th>
<th>Exhibits</th>
<th>Cases</th>
<th>Tapes</th>
<th>Retrieved</th>
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</thead>
<tbody>
<tr>
<td>1st Judicial District Court (505) 827-4687</td>
<td>1970–1990</td>
<td>May be retrieved through April 27</td>
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<tr>
<td>2nd Judicial District Court (505) 841-7596/5452</td>
<td>1996</td>
<td>May be retrieved through April 27</td>
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<tr>
<td>2nd Judicial District Court (505) 841-7596/5452</td>
<td>1996</td>
<td>May be retrieved through April 27</td>
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*Held in conjunction with the regular local bar meeting.*
Casemaker Training and Technology Workshop
Free Training Available

Casemaker, the State Bar’s newest membership service, is free online legal research that includes New Mexico and federal materials as well as access to 25 other state libraries. Training on using Casemaker will be held from 3 to 4 p.m., April 23, at the State Bar Center. Seating is limited. Call (505) 797-6000 to register.

Committee on Diversity in the Legal Profession
Reception and Third Study of Status of Minority Attorneys in New Mexico

The State Bar’s Committee on Diversity in the Legal Profession will host a reception from 5 to 6:30 p.m., June 22, at the State Bar Center to commemorate the work of the committee and celebrate the beginning of the third study of minorities in the profession. The study will be a comprehensive look over the past three decades at bar passage rates, disciplinary matters, State Bar leadership, judicial selection and more. All members are welcome and encouraged to attend this important event. R.S.V.P. to (505) 797-6000 by June 8.

Committee on Women and the Legal Profession
Lunch Meeting Featuring April Land

The Committee on Women and the Legal Profession will host a lunch meeting from noon to 1:30 p.m., April 27, at Slate Street Café, 515 Slate NW, Albuquerque (one block north of Lomas between 5th and 6th streets). UNM Professor April Land will speak on Balancing the Profession of Law with Family. The meeting is open to everyone, and all are invited to attend. Lunch is ordered off the restaurant menu with payment made directly to Slate Street Café. Advance reservations are requested. To confirm attendance no later than April 25, R.S.V.P. to Elizabeth Garcia, (505) 222-9353 or e-mail egarcia@nmjsc.org.

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 20. 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 20. Confidentiality of all personally identifiable information will be strictly maintained at all times.

Public Law Section
Public Lawyer Award

The State Bar Public Law Section will present its annual Public Lawyer of the Year Award to Chief Deputy Attorney General Stuart M. Bluestone at 4 p.m., May 1, at the State Capitol Rotunda in Santa Fe. A reception will follow. This award is given to recognize the accomplishments of an attorney in the public sector, including significant length of service in government, excellence as an attorney, acting as a role model for other public lawyers and serving charitable institutions or nonprofit entities connected with the practice of law. Additionally, a recipient’s character and dedication to public law and public service further the integrity and repute of the legal profession. New Mexico Supreme Court Chief Justice Edward L. Chávez, State Bar President Dennis E. Jontz and Attorney General Gary K. King will speak at the event.

Senior Lawyers Division
Oral History Project and Annual Meeting

At its second quarterly meeting of the year held March 22, the Senior Lawyers Division board reaffirmed its commitment to move forward with its Oral History Project based upon the recommendations of the project subcommittee and authorized the presentation of awards to judges who have served on the bench for 25 years or more.

The board further approved a social event to be held at 5:30 p.m., July 13, at the Inn of the Mountain Gods during the State Bar’s annual meeting in coordination with the division’s annual meeting. Also during the State Bar’s annual meeting, the division plans to conduct several oral histories. Any member in attendance who would like to be interviewed should contact Terrence Revo, (505) 293-8888.

Solo and Small Firm Practitioners Section
Luncheon Presentation

Dr. Moss Aubrey, forensic psychologist and expert on evaluating alleged sexual misconduct, will speak before the Solo and Small Firm Practitioners Section on Psychological Testing of Sexual Interests: A Civil and Criminal Attorney’s Guide.

The meeting will be held at noon, April 17, at the State Bar Center, and lunch will be served to those who R.S.V.P. by April 16 to Tony Horvat, thorvat@nmbar.org, or (505) 797-6033. Each attendee should bring a $5 check made payable to the State Bar Solo and Small Firm Practitioners Section to help defray the cost of the lunch. The board of directors will meet at 11:30 a.m.

Other Bars
Albuquerque Bar Association
Law Day Luncheon

The Albuquerque Bar Association will sponsor the annual Law Day Luncheon at noon, May 1, at the Marriott Uptown, 2101 Louisiana Boulevard NE, Albuquerque.

The keynote speaker is Chief U.S. District Court Judge David F. Levi of the Eastern District of California. A large turnout is expected so reservations should be made as soon as possible. Note that this is a pre-paid event. Tickets will not be sold at the door. Ticket prices are:

Individual Tickets: $35
Tables of 10: $350
Sponsorships: $300

Recognition of sponsors and donations will appear on the program and announced at the luncheon.

Register by noon April 25 online at www.abqbar.com; by e-mail at abqbar@abqbar.com; by mail toABA, 400 Gold SW, Suite 620, Albuquerque, NM 87102; by fax to (505) 842-0287; or call (505) 842-1151 or (505) 243-2615.

N.M. Defense Lawyers Association
2007 Outstanding Civil Defense Lawyer Nominations

Nominations are being accepted for the 2007 Outstanding Civil Defense Lawyer.

www.nmbar.org
The award will be presented at the 2007 DLA Annual Meeting on Oct. 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
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

CLE Dramatization
Ethics and Professionalism in the Afternoon

The New Mexico Law Review and Phi Delta Phi will present Ethics and Professionalism in the Afternoon, a CLE program (1.0 ethics and 1.0 professionalism CLE credits), from 3 to 5 p.m., April 20, at the UNM School of Law, room 4201. Noted actors and attorneys Charles Fisher and Peter Kierst will present dramatizations of classic ethical and professional dilemmas. Judge Michael D. Bustamante, Maureen Sanders, Bruce Hall, Professor Michael Browde, Professor Elizabeth Rapaport and Professor Norman Bay will serve on a panel and facilitate audience participation.

The cost is $20 for attorneys and free to students for 2.0 credit hours. Refreshments will be provided and parking permits will be provided April 20. To register contact Susan Tackman, New Mexico Law Review, (505) 277-4910, fax (505) 277-8342, or e-mail lawrev@law.unm.edu.

Women’s Law Caucus

The UNM School of Law Women’s Law Caucus will present the Justice Mary Walters Award Ceremony honoring Anne K. Bingaman at 6 p.m., April 19, in the UNM Student Union Building, Lobo Rooms A and B. For more information or to purchase tickets, call (505) 577-1628.

OTHER NEWS
Thirteenth Judicial District Attorney’s Office Change of Address

The 13th Judicial District Attorney’s Office in Los Lunas (Valencia County) will be moving April 9 to the Wells Fargo Bank building, 101 South Main Street, Suite 201, Belen, New Mexico 87002. Mailing address: PO Box 1919, Los Lunas, NM 87031. The phone number will be (505) 861-0311 and fax number will be (505) 861-7016.

Legal Services Corporation
Notice of Availability of Competitive Grant Funds for Calendar Year 2008

The Legal Services Corporation announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2008. A Request for Proposals, filing date, submission requirements and other information pertaining to the LSC grants competition will be available from www.ain.lsc.gov during the week of April 16. In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. The listing of service areas for each state and the estimated grant amounts for each service area will be included in Appendix-A of the RFP. Applicants must file a Notice of Intent to Compete (available from the RFP) in order to participate in the competitive grants process. Direct inquiries to Competition@lsc.gov.

N.M. Christian Legal Aid
Information and Training Opportunities

New Mexico Christian Legal Aid announces a free information and training opportunity on May 4 for lawyers and law students who are either providing or are interested in providing help for the poor and homeless.

The 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 roachlaw-firm@yahoo.com, for further information or to R.S.V.P.
Your Response Can Help Improve Our Judiciary

By Felix Briones, Jr.

Next year, we may set a record in the number of district court judges standing for retention. We have the potential to see as many as 84 district court judges (compared to 62 district judges in 2002) and four appellate court judges standing for retention on the 2008 ballot. To stay on the bench, these individuals must receive at least 57 percent voter approval.

That is next year, but there is a step that many attorneys throughout the state can take this year to help shape next year’s ballot and improve our judiciary. The New Mexico Judicial Performance Evaluation Commission will make recommendations to voters on whether to retain judges based on an objective performance in four main areas: legal ability; fairness; communication skills; and preparation, attentiveness, temperament and control over proceedings. This evaluation will be based, in part, on feedback we receive from you between April and September 2007.

In late April 2007, confidential surveys will be mailed by an independent research firm to attorneys who have had direct experience with district judges residing in the 3rd, 5th, 6th, 9th, 10th, 11th and 12th judicial districts. These districts encompass Chaves, Curry, De Baca, Doña Ana, Eddy, Grant, Harding, Hidalgo, Lea, Lincoln, Luna, Otero, McKinley, Quay, Roosevelt and San Juan counties.

In August 2007, confidential surveys will be mailed to attorneys who have had direct experience with district judges residing in the 1st, 2nd, 4th, 7th, 8th and 13th judicial districts. These districts encompass Bernalillo, Catron, Cibola, Colfax, Guadalupe, Los Alamos, Mora, Rio Arriba, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Taos, Torrance, Union and Valencia counties.

The surveys have from 12 to 20 questions, including both closed-ended and open-ended questions in which you have the opportunity to provide additional information. You may be asked to evaluate one or more district judges whom you have appeared before or with whom you have had professional contacts. You may also receive a reminder phone call from the independent research firm.

Your responses to these surveys can help us help a judge improve his or her performance on the bench. They can also give us the information we need to provide fair and accurate evaluations to the public.

This year we hope to improve the rate of response from attorneys, who in many cases are the most prepared to evaluate a judge’s overall performance. In 2005, the overall response rate from all attorneys on district court surveys was approximately 30 percent.

We are all busy. If you receive a survey or surveys, please take a few moments to fill them out. Your responses will be confidential. Your comments will not be provided to the judges. All individual responses will be destroyed. The JPEC will receive only the aggregate results from the independent research firm. Most importantly, you will be doing the public a service. The more responses we receive from you, the more accurate we can make our evaluations.

Thank you, in advance, for your help.

Felix Briones, Jr., chair of the New Mexico Judicial Performance Evaluation Commission, has been a member of the Commission since 1997. He has been in private law practice in Farmington since 1959.
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*G = General  
E = Ethics  
P = Professionalism  
VR = Video Replay  
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      www.trtcle.com |
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## Ceritorari Granted but not yet Submitted to the Court:

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<th>No.</th>
<th>Parties</th>
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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 April 16, 2007

Ceritorari Granted but not yet Submitted to the Court:

(Parties preparing briefs)
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**Certiorari Granted and Submitted to the Court:**

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

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OPINIONS

AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS
Gina M. Maestas, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fé, NM 87504-2008 • (505) 827-4925
EFFECTIVE APRIL 6, 2007

PUBLISHED OPINIONS

No. 24841  AD AD EIB-03-12, NM PETROLEUM v EIB (affirm)  
No. 25420  AD AD EIB-013-12, NM PETROLEUM v NMEIB (affirm)  
No. 25473  2nd Jud Dist Bernalillo CR-03-3460, STATE v R SOTO (affirm in part, reverse in part)  
No. 25448  11th Jud Dist San Juan CR-03-48, STATE v R BOUNDS (reverse and remand)  
No. 25453  12th Jud Dist Otero DM-01-301, HSD v M JACKSON (reverse and remand)  
No. 25476  2nd Jud Dist Bernalillo CR-04-466, CR-04-467, STATE v K. TRUDELLE (affirm)  
No. 24287  6th Jud Dist Hidalgo CV-03-38, FIRST NM BANK v FARMERS (affirm in part, reverse in part)  
No. 26400  6th Jud dist Grant CV-05-205, G ROARK v FARMERS (affirm in part, reverse in part)  
No. 25927  3rd Jud Dist Dona Ana CR-04-73, STATE v J BARRERAS (affirm)  

UNPUBLISHED OPINIONS

No. 26172  2nd Jud Dist Bernalillo CV-04-7248, M BRITTON v K ROGERS (affirm)  
No. 26736  9th Jud Dist Curry CR-03-343, STATE v J MOTEN (affirm)  
No. 27327  3rd Jud Dist Dona Ana DM-06-338 C WELCH v H BACA (dismiss)  
No. 26078  WCA-00-9092, M MONTOYA v CITY OF ABQ (affirm)  
No. 25448  11th Jud Dist San Juan CR-03-48, STATE v R Bounds (affirm)  
No. 26718  9th Jud Dist Curry CR-03-623 STATE v M GARCIA (affirm in part, reverse in part)  
No. 27230  11th Jud Dist McKinley DV-06-275, M YOUNG v R YOUNG (reverse)  
No. 27277  3rd Jud Dist Dona Ana CR-06-208, STATE v J TABLON (reverse)  

Slip Opinions for Published Opinions may be read on the Court’s Web site:  
## Clerk’s Certificate of Name, Address, and/or Telephone Changes

### Clerk Bulletin - April 16, 2007 - Volume 46, No. 16

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April 16, 2007 - Volume 46, No. 16  
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### Clerk Certificates

#### Clerk’s Certificate of Reinstatement to Active Status

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#### Clerk’s Certificate of Change to Inactive Status

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<th>City, State, Zip</th>
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<td>Paul A. Cooter</td>
<td>151 Gonzales Rd., #18</td>
<td>Santa Fe, NM 87501</td>
</tr>
<tr>
<td>Mark Craig Curley</td>
<td>2801 Dunham Rd.</td>
<td>Utica, NY 13501</td>
</tr>
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#### Clerk’s Certificate of Change to Active Status

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<tr>
<th>Name</th>
<th>Address</th>
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<tr>
<td>Herman Fierro</td>
<td>2306 Wrangler Court, SE</td>
<td>Rio Rancho, NM 87124-2377</td>
</tr>
<tr>
<td>James A. Gillespie</td>
<td>PO Box 3092</td>
<td>Houston, TX 77253-3092</td>
</tr>
<tr>
<td>Mark David Goodman</td>
<td>PO Box 25422</td>
<td>Albuquerque, NM 87125-5422</td>
</tr>
<tr>
<td>John T. Hardin</td>
<td>120 E. 4th St.</td>
<td>Little Rock, AR 72201-2808</td>
</tr>
<tr>
<td>John Joseph Harte</td>
<td>1333 New Hampshire Ave., NW</td>
<td>Washington, DC 20036</td>
</tr>
<tr>
<td>Ashley D. Jeffers</td>
<td>6254 Ravendale Lane</td>
<td>Dallas, TX 75214</td>
</tr>
<tr>
<td>JennisLynn E. Lawrence</td>
<td>505 S. Flagler Dr., Ste. 1500</td>
<td>West Palm Beach, FL 33401</td>
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<tr>
<td>Ellen W. Leitzer</td>
<td>2801 Quebec St., NW, Ste. 721</td>
<td>Washington, DC 20008</td>
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<tr>
<td>Stephanie Vyetto Lopez</td>
<td>61 North Cameron Street</td>
<td>Saratoga Springs, UT 84043</td>
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<tr>
<td>Colleen Michele</td>
<td>Clear McClure</td>
<td>12320 Barker Cypress, Ste. 600-205 Cypress, TX 77429</td>
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<tr>
<td>James P. Morgan</td>
<td>108 Roehl Rd., NW</td>
<td>Albuquerque, NM 87107</td>
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<tr>
<td>Paul S. Nathanson</td>
<td>3428 Calle del Monte, NE</td>
<td>Albuquerque, NM 87106</td>
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<tr>
<td>Ellen Radovic</td>
<td>5 Owen Ct.</td>
<td>Irvine, CA 92617</td>
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<tr>
<td>Susan K. Rehr</td>
<td>14 Demora Rd.</td>
<td>Santa Fe, NM 87508</td>
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<tr>
<td>Ashley H. Reymore-Cloud</td>
<td>c/o King &amp; Spalding</td>
<td>Atlanta, GA 30309</td>
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<tr>
<td>Warren F. Reynolds</td>
<td>209 Sunrise Bluffs Dr.</td>
<td>Belen, NM 87007</td>
</tr>
<tr>
<td>Joseph L. Rich</td>
<td>920 Riverview Dr., SE, Apt. 145</td>
<td>Rio Rancho, NM 87124</td>
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<tr>
<td>Kimberly A. Richards</td>
<td>1333 Balboa St., Ste. 1</td>
<td>San Francisco, CA 94118</td>
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<tr>
<td>Erin Elizabeth Schaden</td>
<td>4301 The 25 Way, NE</td>
<td>Albuquerque, NM 87109</td>
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<tr>
<td>Dennis J. Seitz</td>
<td>5448 Mira Sol Drive</td>
<td>Las Cruces, NM 88007-6956</td>
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<tr>
<td>William David Snead</td>
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<td>Washington, DC 20009</td>
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<tr>
<td>Ann Stromberg-Mahony</td>
<td>1809 La Cabra Dr., SE</td>
<td>Albuquerque, NM 87123</td>
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<tr>
<td>Patricia Aileen Suttmann</td>
<td>5650 Shadow Oaks Place</td>
<td>Kettering, OH 45440</td>
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<tr>
<td>Larry H. Sutton</td>
<td>315 Aspen Drive</td>
<td>Plainsboro, NJ 08536-3627</td>
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<tr>
<td>Robert L. Sweney</td>
<td>553 Purdue Ave.</td>
<td>St. Louis, MO 63130</td>
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<tr>
<td>Ryan Kinman Thompson</td>
<td>2935 Bell St.</td>
<td>Houston, TX 77003</td>
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<tr>
<td>Ellen Trapp</td>
<td>555 California St., Ste. 2000</td>
<td>San Francisco, CA 94104</td>
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<tr>
<td>Carol J. Vigil</td>
<td>PO Box 6100</td>
<td>Tescuque, NM 87574-6100</td>
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<tr>
<td>Harold G. Weinberg</td>
<td>1850 N. Central Ave., Ste. 300</td>
<td>Phoenix, AZ 85004</td>
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<tr>
<td>Jerry Neil Williams</td>
<td>PO Box 7001</td>
<td>Hobbs, NM 88241-7001</td>
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#### Clerk’s Certificate of Reinstatement to Inactive Status

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<tr>
<td>Tara Selver</td>
<td>3110 Judson St., PMB 60</td>
<td>Gig Harbor, WA 98335</td>
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#### Clerk’s Certificate of Withdrawal

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<tr>
<td>Judith A. Fahey</td>
<td>PO Box 415</td>
<td>Belleaire, OH 43906-0415</td>
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<tr>
<td>Rand L. Greenfield</td>
<td>747 Fairway Rd., NW</td>
<td>Albuquerque, NM 87107</td>
</tr>
<tr>
<td>Tracy D. Hill</td>
<td>Germani &amp; Riggle, L.L.C. 93 Exchange Street</td>
<td>Portland, ME 04101</td>
</tr>
<tr>
<td>Keshini Mary Ratnayake</td>
<td>9129 Sequoia Bay</td>
<td>Woodbury, MN 55125</td>
</tr>
<tr>
<td>Frank B. Zinn</td>
<td>928 Beech St.</td>
<td>East Lansing, MI 48823</td>
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### In Memoriam

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<tr>
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<tr>
<td>Norman D. Bloom, Jr.</td>
<td>PO Drawer 600</td>
<td>Alamogordo, NM 88310-0600</td>
</tr>
<tr>
<td>James David Durham, Jr.</td>
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<td>Amarillo, TX 79101-3113</td>
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<td>Daniel C. Lil</td>
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<td>William H. Mee</td>
<td>111 San Marcos Rd. East</td>
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Bar Bulletin - April 16, 2007 - Volume 46, No. 16 17
Greetings from the Chair:

Erika E. Anderson

As the new Chair of the Young Lawyers Division, it is with great enthusiasm and pleasure that I am able to address the accomplishments and goals of the Young Lawyers Division for 2007. The Young Lawyers Division had an exciting, busy and productive past year, and I am excited to continue this momentum in 2007.

Every year the Young Lawyers Division is committed to helping law students make the transition from law school to becoming a young lawyer. In January the Young Lawyers Division co-sponsored a resume party with the Older & Wiser Law Students. This is a program where law students work with practicing attorneys to help improve their résumés. The Young Lawyers Division has again co-sponsored a mentorship program with the University of New Mexico School of Law. The mentorship program matches law students with young lawyers who have similar interests and is a way for law students to get guidance and advice from young attorneys. In February the Young Lawyers Division offered a mock interview program. The mock interview program is a program where young lawyers interview law students and provide constructive feedback on their interviewing skills. For the past couple years, the Young Lawyers Division has also offered $3,000 summer scholarships to two law students who show an interest in working in the public sector. The scholarships allow law students to pursue a fellowship in the public sector that they might not otherwise be able to do because of funding concerns.

In November the Young Lawyers Division will again sponsor “Bridge the Gap,” a CLE that focuses on topics of interest to a new lawyer like “How to take a Deposition” or “Discovery 101.” The Young Lawyers Division also has a commitment to doing community service projects throughout New Mexico. Every year the Young Lawyers Division provides funding for the Homeless Legal Aid Clinic in Las Cruces and Albuquerque. The Young Lawyers Division also hosts an annual call-in program for Law Day in Las Cruces, Roswell, Farmington and Albuquerque. Last year the Young Lawyers Division started the Junior Judges program. This is a program that places young lawyers into elementary schools to help empower students to make smart choices when it comes to cheating, bullying and other potentially negative behavior. The Young Lawyers Division also started the Dismas House Project. Dismas House is a transitional living program for individuals who are reentering the community after being incarcerated. The Dismas House project is currently seeking volunteer attorneys to help teach programs in family law, criminal law, landlord/tenant law, and the restoration of diver’s licenses.

This year the Young Lawyers Division is interested in expanding its Junior Judges program and adopting a new community service project. The Young Lawyers Division hopes to expand the Junior Judges program to Santa Fe and Las Cruces. The Young Lawyers Division is also planning to introduce an American Bar Association Young Lawyer program called “Choose Law: A Profession for All” into the Albuquerque public junior high schools and high schools. Choose Law is a program that encourages students, especially students of color, to choose law as a profession. It also educates students on what steps they need to take early in their education if they intend to eventually apply to law school.

The Young Lawyers Division has already hosted two brown bag lunches this year. These brown bag lunches are an excellent way for young lawyers to meet the judges and to learn their expectations. The first brown bag lunch was held on March 15 in Albuquerque with several federal court judges. The second one was held on March 27 in Mescalero, New Mexico. In addition to the great programming and having Justice Sandra Day O’Connor as the keynote speaker, the State Bar is offered a $175 rebate for the first fifty young lawyers who register for the annual convention! The

continued on page 2
In Brief

Young Lawyers Division will hold its annual meeting on July 14, 2007 at 10:00 a.m. Any young lawyer who wants to get involved is encouraged to attend this meeting.

Many of the Young Lawyers Division Board members continue to have funded leadership positions with the American Bar Association. Morris (Mo) Chavez is the Minorities in the Profession Chair. Briana Zamora is on the National Conferences Team and is also a delegate for the National Hispanic Bar Association. Roxanna Chacon and I are on the Affiliate Assistance Team. As Affiliate Assistance Team members, Chacon and I recently presented at the Rocky Mountain regional conference in Las Vegas, Nevada on Increasing Diversity Awareness in Your Bar. Martha Chicoski also received one in ten Minorities in the Profession scholarships.

Finally, most of our recent elections have been contested, representing a strong interest among young lawyers to serve on the Young Lawyers Division Board. I want to welcome Martha Chicoski, Nasha Martinez and David Lutz to the Board. The energy and new ideas from these new Board members will make our Young Lawyers Division even stronger.

The Young Lawyers Division is a mandatory bar with about 1,400 members. It is an exciting division to be a part of, and as the Chair, I want to encourage anyone who wants to get involved in any of these existing projects, or if anyone has an idea for a new project, to contact me or attend one of our upcoming events.

Region II Update - Santa Fe

Brent Moore

The Young Lawyers Division Region II, which includes the Santa Fe area, recently co-hosted an event called Thirsty Thursdays. This event was an opportunity for young lawyers in the area to socialize with other attorneys outside of work. The event was very successful and attracted about thirty lawyers from the area. Region II hopes to co-host another Thirsty Thursday later this year. Region II is also working hard to implement the Junior Judges and Choose Law programs into the Santa Fe schools. The Junior Judges program is designed for elementary schools and is a program that teaches students how to make smart decisions. The Choose Law program is designed for junior high and high schools. This program encourages students, especially minority students, to choose law as a profession.

Region III Update - Las Cruces

Roxanna Chacon and David Lutz

The young lawyers in Region III put on an annual Law Day event which includes going into local schools to provide education about the legal profession, man a legal services call in clinic once per year, host a breakfast with local judges and also assist with providing pro bono legal services to the elderly and others through the State Bar’s referral programs and through private referrals.
If you have not appeared in Southeastern New Mexico's Fifth Judicial District Court (comprising Chaves, Eddy and Lea counties) recently, you are in for a few surprises. The Fifth has had an extreme makeover in that a majority of the District’s nine judges have been appointed or elected within the past two years and stood for general election last November. In order of seniority, the new Fifth Judicial District Judges are: the Honorable Freddie J. Romero, the Honorable Ralph D. Shamas, the Honorable Jane Shuler Gray, the Honorable Steven Bell and the Honorable Thomas Rutledge.

While the judges’ individual paths to the bench are unique in each case, they have many things in common. All of the judges were and are respected trial lawyers. Among the five new judges, they have hundreds of jury and bench trials and countless arbitrations and mediations. They all also have a broad base of experience and background in numerous areas of the law, as well as expertise in many areas, making them well qualified for their role as judges in courts of general jurisdiction. Let me help you get to know them better.

The Honorable Ralph D. Shamas. When Judge William P. Lynch decided to leave the Fifth Judicial District Court bench to take a position as a U.S. District Magistrate Judge, Ralph Shamas felt compelled to seek his judiciary position out of a deep sense of public service, even though it meant leaving behind a very successful law practice. After he applied, Judge Shamas was selected by the non-partisan judicial selection committee of his peers as the only candidate to be recommended to the Governor for appointment to the position. Governor Bill Richardson appointed Shamas to the Division VI seat in June of 2005. Judge Shamas was born and raised in Roswell. He attended undergraduate at the University of New Mexico and law school at the University of Iowa School of Law. After law school, he returned to Roswell to practice law, where he was engaged in private practice for 33 years before deciding to become a judge. He is a former member of the American Association of Trial Lawyers and the New Mexico Trial Lawyers Association where he was on the Board of Directors in 1984 and 1985. His areas of practice included civil litigation and criminal law. Judge Shamas had no opponent in last November’s election and now holds his seat on a retention basis. Judge Shamas hears cases primarily in Chaves County where his chambers are located.

The Honorable Jane Shuler Gray. In 2006 Judge Shuler Gray was appointed by Governor Bill Richardson to fill Position V of the Fifth Judicial District bench, a seat formerly held by her brother, James L. Shuler. Judge Gray was in practice for 30 years before her appointment. She became the first and is currently the only female judge in the history of the Fifth Judicial District. She is a native New Mexican who was born and raised in Carlsbad. She attended the University of New Mexico for her undergraduate work and was one of only eight women in a class of 150 at Pepperdine University School of Law when she graduated in 1977. Judge Shuler Gray's career has been characterized by service to the bar and to others, including serving as a Commissioner on the State Bar of New Mexico Board of Bar Commissioners and on numerous boards and organizations focused on the needs of children. Judge Shuler Gray is also a nurse, having obtained her nursing degree after nearly 20 years of practice as an attorney. Judge Shuler Gray won a contested primary and a general election last year and now holds her seat on a retention basis. Judge Shuler Gray hears cases primarily in Eddy County where her chambers are located.

The Honorable Steven L. Bell. Judge Bell was appointed by Governor Richardson as a District Judge with the creation of the Division X Position. During his 28 years in private practice, he practiced entirely at one firm in Roswell where he represented the State of New Mexico, the City of Roswell, the City of Carlsbad and numerous other metropolitan and municipal entities, as well as local, regional and national businesses. In addition to his work as an attorney, he was a board member for numerous organizations, including the United Way of Chaves County. He has been listed as one of the “Best Lawyers in America” since 2001. Judge Bell attended undergraduate school at Texas Tech University and Law School at the University of Texas School of Law. Judge Bell won a contested election in November and now holds his seat on a retention basis. Judge Bell hears cases primarily in Eddy County where he has his chambers.

The Honorable Thomas A. Rutledge. Judge Rutledge is the only judge of the new judges in the Fifth Judicial District who was not appointed by Governor Richardson. Division IX is a new position created by the legislature in 2006. Thomas Rutledge won the seat in the November 2006
Meet the Board

Erika E. Anderson

Erika E. Anderson is an associate attorney with Long, Pound & Komer, P.A. in Santa Fe, New Mexico. She does civil litigation and works primarily on cases involving civil rights, employment, business and personal injury law. Anderson received her undergraduate degree from the University of Colorado in 1992, her masters in counseling from the University of New Mexico (UNM) in 1995 and her J.D. from the UNM School of Law in 2001 where she was on the dean's list and honor roll and received the A. McLeod Award for Skill in Advocacy. Anderson clerked for eight judges in the Fifth Judicial District, which encompasses Southeastern New Mexico, and for the Honorable Gene Franchini and the Honorable Richard C. Bosson on the New Mexico Supreme Court. She is a member of the U. S. District Court for the District of New Mexico and the U. S. Court of Appeals for the Tenth Circuit. She has served on the New Mexico Young Lawyers Division since 2003 and was elected the Chair for 2007. She has been nationally selected to be a member of the American Bar Association Young Lawyers Division Affiliate Assistance Team, where she provides support to other affiliates throughout the country and assists with programming for national conferences. She is also on the Board of Directors for the First Judicial District Bar Association in Santa Fe and will be its president in 2008. In October of 2006, she was named “40 Under 40” by the New Mexico Business Weekly as an individual who is under forty years of age making positive contributions to the profession and community. Prior to becoming a lawyer, Anderson worked for four years as a counselor for adolescents and their families.

Dustin K. Hunter

Dustin K. Hunter is a name partner in the Roswell, firm of Kraft & Hunter, LLP. He practices in a wide range of civil and corporate matters, including family law, business litigation, insurance coverage and litigation, contracts and personal injury. Dustin grew up in a small town in Southern Oklahoma and attended undergraduate at Cameron University on a full academic and leadership scholarship, graduating magna cum laude with a B.A. in Political Science. Dustin obtained his Juris Doctorate from Texas Tech University School of Law, graduating magna cum laude. He also attended law school on a full academic and leadership scholarship, was a member of the Texas Tech Law Review and was named to the Order of the Coif. Dustin currently serves as a Board of Director on the New Mexico Young Lawyers Division for Region III, which encompasses Southeastern New Mexico, was recently appointed as a member of the State Bar of New Mexico's Quality of Life Committee and also recently appointed as the City Hearing Officer for the Motor Vehicle Seizure, Forfeiture and Violent Crimes Ordinance for the City of Roswell. He is also a proud 2006 graduate of the Roswell Chamber of Commerce “Leadership Roswell” program.

David Lutz

David Lutz, Region IV Director, was born in Las Cruces and grew up in Albuquerque and Las Cruces. He graduated from Oñate High School in 1993 and graduated from Claremont McKenna College with a B.A. in History in 1997. From there, David attended law school at Cornell Law School where he earned his JD with a Specialization in International Legal Affairs in 2000. After law school, David worked at Baker Botts, LLP in Dallas, Texas in the firm’s Litigation Department. He returned to New Mexico in 2004 and is currently a partner at Martin, Lutz, Roggow, Hosford, & Eubanks, P.C. in Las Cruces where his practice is general with an emphasis on commercial litigation. David announces that there will be a brown-bag lunch for young lawyers with Judge Murphy on March 15. He is also looking to implement the Junior Judges program here in Las Cruces in the near future and seeks volunteers in that regard. For more information or to volunteer, please contact at David at dplutz@osogrande.com.

Brent Moore

Brent Moore is the Chair-Elect of the Young Lawyers Division. He represents Region 2 of the Young Lawyers Division, which covers the First, Fourth, Eighth, and Tenth Judicial Districts. Mr. Moore is also the fellowship coordinator for the YLD Summer Fellowship program and a Board member of the Natural Resources, Energy, and Environmental Law Section of the State Bar. Currently, Mr. Moore is the Deputy Superintendent for the Insurance Division of the New Mexico Public Regulation Commission. Mr. Moore is a 1994 graduate of Texas Christian University and a 1998 graduate of the University of New Mexico School of Law in 1998. After graduating from law school, Mr. Moore participated in the Legal Honors Program for the U.S. Department of Housing and Urban Development in Washington, D.C. Upon completing the program, he was Agency Counsel for the Navajo Nation Environmental Protection Agency and an Assistant General Counsel for the New Mexico Environment Department.
S. Carolyn Ramos

Carolyn is a shareholder and director with the law firm of Butt Thornton & Baehr PC in Albuquerque, New Mexico where she practices primarily in the defense of trucking, medical malpractice, product liability, and other personal injury cases. She was born and raised in New York City and earned her bachelors degree from Middlebury College in 1993. From there, she became a Teach for America Corps Member, teaching bilingual elementary school in Washington, D.C. In 2000, Carolyn earned her juris doctorate from the University of New Mexico School of Law where she was the recipient of the Lewis Sutin Award for Excellence in Trial Advocacy, the National Association of Woman Lawyers Award and Honors in Clinical Law. She is Secretary/Treasurer of the New Mexico Defense Lawyers Association, Immediate Past Chair of the Young Lawyers Division, a member of the New Mexico and National Hispanic Bar Associations, American Bar Association, Defense Research Institute, Supreme Court Rules of Evidence Committee and a panelist on the New Mexico Medical Review Commission. Carolyn is also a member of the first graduating class of the State Bar of New Mexico Lawyers’ Leadership Training Institute. Most notably, Carolyn is mom to two-year old Santiago and wife of Albuquerque, financial planner Chad Cooper.

Joseph A. Sapien

Joseph is a native New Mexican born in Albuquerque, New Mexico and raised in Bernalillo, New Mexico. Joseph earned his undergraduate degree in finance from the Anderson Schools of Management at the University of New Mexico (UNM) in 1990 graduating cum laude. After college, he was employed with the State Farm Insurance Companies at the Sunland Regional Office in Tempe, AZ. He returned to Albuquerque in October 1997 working with State Farm in the newly formed Casualty/Litigation claim unit. Joseph entered the University of New Mexico School of Law (UNMSOL) in the fall of 1999 and earned his Juris Doctor in May 2002. After passing the bar exam he began his legal career in September 2002 with Butt Thornton & Baehr, P.C. working in the areas of general liability, products liability, workers compensation, and trucking and transportation. In November 2005 Joseph and his brother Phillip G. Sapien formed Sapien Law LLC. The firm practices in the areas of personal injury, criminal defense, wrongful death, workers compensation, contract disputes and formation, business law, insurance claim settlements and estate planning. Joseph is a member of the American Bar Association (ABA), a member of the Executive Committee and a board member of the New Mexico Hispanic Bar Association (NMHBA), member of the Hispanic National Bar Association (HNBA), a member of the Albuquerque Bar Association, member of American Association of Justice (AAJ), board member of the Solo and Small Firm Practitioners Section and is serving on the board of the Young Lawyers Division, At Large Position #3 until his terms ends in late 2007.

Joseph F. Sawyer

Joseph F. Sawyer is a native New Mexican and Assistant District Attorney working in the Eleventh Judicial District in Farmington. He is a graduate of the University of New Mexico (1995) and the University of Notre Dame Law School (1999). Mr. Sawyer and his wife Ana Lucia have two little girls: Natalia, age 2 1/2 and Mariana, age 1 year.

Briana Zamora

Briana is a native New Mexican. She graduated with a Bachelor of Arts in Psychology and Government from New Mexico State University in 1996 and from the University of New Mexico School of Law in 2000. She is an Associate at Butt Thornton & Baehr PC where she practices primarily in the areas of workers compensation, personal injury defense and criminal defense. Previously, she worked as an Assistant Public Defender, Assistant Attorney General and Workers’ Compensation Mediator. Briana currently serves on the Board of Directors of the New Mexico Young Lawyers Division, the New Mexico Hispanic Bar Association and Dismas House of New Mexico. In addition, she is the National Representative of the Hispanic National Bar Association (HNBA) for the Young Lawyers Division of the American Bar Association. Briana is the co-chair of the New Mexico Young Lawyer’s Division Mock Interview Program and the “Tools of Success” Dismas House Program.
Young Lawyers Division

Junior Judges and Choose Law: YLD’s Ongoing Commitment to Community Service

Martha Chicoski

Community service has always been a top priority for the New Mexico Young Lawyers Division, and this year is no different from any other. Junior Judges and Choose Law are only two examples of YLD’s dedication to giving back to the community. The purpose of Junior Judges is to teach 3rd, 4th and 5th graders to judge for themselves what the right thing to do is in situations such as cheating, bullying, gangs and weapons, and drugs and alcohol. There is no cost to the schools. All that is needed by the school is a VCR and a willingness to have students engage in this interactive program about the potential consequences of misbehaving. The curriculum is taught in approximately one-hour segments.

Last year, during its inaugural year in this state, fifteen Albuquerque public elementary schools participated, with forty-five attorney volunteers generously donating their time to this new endeavor. Junior Judges was a tremendous success thanks to these attorneys who took time from their busy schedules to talk with the students about making the right decision when faced with difficult peer situations. The YLD Board is currently engaged in efforts to bring Junior Judges to other areas in the state, such as Santa Fe, Farmington, and Las Cruces.

This year’s program took place in Albuquerque public schools on Friday, April 13th. At the time this article was written, approximately sixty classes in eighteen schools APS elementary schools had expressed interest in the program. Junior Judges will be held in Las Cruces at the end of May.

Switching gears to older students, this year’s ABA/YLD public service project is entitled Choose Law: A Profession for All. The purpose of Choose Law is to educate junior high and high school students about the legal profession, and to encourage students of color to consider a career in law. The ABA/YLD is committed to increasing diversity within the legal profession by assisting and encouraging students of color to become attorneys.

Choose Law is composed of two motivational tools: a video and a written guide. The video features attorneys and judges of color discussing some of the challenges they faced, some of their more rewarding experiences as attorneys, and the importance of diversity in the profession. Among those included in the video are our very own past YLD-chairs Morris Chavez and Carolyn Ramos! The written guide is designed to provide students with a description of the legal profession in a simple and straight-forward manner, as well as describe the steps needed in order to become an attorney.

Members of the YLD Board are currently working with the New Mexico Hispanic Bar Association and UNM School of Law on ways to bring Choose Law into New Mexico schools. For more information about Choose Law, please contact either Briana Zamora at bhzamora@btblaw.com, or Martha Chicoski at mmchicoski@gmail.com.

The YLD Board is excited to continue its tradition of providing quality public service programs to our communities. We truly appreciate the time and dedication that so many fellow attorneys give to all YLD-sponsored programs to help make them successful.

A Word From Our ABA/YLD District 23 Representative, Liz HIII

Greetings. As many of you know, the American Bar Association (“ABA”) is a very large professional organization that provides law school accreditation, continuing legal education, information about law, programs to assist lawyers and judges in their work, and initiative to improve the legal system for the public. As a new lawyer, an organization of this magnitude may seem overwhelming and possibly irrelevant to your everyday life. Well, I’m here to tell you that the American Bar Association Young Lawyers Division (“YLD”) helps bridge that gap while providing a wealth of opportunities that you can apply to your life and your practice regardless of where you live or what you do.

The YLD mission is to further the Association’s goals and purposes, and thereby to serve the community and the legal profession; to represent young lawyers in the Association, and to represent the Association to young lawyers; to help shape the policies and priorities that affect young lawyers and the legal culture in which they practice; and to create a deliberative forum for the exchange and expression of young lawyers’ views, and a voice to advocate those views. It accomplishes its mission through the combined efforts of the Assembly, Council, Executive Board, committees, special projects, liaisons to other Association entities, and the Division’s affiliated state and local bar young lawyer groups. The Division’s meetings and conferences include several different kinds of programming - public service, affiliate outreach, bar leadership, member service, professional development, and continuing legal education - that benefit both affiliate organizations, and individual young lawyers. Its committee structure is extensive, with over 30 substantive and standing committees that generate programs

continued on page 7
general election and took office the next month. Judge Rutledge graduated from the University of New Mexico in 1970 and then served in the U.S. Army, including time in the Republic of Viet Nam from 1970 to 1972. He then attended law school at the University of New Mexico School of Law and graduated in 1975. After practicing in Albuquerque for a couple of years, he moved to Carlsbad, where he served as an Assistant District Attorney for seven years before running and being elected the Fifth Judicial District Attorney in 1985, a position which he retained until December of 2004 when he stepped down to teach criminal justice at the College of the Southwest until December 2006. Judge Rutledge served and continues to serve the community through numerous board memberships including the Carlsbad Boys & Girls Club and the Carlsbad Riverwalk Recreation Complex. Judge Rutledge holds his seat on a retention basis. He hears cases primarily in Eddy County where he has his chambers.

I had an opportunity to ask each of the judges what advice they would give to young lawyers appearing before them. Their top five suggestions are set out below.

**TOP FIVE LIST OF THINGS YOUNG LAWYERS SHOULD DO:**

1. **Spend Time on Your Written Product.** Judges read everything that is filed.

2. **Be As Prepared As You Can Be.** Being prepared is the touchstone of a good lawyer.

3. **Do Not Be Afraid to Ask for Help or Guidance.** Several judges recounted stories where advice was given to them by a senior judge after a hearing or trial and the invaluable lessons they learned though those conversations. They want to continue this with the next generation’s lawyers.

4. **Treat Other Attorneys (and Everyone Else) With Respect.** Although ours is an adversarial system, you do not have to be adversarial or personal with the opposing attorney. One judge explained that “I have never seen a single lawyer gain an advantage by unprofessional conduct, but the reverse is not true.”

5. **Protect your Reputation at All Costs.** Credibility with the Court and with other lawyers is the most important asset that you have as a lawyer. Young lawyers should strive to always be honest and straightforward, deal fairly with other lawyers, keep your word and cooperate. As one judge explained, “lawyers’ ethical rules are baselines, not goals.”

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**ABA/YLD Report continued from page 6**

on topics as diverse as health care law, family law, dispute resolution, and programs that promote child advocacy and protection, minorities in the profession, ethics, law practice management, and women in the profession.

This year, the YLD will present the “101 Practice Series” as its Member Service Project. The focus is on the lawyers that are new to our profession and who are in their first three years of practice. The goal is to provide these new lawyers with basic training in both substantive and practical aspects of a law practice.

The Public Service Project is Choose Law. The goal is to encourage individuals of color to become attorneys through use of a new video, a written curriculum, a website, and attorney volunteers. The students will be taught the importance of the legal profession and how the law affects all aspects of their lives. They will also be taught that the legal profession is an honorable profession and that attorneys of color have played a crucial role in its development. Finally, the students will be taught that there are wonderful and diverse opportunities for individuals pursuing legal careers, but that they must begin now by obtaining a good education, making good grades, and staying out of trouble if a career in the law is what they truly desire.

In sum, the YLD provides its members with a wealth of personal and professional opportunities—networking, committee participation, public service, educational courses, useful newsletters and national conferences, to name a few.

Membership in the YLD is open to all members of the ABA under the age of 36 years or admitted to practice less than five years. There are no membership dues, but the ABA membership is required. If you are an ABA member, and under the age of 36 or admitted to practice less than five years, you are automatically a member of the YLD.

The next ABA YLD conference will be held this May in Montreal, Canada. There is no better time than now to get involved. If you are interested, or just want more information, simply contact yld@staff.abanet.org, myself, or your local affiliate Chair Erika Anderson.

On behalf of the ABA YLD, I hope you will take advantage of the ABA YLD and all it has to offer. The best to you in all your future endeavors.

Warmest Regards,

Liz Hill
ABA YLD District 23 Representative
travilizhill@cox.net
The YLD would like to extend its sincerest thanks to the following individuals who took time out of their schedules to participate in the Junior Judges Program:

- Erika Anderson
- Angela Arellanes
- Amy Bailey
- Kimberly Bell
- Rachel Berenson
- Alissa Berger
- Martha Chicoski
- Beth Collard
- Tamara Couture
- JoHanna Cox
- Michael Duran
- Darin Foster
- Julie Gallardo
- Glenna Hayes
- Scott Jaworski
- Heather Kenney
- Jane Laflin
- Carolyn Ramos
- Clement Rogers
- Laura Sanchez
- Hon. Frank Sedillo
- Denise Soto Hall
- Nathan Sprague
- Jennifer Wernersbach
- Paul Yarbrough
- Briana Zamora

Many thanks also go out to the Judges who offered their time and wisdom to young lawyers at the most recent YLD Judicial Brown Bag Luncheons in Albuquerque and Las Cruces.

**From the United States District Court:**
- The Honorable James O. Browning
- The Honorable Judith C. Herrera
- The Honorable Lorenzo F. Garcia
- The Honorable William P. Johnson

**From the Third Judicial District Court:**
- The Honorable Michael Murphy
- The Honorable James Martin

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**Announcements**

The Young Lawyers Division will be holding its annual meeting on Saturday, July 14, 2007 at 10:00 A.M. during the State Bar’s Annual Convention at the Inn of the Mountain Gods in Mescalero. The YLD will also host a reception on Friday, July 13, 2007 from 5:30 - 7:00. Location to be announced. All members and guests are encouraged to attend.
DISCIPLINARY NO. 07-206-510  
IN THE MATTER OF F. DOUGLAS MOELLER, ESQ., AN ATTORNEY LICENSED TO PRACTICE BEFORE THE COURTS OF THE STATE OF NEW MEXICO

March 16, 2007

FORMAL REPRIMAND

You are before the Disciplinary Board as a result of your conduct in a domestic relations proceeding in which you represented Dovie Carillo and Joseph F. Sawyer, Esq. represented Mark Allenbaugh, Ms. Carillo’s former husband.

After a hearing in that matter on April 14, 2006 before Hon. Sandra A. Price, Mr. Sawyer suggested that the parties go into a conference room to try to negotiate a settlement. In response to that suggestion, you stated: “If we go into the conference room someone will get their butt kicked.” When Mr. Allenbaugh and his sister asked you if you were threatening Allenbaugh, you replied: “yes.” In a prior telephone conversation with Allenbaugh, you told him that his comments would get his nose bent and that you were a “black belt.” Although this incident did not result in formal discipline, it is nevertheless relevant to our consideration here.

Your conduct in this matter was intended to and did in fact disrupt a tribunal in violation of Rule 16-305(C) and was prejudicial to the administration of justice in violation of Rule 16-804(D). Moreover, these facts support the conclusion that you have violated Rule 16-804(H) regarding your fitness to practice law. The additional fact that you do not understand the inappropriateness of your conduct and behavior adversely reflects on your fitness to practice law as well.

The purpose of a civilized society is to resolve disputes in a non-violent manner. In our society such dispute resolution is addressed by our judicial system. As a member of our legal system, you should be an advocate of peaceful resolution and not a proponent of physical violence. While we fully appreciate the tensions and emotions that flow in family law matters, we, as lawyers, must rise above the fray and encourage peaceful resolution.

We are concerned, since you appear not to understand how and why your conduct was inappropriate for a professional practicing law, about how you will avoid duplication of such conduct in the future. If such conduct is repeated, serious consideration will be given to the question of whether you are fit to continue holding a license to practice law.

The foregoing violations are aggravated by the fact that you are an experienced attorney having been admitted to practice in New Mexico in 1978, and that this is the second time that you have threatened Mr. Allenbaugh with physical violence.

You are reminded that the license to practice law is a conditional privilege and that it is the duty of every recipient of that privilege to conduct himself at all times both professionally and personally in conformity with the standards imposed upon members of the bar as conditions for that privilege.

It is hoped that this formal reprimand will satisfy the primary concern of the disciplinary process, the protection of the public. This Formal Reprimand will be filed with the Supreme Court in accordance with Rule 17-206(D) and will remain part of your permanent records with the Disciplinary Board where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin.

You are further required to take and pass the Multi-state Professional Responsibility Examination on the next date at which it is offered, which is August 10, 2007. The deadline for registration is July 3, 2007.

The costs of this action in the amount of $700.58 are assessed against you and should be paid to the Disciplinary Board within thirty days.

The Disciplinary Board

Mike G. Paulowsky, Chair
OPINION

Edward L. Chávez, Chief Justice

1. Defendant was sentenced in two separate cases and ordered to serve the sentences in each case consecutively. While on probation during the first sentence, Defendant, by his own admission, violated conditions of probation. By the time the sentencing hearing was held on the probation revocation, Defendant had completed serving the first of the two sentences. Notwithstanding, the district court revoked Defendant’s probation under both sentences. On appeal, Defendant contended that the district court committed two errors by: (1) revoking probation under the first sentence, which had expired; and (2) revoking his probation under the second sentence, based on violations occurring before the second sentence commenced. See State v. Lopez, 2006-NMCA-079, ¶ 1, 140 N.M. 1, 138 P.3d 534. The Court of Appeals unanimously agreed with Defendant’s first argument. See id., ¶¶ 9, 13. However, a majority disagreed with Defendant’s second argument, holding that the district court had authority to revoke Defendant’s probation under the second sentence under its broad power to grant clemency and structure rehabilitation. Id., ¶ 7. The dissent disagreed because the violation occurred before service of the second sentence commenced. See id., ¶¶ 15-18. We affirm the majority opinion of the Court of Appeals because, until consecutive sentences have been fully served, a defendant remains under the jurisdiction of the district court.

I. BACKGROUND

2. Defendant was indicted on the same day in two separate cases. In CR 99-502, Defendant was indicted on four felonies, and in CR 99-500, Defendant was indicted on three felonies and one misdemeanor. Defendant pled guilty to all charges. 3. Defendant was sentenced in both cases on the same date. During the hearing, the court announced the following sentence:

   “It is the order of the court that the defendant be committed to the custody of the Department of Corrections on each of these fourth-degree felonies for a period of eighteen months followed by the mandatory parole. That comes out to ten and a half years. In addition, for the petty misdemeanor, there is an additional six months, which would bring it up to a total of eleven years, if I’ve calculated correctly, each to be followed by the mandatory parole. The court is going to suspend all but three years—three years to be served. The remainder, he will be put on probation for a period of five years concurrently with his parole.

The district court structured the sentence as follows. In CR 99-502, Defendant was sentenced to a total of six years incarceration followed by one year of parole. The court suspended three years, placing him on probation for those three years and running his probation concurrent with his parole sentence. In CR 99-500, Defendant was sentenced to five years incarceration, but the court suspended the entire sentence and placed Defendant on probation for five years. The order suspending Defendant’s sentence in CR 99-502 specified that the sentence in CR 99-500 would be served consecutively to CR 99-502. The conditions of probation in each case were substantially the same. In both cases, the district court ordered Defendant to comply with standard conditions of probation, although in CR 99-502, the court also required Defendant to pay restitution and successfully complete a drug treatment program.

4. While on probation in CR 99-502, the State filed petitions to revoke Defendant’s probation in both cases after discovering Defendant had committed multiple probation violations including testing positive for marijuana use, failing to consistently attend counseling, having alcohol in his possession, and committing the crime of battery against a household member. Defendant admitted violating probation in both cases.

5. During sentencing for the probation violations, the court revoked Defendant’s

1 There are fourteen standard conditions of probation. In relevant part, the conditions prohibit a probationer from: (1) violating the laws of New Mexico and endangering the person or property of another, (2) possessing or consuming alcoholic beverages or drugs. Probationers also must report any arrests within forty-eight hours of the incident. N.M. Corr. Dep’t Prob. & Parole Div., Standard Probation Supervision, http://corrections.state.nm.us/parole/std_supv.html (last visited Feb. 23, 2007)
probation in CR 99-502 and re-imposed his original six-year sentence. In CR 99-500, the court revoked Defendant’s probation and sentenced Defendant to his original five-year term of imprisonment followed by one year of parole. However, the court suspended two and one half years of that sentence and placed Defendant on supervised probation.

[6] On appeal, the Court of Appeals held that the revocation of Defendant’s probation in CR 99-502 was improper because the district court had no jurisdiction to revoke Defendant’s probation after the sentence expired. Lopez, 2006-NMCA-079, ¶ 9. However, the Court of Appeals, in a majority opinion, upheld the district court’s revocation of Defendant’s probation in CR 99-500. Id. ¶ 7. The court noted that under New Mexico case law a district court retains jurisdiction to revoke probation “at any time subsequent to the entry of judgment and prior to the expiration of the sentence.” Therefore, it made no difference that Defendant had not yet begun serving his second sentence. Id. ¶ 6 (quoting State v. Padilla, 106 N.M. 420, 422, 744 P.2d 548, 550 (Ct. App. 1987)). We granted Defendant’s petition for a writ of certiorari to answer whether a court has authority to revoke the second of two probationary sentences when the conduct which violated the conditions of probation occurred prior to the date the second sentence was to commence. We answer the question in the affirmative and affirm the Court of Appeals.

II. DISCUSSION

A. The District Court Had Authority to Revoke Defendant’s Probation in CR 99-500.

[7] “Probation assumes that the best interests of the public and the offender will be served” and also that “the offender can be rehabilitated without serving the suspended jail sentence.” State v. Baca, 90 N.M. 280, 282, 562 P.2d 841, 843 (Ct. App. 1977). “The suspension or deferment of a sentence is not a matter of right but is an act of clemency within the trial court’s discretion.” State v. Follis, 81 N.M. 690, 692, 472 P.2d 655, 657 (Ct. App. 1970). Thus, probation is a “matter of favor,” Burns v. United States, 287 U.S. 216, 220 (1932), providing a defendant with the “opportunity to repent and reform.” Coffey v. Commonwealth, 167 S.E.2d 343, 346 (Va. 1969). But, a defendant on probation is still convicted of a crime and “has no contract with the court.” James v. United States, 140 F.2d 392, 394 (5th Cir. 1944) (Waller, J., specially concurring).

[8] The Legislature has granted district courts the power to revoke probation when a probation condition is violated because rehabilitation, which is the primary goal, is not being achieved. See NMSA 1978, § 31-21-15 (1989) (providing that “[a]ny time during probation” the court may issue an arrest warrant or notice to appear for a defendant to answer a charge of a probation violation, and if the violation is established, the court may revoke probation); State v. Rivera, 2004-NMSC-001, ¶ 24, 134 N.M. 768, 82 P.3d 939 (stating that rehabilitation is the primary goal of probation). District courts also have authority to revoke probation prior to the commencement of the probationary term for violations occurring while a defendant is incarcerated. See Padilla, 106 N.M. at 421, 744 P.2d at 549.

[9] In Padilla, the district court sentenced defendant to two years probation following his release from custody. While the defendant was serving jail time, he did not return from work release. As a result, the defendant’s probation was revoked. The defendant argued that because he was not yet serving his probation term, the district court did not have the authority to revoke his probation. Id. The Court of Appeals disagreed, first holding that “[t]he sentencing court retains jurisdiction to revoke a suspended sentence for good cause shown at any time subsequent to the entry of judgment and prior to the expiration of the sentence.” Id. at 422, 744 P.2d at 550 (emphasis added). The court stated that a defendant who violates his probation while serving his jail sentence should be treated no differently than a defendant who completes serving his sentence and then commits a violation while on probation. Id. Thus, the court held that a sentencing court’s power to revoke probation “is not impaired by the fact that the person convicted is still serving prison or jail time and has not yet begun his probationary period.” Id.

[10] In cases following Padilla, the district court’s broad authority to revoke probation in other contexts has also been upheld. In Rivera, we upheld the district court’s authority to revoke probation while a defendant’s appeal was pending. Rivera, 2004-NMSC-001, ¶ 1. In State v. Martinez, the Court of Appeals upheld the district court’s authority to revoke probation while a defendant was serving parole, but before he began serving his probationary term. 108 N.M. 604, 607, 775 P.2d 1321, 1324 (Ct. App. 1989).

[11] Defendant argues that these cases are distinguishable because the defendants in each were serving some portion of the underlying sentence when they violated conditions of their probation. Defendant asserts that the general rule, as stated in Padilla, that a “sentencing court retains jurisdiction to revoke a suspended sentence for good cause shown at any time subsequent to the entry of judgment and prior to the expiration of the sentence” only applies to the sentence actually being served at the time of the probation violation. 106 N.M. at 422, 744 P.2d at 550. We believe NMSA 1978, § 33-2-39 (1889) answers Defendant’s argument. This section provides: “[w]hensoever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence for the full length of all the sentences combined.” (Emphasis added). In this case, the court ordered “Defendant [to] be committed to the custody of the Department of Corrections” under both cases. The district court did so at the same time after considering both cases. Therefore, we construe the consecutive sentences as one continuous sentence. Accordingly, consistent with Padilla, the district court retained jurisdiction to revoke Defendant’s suspended sentence subsequent to the entry of its judgment and prior to the expiration of the entire continuous sentence.

[12] We believe our application of Section 33-2-39 is consistent with the policy supporting probationary sentences. In Rivera, we noted that “[t]he probation statutes themselves are structured in such a manner to give the sentencing court the broad power to ensure that the goal of rehabilitation is indeed being achieved.” Rivera, 2004-NMSC-001, ¶ 21. The sentencing court has wide discretion to “strictly monitor [defendants’] compliance [with probation conditions] with an eye toward the goal of prompt and effective rehabilitation.” Id. This authority is justified because the court’s decision in suspending a defendant’s sentence is based on a showing of clemency. See State v. Serrano, 76 N.M. 655, 657, 417 P.2d 795, 796 (1966) (providing that “suspension or deferment of sentence is not a matter of right but is an act of clemency”). By failing to comply with probation conditions, a defendant demonstrates that clemency is not appropriate because he or she is not willing or able to be rehabilitated. It follows that the court must have broad power to adjust a defendant’s sentence by revoking probation when necessary.

[13] Our holding is also consistent with results reached in other jurisdictions. In Commonwealth v. Wendowski, the defendant’s probation sentences in separate cases were
revoked by two different judges after the defendant committed additional crimes. 420 A.2d 628, 629 (Pa. Super. Ct. 1980). One of the revocations was for a sentence not yet being served. The defendant argued that the lower court’s revocation of probation prior to commencement of the probation term was unconstitutional. Id. The appellate court disagreed, holding that “a term of probation ‘may and should be construed for revocation purposes as including the term beginning at the time probation is granted.’” Id. at 630 (quoting Wright v. United States, 315 A.2d 839, 841 (D.C. 1974)). The court also addressed the policy behind its decision.

“If at any time before the defendant has completed the maximum period of probation, or before he has begun service of his probation, he should commit offenses of such nature as to demonstrate to the court that he is unworthy of probation and that the granting of the same would not be in subservience to the ends of justice and the best interests of the public, or the defendant, the court could revoke . . . probation . . . .” (The expressed intent of the Court to have him under probation beginning at a future time does not change his position from the possession of a privilege to the enjoyment of a right.”)

Id. (quoting James, 140 F.2d at 394 (Waller, J., specially concurring)) (internal quotation marks omitted) (first emphasis added).

The court also noted that its decision was intended to prevent a defendant from committing “‘criminal acts with impunity . . . until he commenced actual service of the probationary period.’” Id. (quoting Wright, 315 A.2d at 842).

{14} The Oklahoma Criminal Court of Appeals also construed consecutive probation sentences as one cumulative sentence, holding that “[u]ntil [a] suspended sentence has been fully served, a defendant remains under the jurisdiction of the trial court with the sentence subject to revocation.” Demry v. State, 986 P.2d 1145, 1147 (Okla. Crim. App. 1999) (emphasis added). In Demry, the trial court ordered the defendant to serve consecutive probation terms in four different cases. Id. at 1146. But, after finding sufficient evidence that the defendant committed new offenses, the trial court revoked the suspended sentences in each case. Id. at 1146-47. The Oklahoma Court of Criminal Appeals rejected the defendant’s argument that the trial court did not have the authority to revoke probation when the defendant did not commit a “violation during the period of those sentences.” Id. at 1147. The court held that the sentences were subject to revocation as long as the prosecutor filed an application to revoke before the expiration of the sentence. Id.

{15} Therefore, we hold that after the court has entered an order of probation and before the full suspended sentence has expired, the court has the authority to revoke probation regardless of whether the probationary term has commenced, or whether a defendant is serving a portion of the underlying sentence. We do not believe it is sound policy to impair a district court’s ability to revoke probation when a defendant violates conditions before beginning to serve the period of probation. Such an approach would frustrate the goal of rehabilitation because defendants could, prior to the commencement of a probation term, violate conditions of probation without any consequences. See Martin v. State, 243 So.2d 189, 191 (Fla. Dist. Ct. App. 1971) (stating that to prevent a court from revoking probation before the commencement of the probationary term “would make a mockery of the very philosophy underlying the concept of probation”); Wendowski, 420 A.2d at 630. Thus, we reject Defendant’s argument that the district court lacked jurisdiction to revoke probation unless a defendant is serving a portion of the sentence for which probation is being revoked. A court grants probation as a matter of grace in the hopes that a defendant may be rehabilitated without being incarcerated, and, in its discretion, the court may revoke probation when the goal of rehabilitation is not being achieved, even if a defendant has not yet commenced serving the probationary term being revoked.

{16} In this case, the district court gave Defendant a chance to prove he was capable of rehabilitation by suspending eight years of Defendant’s eleven-year sentence. Despite being given this opportunity, Defendant later admitted he committed multiple probation violations. The district court could find these violations incompatible with the goal of rehabilitation thereby justifying revocation of probation. Even though these probation violations occurred while Defendant was serving his first probation sentence, the district court maintained the authority to revoke Defendant’s second probationary term at any time after the entry of the order of probation and before Defendant completed serving that sentence.

B. Defendant Had Notice That He Must Demonstrate Good Behavior to Be Eligible for Probation.

{17} Defendant contends that the sentencing orders did not put him on notice that his behavior while serving probation in CR 99-502 could impact his probation in CR 99-500. We disagree. Although the district court could have clearly specified in its judgment and sentence that Defendant’s probation in CR 99-500 was contingent upon successful completion of CR 99-502, we do not believe that it was necessary for the district court to do so. Each suspended sentence carries with it an implied condition of good behavior beginning when the judgment and sentence is entered. See Coffey, 167 S.E.2d at 346 (“When the court saw that the defendant . . . had displayed an unwillingness to be rehabilitated, it had the power to invoke the condition of good behavior which had attached to the suspension from the beginning.”). Whether or not Defendant had explicit notice that his probation in CR 99-500 was contingent upon his completion of probation in CR 99-502, we believe Defendant was on notice that he was required not to commit further violations of the law. This condition was also explicitly stated in the standard conditions of probation prescribed in both CR 99-502 and CR 99-500.

{18} Furthermore, we do not see how a defendant sentenced to probation could reasonably believe that violating the law and other probation conditions would have no impact on subsequent probation sentences. It is unreasonable for a defendant to expect the court to continue to grant clemency with evidence of a defendant’s failure or refusal to comply with previous conditions of probation. This would not serve the goal of rehabilitation and would diminish the court’s ability to ensure compliance with probation conditions. Accordingly, we conclude Defendant had notice that his behavior while serving probation in CR 99-502 could impact his probation in CR 99-500.

III. CONCLUSION

{19} Holding that the district court had authority to revoke Defendant’s probation in CR 99-500, we affirm the Court of Appeals.

{20} IT IS SO ORDERED.

EDWARD L. CHÁVEZ,
Chief Justice

WE CONCUR:
PAMELA B. MINZNER, Justice
PATRICIO M. Serna, Justice
PETRA JIMENEZ MAES, Justice
RICHARD C. BOSSON, Justice
In this case we are asked to determine whether the department of corrections is responsible for the costs of housing parole violators who are incarcerated in a county jail at the request of the department. We hold that it is. Respondents, whom we refer to collectively as “Corrections,” are the secretary of the corrections department, the director of that department’s probation and parole division, and the district supervisor of San Miguel County’s probation and parole division. Corrections appeals from a writ of mandamus and the corresponding written decision issued in favor of Petitioners, which we refer to collectively as “the County” and which include the San Miguel County board of county commissioners and the New Mexico Association of Counties. The district court determined that Corrections must pay for the costs associated with the confinement of parolees held in any county detention facilities. We affirm.

**BACKGROUND**

1. The First Lawsuit

The County brought suit against Corrections prior to its initiation of the present action. We refer to the initial lawsuit as the “first lawsuit.” The first lawsuit was in the form of a complaint for declaratory and injunctive relief. We briefly review the proceedings in the first lawsuit because Corrections argues on appeal that the first lawsuit precluded the County from bringing the present lawsuit in accordance with the doctrines of res judicata and collateral estoppel.

2. The complaint in the first lawsuit alleged that Corrections had been using county jails to hold parolees alleged to have violated their parole and that “[e]xcept in rare instances, Corrections has adopted a practice of refusing to compensate or reimburse” the County for the costs associated with housing these parolees. The County sought a declaratory judgment that Corrections was responsible for the costs of housing parolees, “with such cost to be negotiated between the parties, or set by the court in the absence of agreement.”

3. Corrections filed motions to dismiss the first lawsuit and argued that the County’s suit was barred by sovereign immunity. At the hearing on the motions, the district court determined that sovereign immunity barred the suit but suggested that the merits of the case might be reached via a petition for writ of mandamus. The County indicated it could quickly amend the existing complaint to add a mandamus claim. Corrections objected to amendment on the basis that “[a] petition for writ of mandamus is an entirely different cause of action and theory of law” with “an entirely different procedure for response,” and stated that the County could file such a petition as a separate lawsuit. The County’s attorney had no objection to filing a separate lawsuit “as long as the judgment specifies that it’s without prejudice to file such an action.”

The district court replied:

No, my ruling on this has absolutely nothing to do with mandamus. It’s just ruling that a declaratory judgment[ — ]that sovereign immunity does preclude declaratory judgment. It would have no bearing whatsoever on you. There’s no statute of limitation, nothing that would preclude you from filing a totally separate action on a mandamus if you chose to do so.

The district court subsequently said that its ruling would be with prejudice only as to the declaratory judgment complaint filed in the first lawsuit.

5. At the presentment hearing, the district court clarified that its ruling was not on the merits but simply a determination that “declaratory judgment is not the appropriate cause of action[.] . . . I haven’t ruled that the issues themselves are[ ] barred by sovereign immunity.” Later in the hearing, the district court stated, “I agree this does not preclude your considering mandamus or prohibition, whether those lie or not. . . . [A]nd I’m not ruling on that, but this certainly does not preclude your attempting that anyhow, if that is an appropriate remedy.” The district court’s written order dismissed the complaint and found “that the claims in the Complaint for declaratory judgment against [Corrections] are barred in that [Corrections] is entitled to sovereign immunity.” The order went on to conclude.
that “[t]his ruling is only on the declaratory judgment issue.”

2. The Present Litigation

{6} On the day of the presentment hearing in the first lawsuit, the County filed this suit as a verified petition for a writ of mandamus and a writ of prohibition, which made the same general allegations as the complaint in the first lawsuit. The County sought a writ compelling Corrections to pay the costs associated with housing parolees. The district court entered an alternative writ of mandamus or writ of prohibition and scheduled the matter for hearing. Corrections filed an answer and a motion to dismiss, raising essentially the same issues Corrections now raises on appeal. After a hearing, the district court entered the peremptory writ of mandamus and prohibition and a corresponding written decision. Corrections appeals.

DISCUSSION

{7} As an initial matter, we consider the proper nomenclature for the district court’s action in the present case. Although the parties do not dispute the district court’s description of its decision as a writ of mandamus or prohibition, we believe the proper terminology for the district court’s action is mandamus, not prohibition. See Stanley v. Raton Bd. of Educ., 117 N.M. 717, 718, 876 P.2d 232, 233 (1994) (explaining that writs of prohibition are “extraordinary writ[s], issued by a superior court to an inferior court” and that mandamus includes an order requiring a public functionary “[t]o restore the compliant to rights or privileges of which he has been illegally deprived.” (internal quotation marks and citations omitted; first alteration in original)). Therefore, in this opinion we refer to the district court’s action as the issuance of a writ of mandamus.

{8} Corrections makes an argument related to the merits of the writ of mandamus and several procedural sub-arguments. It also argues that the writ is barred by principles of sovereign immunity or precluded by the doctrines of collateral estoppel or res judicata. We address each argument in turn.

1. Merits of the Writ

{9} Corrections argues that the actions required by the writ were not ministerial or “specially enjoined by law.” In order to address this contention, we first consider the nature of mandamus in New Mexico. A writ of mandamus “may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station.” NMSA 1978, § 44-2-4 (1884). “Mandamus is appropriate to compel the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law.” West v. San Jon Bd. of Educ., 2003-NMCA-130, ¶ 9, 134 N.M. 498, 79 P.3d 842 (internal quotation marks and citation omitted); see also State ex rel. Sandel v. N.M. Pub. Util. Comm’n, 1999-NMSC-019, ¶ 11, 127 N.M. 272, 980 P.2d 55 (stating that “mandamus is an appropriate means to prohibit unlawful or unconstitutional official action” (internal quotation marks and citation omitted)). Determining whether the acts compelled by the writ were “clearly enjoined by law” requires us to consider the meaning of various statutes, which is a question of law. See In re Adjustments to Franchise Fees, 2000-NMSC-035, ¶ 7, 129 N.M. 787, 14 P.3d 525 (stating that a question underlying a mandamus action that involves interpretation of a statute is a question of law).

{10} The question raised by the mandamus petition is which governmental entity is responsible for the housing and care of parolees who are alleged to have violated the terms of their parole. A parolee is a person who has been convicted of a felony and who has completed a term of imprisonment in a corrections facility designated by the department of corrections. See NMSA 1978, § 31-18-15(C) (2005) (requiring courts sentencing convicted felons “to imprisonment in a corrections facility designated by the corrections department” to include in such sentences “authority for a period of parole”); NMSA 1978, § 31-21-5(D), (E) (1991) (defining “board” as “the parole board” and “director” as “the director of the field services division of the corrections department”).

{11} We agree with the district court that New Mexico law mandates that a parolee remains in the legal custody of the department of corrections for the duration of his original sentence, regardless of where he is physically located — at the state penitentiary, in a county jail, or elsewhere. The department of corrections also retains legal responsibility, including financial responsibility, for a convicted felon, whether he is imprisoned at the state penitentiary, on parole, or re-arrested as a parole violator. Although not binding legal precedent on this Court, we agree with the analysis set forth in 26 Op. N.M. Att’y Gen. 50 (1968), in which the attorney general concluded that the department of corrections must pay the cost of hospitalizing and transporting a parolee who was arrested by a parole officer and placed in the county jail. We also adopt the analysis set forth in 62 Op. N.M. Att’y Gen. 105, 106 (1970), in which the attorney general, citing our Supreme Court’s opinion in Robinson v. Cox, 77 N.M. 55, 59, 419 P.2d 253, 256 (1966) (“A paroled prisoner is not discharged from the custody of the prison authorities, but is at all times under the complete custody and control, and subject to the orders of the parole board.”)). That the corrections department retains legal responsibility for parolees is evident in the statute that authorizes the department to issue warrants for the arrest of parole violators: “At any time during release on parole the [parole] board or the director [of the corrections department’s field services division] may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release.” § 31-21-14(A); see also NMSA 1978, § 31-21-5(D), (E) (1991) (defining “board” as “the parole board” and “director” as “the director of the field services division of the corrections department”).
the cost of such control and custody.” 62 Op. N.M. Att’y Gen. at 106.

{13} We conclude, therefore, that Corrections’ legal responsibility for convicted felons during the term of their sentences, no matter where they are physically located, is mandated by law, and this legal responsibility is not discretionary. See, e.g., Hart v. City of Albuquerque, 1999-NMCA-043, ¶ 17, 126 N.M. 753, 975 P.2d 366 (“A ministerial duty required of a public official constitutes an act or thing which he is required to perform by direction of law upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case.” (internal quotation marks and citations omitted)).

2. Procedural Arguments

{14} We turn now to Corrections procedural sub-arguments. Corrections argues that the district court erred in issuing mandamus because: (1) the County did not sustain its burden of proof because issues of fact made mandamus inappropriate; (2) the County’s allegations in its petition were impermissibly vague and conclusory; (3) the writ imposes no monetary limit on the amount Corrections will have to pay for parolees, despite the fact that the legislature appropriated only $1 million to cover Corrections’ obligations; (4) the writ is overly broad in favor of all counties and the New Mexico Association of Counties; and (5) mandamus was improper because the County had an adequate remedy at law by way of appeal from the dismissal of the first lawsuit.

{15} With respect to the County’s burden of proof, Corrections argues that in order to prevail, the County had to present evidence establishing that Corrections failed to pay the costs of confinement for parolees in the past. Because the County did not present any witnesses or evidence, Corrections contends, the district court should have dismissed the petition for mandamus. We are not persuaded. By the time of the hearing on the petition, the County was seeking only prospective relief, not recovery of costs for parolees housed in the past. In addition, the question of which governmental entity is responsible for the cost of detaining parolees is a question of law determined by consideration of applicable statutes and cases. For the same reasons, we also reject Corrections’ argument that issues of fact about past payment of these costs precluded issuance of mandamus.

{16} As for Corrections’ argument that the allegations in the County’s petition were vague and conclusory, we are equally unpersuaded. Corrections contends the allegations in a mandamus petition must be pleaded with the same specificity as in other civil actions. Assuming this statement is correct, we fail to see how the County’s petition fell below the standard for notice pleading that is applicable in civil actions.

Under our rules of notice pleading, it is sufficient that [the] defendants be given only a fair idea of the nature of the claim asserted against them sufficient to apprise them of the general basis of the claim.” Garcia v. Coffman, 1997-NMCA-092, ¶ 11, 124 N.M. 12, 946 P.2d 216 (internal quotation marks, citation, and alteration omitted). The County’s allegations provided a definition of “parolees;” stated that Corrections often ordered parolees to be detained in county jails; complained that county jails were, as a result, forced to bear the cost of detaining and caring for parolees; cited authority for the proposition that such costs should be borne by Corrections; and asked for a writ ordering Corrections to bear the costs of housing and providing for parolees detained in county jails. These allegations clearly apprised Corrections of the general basis of the County’s claim.

{17} Corrections further contends that its obligation to bear the costs of detaining parolees in county jails should be capped at the $1 million appropriated by the legislature. We do not agree. As we discussed above, Corrections has statutory duties, and these do not vary with the size of its budget. All governmental agencies must somehow carry out their statutorily defined duties within the constraints of a legislatively established annual budget. In this regard, the legislature has authorized several alternatives to housing parole violators with county jails. For example, Corrections can return violators back to the penitentiary system in accordance with NMSA 1978, § 31-21-14(A) (1963), or it can send them to alternative correctional programs pursuant to the Adult Community Correction Act, NMSA 1978, §§ 33-9-1 to -10 (1983, as amended through 2004). Should Corrections or sentencing district courts consider county jails to be convenient short-term holding spaces, the legislature has authorized Corrections to enter into agreements with the counties for housing parole violators. NMSA 1978, § 31-20-2(G) (1993) (“The corrections department may enter into contracts with public or private detention facilities for the purpose of housing inmates lawfully committed to the corrections department.”).

{18} Corrections next argues that the writ is overly broad because it applies to all counties, not just to San Miguel County, which brought the action. We disagree. The Association of Counties was also a petitioner, and the petition alleged that the Association represented the interests of all its member counties. As we discussed above, Corrections has statutory obligations to pay the cost of housing parolees in county jails, and these obligations apply statewide.

{19} Corrections also contends mandamus was improper because the County had an adequate remedy at law by way of appeal from dismissal of the first lawsuit. See Montoya v. Blackhurst, 84 N.M. 91, 92, 500 P.2d 176, 177 (1972) (stating that mandamus does not lie where there is an adequate remedy by appeal). We are not persuaded. It is clear that the district court intended its dismissal of the first lawsuit to be with prejudice only as to the declaratory judgment form of action, not as to the merits of the County’s claims in the context of an action for mandamus. The district court expressly stated that “declaratory judgment is not the appropriate cause of action[.] . . I haven’t ruled that the issues themselves are[ ] barred by sovereign immunity.” Thus, we fail to see how an appeal from this ruling would have availed the County anything. Moreover, an appeal from the dismissal of the declaratory judgment action would not have provided the County with the remedy it seeks in the present mandamus action. In the declaratory judgment action, the County sought damages for Corrections’ alleged past breaches of tort duties or implied contract obligations. The district court determined such relief was barred by sovereign immunity. In contrast, in this mandamus action, the County requested the district court to compel Corrections’ future compliance with statutory mandates. Thus, we cannot say that the County had an adequate remedy at law consisting of appeal from the written order in the first lawsuit.

3. Sovereign Immunity Does Not Bar Mandamus

{20} Corrections argues that since its individual respondents are state agencies or state employees acting in their official capacity, issuance of mandamus was barred by sovereign immunity. We review de novo the validity of a claim of sovereign immunity. See Gallegos v. Pueblo of Tesuque, 2002-NMSC-012, ¶ 6, 132 N.M. 207, 46 P.3d 668.

{21} Corrections first contends the County’s petition for mandamus is founded on
a theory such as quasi-contract, quantum meruit, or unjust enrichment, and asserts that it is immune from such claims pursuant to NMSA 1978, § 37-1-23(A) (1976), which provides that “[g]overnmental entities are granted immunity from actions based on contract, except actions based on a valid written contract.” Alternatively, Corrections argues that the County’s petition is founded on a claim in tort for which Corrections’ immunity has not been waived by the Tort Claims Act.

{22} We do not agree that the County’s claims in this case sounded in either contract or tort. Instead, the County expressly sought an order to prospectively require the respondent officials to perform duties imposed on them by law. “Traditionally, mandamus actions could be brought against governmental officials requiring them to perform their statutory duty regardless of whether the government enjoyed sovereign immunity because such actions were not actions against the state.” Bd. of County Comm’rs v. Risk Mgmt. Div., 120 N.M. 178, 181, 899 P.2d 1132, 1135 (1995); see also State ex rel. Castillo Corp. v. N.M. State Tax Comm’n, 79 N.M. 357, 359, 443 P.2d 850, 852 (1968) (stating that a mandamus proceeding compels performance of a plainly required duty and “is not a suit against the [s]tate”). Because this mandamus action is not a suit against the state, sovereign immunity is not a bar.

4. Res Judicata or Collateral Estoppel Do Not Preclude Mandamus

{23} Corrections contends that the doctrines of res judicata and collateral estoppel bar the County’s suit in this case. Corrections argues that this case has the same parties, essentially the same cause of action or legal theory, the same ultimate factual issue, and the same relief requested as the first lawsuit, which was dismissed by the district court as barred on sovereign immunity grounds. We disagree and hold that neither res judicata nor collateral estoppel bar this mandamus action.

{24} This issue as a mixed question of law and fact. We review the facts to determine whether they are supported by substantial evidence, but we review de novo the legal conclusions flowing from those facts. Bank of Santa Fe v. Marcy Plaza Assoc’s., 2002-NMCA-014, ¶ 12, 131 N.M. 537, 40 P.3d 442.

{25} “Claim preclusion, or res judicata, precludes a subsequent action involving the same claim or cause of action.” Id. ¶ 13. Res judicata applies when there is “(1) identity of parties or privies, (2) identity of capacity or character of persons for or against whom the claim is made, (3) [the] same cause of action, and (4) [the] same subject matter.” Id. (internal quotation marks and citation omitted; alteration in original). In order for res judicata to apply, “the claimant must have had a full and fair opportunity to litigate the claim in the original action and there must have been a final decision on the merits.” Moffat v. Branch, 2002-NMCA-067, ¶ 17, 132 N.M. 412, 49 P.3d 673. Corrections, as the party seeking to bar the County’s suit in mandamus, has the burden of establishing res judicata. Anaya v. City of Albuquerque, 1996-NMCA-092, ¶ 5, 122 N.M. 326, 924 P.2d 735.

{26} Res judicata does not apply in this case because no adjudication of the merits occurred in the first lawsuit. The district court determined only that declaratory judgment was barred by sovereign immunity, See City of Sunland Park v. Macias, 2003-NMCA-098, ¶ 21, 134 N.M. 216, 75 P.3d 816 (stating that a prerequisite to application of the doctrine of res judicata, “not only must the claimant have had a full and fair opportunity to litigate the claim in the original action, but there must also have been a final decision on the merits”). In City of Sunland Park, this Court declined to rely on res judicata where the county in that case had argued below, as Corrections argues here, that it was not arguing the merits of the issues but simply seeking dismissal for failure to state a claim. Id. ¶ 21. Similarly, we decline to rely on res judicata where Corrections simply argued in the first lawsuit that sovereign immunity barred the declaratory judgment action and prevailed on that ground without an adjudication on the merits.

{27} Corrections alternatively argues that collateral estoppel precludes the present mandamus action. “Collateral estoppel, like res judicata, is a judicial economy measure to prevent litigation of an issue already judicially decided.” Int’l Paper Co. v. Farrar, 102 N.M. 739, 741, 700 P.2d 642, 644 (1985). “The application of collateral estoppel generally requires that (1) the parties in the current action were the same or in privity with the parties in the prior action, (2) the subject matter of the two actions is different, (3) the ultimate fact or issue was actually litigated, and (4) the issue was necessarily determined.” City of Sunland Park, 2003-NMCA-098, ¶ 10.

{28} We are not persuaded that collateral estoppel is applicable. The district court in the first lawsuit dismissed the County’s declaratory judgment action solely on the basis of sovereign immunity. Thus, the only issue decided in the case was the immunity bar against the County’s claims for damages and declaratory judgment. The district court indicated that the merits of the case, i.e., the question of which entity should pay for the care and housing of parolees, could possibly be reached if the action were brought in mandamus. Corrections argued that the County’s filing of a separate mandamus action would be preferable to its amending the complaint. Thus, the district court and the parties anticipated and intended that the lawsuit, refashioned as a petition for writ of mandamus, would be refiled. Collateral estoppel is inapplicable because the ultimate issue in the case was not litigated or decided in the first lawsuit.

CONCLUSION

{29} We affirm the district court’s peremptory writ of mandamus and the decision on petition for writ of mandamus.

{30} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:
RODERICK T. KENNEDY, Judge
MICHAEL E. VIGIL, Judge
OPINION

LYNN PICKARD, Judge

{1} Defendant was convicted of aggravated assault upon a peace officer contrary to NMSA 1978, § 30-22-22 (1971), based on threatening the officer with a tire tool. On appeal, Defendant argues that his conviction should be reversed because the district court failed to properly instruct the jury with regard to his self-defense claim. The State concedes that the district court erred by failing to properly instruct the jury, but argues that the error was harmless because Defendant was not entitled to a self-defense instruction in the first place. We hold that the district court erred in refusing Defendant’s tendered jury instruction and conclude that the error was not harmless. We therefore reverse Defendant’s conviction for aggravated assault upon a peace officer and remand for a new trial with proper jury instructions.

BACKGROUND
{2} Defendant was pulled over for a seatbelt violation while test-driving a used pickup truck with a friend. As Deputy Sheriff Ruben Castro pulled Defendant over, he turned on his in-car camera and microphone and the entire stop was recorded. After stopping Defendant and asking him and his friend for identification and proof of insurance, Deputy Castro informed Defendant that he was issuing a warning for lack of proof of current insurance and a citation for a seatbelt violation.

{3} Defendant contested the citation, arguing that Deputy Castro could not pull him over for a seatbelt violation and stating that he would not sign the ticket. On the videotape, Deputy Castro can be seen moving in and out of the camera’s view, alternatively walking toward Deputy Castro and then back to the pickup as Deputy Castro can be heard, loudly and apparently out of control, giving conflicting instructions to Defendant to either “stay over there” or “come here.” Defendant eventually walked over to Deputy Castro and took his driver’s license from Deputy Castro’s clipboard. According to Defendant and his friend, Deputy Castro pulled his gun during this first encounter and pointed it at the ground. Defendant and his friend also testified that Deputy Castro pointed his gun at Defendant as the parties continued to argue. Deputy Castro denied pulling his gun at the initial stop.

{4} After Defendant grabbed his driver’s license and Deputy Castro allegedly pointed his gun at Defendant, Defendant got back into the pickup truck and drove to a nearby residence. Defendant explained that he drove away because he was afraid of Deputy Castro and wanted to go some place where there were witnesses. Deputy Castro called for backup and followed Defendant and his friend to a nearby residence where the owner of the pickup truck lived. Defendant waited for Deputy Castro to turn his patrol car around before driving away, and Defendant maintained the speed limit during the entire drive.

{5} After both vehicles arrived at the residence, Deputy Castro pointed his gun at Defendant and ordered him to the ground. Defendant then became angry and moved toward Deputy Castro, stating that he was going to “kick [his] ass” for pulling a gun on him. Deputy Castro testified that as the Defendant approached him, he put his gun back into his holster and sprayed Defendant with pepper spray twice. At this point, Defendant went back to the pickup truck and pulled a tire tool from the bed of the truck. Defendant then began walking back toward Deputy Castro, who again pulled his gun. Defendant tossed the tire tool back over his shoulder and got back into the pickup truck. Defendant drove closer to the residence. Eventually, additional police officers arrived and after a struggle, both Defendant and his friend were arrested.

{6} Defendant’s first trial resulted in a mistrial because the jury was unable to reach a verdict. At both trials, Defendant requested a self-defense instruction. The State did not object to the instruction. The district court found that there was sufficient evidence to support a jury instruction on self-defense. Although the district court accepted Defendant’s general self-defense instruction, Defendant argued that if a self-defense instruction is given, a reference to self-defense must also be included in the elements instruction for the charged crime. Defendant then tendered an instruction including such a reference. The district court rejected Defendant’s tendered jury instruction, stating that a general self-defense instruction would adequately cover Defendant’s self-defense claim. Defendant was convicted of aggravated assault upon a peace officer and sentenced to eighteen months in prison.

DISCUSSION

{7} On appeal, Defendant argues that although the district court correctly determined that he was entitled to a self-defense instruction, the district court erred in refusing Defendant’s tendered jury instruction that included the concept that Defendant “did not act in limited self-defense” as one of the elements of the aggravated assault charge. The State concedes that the district court erred, but argues that Defendant’s conviction should not be reversed because the error was harmless. Because we are not bound by the State’s concession, we will first independently review the district court’s decision regarding Defendant’s
submitted jury instruction. See State v. Foster, 1999-NMSC-007, ¶ 25, 126 N.M. 646, 974 P.2d 140. Second, we will address the State’s harmless error argument.

Jury Instructions on Self-defense

[8] “The standard of review we apply to jury instructions depends on whether the issue has been preserved. If the error has been preserved we review the instructions for reversible error. If not, we review for fundamental error.” State v. Benally, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134 (citation omitted). In the present case, because Defendant’s argument was preserved, “[w]e review the jury instructions to determine whether a reasonable juror would have been confused or misdirected by the instructions.” State v. Griffin, 2002-NMCA-051, ¶ 8, 132 N.M. 195, 46 P.3d 102; see also State v. Parish, 118 N.M. 39, 41-42, 878 P.2d 988, 990-91 (1994). “[I]f an instruction is facially erroneous it presents an incurable problem and mandates reversal.” Parish, 118 N.M. at 41, 878 P.2d at 990. Further, “[i]t is reversible error if a reasonable juror might have misunderstood a jury instruction.” Griffin, 2002-NMCA-051, ¶ 8 (internal quotation marks and citation omitted).

[9] The use notes for the jury instructions for self-defense provide that if a self-defense instruction is deemed appropriate, the district court must also include within the essential elements instruction for the charged offense the phrase, “[t]he defendant did not act in self-defense.” UJI 14-5181 NMRA, Use Note 1; UJI 14-5183 NMRA, Use Note 1. In the present case, Defendant tendered such an instruction, but the district court refused the instruction.

[10] District courts must give uniform jury instructions as written. UJI-Criminal General Use Note NMRA (“[T]he uniform instruction must be used without substantive modification or substitution.”); State v. Armijo, 1999-NMCA-087, ¶ 24, 127 N.M. 594, 985 P.2d 764. The failure to do so may constitute reversible error. See Griffin, 2002-NMCA-051, ¶ 10; see also Parish, 118 N.M. at 44; 878 P.2d at 993 (“A jury instruction which does not instruct the jury upon all questions of law essential for a conviction of any crime submitted to the jury is reversible error.” (internal quotation marks and citation omitted)). We have previously recognized that the failure to include a reference to self-defense within an elements instruction — where a self-defense argument is supported by the evidence — is an error that may lead to reversal on appeal. See Griffin, 2002-NMCA-051, ¶ 20 (“The only way to correctly instruct the jury in this case is to comply with the applicable Use Note and include as an essential element the requirement that Defendant did not act in self-defense.”); State v. Foxen, 2001-NMCA-061, ¶ 10, 130 N.M. 670, 29 P.3d 1071 (holding that the failure to include a reference to self-defense in the elements instruction, as well as the failure to include the appropriate burden of proof in the self-defense instruction, constituted fundamental error); Armijo, 1999-NMCA-087, ¶ 12 (“Because of the importance of the instructions to the jury concerning the essential elements of a crime, failure to do so can result in fundamental error.”). Thus, the district court erred by failing to comply with applicable use notes, which require that the concept of self-defense, when supported by the evidence, be included as an element of the charged crime.

[11] We therefore agree with Defendant’s assertion, and the State’s concession, that the district court erred by refusing Defendant’s tendered jury instruction. We now must address the State’s argument that the district court’s error was harmless.

Harmless Error

[12] The State argues that although the district court failed to properly instruct the jury with respect to self-defense, any error was harmless because Defendant was not entitled to a self-defense instruction in the first place. Specifically, the State argues that the evidence presented at trial did not support such an instruction and therefore that Defendant actually received more than he deserved by way of the jury instructions. We disagree.

[13] Initially, we note that there is some disagreement as to whether the district court’s error in this case should be subject to harmless error review. We, however, agree with the State’s assertion that harmless error review is appropriate in the present case.

[14] “New Mexico appellate courts have acknowledged that most constitutional errors are amenable to harmless error scrutiny.” State v. Benavidez, 1999-NMCA-053, ¶ 23, 127 N.M. 189, 979 P.2d 234, vacated on other grounds, 1999-NMSC-041, 128 N.M. 261, 992 P.2d 274. Such errors include the failure of the district court to instruct the jury on an essential element of the crime charged, see id., ¶ 23; see also Neder v. United States, 527 U.S. 1, 15 (1999) (holding that “the omission of an element is an error that is subject to harmless-error analysis”), which in the present case would be the absence of self-defense by Defendant. Griffin, 2002-NMCA-051, ¶ 20. We further observe that while the “[failure to give an instruction which is supported by the evidence is not harmless error,” State v. Diaz, 121 N.M. 28, 33, 908 P.2d 258, 263 (Ct. App. 1995), to the extent that the evidence presented at trial does not actually support a self-defense instruction, any errors with respect to such an instruction must be deemed harmless. See Benally, 2001-NMSC-033, ¶ 46 (Baca, J., dissenting) (stating that where the facts adduced at trial do not support a self-defense instruction, “so far as the jury was instructed at all on that subject, the defendant got more than he was entitled to on the evidence and error, if any, in the instructions so given may not be made the basis of a reversal” (internal quotation marks and citation omitted)); see also Commw. v. Toon, 773 N.E.2d 993, 998 (Mass. App. Ct. 2002) (“Whether an allegedly erroneous instruction on self-defense (and excessive force in self-defense) is prejudicial (or creates a substantial risk of a miscarriage of justice) necessarily involves examining first whether self-defense was raised sufficiently. If not, the defendant received more than he was entitled to.”); State v. Reid, 440 S.E.2d 776, 790 (N.C. 1994) (“As defendant was not entitled to any jury instructions on self-defense, any mistakes by the trial court in its instructions on self-defense were, at worst, harmless error not necessitating a new trial.”). In addition, we have in the past addressed as a threshold issue the matter of a defendant’s entitlement to self-defense instructions in the first place. See Griffin, 2002-NMCA-051, ¶ 9. We therefore agree with the State’s contention that harmless error review is appropriate with respect to errors in the failure to give requested jury instructions. However, in the present case, we conclude that the error in the jury instructions was not harmless.

[15] In the context of a claim of self-defense against a police officer, the general self-defense jury instruction must be modified to reflect the understanding that an individual may use self-defense against a police officer only in limited circumstances. See State v. Hill, 2001-NMCA-094, ¶ 8, 131 N.M. 195, 34 P.3d 139; State v. Gonzales, 97 N.M. 607, 610, 642 P.2d 210, 213 (Ct. App. 1982); State v. Kraul, 90 N.M. 314, 318-19, 563 P.2d 108, 112-13 (Ct. App. 1977). Specifically, an individual only has a “right to self-defense against a police officer when excessive force is used to effect an arrest.” Hill, 2001-NMCA-094, ¶ 8; Kraul, 90 N.M. at 319, 563 P.2d at 113. Thus, in
the present case, the jury was instructed in relevant part that

Defendant has the right to self-defense against a Peace Officer when the officer uses excessive force to effect an arrest. Excessive force means greater force than reasonably necessary to the performance of the duties of the officer. If an officer uses force reasonably necessary to effect an arrest, there is no right of Defendant to self-defense.

The Defendant acted in self-defense if:

1. There was an appearance of immediate danger . . . to [D]efendant as the result of Deputy Ruben Castro pointing a pistol at [D]efendant upon traffic stop for failure to use seatbelt[,] and]

2. [D]efendant was in fact put in fear . . . and[ ]picked up a tire tool because of such fear[,] and[ ] . . .

4. The apparent danger would have caused a reasonable person in the same circumstances to act as [D]efendant did.

The State argues that there was simply no evidence, slight or otherwise, to support the elements of Defendant’s self-defense claim. To address the State’s contentions, we will review the evidence presented at trial in the light most favorable to the giving of the self-defense instruction, see Hill, 2001-NMCA-094, ¶ 5, being mindful of the fact that a self-defense instruction “should be given if there is any evidence, even slight evidence, to support the claim.” State v. Duarte, 1996-NMCA-038, ¶ 3, 121 N.M. 553, 915 P.2d 309.

{16} In order for us to conclude that the error in the present case is truly harmless, we “must be able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.” State v. Zamora, 91 N.M. 470, 474, 575 P.2d 1355, 1359 (Ct. App. 1978). Although we appreciate the State’s assertion that the evidence in support of Defendant’s self-defense claim is somewhat tenuous, we nonetheless conclude that it is sufficient to warrant a self-defense instruction. Therefore, we hold that the district court’s failure to properly instruct the jury with regard to self-defense was not harmless error. See Diaz, 121 N.M. at 33, 908 P.2d at 263.

{17} At trial, Defendant acknowledged that he had argued with Deputy Castro about the citation and that he had refused to sign the citation. Defendant testified that he walked over to Deputy Castro and took his driver’s license from the deputy’s clipboard. At that point, according to Defendant, Deputy Castro pulled his gun and pointed it at the ground. Defendant then became concerned and wanted others to witness what was going on, so he called Deputy Castro to call for backup. Defendant testified that Deputy Castro began yelling at him to “come here” and pointed his gun at Defendant as Defendant walked toward him. Defendant further testified that when Deputy Castro pointed the gun at him, Defendant put his arms out to show that he did not have any weapons. Deputy Castro then told Defendant to stand near the rear tire of the pickup truck, at which point Defendant told Deputy Castro that he was going to drive to a nearby residence. Defendant testified that he believed he needed to leave that area because he thought Deputy Castro was going to shoot him. Defendant then testified that when he arrived at the residence, Deputy Castro once again pointed his gun at him. Defendant stated that Deputy Castro sprayed him with pepper spray twice, which scared Defendant, leading him to grab a tire tool from the bed of the pickup truck and approach Deputy Castro. Defendant tossed the tire tool away when he realized that it would not protect him against Deputy Castro. Defendant then played the videotape of the traffic stop at trial and testified as to specific points on the tape that he believed corroborated his version of events.

{18} Similarly, the passenger in the pickup truck testified that Defendant argued with Deputy Castro about the seatbelt citation. The passenger testified that Defendant approached Deputy Castro and retrieved his driver’s license from the deputy’s clipboard. Deputy Castro then stepped back, unholstered his gun, and pointed it at the ground. Defendant then walked back to the pickup truck. According to the passenger, Deputy Castro asked Defendant to sign the citation and Defendant refused. The passenger then testified that Deputy Castro pointed his gun directly at Defendant. Deputy and the passenger returned to the pickup truck and drove to a nearby residence. The passenger testified that they drove to the residence so that witnesses could observe what was going on. At the residence, Deputy Castro again pointed his gun at Defendant. The passenger testified that Defendant was sprayed twice with pepper spray. According to the passenger, Defendant grabbed a tire tool from the pickup truck, approached Deputy Castro with it, and then tossed the tire tool away. On cross-examination, the passenger also reviewed the videotape of the traffic stop and testified as to specific points on the video that corroborated his and Defendant’s version of events.

{19} Additionally, Defendant’s ex-girlfriend testified that she was at the residence when Defendant and his friend arrived with Deputy Castro following them in his patrol car. She testified that once Defendant stopped the pickup truck, Deputy Castro drew his gun and began ordering Defendant to come toward him. She then testified that Deputy Castro sprayed Defendant with pepper spray twice. Defendant then grabbed a tire tool from the truck and tossed it away as he approached Deputy Castro.

{20} Based on the above evidence, the district court found that a self-defense instruction was appropriate. We agree that the evidence supports Defendant’s theory of the case. Defendant argues that Deputy Castro engaged in excessive force by pointing his gun at Defendant during the initial traffic stop. Defendant testified that he was afraid and believed that he was going to be shot. According to Defendant, Deputy Castro’s pointing of his gun at the second stop, and his actions in spraying Defendant with pepper spray, continued to frighten Defendant, who in turn grabbed a tire tool to protect himself. Because the evidence above supports Defendant’s claim of self-defense, he was entitled to a self-defense instruction.

{21} In contrast to the above testimony, the State argues that the videotape of the traffic stop demonstrates that no rational juror could possibly find that Defendant acted in self-defense. While a review of the videotape lends some credence to the State’s version of events, we are unable to conclude that it conclusively disproves the testimony of Defendant, his friend, and his ex-girlfriend. For the majority of the videotape, Deputy Castro is off-camera, and thus it is not readily apparent when Deputy Castro first pointed his gun at Defendant. Moreover, because Deputy Castro was off-camera, a viewer cannot see his body language or use of the gun and pepper spray at the second stop. While the State and Defendant present different interpretations of what happened off-camera, we conclude that, in spite of the videotape, it is possible that a rational juror could accept Defendant’s version of events. See Hill, 2001-NMCA-094, ¶ 10 (“If members of
the jury believed Defendant’s version of events, it would be reasonable for them to conclude that he acted in self-defense.”). (22) Additionally, the State argues that even if Deputy Castro pointed his gun at Defendant during the initial stop, it was reasonable for him to do so and it cannot be considered excessive force. In support of this argument, the State cites to numerous cases addressing the issue of excessive force by police officers in the context of civil lawsuits. We have previously warned against “borrowing legal propositions pertaining to excessive force in a civil proceeding and importing them wholesale into the context of self-defense in a criminal action.” State v. Hernandez, 2004-NMCA-045, ¶ 10, 135 N.M. 416, 89 P.3d 88. This is because in civil cases, the central focus of whether an officer used reasonable force is measured “from the perspective of the officer on the scene,” Archuleta v. LaCuesta, 1999-NMCA-113, ¶ 8, 128 N.M. 13, 988 P.2d 883, whereas the issue of whether a defendant acted in self-defense is a “question that the jury must analyze through the lens of ‘a reasonable person in the same circumstances . . . as the defendant.’” Hernandez, 2004-NMCA-045, ¶ 10 (quoting UJI 14-5181 NMRA).

(23) Moreover, the bulk of these cases are federal cases decided under different standards from which we are currently evaluating the evidence. Compare, e.g., Miller v. Lewis, 381 F. Supp. 2d 773, 780 (N.D. Ill. 2005) (granting summary judgment in favor of police officer where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law” (internal quotation marks and citation omitted)), with Hill, 2001-NMCA-094, ¶¶ 5-11 (construing the evidence in favor of allowing the requested instruction and concluding that instruction should be given even if only slight evidence supports the claim). We therefore do not find these cases helpful to deciding the case at bar.

(24) The State also cites to two criminal cases that it believes supports its argument that any error in the jury instructions was harmless. We do not find these cases persuasive. In State v. Giminski, 2001 WI App. 211, ¶ 19, 634 N.W.2d 604, the Wisconsin Court of Appeals upheld a district court determination that a defendant was not entitled to defense of others instruction. In so holding, the court concluded that the defendant’s use of a gun to protect his daughter from a federal agent who was pointing a gun at the daughter’s head was not objectively reasonable. Id. ¶¶ 17-18. The court based this conclusion in part on the fact that the incident took place in a residential neighborhood in broad daylight, because there was no indication that the agent actually planned to use the gun, and because the defendant knew the agent was entitled to be taking the actions he was taking. Id. ¶ 16. The court further held that the federal agent’s actions did not constitute excessive force because the agent was in the course of arresting the defendant’s daughter, and, based on the law limiting a right of self-defense when an officer is discharging his official duties of arrest, the defendant could not, as a matter of law, have reasonably believed that the officer’s conduct amounted to excessive force. Id. ¶¶ 18-19. In the case at bar, however, the initial traffic stop took place in an isolated area, Defendant testified that he believed that Deputy Castro was going to shoot someone, and Deputy Castro was not in the course of arresting Defendant when he allegedly pointed the gun at the initial stop. The present case is therefore factually distinguishable from Giminski. Moreover, we believe that questions of reasonableness and excessive force, where reasonable minds could differ, are better resolved by a properly instructed jury, rather than an appellate court. See Griffin, 2002-NMCA-051, ¶ 9; Foxen, 2001-NMCA-061, ¶¶ 13-15.

(25) In State v. Thomas, 625 S.W.2d 115 (Mo. 1981), the Supreme Court of Missouri upheld a defendant’s capital murder conviction in the shooting of a police officer. The defendant argued on appeal that he was entitled to a self-defense instruction and that the district court had erred in denying his requested instruction. Id. at 122. The court held that the defendant was not entitled to such an instruction. Id. at 123. The defendant had been arrested three times previously by the slain officer and had told others that he was going to get even with the officer. Id. at 119. The defendant encountered the officer while driving around looking for one of his dogs and began yelling at the police officer as he drove by him. Id. at 120-21. The police officer told the defendant to “come here” and pointed his gun at him. Id. at 121. The police officer then told the defendant that he was under arrest. Id. At that point, the defendant shot the police officer. Id. At trial, the defendant testified that “as he was escaping [the officer] he felt it necessary to kill the officer in order to prevent the officer from killing him.” Id. at 123. Based on this evidence, the court concluded that the defendant was not entitled to a self-defense instruction because the facts did not “reveal that excessive force was used and that [the] defendant reasonably believed such force was the only means by which he could protect himself against the excessive force.” Id.

(26) Conversely, in the present case, Defendant was not yet under arrest when Deputy Castro allegedly pointed his gun at Defendant. Moreover, there is no indication in the record that Defendant had any prior encounters with Deputy Castro or that Deputy Castro had any reason to believe that Defendant may be dangerous. Further, Deputy Castro’s out-of-control, contradictory instructions to Defendant could reasonably have caused Defendant to believe that he was being set up to be shot for no reason, and Deputy Castro did nothing to calmly explain to Defendant the purpose of signing a traffic citation. Finally, unlike the defendant in Thomas, Defendant was not attempting to escape from Deputy Castro when he grabbed the tire tool; rather, Defendant’s testimony reveals that he grabbed the tire tool with the hope that it would protect him and cause Deputy Castro to back down. We therefore find this case distinguishable from the case at bar.

(27) As previously mentioned, we believe that, because there was sufficient evidence to support a self-defense instruction, the issue of whether Deputy Castro used excessive force is best left to a properly instructed jury. See Hill, 2001-NMCA-094, ¶ 8 (“When there are questions as to whether excessive force has been used by a peace officer, it devolves upon the jury, under the evidence in the case and proper instructions of the court, to resolve these questions.” (internal quotation marks and citation omitted))). Thus, to the extent that the State argues that Deputy Castro’s actions were reasonable and not excessive, we decline to decide this issue as a matter of law. Moreover, we refuse to adopt the State’s contention that a police officer’s act of pointing a gun at another individual can never be excessive force. At trial, Defendant presented evidence that Deputy Castro pulled his gun at the initial stop and pointed it at him. Moreover, Defendant testified that, at that point, he was unarmed and had not threatened or otherwise physically harmed the deputy. Defendant further testified that the deputy’s actions caused him to be afraid for his life, causing him to
drive to an area where there were more witnesses around. Defendant claimed that he grabbed the tire tool only after the Deputy had pointed his gun at him twice and after the Deputy had sprayed him with pepper spray. To the extent that the videotape or the State’s arguments on appeal raise questions about this evidence, we conclude that it is best left to the jury to decide.

{28} The State argues that even if Deputy Castro used excessive force, there is no evidence to support the remaining requirements of self-defense. Specifically, the State contends that Defendant cannot assert self-defense because he was the aggressor or instigator of the conflict. Again, we believe that this is a question best left to a properly instructed jury. See id. ¶ 10 (“Unless reasonable minds could not differ, the question of whether Defendant was the instigator or the victim should be left to the jury.”). Although it is readily apparent from the videotape that Defendant was agitated and upset by the stop, we are unable to conclude as a matter of law that he was the initial aggressor. We note that at the initial stop, Defendant testified that he was not armed and that he did not physically threaten or attack Deputy Castro. Moreover, because Deputy Castro is not seen on-camera, we cannot say whether he actually pulled his gun at the stop or whether he otherwise acted in a threatening manner toward Defendant. Finally, we observe that Defendant testified that the cause of his anger and agitation was the fact that he was fearful for his life after Deputy Castro pointed a gun at him.

{29} It is for these same reasons that we conclude that Defendant has presented enough evidence to support the remaining elements of his self-defense claim, “particularly in light of the applicable standard, requiring instruction even where the supporting evidence of self-defense is slight.” Foxen, 2001-NMCA-061, ¶ 13. Although the State raises reasonable arguments concerning the evidence, it is not for this Court to decide which party presents the more accurate version of events. See State v. Mantelli, 2002-NMCA-033, ¶ 13. See also Griffin, 2002-NMCA-051, ¶ 9 (holding that where the evidence supports a self-defense instruction, the jury will determine whether the elements of self-defense are actually met); Foxen, 2001-NMCA-061, ¶¶ 13-15 (concluding that if reasonable minds could differ as to the evidence presented, a self-defense instruction is appropriate); State v. Arias, 115 N.M. 93, 96, 847 P.2d 327, 330 (Ct. App. 1993) (“[S]ince evidence was presented to create a factual question concerning whether Defendant acted in self-defense, the jury was properly instructed on that defense.”), overruled on other grounds by State v. Abeyta, 120 N.M. 233, 242, 901 P.2d 164, 173 (1995).

{30} Additionally, we observe that, “[i]n such close circumstances, where the error involves the central issue in the case, it is the better policy to require a new trial under the correct instruction.” Mantelli, 2002-NMCA-033, ¶ 46; see also Benavidez, 1999-NMCA-053, ¶ 28 (concluding that to speculate on how a properly instructed jury would have decided the case “would jeopardize Defendant’s right to have his conviction rest on an actual finding of guilt, beyond a reasonable doubt, as to each essential element of the crime charged, as our case law requires”). We therefore hold that the district court’s failure to properly instruct the jury with respect to self-defense was not harmless error.

CONCLUSION

{31} We reverse Defendant’s conviction and remand for a new trial.

{32} IT IS SO ORDERED.

LYNN PICKARD, Judge

WE CONCUR:
JONATHAN B. SUTIN, Chief Judge
MICHAEL E. VIGIL, Judge
II. DISCUSSION

A. Standard of Review
{6} Plaintiff argues that summary judgment should not have been granted because there were genuine issues of material fact. Summary judgment is proper when “there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.” Self v. United Parcel Serv., Inc., 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. We review this issue de novo. Id.

B. Inherently Dangerous Activity
{7} “As a general rule, an employer of an independent contractor is not responsible for the negligence of the [independent] contractor or his employees.” Saiz v. Belen Sch. Dist., 113 N.M. 387, 393, 827 P.2d 102, 108 (1992). The exceptions are “where the employer has nondelegable duties (1) arising out of some relation toward the public or the particular plaintiff (e.g., duty of lessor to lessee), or (2) because of work that is specially, peculiarly, or inherently dangerous.” Id. The rationale underlying the rule that an employer is liable for the acts of an independent contractor when the work is inherently dangerous is the idea that an employer should not be allowed to insulate himself from liability by hiring an independent contractor when the employer knows or should know that the work presents special risks of physical harm. Id. at 395, 827 P.2d at 110. Whether an activity is inherently dangerous is a question of law. Id. at 395-96, 827 P.2d at 110-11.

{8} We use a three-prong test to determine whether an activity is inherently dangerous: 1) the activity must involve an unusual or peculiar risk of harm that is not a normal routine matter of customary human activity; 2) the activity is likely to cause a high probability of harm in the absence of reasonable precautions; and 3) the danger or probability of harm must flow from the activity itself when carried out in its ordinary, expected way, such that reasonable precautions aimed at lessening the risk can be expected to have an effect.

Gabaldon v. Erisa Mortgage Co., 1999-NMSC-039, ¶ 13, 128 N.M. 84, 990 P.2d 197. The first prong “addresses the relative rarity of the activity and the [public’s] . . . experience with the activity.” Id. ¶ 14 (internal quotation marks and citation
omitted). The second prong addresses “the expected probability of harm associated with the activity.” Id. ¶ 17. The third prong asks whether “the risk of harm flow[s] from the activity itself when carried out in an ordinary expected manner or [whether] the harm result[s] from the negligence of a particular actor.” Id. ¶ 19.

9 New Mexico courts have found the installation of high-voltage lighting systems and the felling of large trees to be inherently dangerous. See Saiz, 113 N.M. at 398-99, 827 P.2d 113-14 (holding that the installation of a high-voltage lighting system is inherently dangerous); Enríquez v. Cochran, 1998-NMCA-157, ¶ 98, 126 N.M. 196, 967 P.2d 1136 (holding that felling large trees is inherently dangerous).

On the other hand, we have refused to find that the operation of a wave pool, or a swimming pool, is inherently dangerous. Gabaldon, 1999-NMSC-039, ¶ 21 (holding that the operation of a wave pool is not inherently dangerous); Seal v. Carlshad Indep. Sch. Dist., 116 N.M. 101, 103-04, 860 P.2d 743, 745-46 (1993) (holding that operation of a swimming pool is not inherently dangerous).

10 Given these standards, we hold that the operation of an eighteen-wheeled truck to deliver water is not an inherently dangerous activity. Large numbers of eighteen-wheeled trucks are operated on our roadways, and the public is familiar with the activity. We do not believe the expected probability of harm associated with the activity is any greater than that applicable to the operation of motor vehicles generally, and Plaintiff introduced no evidence below to suggest that eighteen-wheeled trucks are involved in an abnormally high percentage of accidents.

11 We conclude that the act of driving large trucks on the highway is neither unusual, nor does it pose a peculiar risk. As we noted in Enríquez, “while driving an automobile may be considered by some as highly dangerous, it is a common, everyday occurrence, and the resultant familiarity . . . with its dangers through personal experience dictates against any finding that its risks are peculiar.” 1998-NMCA-157, ¶ 93. We are also persuaded that the risk of harm results from the negligence of a particular actor and not from the activity itself when carried out in an ordinary manner. Id. ¶ 97. As the Court in Seal noted, “[t]he doctrine of inherently dangerous activity pertains to creation or maintenance of a condition that is universally dangerous.” 116 N.M. at 104, 860 P.2d at 746. The operation of large trucks on the highway is not universally dangerous.

12 In reaching our conclusion, we recognize that, if an accident involving the negligent operation of an eighteen-wheeled truck does occur, the damage and harm is likely to be much greater. However, the analysis in this case does not depend on the resultant damage. Rather, it focuses on the danger presented by the activity. We are not persuaded that the operation of large trucks is unusual, statistically increases the likelihood of an accident, or presents risks with which the public is unfamiliar. The problem is the negligence and inattention of the driver and not any peculiar risk from the operation of eighteen-wheeled trucks.

13 Plaintiff argues that “driving trucks weighing over 10,000 pounds on [New Mexico] highways without any safety program or drug and alcohol program constitutes an inherently dangerous activity.” He also frames the issue, arguing that a company with twenty-five trucks that allows drivers to drive with methamphetamine and marijuana has no drug and alcohol safety program is engaged in inherently dangerous activity. We do not agree that Plaintiff has posited the correct analysis. Under his analysis, the particular act or acts of alleged negligence are layered on top of the activity to determine whether the activity is inherently dangerous. Plaintiff’s analysis would expand the definition of “inherently dangerous” well beyond what is delineated by our cases.

14 The proper analysis depends on the nature of the activity in general and whether it is inherently dangerous, not on whether it was dangerous because of alleged negligent acts or omissions in the way it was conducted. Gabaldon, 1999-NMSC-039, ¶ 20 (holding that the risk of injury in wave pools “does not appear to have resulted from an inherent danger in the ordinary, expected operation of wave pools”). Gabaldon rejected the idea that acts or omissions of those operating the pool, such as poor training of lifeguards, the lack of a safety auditing program, or improper functioning of the pool itself, triggered the employer’s liability. Id. Similarly, we reject Plaintiff’s argument that JWS’s lack of drug or alcohol safety programs made driving an eighteen-wheeled truck inherently dangerous.

15 Further, our holding is driven by policy. See id. ¶ 17 (recognizing that defining a particular activity as inherently dangerous involves consideration of public policy). We decline to conclude that an employer will be liable whenever an independent contractor is involved in a truck accident while making a delivery, or returning from a delivery. Plaintiff’s suggestion that we should hold employers liable for such accidents seems to us to be an unwarranted extension of the “inherently dangerous activity” exception. We conclude that any risks created by driving a large truck, commonly seen on the highways, is “not sufficiently great to require, as a matter of public policy, application of a legal rule more stringent than ordinary negligence.” Id. ¶ 17.

C. Negligent Selection of Contractor

16 Plaintiff argues that Defendant can be held liable for negligently selecting an unsafe contractor. Plaintiff relies on evidence suggesting that JWS did not adequately test employees for drugs, and on affidavits from two expert witnesses asserting violations of federal Department of Transportation regulations. Plaintiff also relies on an affidavit from an industry expert, suggesting that Defendant failed to comply with recommendations of the American Petroleum Institute contractor safety guidelines.

17 The employer of an independent contractor is generally not liable for physical harm caused to another by a negligent act, or omission of the contractor or his servants. Saiz, 113 N.M. at 393, 827 P.2d at 108; see also Restatement (Second) of Torts § 409 (1965).

18 However, when dealing with selection of an independent contractor, Restatement (Second) of Torts sets out the following exception to this general rule:

§ 411. Negligence in Selection of Contractor

An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor

(a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or
(b) to perform any duty which the employer owes to third persons.

19 While several New Mexico cases have mentioned Section 411, none has ex-

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pressly adopted it. See Valdez v. Cillessen & Son, Inc., 105 N.M. 575, 734 P.2d 1258 (1987); Talbott v. Roswell Hosp. Corp., 2005-NMCA-109, 138 N.M. 189, 118 P.2d 194; Williams v. Cent. Consol. Sch. Dist., 1998-NMCA-006, 124 N.M. 488, 952 P.2d 978. In Talbott, for example, we specifically noted that the defendant did not attack the viability of the plaintiff’s claim based on Section 411. Instead, the defendant confined its challenge to the applicability of Section 411 in light of the particular facts and circumstances. We limited our analysis accordingly. 2005-NMCA-109, ¶ 7. Similarly, in the present case, assuming without deciding that Section 411 is viable substantive law, the undisputed facts establish that JWS was not performing any duty owed by Defendant at the time of the accident. The undisputed material facts establish that the fatal accident, underlying Plaintiff’s claims, occurred after Tice had completed his last water delivery of the day to the drilling site. Tice was traveling on a public highway on his way back to JWS when the accident occurred. Defendant had no authority to control Tice and exercised no authority over him, regarding the manner in which he traveled to and from the drilling site, or the details of his work in that regard. The agreement between Defendant and JWS was for the providing of fresh water to operations at Defendant’s drilling site. No one was injured during that process on any land owned by Defendant, or over which it exercised control.

{20} Plaintiff implies that Defendant owed a duty to the traveling public because Tice was chemically impaired and had a JWS employee do some work on the truck brakes at Defendant’s drilling site. However, there is no evidence in the record that Defendant knew that Tice was chemically impaired and was having work done on the truck brakes, or that the brakes were not in perfect working order after the work had been completed.

{21} Plaintiff’s other theory is tied to Section 411(a). The essence of Plaintiff’s argument is that Defendant was negligent in not properly investigating and screening JWS as a potential contractor, even though its work would necessarily involve driving heavily laden trucks — an activity which “will involve a risk of physical harm unless it is skillfully and carefully done.” Id. Plaintiff relies on two items in the record to create a question of fact. First, it relies on the affidavit of a petroleum industry safety engineer, who asserts that Defendant failed to use ordinary care in hiring JWS in that Defendant “failed to follow standard industry practice in their failure to properly pre-qualify contractor, [JWS] as a safe contractor.” The engineer bases his opinion on Defendant’s failure to follow “American Petroleum Institute [API] contractor safety guidelines APIRP 2220 and RP 2221.” Our review of the API document reveals that it is not an industry standard by its own terms. Rather, it simply provides helpful suggestions for improving job site safety, including a list of inquiries which “may” be included in pre-trial information requests. These suggestions are reasonable for some formal bid processes, but they provide no guidance as to what would be required in the much more ad hoc or informal arrangement between Defendant and JWS. There certainly is no suggestion that they do or should apply across the board to every situation where an entity such as Defendant calls for relatively sporadic delivery services such as we have here. We conclude that the safety expert’s affidavit does not create a question of fact concerning Defendant’s pre-hiring inquiries of JWS’s competence.

{22} Second, Plaintiff relies on a negative Safety Fitness Rating Report from the New Mexico Department of Transportation (DOT) dated May 18, 2000. The report details DOT’s assessment of problems with JWS’s safety program as of that date. The difficulty for Plaintiff is that this report was created after the accident which gives rise to this case. Plaintiff points to nothing in the record creating a question of fact as to whether Defendant had any reason to know or suspect these difficulties before the accident. In the parlance of our tort law prior to the accident, there is nothing in the record to indicate that Defendant knew or should have known that JWS was incompetent or potentially incompetent to perform the work it was hired to do.

D. Contract Theory

{23} Plaintiff argues that he is entitled to recover against Defendant under the theory that Defendant and the contractor entered into a contract and that Defendant breached its duty of good faith and fair dealing. Therefore, there are genuine issues of material fact that preclude summary judgment. We reject this argument.

{24} Plaintiff has not cited us to any on-point authority for the novel proposition that any breach of the contractual duty of good faith running between Defendant and its contractor would give Plaintiff a right to recover from Defendant after a motor vehicle accident. See In re Adoption of Doe, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984) (stating that an appellate court will not consider an issue if no authority is cited in support of the issue).

III. CONCLUSION

{25} We affirm the grant of summary judgment in favor of Defendant.

{26} IT IS SO ORDERED.

IRA ROBINSON, Judge

WE CONCUR:
Micheal D. Bustamante, Judge
Cynthia A. Fry, Judge
Certiorari Not Applied For
From the New Mexico Court of Appeals

Opinion Number: 2007-NMCA-039

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
BEATE EGER,
Defendant-Appellant.
No. 26,992 (February 15, 2007)

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
MICHAEL E. VIGIL, District Judge

GARY K. KING
Attorney General
Santa Fe, New Mexico
M. ANNE KELLY
Assistant Attorney General
Albuquerque, New Mexico
for Appellee

JOHN BIGELOW
Chief Public Defender
NANCY HEWITT
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

OPINION

RODERICK KENNEDY, JUDGE

{1} Defendant appeals from the district court’s dismissal of his appeal and remand to magistrate court for sentencing based on an untimely appeal to district court. The notice of proposed summary disposition proposed to reverse on the basis that Defendant reserved his right to appeal to district court by his conditional plea and is not deprived of his right to appeal by virtue of counsel’s ineffectiveness in failing to timely appeal. The State responded with a timely memorandum in opposition.

{2} Although this case is assigned to the summary calendar and additional briefing is not necessary, we issue a formal opinion to emphasize that we accord the same regard to a defendant’s right to appeal from magistrate court to district court as we do to a defendant’s right to appeal from district court to this Court. For this reason, we hold that defense counsel’s failure to timely appeal Defendant’s magistrate court conditional plea agreement to district court, as would be a failure to timely appeal a district court conditional plea agreement to this Court, was presumptively ineffective assistance of counsel and that dismissal was therefore improper. For this reason we reverse and remand with instructions that the district court consider the merits of Defendant’s appeal.

FACTS

{3} Defendant pled guilty in magistrate court for aggravated DWI (first offense). Defendant’s plea was pursuant to a conditional plea and disposition agreement with the provision that Defendant “specifically reserves the right to appeal the issue of the six-month rule violation.” Pursuant to the plea, the magistrate court judgment and sentence was entered on February 28, 2006. Defendant filed an untimely notice of appeal to district court on March 27, 2006. See Rule 6-703(A) NMRA (providing that “[t]he notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the magistrate court”). In response to the State’s motion to dismiss, the district court ruled that Defendant’s appeal was not timely filed, that defense counsel was ineffective for failing to file a timely notice of appeal, and dismissed Defendant’s appeal and remanded to magistrate court for sentencing.

DISCUSSION

{4} Ordinarily, a voluntary no-contest plea waives a defendant’s right to appeal on non-jurisdictional grounds. See State v. Hodge, 118 N.M. 410, 414, 882 P.2d 1, 5 (1994). However, a defendant may enter into a conditional plea to reserve pre-trial issues for appellate appeal. Id. at 412, 882 P.2d at 3 (stating that “a conditional plea agreement is an agreement between the prosecutor and the defendant in a criminal case, under which, subject to the trial court’s approval, the defendant agrees to plead guilty to the offense charged but reserves one or more specific issues for appellate review following conviction”). Because the present Defendant entered into a conditional plea, we hold that he reserved his right to appeal to the district court. See State v. Celusniak, 2004-NMCA-070, ¶ 7, 135 N.M. 728, 93 P.3d 10 (recognizing conditional pleas in magistrate court).

{5} Despite entry of the conditional plea, however, defense counsel failed to timely appeal, filing the notice of appeal outside the fifteen-day time frame as required by Rule 6-703(A). As recognized by the district court, counsel’s failure to timely appeal to the district court from the conditional plea agreement constituted ineffective assistance of counsel. In such instance, case law provides that the district court nonetheless must consider the merits of Defendant’s appeal. See State v. Duran, 105 N.M. 231, 232, 731 P.2d 374, 375 (Ct. App. 1986) (holding that in criminal cases, “there is a conclusive presumption of ineffective assistance of counsel where notice of appeal or affidavit of waiver are not filed within the time limit required” and that the defendant’s right to an appeal must not be denied because of ineffective assistance of counsel); see also State v. Manuelito, 115 N.M. 394, 395-96, 851 P.2d 516, 517-18 (Ct. App. 1993) (holding that the defendant was denied effective assistance of counsel by counsel’s failure to file a timely notice of appeal in district court when counsel was aware of the defendant’s intent to appeal the metropolitan court judgment and sentence, and accordingly reversing the district court’s order of dismissal and remanding for reinstatement of the defendant’s appeal). Unlike the circumstances addressed in State v. Peppers, 110 N.M. 393, 399, 796 P.2d 614, 620 (Ct. App. 1990) (declining to extend the conclusive presumption of ineffectiveness of counsel to include appeals from pleas of guilty or no contest), the present Defendant specifically reserved his right to appeal in his conditional plea, thereby clearly expressing his intent to appeal. In such instance, we hold that the Duran presumption of ineffectiveness of counsel extends to Defendant’s right to appeal his magistrate court conditional plea agreement to district court.

CONCLUSION

{6} Based on the foregoing discussion, we reverse and remand with instructions that the district court consider the merits of Defendant’s appeal.

{7} IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

JONATHAN B. SUTIN, Chief Judge
A. JOSEPH ALARID, Judge
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**CLE Programs – University of New Mexico School of Law**

**“The War on Terror and U.S. Foreign Policy”**
**William H. Taft IV, Esq.**

Monday, April 23, 2007, 5:30-7:00 p.m., Rm. 2402
UNM School of Law, Albuquerque

**1.5 General CLE Credits – $39** (free if not attended for credit)

Funding for the lecture is provided by the Guadalupe Institute. This lecture is co-sponsored by UNM School of Law chapter of ACLU-NM and the International Law Students Association (ILSA).

William H. Taft IV, Esq. is of counsel in the Fried Frank law firm’s Washington, D.C. office. In 2001, he was appointed by President George W. Bush as legal adviser to the U.S. Department of State, where he served four years. He has also served as U.S. Permanent Representative to NATO, Deputy Secretary of Defense, Acting Secretary of Defense and General Counsel for the Department of Defense.

The lecture will explore important legal issues raised by the war on terror, both domestically and internationally. How has the law affected the way the U.S. has engaged in the conflict and how has the law, in turn, been affected by the conflict? Mr. Taft will discuss the substance of new practices, as well as the means by which they have been put in place, and consider how other countries have used or amended their laws in response to terrorism.

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**To Register:**

Phone: 505-277-0080
Fax: 505-277-4165
Mail: Claire Conrad
UNM School of Law
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**SCHOOL OF LAW Calendar of Events**

April

20 A CLE on Professionalism and Ethics
Visit http://lawschool.unm.edu/announcements/nmlr/cle/index.php for more information
3-5 p.m.

23 CLE Course: “The War on Terror and U.S. Foreign Policy” William H. Taft IV, Presenter
5:30-7:00 p.m.

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For Proposal #07-647-P737-0437
The New Mexico Developmental Disabilities Planning Council, Office of Guardianship, announces that it is soliciting proposals from one or more New Mexico Licensed attorneys familiar with representing petitioners or acting as GAL in Judicial Districts One through Thirteen for court appointment of a person to serve as guardian for an alleged incapacitated adult who is income- and resource eligible. Interested parties may obtain a copy of the RFP in writing, by email or by telephone by your request to: Julie Molina, NMDDPC, Office of Guardianship, 810 W. San Mateo Suite C, Santa Fe, New Mexico 87505-4144, (505) 476-7326 or julie.Molina@state.nm.us. Any questions or inquiries concerning this request, including obtaining referenced documents, should be directed to: Julie Molina, of the NMDDPC, Office of Guardianship, 810 W. San Mateo, Suite C, Santa Fe, New Mexico 87505-4144, (505) 476-7332. Offers may rely only on information provided by the Contracts Manager of the NMDDPC, Office of Guardianship. Submit an original and three (3) copies of the proposal obtained from the New Mexico Developmental Disabilities Planning Council, 810 W. San Mateo, Suite C, Santa Fe, New Mexico 87505-4144. The deadline for submission of the completed proposals for review at the above address is 12:00 p.m. on Wednesday May 16, 2007. Proposals received after this deadline will not be accepted. A pre-proposal conference will be held Tuesday April 24, 2007 at 1:00 p.m. at the Developmental Disabilities Planning Council Conference Room, 810 W. San Mateo, Suite C, Santa Fe, New Mexico. Potential offerors are encouraged to submit written questions in advance of the conference to the Contracts Manager at the above address. Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

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.

Request for Proposal
The New Mexico Mortgage Finance Authority (MFA) is seeking proposals from qualified attorneys, licensed to practice in New Mexico, to serve as General Counsel on a contract basis for the MFA. To receive a copy of the Request for Proposal, please access our web site at http://www.housingnm.org/publications/documents/rfpGeneralCounsel2007.pdf or e-mail your name, address, phone and fax number to Marjorie A. Martin at mmartin@housingnm.org, telephone number (505) 767-2242. Responses must be received by the contact person no later than 4 p.m. Mountain Standard Time on April 24, 2007.

NM Center on Law and Poverty - Staff Attorney
Public interest, non-profit law firm seeks attorney to engage in advocacy and litigation on poverty law issues. Looking for someone with a demonstrated commitment to addressing poverty and/or equal access to justice issues. Candidates should have extraordinary drive, research, writing and verbal skills, Spanish proficiency a plus. Non-profit salary offered with excellent benefits. Apply in confidence by sending letter of interest, resume, and writing sample to kim@nmpovertylaw.org. We are an equal employment opportunity employer.

ACLU of NM - Director, Southern Regional Office
ACLU of New Mexico seeks Director for its Southern Regional Office. Located near Las Cruces, this office will advance the ACLU’s mission of defending civil liberties, with particular emphasis on regional immigration and border issues. Director will manage office, coordinate community outreach/education, facilitate civil rights litigation. Excellent communications, managerial skills essential. Bilingual Spanish/English a must. Legal background a plus. Generous health, dental benefits; pension plan. AA/EOE. Send cover letter, resume, references, salary requirements to: SRO Director Search, ACLU-NM, PO Box 566, Albuquerque, NM 87103, or Fax: (505)266-5916.

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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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All advertising must be submitted by e-mail or fax by 5 p.m. Wednesday, two weeks prior to publication. The Bar Bulletin publishes every Monday. Advertising will be accepted for publication in accordance with standards and ad rates set by the publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication requests. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. Cancellations must be received by 10 a.m. on Thursday, two weeks prior to publication. For more advertising information, contact Marcia C. Ulibarri at (505) 797-6058, e-mail ads@nmbar.org or fax (505) 797-6075.
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

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Santa Fe law firm seeks full-time/part-time attorney with 2-5 year experience for general practice firm. Firm engages in practice including family law, guardianships, estate planning, criminal law and complex litigation. Additional licensure in California, Colorado, and Nevada desirable but not mandatory. Albuquerque resident may be able to split time between Albuquerque/Santa Fe. Health insurance and Simple IRA plan match. Send resume to bsutherland@jaygoodman.com, or fax to 505 989-3440.

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Lawyer Position
Guebert, Bruckner & Bootes, P.C. seeks an attorney with one to three years of experience and the desire to work in tort and commercial litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner & Bootes, P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

Fifth Judicial District Court Notice To Receive Bids
In accordance with the appropriate sections of the State of New Mexico Procurement Code, the Fifth Judicial District Court, County of Chaves, Eddy and Lea, is accepting proposals (bids) from licensed New Mexico attorneys or firms to furnish professional services for indigent persons in each county by serving as a (1) guardian ad litem, or (2) attorney for the primary respondent(s), or (3) attorney for conflict custodian(s) for the FY2008, beginning July 1, 2007 and ending June 30, 2008. Bids are to be sealed and marked “BID” on the envelope. Bids are due by 5:00 P.M., on Friday, May 11, 2007, in the Court Administrator’s Office at the address below. For further information on case statistics, costs, contract requirements, bid and resume information requested, contact the Court Administrator’s Office, P. O. Box 1776, Roswell, NM 88202-1776, or 505-622-2565.

Paralegal
The Santa Fe office of Hinkle, Hensley, Shanor & Martin, L.L.P. is seeking a paralegal. Experience in general civil practice, including employment, environmental, insurance defense, professional malpractice defense, regulatory and commercial law is preferred. Candidates should have excellent writing and research skills, and the ability to work with little supervision. A paralegal certificate or degree is necessary. All inquiries kept confidential. Resume can be faxed to Office Manager, 505-982-8623 or mailed to P.O. Box 2068, Santa Fe, NM 87504-2068.

Request for Applications
City of Albuquerque
Legal Secretary Position
LEGAL SECRETARY: Legal secretary position available in the Public Safety Division requiring considerable knowledge of legal terminology, litigation procedures, pleadings and other legal documents. Associate’s degree in Business Administration or related field, plus three (3) years of secretarial experience to include two (2) years as a Legal Secretary. Related education and experience may be interchangeable on a year for year basis. (Exception: The Legal Secretary experience is not interchangeable). Please apply online at www.cabq.gov. Application deadline is April 20, 2007.

Full Time Legal Assistant
Guebert, Bruckner & Bootes, P.C. seeks a full time legal assistant with strong writing and organizational skills. The successful candidate will be self-motivated, detail oriented and have the ability to work independently. Must have excellent communication skills and be able to multi-task. Competitive salary and benefit package. Please send resume and references to: Guebert, Bruckner & Bootes P.C., Attention Debbie Primmer, P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

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State Bar of New Mexico
**Program Schedule**

**8:30 a.m.**  Check-in/Registration

**9:00 a.m.**  CURRENT ISSUES INVOLVING VENUE  
Michael Browde, Esq.

**9:30 a.m.**  WHITHER DELGADO?  
David Jaramillo, Esq.

**10:00 a.m.**  COMING ATTRACTIONS - PENDING CASES  
Kathy Love, Esq.

**10:30 a.m.**  Break

**10:45 a.m.**  RECOVERING FULL COST OF MEDICAL BILLS  
Lori Bencoe, Esq.

**11:00 a.m.**  MEDICAID REIMBURSEMENT AFTER AHLBORN & PUNITIVE DAMAGES UPDATE  
Ray Vargas, Esq.

**11:40 a.m.**  LEGISLATIVE UPDATE  
Peter Mallery, Esq.  
David Dubigg, Esq.

**12:00 noon**  Lunch (provided)

**12:30 p.m.**  NEW CASES IN WORKERS’ COMPENSATION  
Peter White, Esq.

**1:00 p.m.**  NEGLIGENCE PER SE: WHEN DO REGULATIONS COME INTO PLAY?  
Ronald Morgan, Esq.

**1:45 p.m.**  FEDERAL PRACTICE: CIVIL RIGHTS AND NEW RULES  
Jane Gaigne, Esq.

**2:15 p.m.**  Break

**2:30 p.m.**  TORT CLAIMS AGAINST STATE ENTITIES  
F. Michael Hart, Esq.

**3:00 p.m.**  INSURANCE ROUNDPUP  
Maureen Sanders, Esq.

**4:00 p.m.**  AND THE KITCHEN SINK...  
David Stout, Esq.

**4:30 p.m.**  Adjourn  
David J. Jaramillo, Program Co-Chair  
David J. Stout, Program Co-Chair

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**Please return to:** New Mexico Trial Lawyers’ Foundation  
P.O. Box 301, Albuquerque, NM 87103-0301

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