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Special Insert:
New Mexico Hispanic Bar
Res Publica

www.nmbar.org
Wyndham Albuquerque Hotel At International Sunport • 2910 Yale Blvd., SE • Albuquerque, New Mexico

Program Schedule

8:30 a.m. Check-in/Registration
8:50 a.m. Professionalism in Outer Space
  Richard Gerding, Esq.
9:20 a.m. Current Professional Scenarios
  William E. Snead, Esq. (Moderator)
  Richard Gerding, Esq.
  John A. Myers, Esq.
  Bruce D. Hall, Esq.
  F. Michael Hart, Esq.
  Kathleen Love, Esq.
  Peter Johnstone, Esq.
  Pía Salazar, Esq.
  F. Michael Hart, Esq.
  James E. Snead, III, Esq.
  Justice Richard Bosson
  P. Ray M. Vargas, II, Esq.
  K. Kathleen Love, Esq.
  R. Robert Sabin, Esq.
  S. Stephen Durkovich, Esq.
  A. Andrew Schultz, Esq.
  K. Karen Myers, Esq.
  V. Victor Titus, Esq.
  S. Sarah Singleton, Esq.
  D. Daymon Ely, Esq.
10:30 a.m. Break
10:45 a.m. Ethical Scenarios
  Ethical Dilemmas and a Lawyer’s Duty
  Michael Browde, Esq. (Moderator)
  Stephen Durkovich, Esq.
  Daymon Ely, Esq.
  Karen Myers, Esq.
  Robert Sabin, Esq.
  Maureen Sanders, Esq.
  Andrew Schultz, Esq.
  Sarah Singleton, Esq.
  Victor Titus, Esq.
  Wendy York, Esq.
11:45 a.m. Lunch (on your own)
1:20 p.m. The Greatest Legal Story Ever Told
  Michael Koskoff, Esq.
2:50 p.m. Break
3:05 p.m. Professionalism Recognized - New Mexico Lawyers Recognized for Professional Conduct
  Justice Richard Bosson
  New Mexico Supreme Court
3:30 p.m. Proposed Changes to the Rules of Professional Conduct
  Nancy Cronin, Esq.
4:00 p.m. What Flies and Doesn’t Fly in Front of Judge and Jury
  Hon. Linda Vanzi (Moderator)
  Hon. Michael Bustamante
  Hon. Nan Nash
  Hon. Neil Candelaria
  Hon. Raymond Ortiz
  Hon. Pat Murdock
5:00 p.m. Adjourn

William E. Snead, Program Chair

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

TUITION (After November 9, 2007 increases by $10)

- NMTLA Member ................................................................. $249.00
  (If you are attending the seminar and joining NMTLA, please send two checks, one for the seminar and one for your dues)
- Non Member Attorney ...................................................... $299.00
- Paralegal ........................................................................ $89.00
  (Attorney must also be registered for this program
  Attorney attending: )
- UNM Law School Student Chapter Member .................... $54.00
- NMTLA Public Interest Attorney Member ....................... $158.00
- Full-time Judicial Clerk - no MCLE Credits ...................... $149.00
  MCLE Credits reported ...................................................... $158.00
- Full-time Judge or Appellate Law Clerk (Must pre-register)
  no MCLE Credits .............................................................. $69.00
  MCLE Credits reported ...................................................... $78.00

- I cannot attend the seminar. Please send the:
  Course Materials ........................................................... $25.00
  Course Materials & Audio Tape ....................................... $80.00

Payment □ Check Enclosed □ Visa □ MasterCard □ Amex
To register with a credit card complete registration form including credit card information and fax form to 243-6099 or call 243-6003.

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Name _________________________________
NM Bar ID No. __________________________
Firm _________________________________
Mailing Address _________________________
City/State/Zip: __________________________
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Fax: _________________________________
E-mail _______________________________
Hats Off to...

The Indian Law Section of the State Bar of New Mexico proudly announces its second annual Bar Preparation Scholarships awarded to third-year law students at the University of New Mexico. The Indian Law Section created the Bar Preparation Scholarships to support and promote the practice of Indian Law in New Mexico. The Bar Preparation Scholarships will help defray the costs to prepare and take the New Mexico bar exam.

The Indian Law Section congratulates the 2007 scholarship recipient who will receive $2000 at the Indian Law Section annual meeting. Nellisa Kennedy has demonstrated a commitment to Indian law and issues relating to Indian peoples. The Indian Law Section will present the scholarship to Ms. Kennedy at the Indian Law Section’s Annual Meeting on Thursday, November 8, 2007 at 1:00 p.m. at the New Mexico State Bar Center.

Congratulations to
Nellisa Kennedy!

The Indian Law Section greatly appreciates the donations from the following:

1st Judicial District Bar Association
Cuddy, Kennedy, Albetta & Ives, LLP
Robert A. Currier
Robert Gruenig
Leubben, Johnson & Barnhouse, LLP
Long, Pound & Komer, PA
Modrall Sperling
Pueblo of Acoma
Pueblo of Sandia
Marisa Y. Salazar
State Bar Young Lawyers Division
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

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E-mail __________________________________________________________________________________________________________

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

Credit Card #  _____________________________________________________________________________   Exp. Date  _________________

Authorized Signature  _______________________________________________________________________________________________

NOVEMBER 13TH VIDEO REPLAYS

2007 Probate Institute  
6.0 General and 1.0 Professionalism CLE Credits  
8:00 a.m. – 3:30 p.m.  
☐ $209

Advancing the HR/Attorney Relationship:  
Enhancing Employer Practices for Any Size Business  
5.5 General CLE Credits  
8:30 a.m. – 2:00 p.m.  
☐ $179
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Professionalism Tip

With respect to the public and to other persons involved in the legal system:

I will commit to the goals of the legal profession, and to my responsibilities to public service, improvement of administration of justice, civic influence, and my contribution of voluntary and uncompensated time for those persons who cannot afford adequate legal assistance.

Meetings

November

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

7
Employment and Labor Law Section Board of Directors, noon, State Bar Center

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

8
Business Law Section Board of Directors, 4 p.m., State Bar Center

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

State Bar Workshops

November

7
Lawyer Referral for the Elderly Workshop 10:30 a.m., Tucumcari Senior Center, Tucumcari

7
Lawyer Referral for the Elderly Workshop 12:30 p.m., Baxter-Curren Senior Center, Clovis

14
Consumer Debt/Bankruptcy Workshop 6 p.m., Silver City Annex (Bank of America Building) Silver City

28
Lawyer Referral for the Elderly Workshop 9:30 a.m., Munson Senior Center, Las Cruces

Cover Artist: Jack Atkins (www.jackatkins.com) paints the Southwest’s intense desert light, its spectacular vistas, and the people and things that create its sense of place. This fourth-generation New Mexican uses vivid colors and dramatic compositions to tell the story of this area’s underlying sense of drama and history. Atkins’ paintings are in a contemporary realist style. To see the cover art in its original color, visit www.nmbar.org and click on Bar Bulletin.
Destruction of Exhibits and Tapes

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

<table>
<thead>
<tr>
<th>District Court</th>
<th>Exhibits/Tapes</th>
<th>May Be Retrieved Through:</th>
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<tbody>
<tr>
<td>(505) 827-4775</td>
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<tr>
<td>2nd Judicial District</td>
<td>Exhibits in domestic cases, 1960–1991</td>
<td>Nov. 29</td>
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<tr>
<td>10th Judicial District</td>
<td>Tapes in civil cases, 1988–2005</td>
<td>Dec. 1</td>
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<tr>
<td>(505) 461-2764</td>
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in Santa Fe. A reception will immediately follow. Members of the judiciary, bar, and public are welcome to attend.

Justice Daniels was appointed by Governor Bill Richardson to fill the vacancy created by the death of Justice Pamela B. Minzner on Aug. 31.

Prior to his appointment, Justice Daniels was in private practice for over 30 years at the Freedman, Boyd, Daniels, Hollander, Goldberg & Ives law firm and has served as a professor at the UNM School of Law. He received his law degree from the UNM School of Law in 1969 and a master’s degree in trial advocacy from the Georgetown University School of Law in 1971.

Second Judicial District Court

Judicial Appointment

Governor Bill Richardson has announced his appointment of William Edward Parnall to fill the vacancy in Division I at the 2nd Judicial District Court. Effective Nov. 5, Judge Parnall will be assigned Children’s Court cases previously assigned to Judge Marie A. Baca. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Nov. 5 to challenge or excuse Judge Parnall pursuant to Supreme Court Rule 1-088.1.

National Adoption Day

The 2nd Judicial District Court, Children’s Court Division, will be celebrating National Adoption Day on Nov. 17. Clients having an adoption pending in Bernalillo District Court are invited to participate.
Attorney Support Group

State Bar News

Ninth Judicial District Court Designation of Roosevelt County Cases
Pursuant to Administrative Order filed Oct. 22, the 9th District Court, Curry and Roosevelt counties, has designated Division II Judge Drew D. Tatum to preside over all matters arising in Roosevelt County with the exception of CYFD matters, which shall be retained by Division IV Judge Robert Orlik. All cases now pending or hereinafter filed and not retained by the assigned judge due to familiarity with the case shall be transferred to Division II. Any party affected by the transfer of a case to Division II shall have the statutory 10 days from Nov. 5 to file the peremptory election to excuse this judge, pursuant to NMRA (2005) 5-106.

U.S. District Court for the District of New Mexico Ceremony to Honor Judge Joe H. Galvan
The legal community is invited to attend a ceremony honoring U.S. Magistrate Judge Joe H. Galvan at 4 p.m., Nov. 15, U.S. Courthouse, Third Floor Courtroom I, 200 E. Griggs, Las Cruces. A reception will immediately follow from 5:30 to 7:30 p.m. at the Stan Fulton Athletic Center, New Mexico State University. Call (505) 348-2001 or e-mail jjbullington@nmcourt.gov for more information.

Board of Bar Commissioners
Announcements
Fifth Bar Commissioner District Vacancy
A vacancy in the 5th Bar Commissioner District, representing Curry, DeBaca, Quay and Roosevelt counties, was created due to Donald C. Schutte’s appointment to a judgeship in the 10th Judicial District. The Board will make the appointment at its Nov. 30 meeting to fill the vacancy for the remainder of the unexpired term, which ends December 2008. Active-status members with a principal place of practice located in the 5th Bar Commissioner District are eligible to apply. Anyone interested in serving on the Board of Bar Commissioners should submit a letter of interest and resume to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860, by Nov. 26.

N.M. Legal Aid (NMLA) Board
The Board of Bar Commissioners will make three appointments to the New Mexico Legal Aid Board. Two of the appointments are one-year terms and one appointment is a one-year term, with one of the appointments being a member of and recommended by the Indian Law Section.

Children’s Law Section
5th Annual Art Contest
Members of the State Bar are invited to a reception honoring the winners of the “What Other People Think of Me/What I Think Of Myself” art contest. Masks decorated by children in D-homes and drug court will be on display.

State Bar News

Attorney Support Group
The Attorney Support Group offers two meeting opportunities:
• 5:30 p.m., Nov. 5 (meets regularly on the first Monday of the month)
• 7:30 p.m., Nov. 19 (meets regularly on the third Monday of the month)
Both groups meet at the First United Methodist Church at Fourth and Lead SW, Albuquerque. For more information, contact Bill Stratvert, (505) 242-6845.

Casemaker Training
Plan to attend a Casemaker training from 2:30 to 3:30 p.m., Nov. 15, at the State Bar Center. This one-hour program has been approved for 1.0 general CLE credit.

Employment and Labor Law Section
Board Meetings Open to Section Members
The Employment and Labor Law Section board of directors welcomes section members to attend its meetings on the

Contact Nancy Sandstrom in Judge M. Monica Zamora’s office, (505) 841-7392.

Holiday Deadlines
Due to the Thanksgiving Holidays, the deadlines for the Nov. 26 issue of the Bar Bulletin are as follows:
Advertising
Friday Nov. 9
Notices and Court Documents
Wednesday, Nov. 14

Children’s Law Section
5th Annual Art Contest
Members of the State Bar are invited to a reception honoring the winners of the “What Other People Think of Me/What I Think Of Myself” art contest. Masks decorated by children in D-homes and drug court will be on display.

The reception in Albuquerque will be held from 3 to 5 p.m., Nov. 9, in conference rooms A and B, Juvenile Justice Center. The reception in Santa Fe will be held from 4 to 6 p.m., Nov. 16, at the B.E Young Professional Building, Main Conference Room, 1300 Camino Sierra Vista. Refreshments will be served!

The section thanks the following sponsors for their generous donations:

Susie C. Krubasik
Whitney Johnson
Susan Alkema
Abyad Temple
Kari Brandenburg
Elizabeth Collard
Jean Conner
Sara Crecca
Sara Hurd
Flyn-Flynn
Jean Conner
Kari Brandenburg
Elizabeth Collard
Sara Crecca
Sara Hurd
Flynn-O’Brien
Kiva Lighting LLC

The Wonderful World of Wikis will be held in the computer lab from 3:45 to 4:45 p.m., sponsored by the Technology Committee. Wikis are collaborative Web tools that allow many users to share and edit files. This program does not offer CLE credit.

Call (505) 797-6000 to register. Casemaker is free online legal research offered to active State Bar members and Paralegal Division members.

Employment and Labor Law Section
Board Meetings Open to Section Members
The Employment and Labor Law Section board of directors welcomes section members to attend its meetings on the

www.nmbar.org
first Wednesday of each month. The next meeting will be held at noon, Nov. 7, at the State Bar Center. Lunch is not provided. For information about the section, visit the State Bar Web site, www.nmbar.org, or call S. Charles Archuleta, section chair, (505) 346-4646.

Indian Law Section Annual Meeting, Scholarship Award and CLE

The Indian Law Section will hold its annual meeting at 1 p.m., Nov. 8, in conjunction with the CLE, What is Economic Development in Indian Country? During the annual meeting, a student from the UNM School of Law will be awarded a bar preparation scholarship—$2000 to defray the costs of the bar exam and preparation courses.

The cost of the CLE program is $95; $20 for section members, government attorneys and paralegals; and $47 for Navajo advocates, tribal court judges, admin and staff. Attendees will receive 2.0 general and 1.0 professionalism CLE credits. Native American cuisine will be provided for lunch. To register call (505) 797-6020; fax (505) 797-6071; visit www.nmbar.org and select CLE; or mail CLE, PO Box 92860, Albuquerque, NM 87199. Agenda items for the annual meeting should be sent to Chair Karl Johnson, kjohnson@luebbenlaw.com or (505) 842-6123.

Paralegal Division Monthly Brown-Bag CLE for Attorneys and Paralegals

The Paralegal Division invites members of the legal community to bring a lunch and attend Trial Technology: Trials in the 21st Century, presented by Jeanne Adams, paralegal. The program will be held from noon to 1 p.m., Nov. 14, at the State Bar Center and offers 1.0 general CLE credit (pending MCLE approval). Registration begins at the door at 11:30 a.m. The cost is $16 for attorneys and $15 for paralegals and support staff. For more information, contact Cheryl Passalaqua, (505) 872-7469 or Evonne Sanchez, (505) 222-9356.

Prosecutors Section Annual Meeting

The Prosecutors Section will hold its annual membership meeting at noon, Nov. 15, at the State Bar Center. Lunch will be provided to those who R.S.V.P. by Nov. 13 to membership@nmbar.org. Contact Chair Stephen Kovach, skovach@da.state.nm.us, to place an item on the agenda.

Real Property, Probate and Trust Section Annual Meeting and CLE

The Real Property, Probate and Trust Section will hold its annual membership meeting at 12:45 p.m., Nov. 30, in conjunction with the 2007 Real Property Institute at the State Bar Center. Contact Chair Scotty Hollman, scotty@leaco.net or (505) 393-0505, to place an item on the agenda. CLE attendees will earn 7.0 general CLE credits. The cost of the CLE program is $189; and $179 for section members, government and legal service attorneys and paralegals. Lunch will be provided. See the CLE At-a-Glance insert in the Oct. 15 (Vol. 46, No. 42) Bar Bulletin for more information. To register call (505) 797-6020; fax (505) 797-6071; visit www.nmbar.org and select CLE; or mail CLE, PO Box 92860, Albuquerque, NM 87199.

Senior Lawyers Division Holiday Social and Year-End Meeting

The Senior Lawyers Division will hold its year-end meeting at 4 p.m., Dec. 7, at the State Bar Center. A holiday social with wine and snacks will follow at 5 p.m. R.S.V.P. by Dec. 5 to Tony Horvat, thorvat@nmbar.org or (505) 797-6033.

Software Tutorials

Free software tutorials for State Bar members and their support staff will be offered every Friday at the State Bar Center Computer Lab through the end of the year (excluding Nov. 16 and Nov. 23). Provided by the Law Office Management Committee, tutorials will be offered on Lotus 1-2-3, PowerPoint, Office Integration, Excel, Access, Quicken and QuickBooks. Only one space is available for each tutorial, but all seven will be available every Friday. Space will be reserved on a first-come first-served basis. Each tutorial is 3½ to 4 hours in length and participants are encouraged to start by 9 a.m. to provide ample time to finish. Call (505) 797-6039 or e-mail vcordova@nmbar.org to reserve a spot. Leave your name, phone number, e-mail address, the date you wish to attend, and the title of the program you are interested in so confirmation can be sent.

Featured Program: Quicken–Learn how to set up a checking account and check register; edit category lists; record split transactions; create and print checks; reconcile bank statements; set up a credit card account; and set up loans, payments, online checking, payees, and online banking. This tutorial includes working with investment tools and designing reports and graphs.

Trial Practice Section Annual Meeting and CLE

The Trial Practice Section will hold its annual meeting at 12:45 p.m., Nov. 29, in conjunction with Terence F. MacCarthy CLE. Agenda items should be sent to Chair Robert Cole, rcolelaw@yahoo.com or (505) 872-8626. Attendees will earn 6.0 general CLE credits. The cost of the CLE program is $169; $159 for section members, government attorneys and paralegals. Lunch will be provided.

To register call (505) 797-6020; fax (505) 797-6071; visit www.nmbar.org and select CLE; or mail CLE, PO Box 92860, Albuquerque, NM 87199.

Other Bars Albuquerque Bar Association

Call for Nominations for Outstanding Lawyer and Outstanding Judge

The Albuquerque Bar Association is entertaining nominations for the Outstanding
Membership Luncheon

The Albuquerque Bar Association’s Membership Luncheon will be held at noon, Tuesday, Nov. 6, at the Hyatt Regency Hotel, 330 Tijeras NW, Albuquerque. The luncheon speaker is David J. Schmidly, president of the University of New Mexico.

The CLE (1.0 professionalism CLE credit) will immediately follow the luncheon from 1:30 p.m. to 2:30 p.m. Lauren Marble will present Professionalism: The Secret to a Successful Practice, a one-hour presentation analyzing professionalism through New Mexico’s rich history of cultural diversity—Native American, Hispanic and Anglo-American—to uncover the sometimes hidden, sometimes forgotten teachings from the past, and integrate them into our understanding of professionalism.

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

Register for lunch by noon, Friday, Nov. 2. Those unable to register prior to the luncheon will be charged an additional $5 at the door. To register:
1. log on to www.abqbar.com;
2. e-mail abqbar@abqbar.com;
3. by fax to (505) 842-0287;
4. call (505) 842-1151 or (505) 243-2615; or
5. mail to PO Box 40 Albuquerque, NM 87103-0040

Doña Ana County Bar Association Reception for Justice Charles W. Daniels

Recently appointed Justice Charles W. Daniels of the New Mexico Supreme Court will address the legal community and the general public at 4 p.m., Nov. 16, in the Ceremonial Courtroom of the 3rd Judicial District Court at 201 W. Picacho, Suite A, in Las Cruces. The Doña Ana County Bar Association will host a welcoming reception at the courthouse for Justice Daniels immediately following his remarks. Refreshments will be served until 6 p.m. For further information, call (575) 523-8200.

UNM School of Law Corinne Wolfe Children’s Law Center Regional Cross-Training

A day-long program, Engaging Families and Preserving Connections: Best Practices in Children’s Court, will take in Santa Fe on Nov. 9 and Las Cruces on Nov. 30. This program will focus on foster parent and youth participation in court proceedings, open adoption, and mediated post-adoption contact agreements. Sponsors include the Supreme Court’s Court Improvement Project; the Children, Youth & Families Department and the Corinne Wolfe Children’s Law Center, UNM Institute of Public Law. For more information, visit http://ipl.unm.edu/childlaw or call (505) 277-9170.

Fall Library Hours

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.
Sunday Noon to 4 p.m.
Thanksgiving Holidays Closed

Nov. 22–23

Can’t Find It?

Searching for a court rule, order, opinion or article in a past issue of the Bar Bulletin?

We can do a word search for you.

Contact Dorma Seago
(505) 797-6030
or
dseago@nmbar.org

This comprehensive guide includes practical information gathered from a wide range of contributors, including successful solo practitioners, law firm consultants, state and local bar practice management advisors and law school professors. All the contributors share tips and advice that can be easily implemented in a solo or small-firm practice. It includes a step-by-step analysis of the decision to start a solo practice, including choosing a practice focus. It then provides tools to help with financial issues including banking and billing; operations issues such as staffing and office location and design decisions; technology for the small law office; and marketing and client relations. A final section covers quality of life issues. Flying Solo provides time-tested answers to real-life questions to those thinking of going solo and those new to the solo life.

Available at the State Bar Lending Library.
Visit www.nmbar.org,
call (505) 797-6033 or e-mail membership@nmbar.org.
The 2007 election of commissioners for the State Bar of New Mexico Board of Bar Commissioners will be held on Nov. 30. Only the First Bar Commissioner District has a contested election for two positions (one three-year term and one one-year term). Where provided, candidate responses and brief biographies are printed below. Ballots for the contested election are currently being mailed to members of the First Bar Commissioner District and must be returned by noon, Nov. 30. The other four districts with vacancies were uncontested; therefore, the candidates won by acclamation. All terms are for three years except as indicated.

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<thead>
<tr>
<th>Third Bar Commissioner District (uncontested)</th>
<th>Sixth Bar Commissioner District (uncontested)</th>
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</thead>
<tbody>
<tr>
<td>Carolyn A. Wolf (three-year term)</td>
<td>Andrew J. Cloutier (three-year term)</td>
</tr>
<tr>
<td>Fourth Bar Commissioner District (uncontested)</td>
<td>Seventh Bar Commissioner District (uncontested)</td>
</tr>
<tr>
<td>Gary D. Alsup (three-year term)</td>
<td>Richard M. Jacquez (three-year term)</td>
</tr>
</tbody>
</table>

**First Bar Commissioner District**  
**Candidate Biographies and Statements**

**Beatrice J. Brickhouse**—I grew up in Peoria, Illinois and attended Western Illinois University. After receiving my B.S. degree, I served three years in the Army as an officer. After completing my military service, I attended and graduated from the University of Arizona College of Law. I moved to Albuquerque and was admitted to the Bar in May 1993. My first job after law school was as a prosecutor in Farmington. I also practiced criminal defense in southeastern New Mexico. I have worked for the City of Albuquerque Legal Department, Litigation Division, as an Assistant City Attorney for five years. In addition to my professional activities, I have worked with our neighborhood association and served on the board of directors for La Puerta de los Ninos. While like many other attorneys I sometimes struggle with the balance between parenthood and practice, I find volunteer activities such as service on the BBC rewarding and believe it is important for our children to understand the need for community service.

**Q** State your view of what the mission of the State Bar is or should be and how it is or should be fulfilling that objective.

**A** The Bar should strive to serve its members and the public, as well as to promote a sense of community within its ranks. I believe the Bar is doing well in providing the members with opportunities for interaction. Every CLE, bar convention, and bench and bar conference provides the members with an opportunity to further build our community and professionalism. By promoting service projects, such as the Lawyers Care Referral Program and the LawLine 4 Call-In, the Bar promotes a positive image of its members and its commitment to the public. Bar Commissioners best help the Bar fulfill this function when they are accessible and responsive to our members’ concerns. Since I have been on the Board, I have found the Board members to be energetic, enthusiastic, and serious about their commitment to our members. While we may disagree on any given subject, I believe that there is a strong sense of service to the membership.

**Q** Give your perspective of how the State Bar is viewed by its membership. Identify an issue that the Board of Bar Commissioners has addressed and whether you would have handled it differently.

**A** Most members seem to take the Bar for granted and think of it as an entity that has very little to with their daily practice of law. When I first ran for Bar Commissioner, one of the “hot” issues was unionization of the Bar Center staff. At that time and now, my views are that any group of employees who wish to form a union should be allowed to do so. Right now, the “hot” issue seems to be reciprocity. Based on information I received, the membership was sharply divided on this issue. I was not certain we had all the information on this issue. There was information that suggested that the majority of attorneys licensed in New Mexico, but residing and practicing out of state, were opposed to reciprocity. On the other hand, concerns were also raised that increasing our membership would improve the Bar’s ability to provide more services to clients in outlying parts of the state. Because opinions were so strongly divided on this subject, I would have preferred more feedback from our members before the BBC took a position. There are times when members of the BBC should make a decision that may be contrary to the majority position; however, I am not sure that this was one of those issues.

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

**A** Unfortunately, most of the situations that necessitate a person seeking legal services are not happy events. Whether a client is going through a divorce, has been injured, or has lost their job, they are not likely to have a positive and objective view of the legal profession. Many times the public develops their perceptions of lawyers from these unpleasant events. I believe it is important that we, as attorneys, see and present ourselves not only as “legal eagles,” but also as attorney-counselors whose goal is not just earning a fee, but also guiding and educating our clients and the public. I am committed to following our Creed of Professionalism and I will take every opportunity to encourage other members to embrace those principles by which we should practice law.
If elected to the BBC, how do you intend to communicate with members of your district, and how would you respond to your district’s concerns?

I plan on continuing to attend as many Bar-sponsored events as possible. Over the last three years I have met and spoken with many members of my district to better understand their needs and represent their interests. I will continue to communicate that information to other members and to the Board to ascertain if a specific issue is one appropriate for the Bar to address or act upon. If any member has a concern or wishes to discuss issues, he or she is also free to contact me by email at bbrickhouse@cabq.gov, or by telephone at (505) 768-4661.

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

I am currently on the Board of Bar Commissioners, and have served on it since December 2004. I am a member of the Bylaws/Policies and Personnel Committees. I also serve as the Board’s liaison to the Children’s Court Rules Committee and the Board of Bar Examiners. I previously served as President of the Lincoln County Bar Association and Secretary of the New Mexico Black Lawyers Association. I have attended numerous bench and bar conferences, state bar conventions and volunteered for Law Day Activities, including the Martin Luther King, Jr. State Commission Youth Day Conference.

The State Bar’s mission is to provide service to all Bar members, as well as to oversee the legal community, so that all members of the legal community and the general public benefit from the wealth of knowledge and skills available statewide. In my opinion, the Bar provides a broad array of excellent services to the legal community, including CLEs, mentoring and support programs. The Bar offers numerous opportunities to its members to become involved in Bar activities and groups, as well as opportunities to interact positively with the community. However, I believe that there is room for improvement in sharing information with the general public so that the public is aware of the good people who make up the Bar and the services available.

State your view of what the mission of the State Bar is or should be and how it is or should be fulfilling that objective.

The State Bar’s mission is to provide service to all Bar members, as well as to oversee the legal community, so that all members of the legal community and the general public benefit from the wealth of knowledge and skills available statewide. In my opinion, the Bar provides a broad array of excellent services to the legal community, including CLEs, mentoring and support programs. The Bar offers numerous opportunities to its members to become involved in Bar activities and groups, as well as opportunities to interact positively with the community. However, I believe that there is room for improvement in sharing information with the general public so that the public is aware of the good people who make up the Bar and the services available.

Give your perspective of how the State Bar is viewed by its membership. Identify an issue that the Board of Bar Commissioners has addressed and whether you would have handled it differently.

In my opinion, the membership of the State Bar generally considers the Bar to be well-run, easily accessed and effective. One issue that the Board of Bar Commissioners has discussed, and continues to discuss for purposes of making a recommendation to the Legislature, is whether judicial elections should be non-partisan. I favor making the judicial election process, including appointments and retention of judges, non-partisan. I believe that removing politics from the process would both increase the likelihood of having more qualified people interested in pursuing service on the bench and would improve the way the public views the judiciary.

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

It appears that the public has little knowledge or awareness of the State Bar, its mission or its services. With a lack of communication between the Bar and the community, the public’s perception of attorneys and the legal community tends to be needlessly and unfairly negative. I would certainly strive to improve the reputation of the State Bar and its members by increasing visibility and communication with the public. I would encourage the Bar and its members to interact more with the public through volunteer programs, educational opportunities and meetings on topics of particular interest and relevance to both the Bar and the public.
State your view of what the mission of the State Bar is or should be and how it is or should be fulfilling that objective.

The mission of the bar association is to improve the relationship between the legal profession and the public, to improve the delivery of legal services and the administration of justice, to help us as lawyers deal with our day to day practices and pressures and to help us keep high ideals, integrity and competence, all as more fully described on the state bar's website. I think the state bar has been doing a great job at meeting its various mission goals. I was particularly impressed with the speakers at the last bar convention and their challenges to us as lawyers to examine the delays in litigation, mostly in the discovery process, and how that negatively affects our lives and the access to justice for many people. The bar convention provides an excellent forum to discuss these subjects affecting the practice of law and law reform. The state bar should continue to seek to be on the cutting edge of law reform issues and continue to provide a forum for these discussions, and should seek to provide additional ways for these discussions to continue, in addition to the bar convention. The state bar also needs to continue to pay attention to the needs of lawyers, whether it is the training and supervision of young lawyers, or addressing practice issues faced by more experienced lawyers.

Give your perspective of how the State Bar is viewed by its membership. Identify an issue that the Board of Bar Commissioners has addressed and whether you would have handled it differently.

I think the bar is viewed as very relevant to its membership and the bar certainly attempts to address many of the needs of the membership including the bar bulletin, directory, casemaker, referral services, product discounts, lawyers assistance program, and many case management and ethics services as well. The implementation of casemaker was a great idea as a service to attorneys and the training state-wide was exactly what the state bar should be doing in an effort to reach out to the entire state and be relevant to all of its members.

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

I am troubled by the public's view of the bar and the public's continuing limited access to justice. The bar has many wonderful programs for the public, e.g., client assistance, workshops, lawline, referral programs, and the latest initiative by the Court and the bar to reinstate a meaningful client protection fund. I would like to investigate whether there are better ways of getting the word out about these great programs, either through television, more prominent newspaper articles, and/or more outreach to other community associations. I would like to see the bar continue to investigate the delays in litigation and the discovery process that limit access to justice for many litigants. I would also like to see the state bar work in conjunction with the law school and the Supreme Court to improve the training and supervision of young lawyers.

Twila B. Larkin, a shareholder at the firm of Sutin, Thayer & Browne, is a board recognized Certified Specialist in Family Law. She is also a Fellow in the American Academy of Matrimonial Lawyers. She is past chair of the New Mexico Family Law Section and a past chair of the CLE Committee of the Family Law Section for the 15th and 19th Annual Family Law Institutes. She is a member of various state and local bar committees, including the state-wide Alimony Guidelines Committee, and the NM Legal Specialization Committee. She is currently serving on the ABA Committee on Legal Specialization. She was the Region V Representative to the Council of the American Bar Association Family Law Section for seven years.
Larkin continued

Q If elected to the BBC, how do you intend to communicate with members of your district, and how would you respond to your district’s concerns?

A I would certainly be in contact with my district’s members through individual emails and possibly individual letters. In the past, I have served on the Council for the Family Law Section of the ABA as Region V Representative, which consisted of several states, and I often communicated with the family law leaders in those other states as to what business was currently before the ABA Family Law Section. When I was Chair of the Family Law Section, I held two board meetings in cities other than Albuquerque (Las Cruces and Roswell) in an attempt to reach out to state-wide members. I would respond to the district’s concerns by listening to those concerns, gathering information, involving all participants and bringing those concerns to the Board and attempting to address those concerns to the satisfaction of the district.

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

A I’ve been actively involved in State Bar activities. I served as the Chair of the Family Law Section from 1999 to 2000. I served on the Board of Directors for the Family Law Section from 1999 to 2005. I served on many CLE committees for the Section, and chaired or co-chaired the 15th and 19th Family Law Institute committees. I have served on family law committees involved in lobbying the Legislature for the passage of statutes. I also served on the State Bar’s Public Legal Education Committee and revised some of the pamphlets that can be used by the public or lawyers as informational pamphlets for the public. I am currently wrapping up my service after 6 years on the Committee for Legal Specialization (court-regulated program). I also served on the Bernalillo County Alimony Guidelines Committee from 2001 to 2004, and on the State-wide Committee from 2005 to the present. I was a charter member of both the Pro Se Committees for the First and Second Judicial Districts. I also served as a member on the Advisory Board for the State-wide Pro Se Forms Project. Nationally, I served as the Region V Representative for the ABA Family Law Section from 1999 to 2005. I have also chaired various committees for the ABA Family Law Section (marital property, law school curriculum, product development). I am currently now serving on the ABA Committee for Legal Specialization. I am a member of the Albuquerque Bar Association and the Women’s Bar Association. I am also a member of the Rotary Club of Albuquerque and co-chair the Community Outreach Committee.

Alan M. Malott—I graduated from UNM Law School in 1979 and have operated a civil trial practice since 1981 ranging from a solo office to a practice group of 6. While concentrating on Plaintiff’s personal injury and insurance claims, I have also represented varied businesses and litigated commercial, real estate and trademark infringement cases. I was certified as a civil trial specialist in 1994 through NBTA and am certified through 2009. I am a member of the Board of Directors of NMTLA since 2000. Personally, I am keenly interested in cars that go fast, especially if they’re German, and am a reasonably good handyman and carpenter. I married my first secretary, Linda, in 1981 and we have just entered the “empty nest/dual tuition” phase of life as our youngest now attends Colorado University. I am proud to be a lawyer and look forward to the opportunity to better our profession.

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

A In my view, the mission of the organized bar is much the same as that of the individual lawyers who make up the membership: to serve the public and help improve the profession. In our integrated bar system, this also includes issues of managing both a service organization and a licencing board. I am pleased with the improvement in depth, breadth of subject matter and quality of presentation in the CLE programs over the last few years. Additionally the membership services committee has been able to significantly expand the goods and services made available to members. As a member of the Board, I would hope to learn more about the issues that face our organization and to bring the perspective of a small practitioner to possible solutions.

Q Give your perspective of how the State Bar is viewed by its membership. Identify an issue that the Board of Bar Commissioners has addressed and whether you would have handled it differently.

A I believe that recent survey results show the membership is favorably impressed with the expansion of our CLE programs and with membership services. However, it seems many members still feel involvement in bar activities is of limited importance to them. There remains a disconnect, at least perceptually, between the solo and small firm practitioners and our organization. One of the ways to address this is if more of us solo and small group lawyers get involved in the management of the organization. As an example of a recent issue which I might have addressed differently, I am not in favor of the reciprocity rule which the Board recently recommended to the Supreme Court. I note that the Board of Bar Examiners and numerous voluntary bar associations were also not in favor of the rule as submitted. The vote was narrow and I would not have supported the rule as submitted. I am not totally against reciprocity, but feel the recommended rule is overly broad and does little to protect the public, the profession, or the unique cultural interests of our State. Unfortunately, there is not enough space here to fully discuss this issue here.
Malott continued

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

A I am not sure how the Bar itself is viewed by members of the public, but the manner in which the members, lawyers, are viewed by the public continues to be a problem. I believe much of this stems from 1) the bad behavior of a very few members and 2) a lack of understanding of what we really do. I believe that programs like the people’s law school seminars and TV call in drives have been very effective in making lawyers accessible to ordinary people and therefore less intimidating. The lawyer/client dispute resolution programs, in which I have served for many years, are also important in making us accountable to the clients. Programs that make lawyers more accessible and more accountable are amongst my foremost interests.

Q If elected to the BBC, how do you intend to communicate with members of your district, and how would you respond to your district’s concerns?

A If elected, I intend to communicate directly with the members of District One on issues as they emerge. Mr. Conte has been kind enough to provide a listing of everyone’s e-mail and I am in the process of having it linked into our office e-mail system so that I can use this effective and inexpensive means of communication. In addition, my cell phone is (505) 507-2456.

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

A In addition to membership in the New Mexico Bar, where I have served as Chair of the Membership Services Committee and have been a long-term member of the Fee Dispute Committee, I am also a member of the Colorado Bar Association, and the Board of Directors of the New Mexico Trial Lawyers Association; I was Secretary in 2005. I am a Diplomate of the National Board of Trial Advocacy since 1994. Since 1992 I have also been a member of the faculty of CNM’s paralegal program where I teach Civil Procedure, Evidence, and Personal Injury Law on a rotating basis.

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To request an order form call the State Bar of New Mexico at (505) 797-6000 or E-mail sbnm@nmbar.org
Dear Members:

The Board of Bar Commissioners has approved the following budget for calendar year 2008. The budget is available in its entirety for the benefit of State Bar members and to provide an opportunity for members to object to any proposed expenditure in the budget that is not related to the State Bar’s purposes of regulating the profession or improving the quality of legal services. Members wishing to receive a printed copy of the budget disclosure may do so by calling (505) 797-6035 or (800) 87nmbar (876-6227). Instructions for challenging expenditures believed to be non-germane are set forth on page two of the document. The first pages of the budget provide the total expenditures by categories, while the remaining pages provide explanations and further breakouts of the expenditures by category. The total expenditures for the State Bar in 2008 are budgeted to be $1,952,075. Of this amount, approximately $612,115 is expected to be supported by non-dues revenue, and approximately $1,339,960 will be funded by dues. The following chart illustrates the total dues-supported budget broken into five main categories.

There were no material non-budgeted items for 2006.

The financial condition of the State Bar is sound, and the Board of Bar Commissioners is proud of the many programs and services the State Bar provides to the membership and the public.

Sincerely,

Stephen S. Shanor
Secretary-Treasurer
There’s a **NEW Look** At www.nmbar.org

The State Bar’s Web site, www.nmbar.org, is undergoing a redesign and update. In our ongoing effort to constantly improve our service to our members, we recently upgraded the member database from an outdated system. This meant that an update of the Web site was also in order. Now, many applications (for example all section, committee, commission and division rosters) are reading from the database and writing directly to the Web site. Information in the database is automatically displayed on the Web site without staff having to manually enter data twice.

**What Does It Mean to You?**

- A new site design displays six main navigation items: About Us, Attorney/Members, CLE, Find an Attorney, Legal Research and Public.

- Roll-out menus expand navigation items so you can select content directly from the home page without having to click page-by-page to find what you are looking for.

- A new search menu gives you the ease of finding content with simple keyword searches.

- The online dues process will be simplified. All of your data will be displayed when you log in to the “Pay My Dues” page. You can either modify any of your data or, if the information displayed is correct, you can proceed to check out right away. This process will save you time in filling out your annual dues form.

**The site goes live this month. We hope you and the public are pleased with a clean polished look and a user-friendly design.**
6  Independence of the Judiciary
   [Excerpt from 2007 Annual Meeting]
   VR, State Bar Center
   Center for Legal Education of NMSBF
   1.0 G
   (505) 797–6020
   www.nmbarcle.org

6  Order in the Court
   [Excerpt from 2007 Annual Meeting]
   VR, State Bar Center
   Center for Legal Education of NMSBF
   1.0 G
   (505) 797–6020
   www.nmbarcle.org

6  Workplace Injury: A Delgado Action or Worker’s Comp?
   Factors to Consider Before You File Suit
   VR, State Bar Center
   Center for Legal Education of NMSBF
   1.0 G
   (505) 797–6020
   www.nmbarcle.org

7  Annual Estate Tax Update
   Satellite Broadcast
   Edward Jones
   2.8 G
   (800) 441-2018

7  Arbitration—Theory and Practice
   Teleconference
   TRT
   2.0 G
   (800) 672-6253
   www.trtle.com

7  Fundamentals of Water Law
   Albuquerque
   National Business Institute
   5.0 G, 1.0 E
   (715) 835-8525
   www.nbi-sems.com

7  Power of Strategy: Mastering Advance §1031 Exchange Concepts
   Teleseminar
   Center for Legal Education of NMSBF
   1.0 G
   (505) 797–6020
   www.nmbarcle.org

8  Merging LLCs: Tax and Non-Tax Aspects, Part 1 & 2
   Teleseminar (Live Replay)
   Center for Legal Education of NMSBF
   2.0 G
   (505) 797–6020
   www.nmbarcle.org

8  What is Economic Development in Indian Country?
   State Bar Center
   Indian Law Section
   Center for Legal Education of NMSBF
   2.0 G, 1.0 P
   (505) 797–6020
   www.nmbarcle.org

9  Annual Navajo Law Seminar
   Window Rock, Arizona
   Sutin Thayer and Browne
   4.5 G, 1.5 E
   (505) 883-3396

9  Art of the Deal 6: Condominiums and More
   Teleseminar (Live Replay)
   Center for Legal Education of NMSBF
   1.0 G
   (505) 797–6020
   www.nmbarcle.org

9  CLE Friday
   Roswell
   Paralegal Division, Roswell
   5.0 G
   (505) 622-6510

12  When Politics Tip the Scales of Justice
    Teleconference
    TRT
    2.0 E
    (800) 672-6253
    www.trtle.com

13  2007 Probate Institute
    VR, State Bar Center
    Center for Legal Education of NMSBF
    6.0 G, 1.0 P
    (505) 797–6020
    www.nmbarcle.org

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**G = General**  **E = Ethics**  **P = Professionalism**  **VR = Video Replay**

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<td>1.0 G</td>
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### Petitions for Writ of Certiorari Filed and Pending:

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*Parties preparing briefs*
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Slip Opinions for Published Opinions may be read on the Court’s Web site:

# Clerk Certificates

From the New Mexico Supreme Court

## Clerk’s Certificate of Name, Address, and/or Telephone Changes

The following attorneys are at the address and telephone number immediately following:

### Felony Division

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<thead>
<tr>
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<th>Telephone</th>
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<tr>
<td>Eileen B. Baca</td>
<td><a href="mailto:Eileen.baca@state.nm.us">Eileen.baca@state.nm.us</a></td>
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<tr>
<td>Jennifer L. Barela</td>
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</tr>
<tr>
<td>Catherine Ava Begaye</td>
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<tr>
<td>Carey Corlew Bhalla</td>
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<tr>
<td>Alice Melissa Bozone</td>
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<tr>
<td>Mary V. Carmack</td>
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<td>Sophie Cooper</td>
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<td>Josh Ewing</td>
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<td>Keren H. Fenderson</td>
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<td>Sarah M. Gorman</td>
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### Metro Division

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(Practicing under limited license)
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Albuquerque, NM 87102
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Felony, Metro Appeals, Mental Health, Habeas
(505) 841-5006 (telecopier)

Metro
(505) 841-6953 (telecopier)

Juvenile
(505) 841-5153 (telecopier)

Capital Crimes
(505) 841-5141 (telecopier)
Education, Mentorship and the Hispanic Bar

by Christina A. Vigil

As New Mexicans, we are fortunate to live in a state enriched with cultural diversity in our universities, legislature, judiciary and the bar. As a result, each member of our profession was exposed to influences in their lives that helped mold them into who they are today. Whether it was a hard working grandparent or fictitious character from a book, each of us had someone in our life who exemplified certain characteristics that we desired to develop within ourselves. The term we now associate with those influences whether grandparents, fictitious character, or any other person whose characteristics we admire is “Mentor”.

My father, Gilbert Jose Vigil, Esq. was raised in Martineztown, a small, predominantly Hispanic community in Albuquerque. While growing up, he and many of the children of Martineztown were exposed to poverty, gangs, drugs and violence at a very early age. As my father grew older, he inevitably started associating with the wrong crowd and found himself lost in the public school system. Fortunately, my father was given an opportunity to recognize the value of education by an elderly Presbyterian couple, who appreciated my father’s talent, intelligence and determination. The couple allowed him access to their garage, and regularly left him a plate of home cooked food, a pillow and a blanket. He soon became a regular visitor. The couple agreed to fund his tuition, room and board at Menaul School so long as he would clean their yard on a weekly basis. This single act changed the direction and future of my father’s life, helped him realize opportunities to further his education, and instilled in him the power of knowledge. Today, my father is a successful civil rights attorney and credits his education, and instilled in him the power of knowledge.

How is mentorship connected to education? Like my father, there are countless at-risk children who are presently struggling to find their direction in life, struggling to realize who they are and sometimes even struggling to attend class or complete their homework assignments. Mentorship provides students with real life examples of people who have “made it,” which in turn gives them hope and motivation to complete their education. Mentorship gives students additional resources and opportunities to help further their education. Eventually, these children will embrace their own talents and realize the beauty and power of their own potential and thus empower them to educate themselves.

The New Mexico Hispanic Bar Association, as an organization, recognizes the moral responsibility of our profession to assist in the education of our youth. For this reason, the NMHBA has focused much of its efforts on furthering the education of Hispanic students in our community. The NMHBA has developed several education programs, which are designed to allow attorneys to act as role models, and positively impact the students of New Mexico.

The NMHBA Classroom Mentorship Program allows attorneys to collaborate with law students to create a curriculum that can be used in the public school classrooms. The goal is to provide public school students in high school, middle school and elementary school with exposure to the legal profession and to provide students with advocacy and communications skills that are invaluable in any profession. The curriculum may be structured to teach basic legal concepts, may focus on a certain area of law, or can be structured in the form of a mock trial. The subject matter, duration and frequency of the class visits are determined through collaboration between the mentor and the classroom teacher.

The Hispanic National Bar Association (HNBA)/NMHBA Pipeline Mentorship Program will provide minority students in New Mexico with opportunities to communicate and network with men and women who have established themselves in the legal profession. Law students and high school students will be paired with attorneys in New Mexico to receive guidance in professional development, career decisions, encouragement, support and networking opportunities. The HNBA/NMHBA Pipeline Mentorship Program will begin its mentorship efforts by pairing our members with law students from UNM Law School and high school students from the new APS High School in the South Valley. This new APS High School will place strong emphasis on college preparation and professional career academics, including law and public policy and will be constructed with a moot court and law clinic on the school grounds.

Through successful fundraising efforts and community support, the NMHBA Scholarship Program provides scholarships to graduating law students, book scholarships to first and second year law students and high school students who have an interest in a legal or public interest career. Scholarships have also been given to students for the purpose of attending the Hispanic National Bar Association’s High School Law Camp.

The NMHBA Law Camp Program affords children with the opportunity to participate in an extensive mock trial program. The NMHBA is working collaboratively with the Special Programs Department at the University of New Mexico in connection with this project. The week-long program is held in the summer for seventh and eighth grade students. The program allows students the opportunity to meet judges, practicing attorneys and law enforcement officers. The students also visit the federal and state courthouses in Albuquerque and visit one of the larger firms in the state. The program culminates with students participating in a mock trial.

The NMHBA also participates in the American Bar Association - Young Lawyer’s Division’s Choose Law Program. This program utilizes materials and media developed by the ABA which is shared during a class period with public school students. During this time, attorneys may share their “story” and educational insight. The mentor may also provide the
Message from the President

Frank Baca

Why a Hispanic Bar Association? In this day and age, why do we still have and why do we need a Hispanic Bar Association, especially in New Mexico? Is it an anachronism, an unnecessary vestige from an era long past? That is a legitimate question and the answer is not precisely the same as it was 30 years ago.

It is important to recall why the New Mexico Hispanic Bar Association was founded. Thirty years ago, there was a need to fight battles to open doors. There was a need to network among ourselves for consultation and consultation. There was a need to organize to demand change. It is important to remember why this organization was needed 30 years ago because it reminds us of how frail our civil rights are and because it keeps us vigilante to protect those rights in the future. Remembering the past also reminds us and everyone else that there are those willing to lead the battle for justice at their own expense. People like Eddie Benavidez, Judge Steve Herrera, Presiliano Torres, Helen Lopez and many others devoted much time and energy, often to their own financial detriment, to open doors to the law schools, to the bar and to other professional and political opportunities. We still exist to remember those efforts and to stand ready to defend those rights, if necessary.

Today, the primary focus of the New Mexico Hispanic Bar Association is somewhat different. The doors are ajar, although there are still many obstacles, more economic than political. It is naive and unrealistic to believe otherwise. Today, the NMHBA exists to help carry the load. Where in the past we relied on others to do for us, today we are part of the organized effort to do for ourselves. We are in positions of authority: decision-makers when it comes to hiring and firing, promotions and new opportunities. We are now in a position to assume responsibility for ourselves, for our community, for our constituents.

With this newfound authority and influence comes much responsibility. It is one thing to make sure there is diversity at the law school, in the Bar and in the courts. It is quite another thing to help bring up those that are not in college, in law school or in the Bar, and those who never even contemplated that possibility. I am fond of opinion that there is no glass ceiling in New Mexico, but unfortunately the floor is dropping for many.

The NMHBA is now clearly focused on providing educational opportunities for people of all colors and ethnic backgrounds.

There is a need for organizations such as ours to carry on this work. It is not the responsibility of the government to solely carry the load. Quite frankly, it is more meaningful to do for yourself than to have others do for you. Therefore, the New Mexico Hispanic Bar Association proudly exists to provide an organized framework for continuing the process of expanding educational opportunities in this State. We do so by our scholarship program, which now extends to high school students. We do this by our mentorship program, that in partnership with other organizations, reaches out to mid-school students. We do this by our summer law camp, which reaches out to the rural communities within the State.

Why does the NMHBA exist today? We continue to exist to remember the past. We continue to exist to provide social and professional networking opportunities for our members. However, we thrive on expanding educational opportunities for the youth of our community. We hope you will join us in this worthwhile endeavor.

New Mexico To Host 2009 HNBA Annual Convention

by Charles Garcia

As a result of the work and efforts of the Bid Committee of the New Mexico Hispanic Bar Association, New Mexico was awarded the 2009 Hispanic National Bar Association (HNBA) Annual Convention. The Bid Committee made the presentation to the National Board of Governors (BoG) at the HNBA’s mid-year meeting in Minneapolis, Minnesota earlier this year. I heard many comments about how impressed everyone was with our bid proposal and presentation. Many current and former members of the BoG told me afterwards that they had never seen any city or state put together such a professional and well thought-out bid. NM competed with Los Angeles, California, Chicago, Illinois, and San Antonio, Texas in the bid. Several members of the Bid Committee need to be recognized for their contributions to the bid we submitted including Frank Baca, Brian Colón, Tina Cruz, Roxie De Santiago, Laura E. Sanchez, Jose Sapien, Christina Vigil, and Briana Zamora.

Convention planning is already underway. We are currently planning the Annual Convention for September 2009 and finalizing the hotel that will host the convention. The New Mexico convention will be focused on several areas of local interest including high tech industries, a judicial program and issues affecting us as a border state, including immigration. The convention will also feature the educational programs of the NMHBA. Among other things, the Annual Convention will also include the HNBA’s mentoring program, a program focused on development of young lawyers, a program focused on the diversity of bar membership, and a law student program. Many of the substantive committees are already being formed. We will need many volunteers to help plan and manage the convention. If you would like to serve on one of the CLE committees, or on one of the convention planning committees, please contact Charles Garcia at Charles.Garcia@PNMResources.com or at (505) 241-4939. We hope to hear from many of you to help us put on a GREAT HNBA Annual Convention in 2009.

Education continued from cover

class with career opportunities that are available in the legal profession. This program is designed to target public school students who would not regularly have the opportunity to communicate with an attorney, and includes rural areas in northern and southern New Mexico.

Take a moment now to reflect on those persons who touched your life. It may be someone you called a mentor, or maybe, like the family who took my father under their wing, someone who just reached out and made a difference in your life. Take a moment also to reflect on how your life might have been different if that person had not encouraged you. As members of the legal profession, and particularly as Hispanics, we have the ability and duty to positively impact our community. The NMHBA has created many exciting programs that provide great opportunities to be an influence in someone else’s life. Each of these programs provides you with a different experience and requires differing levels of commitment, from a one time visit to a classroom to regularly scheduled visits with a student. We encourage you to become involved in these programs and make a difference in a student’s life.

Christina is the Chair of the NM Hispanic Bar’s Education/Mentorship Committee. Please contact Christina at christinavigil77@hotmail.com for additional information or to participate in any of these programs. You may also contact the NM Hispanic Bar at nmhispicanbar@yahoo.com.
When I was approached to write an article on Justice Pamela B. Minzner and her impact on New Mexico’s legal landscape, several questions entered my mind, including: “Why me?” “What more can I add to all the extraordinary memories that others have already shared?” “How can I really capture everything that I want to say in words?” At the same time that these questions were racing through my head, I politely said “Of course, I will write something.”

The truth of the matter is that I am honored to write an article about Justice Minzner, but I can only speak for myself and share with you one of the many lessons that Justice Minzner taught me. I encourage each of you who had the opportunity to meet and know Justice Minzner to share your stories with others, as well. By doing so, we will keep her wonderful spirit and memory alive.

While I was still in law school, I had the privilege of meeting Justice Minzner. I was awestruck and completely mesmerized by her. Although I knew that she was the first female Chief Justice on the New Mexico Supreme Court, there was something else that captured my attention. Perhaps it was the attention that she gave me. She treated me as if I was the only person in the room, and she was so interested in who I was and what I was doing. After that unforgettable encounter, I knew exactly what I wanted to do after I graduated from law school— clerk for Justice Minzner.

Shortly after that first meeting, Justice Minzner sent me a handwritten note, which I later learned was one of the sincere gestures for which she was known. I remember how excited I was when I received that note. I ran up to a friend and showed her the prize that I had received. That note sealed the deal for me—actually, it reaffirmed my goal that I really wanted to clerk for Justice Minzner upon graduation.

Fortunately, I was given that opportunity. Upon graduation, Justice Minzner offered me a clerkship position and, of course, I accepted the offer. Shortly thereafter, Justice Minzner met my boyfriend at a law review function and she told him “thank you for sharing Amanda with me.” I was mystified. In my mind, he should have been thanking her because clerking for her was all that I had talked about for quite some time.

During my one-year clerkship with Justice Minzner, I learned so much from her and about her. I learned how eloquent and meticulous she was with her words and actions. I also learned that simply calling her “Justice” did not really do justice at all to who she really was. Whenever she met people, she always introduced herself as “Pam.” Now I know that “Pam” encompasses her so much more than “Justice” does. This leads me to the great lesson that Pam taught me: Do not be known by the artificial labels bestowed upon you, but instead be known by the multiple facets that make you you!

Pam was a multifaceted gem that sparkled no matter what light she was in. She was a loving and devoted wife, mother, daughter, friend, mentor, and colleague. She was a senior justice on the New Mexico Supreme Court. She had previously served on the New Mexico Court of Appeals and had been a distinguished law professor at UNM. Even after she left the law school, she continued to be a teacher because that was her nature. She was actively involved with her church. She was and continues to be my inspiration! She and I had so many wonderful conversations, each intriguing in its own respect, including discussions about Elmo, yes Elmo from Sesame Street, and Big Bird and his beautiful yellow feathers. She reminded me how important it is to laugh, smile, and enjoy life. We talked about the great fun it would be to do a series of cartwheels down the long hallway where the justices’ offices are located. In a nutshell, she taught me the importance of seeing beauty in everything and living life to its fullest. I believe she lived a successful life because she was multifaceted and because she was “Pam.”

As I reflect upon who she was, and as I continue to learn more about her, I now know that “Pam” really does capture who she was so much better than any single label could. Clearly, Pam earned all of her successes and labels that came with them. Although she was a distinguished justice and deserved the respect that came with that role, that was only one of the many facets of her legacy. She never let anyone else define who she was, instead she lived the life that she was intended to live, bringing grace to every role she had.

Now I understand why she thanked my boyfriend—because she was Pam. She was a gracious woman. Her sincere gratitude for everyone and everything both humbles and inspires me still.

I have been blessed to know Pam. The memories that I have of her are memories that I will treasure forever. Thank you, Dick. Thank you, Carl. Thank you, Max. Thank you for sharing Pam with me and all who knew and loved her!
Members on the Move

Denise Chanez, a 2006 graduate of the University of New Mexico School of Law, recently joined the Narvaez Law Firm, P.A. as an associate. Before joining the Narvaez Law Firm, Ms. Chanez was employed as a law clerk for New Mexico Supreme Court Chief Justice Edward Chavez. While in law school, Ms. Chanez was the President of the Mexican American Law Students Association and she currently is a board member with the New Mexico Hispanic Bar Association.

Brian S. Colón became a partner at Robles, Rael & Anaya, P.C. in January 2007 and in April was elected Chairman of the Democratic Party of New Mexico. In June, Mr. Colón was invited to join the UNM Alumni Board Association and proudly accepted the invitation. Currently, Mr. Colón also serves with the Central New Mexico Alumni Association for NMSU, which is where he received his finance degree. This past summer Mr. Colón also co-founded “Club Social” at the National Hispanic Cultural Center. This organization focuses on attracting and enriching young professionals in support of the dual worlds of Hispanic arts and culture by way of philanthropy, while providing unique opportunities for networking.

LaDonna Giron of Los Lunas, NM was appointed by Governor Richardson to the New Mexico Adult Parole Board. A former state public defender and prosecutor, Ms. Giron welcomes this opportunity to serve and participate in yet another part of New Mexico’s Criminal Justice System. Ms. Giron has spent her legal career primarily in the area of criminal law. She will begin her term on the parole board immediately. Ms. Giron proudly serves on the board of directors of the NMHBA and is the 2007 Holiday Scholarship Fundraiser co-chair.

William E. Parnall was appointed by Governor Richardson to the Bench of the Second Judicial District Court, Children’s Court Division.

Laura E. Sanchez has been appointed as the Executive Director of the Democratic Party of New Mexico. Originally from Deming, Ms. Sanchez received her B.A. and M.B.A. from the University of Arizona and her J.D. from UCLA Law School. She also teaches Business Law as an adjunct professor at New Mexico Highlands University.

Submit information for this section to nmhispanicbar@yahoo.com by March 15, 2008.

UPCOMING EVENTS

NOVEMBER 10 & 11: Board of Directors Retreat. We would love to hear your voice at our Retreat. If you have any suggestions, comments or issues that you think need to be addressed by the NMHBA over the next year, please send them to nmhispanicbar@yahoo.com or contact any member of the Board of Directors.

DECEMBER 7, 2007: Holiday Fundraiser: Please see ad in this issue of Res Publica.

JANUARY 2008: Board of Directors Meeting. For an agenda of issues and for more information please contact Lisa Vigil at lisavigil777@msn.com.

FEBRUARY 2008: Board of Directors Meeting. For an agenda of issues and for more information please contact Lisa Vigil at lisavigil777@msn.com.

MARCH 15, 2008: Deadline for submission of Members on the Move information and articles for the spring issue of Res Publica. Information can be submitted at nmhispanicbar@yahoo.com.

MARCH 2008: Board of Directors Meeting. For an agenda of issues and for more information please contact Lisa Vigil at lisavigil777@msn.com.

This case requires us to determine whether a Rule 1-059(E) NMRA motion to alter or amend a judgment is subject to the automatic denial provision of NMSA 1978, Section 39-1-1 (1917). The Court of Appeals, in a memorandum opinion, decided that Rule 1-059(E) is subject to automatic denial because both Section 39-1-1 and Rule 1-059(D) NMRA 2006 (prior to August 21, 2006, amendment) provide for automatic denial thirty days after a motion is filed. However, a plain reading of Rule 1-059(E) does not provide for automatic denial, and therefore we reverse the Court of Appeals and remand the case for consideration of Appellant’s remaining claims.

I. FACTS

Albuquerque Redi-Mix (“Redi-Mix”) is a business selling gravel and concrete in New Mexico. On October 2, 2002, a Redi-Mix employee was involved in an auto accident that resulted in the death of Laura Miera (Victim). Victim’s survivors filed a complaint for wrongful death against Redi-Mix as a result of the accident. In an August 6, 2003, letter, Redi-Mix contacted Scottsdale Insurance Company (“Scottsdale”), its commercial general liability coverage provider, to investigate, evaluate, pay, or settle the wrongful death case against Redi-Mix. Scottsdale informed Redi-Mix that the insurance policy did not apply to bodily injury arising out of the use of an auto, and, as a result, it would not indemnify or defend the claim. Redi-Mix then filed a complaint against Scottsdale for declaratory judgment, breach of contract, bad faith and breach of fiduciary duties, and violations of the Insurance Code and Unfair Practices Act.

Redi-Mix and Scottsdale both filed motions for summary judgment on the declaratory judgment and breach of contract claims. The district court granted Scottsdale’s motion for summary judgment and denied Redi-Mix’s motion on December 28, 2004. Thereafter, Scottsdale filed a motion for summary judgment on the remaining claims, which the court granted on February 17, 2006. On February 23, 2006, Redi-Mix submitted a motion for reconsideration. Over three months later, on June 5, 2006, the court issued an order denying Redi-Mix’s motion.

Redi-Mix appealed the denial of its motion for reconsideration to the Court of Appeals. In a memorandum opinion, the Court of Appeals dismissed Redi-Mix’s appeal. Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co., No. 26,872, slip op. (Ct. App. Oct. 24, 2006). The Court determined that Redi-Mix filed an untimely notice of appeal because its motion for reconsideration was denied by operation of law thirty days after it was filed. Id. at 2 (citing Section 39-1-1 and Rule 1-059(D)). Section 39-1-1 provides that final judgments and decrees, entered by district courts in all cases tried pursuant to the provisions of this section shall remain under the control of such courts for a period of thirty days after the entry thereof, and for such further time as may be necessary to enable the court to pass upon and dispose of any motion which may have been filed within such period, directed against such judgment; provided,
that if the court shall fail to rule upon such motion within thirty days after the filing thereof, such failure to rule shall be deemed a denial thereof . . . .

(Emphasis added.) Similarly, the 2006 version of Rule 1-059(D) in effect at the time stated: “If a motion for new trial is not granted within thirty (30) days from the date it is filed, the motion is automatically denied.”

{5} Redi-Mix filed a petition for writ of certiorari with this Court asking us to ascertain whether a motion filed under Rule 1-059(E), which does not have an automatic denial provision, is deemed automatically denied after thirty days pursuant to Section 39-1-1. We conclude that a plain reading of Rule 1-059(E) demonstrates that it is not subject to automatic denial, in spite of the references to automatic denial in Rule 1-059(D) and Section 39-1-1. Consequently, we reverse and remand this case to the Court of Appeals for further consideration of the merits of Redi-Mix’s appeal.

II. STANDARD OF REVIEW

{6} This case requires us to examine the effect of Section 39-1-1 and Rule 1-059(D) on Rule 1-059(E). Interpretation of our rules of civil procedure and statutes is a question of law that we review de novo. Walker v. Walton, 2003-NMSC-014, ¶ 8, 133 N.M. 766, 70 P.3d 756; State v. Rowell, 121 N.M. 111, 114, 908 P.2d 1379, 1382 (1995). “In construing a particular statute, a reviewing court’s central concern is to determine and give effect to the intent of the legislature.” Cobb v. State Canvassing Bd., 2006-NMSC-034, ¶ 34, 140 N.M. 77, 140 P.3d 498 (quoting State ex rel. Kline-line v. Blackhurst, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (1988)). “We must ‘give a statute its literal reading if the words used are plain and unambiguous, provided such a construction would not lead to an injustice, absurdity or contradiction.’” Johnson v. Shuler (In re Extradition of Martinez), 2001-NMSC-009, ¶ 14, 130 N.M. 144, 20 P.3d 126 (quoting Atencio v. Bd. of Educ., 99 N.M. 168, 171, 655 P.2d 1012, 1015 (1982)).

III. REDI-MIX’S MOTION FOR RECONSIDERATION IS A RULE 1-059(E) MOTION TO ALTER OR AMEND A JUDGMENT

{7} As a preliminary matter, we must resolve whether Redi-Mix’s motion for reconsideration is a Rule 1-059(E) motion to alter or amend a judgment or a Section 39-1-1 motion. Scottsdale notes that Redi-Mix’s motion for reconsideration did not specify the rule or statutory authority upon which it was based. While Scottsdale concedes that the motion could have been brought under Rule 1-059(E), it posits that the motion should also be considered to have come under Section 39-1-1. If the motion for reconsideration also comes under Section 39-1-1, Scottsdale asserts that the statute’s automatic denial provision would apply. Redi-Mix urges the Court to hold, like the Court of Appeals and our federal counterparts, that a motion for reconsideration filed within ten days of judgment is a motion to alter or amend a judgment under Rule 1-059(E). We accept Redi-Mix’s position and treat its motion for reconsideration as a Rule 1-059(E) motion to alter or amend a judgment.

{8} Our Court of Appeals has previously addressed this issue. In In re Estate of Keeney, the petitioner submitted a motion for reconsideration after the trial court announced it would grant the respondents’ motion for summary judgment. 121 N.M. 58, 59, 908 P.2d 751, 752 (Ct. App. 1995). While specifically addressing whether the Court of Appeals could consider affidavits attached to the petitioner’s motion for reconsideration, the Court also analyzed whether the motion for reconsideration should be treated as a Rule 1-059(E) motion. Id. at 60, 908 P.2d at 753. The Court of Appeals found guidance in the Fifth Circuit Court of Appeals case of Lavespere v. Niagara Machine & Tool Works, Inc., 910 F.2d 167 (5th Cir. 1990), abrogated on other grounds by Little v. Liquid Air Corp., 37 F.3d 1069 (5th Cir. 1994). Keeney, 121 N.M. at 60-61, 908 P.2d at 753-54. In Lavespere, the court noted that the Federal Rules of Civil Procedure do not recognize a motion for reconsideration of summary judgment, but asserted that such a motion will be treated as either a motion “to alter or amend” under Rule 59(e) or a motion for “relief from judgment” under Rule 60(b). Under which Rule the motion falls turns on the time at which the motion is served. If the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b).

910 F.2d at 173 (internal footnotes omitted). Our Court of Appeals adopted this reasoning and concluded that because the petitioner’s motion for reconsideration was submitted ten days after the trial court announced an intent to grant the respondent’s summary judgment motion, it would treat the petitioner’s motion as a Rule 1-059(E) motion. Keeney, 121 N.M. at 60, 908 P.2d at 753. Rule 1-059(E) is the New Mexico Rule of Civil Procedure equivalent to Rule 59(e).

{9} We have previously stated that Rule 1-059(E) and Rule 1-060(B) NMRA “are taken from their corresponding [federal] counterparts.” Perez v. Perez, 75 N.M. 656, 658, 409 P.2d 804, 805 (1966). When our state court rules closely track the language of their federal counterparts, we have determined that federal construction of the federal rules is persuasive authority for the construction of New Mexico rules. Schwartzman v. Schwartzman Packing Co., 99 N.M. 436, 440, 659 P.2d 888, 892 (1983); Lopez v. Singh, 53 N.M. 245, 247, 205 P.2d 492, 493 (1949). Several other federal circuit courts have held that a motion questioning the correctness of a judgment and filed within ten days of judgment is to be treated as a motion to alter or amend a judgment under Rule 59(e). See, e.g., Price v. Philip, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005); Rankin v. Heckler, 761 F.2d 936, 942 (3d Cir. 1985); Cosgrove v. Smith, 697 F.2d 1125, 1127-28 (D.C. Cir. 1983); Lyell Theatre Corp. v. Loews Corp., 682 F.2d 37, 40-41 (2d Cir. 1982); Dove v. Codesco, 569 F.2d 807, 809 (4th Cir. 1978); Seshachalam v. Creighton Univ. Sch. of Med., 545 F.2d 1147, 1147 (8th Cir. 1976); Sea Ranch Ass’n v. Cal. Coastal Zone Conservation Comm’n, 537 F.2d 1058, 1061 (9th Cir. 1976).

{10} Therefore, we hold, like our Court of Appeals and several federal circuit courts of appeals, that a motion challenging a judgment, filed within ten days of the judgment, should be considered a Rule 1-059(E) motion to alter or amend a judgment. “[N]omenclature is not controlling.” Sea Ranch Ass’n, 537 F.2d at 1061. In this case, the parties agree that Redi-Mix’s motion for reconsideration was filed within ten days of the trial court’s judgment; therefore, we deem it a Rule 1-059(E) motion.

IV. RULE 1-059(E) IS NOT SUBJECT TO AUTOMATIC DENIAL BECAUSE IT DOES NOT CONTAIN AN AUTOMATIC DENIAL PROVISION

{11} Having decided that Redi-Mix’s motion falls under Rule 1-059(E) and not Section 39-1-1, we must now determine whether a Rule 1-059(E) motion is nevertheless subject to automatic denial pursuant to Rule 1-059(D), Section 39-1-1, or Rule 12-201(D) NMRA 2006. Scottsdale urges
this Court to affirm the Court of Appeals, which held that Rule 1-059(E) is subject to automatic denial after thirty days under Section 39-1-1. Scottsdale notes that the applicable rule of appellate procedure, Rule 12-201(D) NMRA 2006, incorporated the automatic denial provision of Section 39-1-1 at the time of the proceedings. Redi-Mix counters that Rule 1-059(E) does not reference Section 39-1-1 and actually supersedes the applicability of the statute. Since Rule 1-059(E) supersedes Section 39-1-1 and fails to include an automatic denial feature, Redi-Mix posits that Rule 1-059(E) motions can only be denied by order of the district court. We agree with Redi-Mix and conclude that Rule 1-059(E) supersedes Section 39-1-1, and according to the plain language of Rule 1-059(E), it is not subject to automatic denial.

{12} In making this determination, we look first to Rule 1-059 NMRA 2006 (prior to August 21, 2006 amendment), which governed Redi-Mix’s motion for reconsideration. “Rule 1-059 sets forth the procedures governing post-trial motions for new trial in civil cases.” Martinez v. Friede, 2004-NMSC-006, ¶ 11, 135 N.M. 171, 86 P.3d 596. In the early 2006 version of the rule, only Rule 1-059(D) provided for automatic denial: “If a motion for new trial is not granted within thirty (30) days from the date it is filed, the motion is automatically denied.” Rule 1-059(E), on the other hand, states “[a] motion to alter or amend the judgment shall be served not later than thirty (30) days after entry of judgment.” Rule 1-059(E), on the other hand, states “[a] motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.” A Rule 1-059(E) motion is distinct from a Rule 1-059(D) motion and not subject to the same requirements. Rule 1-059(D) simply does not apply to Rule 1-059(E). If this Court wanted to subject a Rule 1-059(E) motion to automatic denial, we would have expressly done so. Therefore, under the plain language of Rule 1-059(E), it is not subject to automatic denial thirty days after filing.

{13} Likewise, the automatic denial feature of Section 39-1-1 does not apply to Rule 1-059(E). Scottsdale argues that Section 39-1-1 applies to a Rule 1-059(E) motion pursuant to the 2006 version of Rule 12-201(D), which governed appellate procedure. However, this Court has amended the Rules of Civil Procedure to exclude the automatic denial provision of Section 39-1-1 from several post-judgment motions. See Rules 1-054.1, 1-052(D), 1-059(D) NMRA 2006. The committee comment to Rule 1-054.1 makes clear that “[t]he 2006 amendment, approved by Supreme Court Order 06-8300-17, effective August 21, 2006, supersedes the portion of Section 39-1-1 NMSA 1978 providing that many post-judgment motions are deemed automatically denied if not granted within thirty (30) days of filing. As a result of this change, and changes made to Paragraph D of Rule 1-052 and Paragraph D of Rule 1-059, post-judgment motions are subject to the rule that the court shall enter judgments or orders within sixty (60) days of submission. Rule 1-054.1 NMRA. Because there no longer is an automatic denial of post-judgment motions, the time for filing notices of appeal will run ‘from the entry of an order expressly disposing of the motion’.” Rule 12-201(D) NMRA (time for filing of notice of appeal runs from date of entry of order expressly disposing of the motion when there is no provision of automatic denial of motion under applicable statute or rule of court).

(Emphasis added.) While committee commentary is not binding on this Court, it is persuasive authority. State v. McCrany, 100 N.M. 671, 673, 675 P.2d 120, 122 (1984). We have also recently amended our appellate rule to provide that “the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the entry of an order expressly disposing of the [Rule 1-059] motion.” Rule 12-201(D) NMRA 2007 (effective Feb. 1, 2007). We conclude that the 2006 and 2007 amendments make clear that Section 39-1-1 no longer applies to post-judgment motions filed pursuant to Rules of Civil Procedure that do not themselves explicitly contain an automatic denial provision. Because Rule 1-059(E) was never subject to automatic denial, the 2006 amendments clarify our intent that Section 39-1-1 does not apply to Rule 1-059(E). Therefore, Redi-Mix’s motion could not be denied by operation of law, and the Court of Appeals erred in dismissing Redi-Mix’s appeal.

{14} This does not end our inquiry, however. As Scottsdale suggests, Rule 12-201(D) NMRA 2006 could be interpreted as granting an automatic denial provision to Rule 1-059(E). Rule 12-201(D) stated:

If a party timely files a motion pursuant to Section 39-1-1 NMSA 1978, Paragraph B of Rule 1-050 NMRA, Paragraph D of Rule 1-052 NMRA, or Rule 1-059 NMRA or a motion pursuant to Rule 5-614 NMRA . . . , the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from either the entry of an order expressly disposing of the motion or the date of any automatic denial of the motion under that statute or any of those rules, whichever occurs first.

(Emphasis added.) This version of Rule 12-201(D) could be interpreted to apply the automatic denial provision under Section 39-1-1 (“that statute”) or “any of those rules” to a motion filed under Rule 1-059.

{15} Indeed, the Court of Appeals adopted such an interpretation in Valley Bank of Commerce v. Hilburn, 2005-NMCA-004, 136 N.M. 741, 105 P.3d 294. In that case, the Court of Appeals addressed the applicability of the automatic denial provision in Section 39-1-1 to Rule 1-050 in an appeal from a jury trial. Id. ¶¶ 12-14. First, the Court held that Section 39-1-1, by its plain terms, applies only to non-jury trials. Id. ¶ 18. The Court then noted that Rule 12-201(D), which governs appeals, references both Section 39-1-1 and Rule 1-050, and states that the time for filing a notice of appeal runs from “the earliest date at which either Section 39-1-1 or Rule 1-050 disposes of the motion.” Id. ¶ 20 (emphasis added). Since Section 39-1-1 did not apply to the case, and Rule 1-050 did not contain an automatic denial provision, the Court held that “the time for filing a notice of appeal did not begin to run until the district court

1 Scottsdale concedes that Rule 1-059(D) does not govern motions for reconsideration and is inapplicable to Redi-Mix’s motion, and that only Rule 1-059(E) or Section 39-1-1 could apply.

2 This Court’s authority to promulgate rules of procedure is derived from the New Mexico Constitution. Article VI, section 3 grants this Court “superintending control over all inferior courts.” We have held that this constitutional provision vests the Court with power to promulgate rules relating to practice, pleading and procedure. See Ammerman v. Hubbard Broad., Inc., 89 N.M. 307, 310-11, 551 P.2d 1354, 1357-58 (1976) (citing State v. Roy, 40 N.M. 397, 420-22, 60 P.2d 646, 660-62 (1936)).
enter[ed] an order ruling on the motion.” Id. The Court of Appeals acknowledged that this result was “incongruous in light of New Mexico’s policy to generally provide for automatic denials of motions,” but left it to this Court to conform the rules to this policy. Id. We changed Rules 1-059, 1-052(D), and 1-054.1 through 2006 amendments, and also amended Rule 12-201(D) in 2007, which clarify our policy: Section 39-1-1 is superceded, and there is no longer automatic denial of post-judgment motions. Rule 1-054.1 committee cmt.

{16} Rule 1-054.1 states, “[n]otwithstanding Section 39-1-1 NMSA 1978, the court shall enter a judgment or order within sixty (60) days after submission. As used in this rule, ‘submission’ is the time when the court takes the matter under advisement.” In the committee comment, Rule 1-054.1 is said to “supersede[] the portion of Section 39-1-1 NMSA 1978 providing that many post-judgment motions are deemed automatically denied if not granted within thirty (30) days of filing.” The committee went on to note that “[b]ecause there no longer is an automatic denial of post-judgment motions, the time for filing notices of appeal will run ‘from the entry of an order expressly disposing of the motion’.” Rule 1-054.1 committee cmt. (quoting Rule 12-201(D)). In light of our amendment to Rule 1-054.1, and the deletion of automatic denial language from Rules 1-052(D) and 1-059(D), it is clear that we never intended Rule 1-059(E) to be subject to automatic denial.

{17} Scottsdale directs our attention to Beneficial Finance Corp. v. Morris, where our Court of Appeals held that Rule 1-059(E) is subject to automatic denial under Section 39-1-1 and Rule 12-201. 120 N.M. 228, 228-29, 900 P.2d 977, 977-78 (Ct. App. 1995). However, the appellants did not apply for a writ of certiorari in that case. Furthermore, the Rule 1-054.1 committee comment identified Morris as a case where “possible injustice” took place. Now that we have been given the opportunity to address the issue, we expressly overrule Morris, reverse the Court of Appeals, and remand the instant case for consideration of Redi-Mix’s remaining claims.

V. CONCLUSION

{18} We hold that Redi-Mix’s motion for reconsideration falls under Rule 1-059(E), and that under the plain wording of the rule, it is not subject to automatic denial after thirty days. The 2006 version of Rule 12-201(D) did not graft the automatic denial features of Rule 1-059(D) or Section 39-1-1 to Rule 1-059(E), as clarified by our 2006 amendments to Rules 1-059(D) and 1-054.1. Our 2007 amendment to Rule 12-201(D) also makes this fact clear. Therefore, we reverse and remand this case to the Court of Appeals to address the merits of Redi-Mix’s appeal.

{19} IT IS SO ORDERED.

PATRICIO M. SERNA,
Justice

WE CONCUR:
EDWARD L. CHÁVEZ, Chief Justice
PETRA JIMENEZ MAES, Justice
RICHARD C. BOSSON, Justice
PAMELA B. MINZNER, Justice
(not participating)
From the New Mexico Supreme Court

Opinion Number: 2007-NMSC-052

Topic Index:
Civil Procedure: Venue
Statutes: Interpretation

ROBERT GARDINER, individually and as personal representative of the ESTATE OF DAISY SALAS, and as next of friend of SEBASTIAN ANTHONY G., a minor, Plaintiff-Respondent, versus

GALLES CHEVROLET COMPANY, a New Mexico corporation, Defendant-Petitioner.

Third-party-Defendant-Respondent.

No. 29,783 (filed: August 30, 2007)

ORIGINAL PROCEEDING ON CERTIORARI

TIM GARCIA, District Judge

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OPINION

RICHARD C. BOSSON, JUSTICE

This appeal raises a venue question that we expressly left unanswered in Baker v. BP America Production Company, 2005-NMSC-011, 137 N.M. 334, 110 P.3d 1071: In a case with multiple defendants, can a proper venue for a foreign corporation with a statutory agent also establish venue for a resident defendant? To answer this question, we must take the next step in the construction of the New Mexico venue statute that we began in Baker. While we reaffirm our holding in Baker, that venue for foreign corporations with statutory agents may not be based on venue for foreign corporations without statutory agents, we decline to extend that holding to the combination of defendants present in this case. We therefore hold that venue for a resident defendant is proper in the county where a foreign corporation’s statutory agent resides.

BACKGROUND

Plaintiffs, residents of Bernalillo County, filed a wrongful death action against twenty-one defendants arising out of a fatal car accident that occurred in Bernalillo County. Defendant Galles Chevrolet (“Galles”), a New Mexico corporation with a registered agent in Bernalillo County, is the only resident defendant. The remaining twenty defendants are foreign corporations, one of which, General Motors (“GM”), maintains a registered agent in Santa Fe County. Plaintiffs filed their complaint in the District Court for Santa Fe County.

Galles filed a motion to dismiss for improper venue, arguing that it can only be sued in Bernalillo County. The district court denied Galles’ motion and allowed for an interlocutory appeal pursuant to NMSA 1978, Section 39-3-4(A) (1999). The Court of Appeals denied Galles’ application for interlocutory appeal, and we accepted certiorari to determine whether venue for resident defendants may be based on venue for foreign corporations with statutory agents. Holding that venue is proper for Galles where GM’s statutory agent resides, we now affirm the district court’s denial of Galles’ motion to dismiss.

DISCUSSION

A motion to dismiss for improper venue involves questions of law that we review de novo. Baker, 2005-NMSC-011, ¶ 6. “Venue relates to the convenience of litigants and reflect[s] equity or expediency in resolving disparate interests of parties to a lawsuit in the place of trial.” Id. (alteration in original) (quoted authority omitted). When construing our venue statute, we keep in mind that our venue rules are meant to balance the interests of defendants to be sued in a convenient forum against the interests of plaintiffs to choose the forum in which to sue. Id. We also note the expansive nature of the venue statute and the broad discretion it allows plaintiffs in choosing where to bring an action. Id.

This case implicates the same two subsections of the venue statute that were at issue in Baker. See id. ¶ 3. Those subsections provide:

All civil actions commenced in the district courts shall be brought and shall be commenced in counties as follows and not otherwise:

A. First, except as provided in Subsection F of this section relating to foreign corporations, all transitory actions shall be brought in the county where either the plaintiff or defendant, or any one of them in the case there is more than one of either, resides; or second, in the county where the contract sued on was made or is to be performed or where the cause of action originated or indebtedness sued on was incurred; or third, in any county in which the defendant or either of them may be found in the judicial district where the defendant resides.

F. Suits may be brought against transient persons or non-residents in any county of this state, except that suits against foreign corporations admitted to do business and which designate . . . a statutory agent in this state upon whom service of process may be had shall only be brought in the county where the plaintiff, or any one of them in the case there is more than
one, resides or in the county where the contract sued on was made or is to be performed or where the cause of action originated or indebtedness... was incurred or in the county where the statutory agent designated by the foreign corporation resides.

NMSA 1978, § 38-3-1 (as amended through 1988) (emphasis added). Based on these two subsections, Galles argues that venue for a resident defendant and venue for a foreign defendant corporation with a statutory agent are “distinct and separate considerations,” such that a proper venue for a foreign corporation with a statutory agent may never establish venue for a resident defendant.

{6} Galles’ proposed construction of the venue statute argues for an extension of this Court’s recent opinion in Baker. Baker was a multiple defendant case, but unlike the present one, all of the defendants were foreign corporations. Baker, 2005-NMSC-011, ¶ 1. We were asked to determine whether a proper venue for a foreign corporation without a statutory agent could also establish venue for a foreign corporation with a statutory agent. That question required us to construe Subsection F of the venue statute, which determines proper venue for foreign corporations. We held that the language in Subsection A that allows the residency of one defendant to establish venue for all did not apply to foreign corporations with statutory agents because the plain language of Subsection F states that an action against such foreign corporations “shall only” be brought in the county where the statutory agent resides, along with any other plaintiffs or where the cause of action originated. Baker, 2005-NMSC-011, ¶ 14.

{7} We reasoned that in order to give effect to legislative intent, “Subsection F should be interpreted to ‘give foreign corporations that are admitted to do business and that have designated and maintained a statutory agent in this state the same “weight” in the venue balance as resident defendants.”” Id. ¶ 19 (quoting Team Bank v. Meridian Oil Inc., 118 N.M. 147, 150, 879 P.2d 779, 782 (1994)). To allow venue for a foreign corporation without a statutory agent, which is anywhere in the state, to establish venue for a foreign corporation with a statutory agent would eviscerate the legislative intent to reward corporations for registering agents in the state as well as the plain language of Subsection F, which states that such corporations “shall only” be sued in the county where their statutory agent resides (along with the other two options). Id.

{8} By its own terms, Baker limited its holding to multiple defendant cases involving only foreign corporations or non-resident defendants; we expressly declined to address other combinations of defendants, including the one present in this case. Id. ¶ 19 n.1 (stating that the opinion “[d]id not address situations involving other combinations of multiple defendants such as residents and foreign corporations with statutory agents”). Although Baker mentioned Subsection A in observing that the language present in that subsection allowing venue for one defendant to establish venue for all is not present in Subsection F, we did not interpret Subsection A. Because all the defendants in Baker were foreign corporations, the only applicable provision was Subsection F. This case calls on us to interpret Subsection A and determine how it relates to Subsection F.

{9} As we said in Baker, “[t]he residence of the defendant determines which subsection applies.” Id. ¶ 7. Because Galles is challenging venue in this case and is a resident defendant, Subsection A applies to determine proper venue for Galles. Under Subsection A, Galles may be sued in any county where any defendant “resides.” Galles therefore understands that it may be sued anywhere in the state based on the residence of another defendant. However, according to Galles, this “good for one, good for all” rule in Subsection A applies to resident defendants only in relation to other resident defendants, but not in relation to foreign corporations. Galles contends that, if it is to be sued based on the venue of another defendant, that defendant must be a resident defendant and cannot be a foreign corporation.

{10} The language of the statute does not compel as narrow a reading as Galles proposes. Subsections A and F must be read together, not in isolation. In interpreting a statute, this Court strives to give effect to all statutory provisions and reconcile provisions with one another. See State v. Smith, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022 (“[A] statutory subsection . . . must be considered in reference to the statute as a whole . . . .”) (alteration in original) (quoted authority omitted); Montell v. Orndorff, 67 N.M. 156, 166, 353 P.2d 680, 686 (1960) (“It is a long standing rule of statutory construction that each and every part of the statute, where possible, must be given same effect in an effort to reconcile it in meaning with every other part.”) (quoted authority omitted)). Instead of operating as a stand alone provision, Subsection F is better understood as an exception to Subsection A. As such, it does not limit the “good for one, good for all” rule from applying, except where it expressly does not apply such as to foreign corporations with a statutory agent. Thus, while a foreign corporation with a statutory agent may not be sued where another defendant resides, a resident defendant may.

{11} Galles argues that foreign corporations with statutory agents do not “reside” in New Mexico for purposes of the venue statute, and therefore, the “good for one, good for all” rule does not apply in relation to such foreign corporate defendants. Our opinion in Cooper v. Chevron U.S.A. Inc., 2002-NMSC-020, 132 N.M. 382, 49 P.3d 61, though it addressed a somewhat different issue, sheds light on the argument Galles raises. In that case, we were asked whether a foreign corporation had to appoint a resident agent in order to avail itself of the more limited venue options in Subsection F, or whether the statutory agent could itself be a foreign corporation. We held that “[i]n the context of a statutory agent . . . the term ‘resides’ has a plain meaning which we believe the Legislature intended. A statutory agent who maintains an office in New Mexico for the purpose of receiving service of process ‘resides’ in New Mexico regardless of whether it is a foreign corporation or a New Mexico resident.” Id. ¶ 19. In reaching this conclusion, we reasoned, as we did in Baker, that “the Legislature passed Section 38-3-1(F) in order to ‘give foreign corporations that are admitted to do business and that have designated and maintained a statutory agent in this state the same “weight” in the venue balance as resident defendants.’” Id. ¶ 18 (quoting Team Bank, 118 N.M. at 150, 879 P.2d at 782).

{12} The reasoning of Cooper can be logically extended to the issue in this case. The term “resides” appears in the statute both in reference to resident defendants in Subsection A and statutory agents in Subsection F. Consistent with the plain language of the statute along with the intent of the Legislature to give foreign corporations equal weight in the venue balance as resident defendants, we interpret the statute to mean that foreign corporations with statutory agents “reside” in New Mexico for purposes of the “good for one, good for all” rule that applies to resident defendants. Though the statute limits venue for foreign corporations with statutory agents to the
county where the statutory agent resides, it does not so limit venue for resident defendants.

{13} Baker does not mandate a contrary approach. In fact, Baker recognized the same legislative imperative acknowledged in Cooper—to reward foreign corporations for registering a statutory agent in the state by giving them equal weight in the venue balance as residents. See Baker, 2005-NMSC-011, ¶ 19. Consequently, Baker refused to do away with those rewards by preventing a non-resident defendant from determining venue for a foreign corporation with a statutory agent. In this case, we simply allow foreign corporations with statutory agents to carry the same weight as resident defendants when applying the “good for one, good for all” rule of Subsection A to determine proper venue for a resident defendant.

{14} As was true in Baker with regard to foreign corporations with statutory agents, venue may not be established for a resident defendant based on proper venue for a non-resident defendant or a foreign corporation without a statutory agent. See id. (noting that “venue for a non-resident defendant [cannot] determine proper venue for a resident defendant”). Such an application of the statute would lead to the same result we noted in Baker: it would “allow[] a party to pick a forum convenient to no one, a result contrary to the limited venues the venue statute authorizes for residents and foreign corporations with a statutory agent.” Id. ¶ 18. However, because Subsection F was intended to encourage foreign corporations to register statutory agents, the reward is recognition that registration of a statutory agent will establish a convenient forum in the county where the agent is registered.

{15} We recognize that the construction of the venue statute we articulate here appears to favor foreign defendants over local defendants. Foreign corporations with statutory agents have the most restricted venue options because they “shall only” be sued where the statutory agent resides. Pursuant to Subsection F, venue for such corporations could not be established based on other resident defendants. However, this interpretation is not inconsistent with the text of the statute, policy goals, or longstanding practice. Subsection A does not have the limiting language that is present in Subsection F, and thus, there are a broader range of venue options for resident defendants. Nor is it implausible that the Legislature would adopt a policy favoring foreign defendants doing business in New Mexico. There are rewards that New Mexico obtains by inducing large foreign corporations to obtain a local agent, thereby facilitating service of process and perhaps achieving other benefits as well. Moreover, regardless of the policy choices that may have motivated the particular language of the venue statute, to the extent they are not reflected in the current statute, it is for the Legislature to address.

{16} Finally, we note that plaintiffs have for many years done exactly what Plaintiffs here did, namely lay venue for all defendants, including resident defendants, in the forum where a foreign corporation’s statutory agent resides. The only thing that has changed is the birth of the Baker opinion. Because the venue statute is capable of a construction that is consistent with this longstanding practice, and absent a compelling policy reason to change what has long been common practice, the statute should be interpreted in a manner that maintains the status quo.

CONCLUSION

{17} We hold that venue for Galles is proper in Santa Fe County, the county where GM’s registered agent resides. Therefore, we affirm the district court’s dismissal of Galles’ motion to dismiss for improper venue.

{18} IT IS SO ORDERED.

RICHARD C. BOSSON,
Justice

WE CONCUR:
EDWARD L. CHÁVEZ, Chief Justice
PETRA JIMENEZ MAES, Justice
MICHAEL VIGIL, Judge
(sitting by designation)
PAMELA MINZNER, Justice
(not participating)
OPINION

PATRICIO M. Serna, Justice

Pursuant to the Renewable Energy Act (“REA”), NMSA 1978, §§ 62-16-1 to -10 (2004, prior to 2007 amendment), El Paso Electric Company (“EPE”) purchased Renewable Energy Certificates (“RECs”) representing renewable energy generated by Public Service Company of New Mexico (“PNM”); however, EPE did not purchase the actual renewable energy represented by the RECs. Pursuant to the REA, Section 62-16-6(A), EPE sought recovery of the REC costs through its automatic adjustment clause. Section 62-16-4(A)(1). This requirement is called the Renewable Portfolio Standard (“RPS”), and it increases by one percent each year until January 1, 2011, when it will reach ten percent of each public utility’s annual retail sales in New Mexico. Section 62-16-4(A)(2).

Utilities must establish their compliance with the Renewable Portfolio Standard by filing Renewable Energy Certificates with the Commission. Section 62-16-5(A) (directing the Commission to establish a system of RECs), 17.9.572.13 NMAC (stating that utilities must establish their annual compliance with the Renewable Portfolio Standard “through the filing of [R]enewable [E]nergy [C]ertificates with the [C]ommission”). Rule 572 defines a Renewable Energy Certificate as “a document evidencing that the enumerated renewable energy kilowatt-hours have been generated from a renewable energy generating facility.” 17.9.572.7(E) NMAC. Each REC must have “a minimum value of one kilowatt-hour of renewable energy represented by the certificate for purposes of compliance with the [R]enewable [P]ortfolio [S]tandard.” Section 62-16-5(A). RECs may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a public utility for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery in New Mexico.

Section 62-16-5(B)(1)(b). Rule 572 adds that “transfers and use of the [R]enewable [E]nergy [C]ertificate by a public utility for compliance with the [R]enewable . . . [P]ortfolio [S]tandard do not require physical delivery of the electric energy represented by the certificate to a public utility.” 17.9.572.13(B)(2) NMAC. Thus, compliance with the RPS provision of the REA can be established through RECs representing renewable energy the utility itself has generated; renewable energy the utility has purchased from another source; or renewable energy generated and contracted for delivery in New Mexico without the utility itself purchasing the energy. To ensure that compliance costs are reasonable, the REA requires that each year until 2012, and if necessary thereafter, public utilities file for the Commission’s approval a report on their purchases of renewable energy.

A public utility is “an entity certified by the [C]ommission to provide retail electric service in New Mexico pursuant to the Public Utility Act [62-13-1 NMSA 1978] but does not include rural electric cooperatives.” Section 62-16-3(B).
energy during the prior calendar year as well as a procurement plan. Section 62-16-4(D)-(E).

5 The REA authorizes public utilities to recover the reasonable costs of compliance with the REA “through the rate-making process.” Section 62-16-6(A) states: A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

The REA does not define the “rate-making process.”

6 A related statute, the Public Utility Act (“PUA”), NMSA 1978, § 62-13-1 (1993), grants the Commission “general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations.” NMSA 1978, § 62-6-4(A) (2003). In order to change or increase rates, a utility normally must go through a notice, hearing, and approval process. Section 62-8-7(A)-(E). However, utilities can recover certain costs — “taxes or cost of fuel, gas or purchased power” — automatically through an automatic adjustment clause. Section 62-8-7(E). The Commission adopted Rule 550, 17.9.550 NMAC, regarding the implementation, oversight, and maintenance of automatic adjustment clauses, pursuant to Section 62-8-7(E).

II. FACTS AND PROCEDURAL BACKGROUND

7 In 2004, El Paso Electric Company obtained Commission approval of its 2004 renewable energy transitional procurement plan (“2004 Plan”), pursuant to Section 62-16-4(D)-(E) and Rule 572. EPE sought to comply with the Renewable Portfolio Standard by purchasing Renewable Energy Certificates, without taking physical delivery of the associated energy, from Public Service Company of New Mexico. In its 2004 Plan, EPE proposed to recover the costs of complying with the REA through its automatic adjustment clause. See § 62-8-7(E). The Commission approved EPE’s 2004 Plan; however, the Commission deferred the issue of the appropriate mechanism for cost recovery to this case. Final Order, NMPRC Case No. 04-00306-UT.

8 On September 1, 2005, EPE filed its 2005 renewable energy procurement plan (“2005 Plan”), which contained the specific REC contract with PNM as well as the costs EPE sought to recover through the automatic adjustment clause. NMPRC Case No. 05-00355-UT. In the instant proceeding, EPE sought Commission approval, on a permanent basis, of the automatic adjustment clause as the mechanism for recovering all costs of the purchased RECs under its approved Plan. In support, EPE filed testimony of its witness Steven P. Busser, contending that automatic adjustment clause recovery is appropriate under the REA, the PUA, and Commission Rules 572 and 550, and is the most reasonable mechanism for recovery of REA compliance costs. According to Busser, automatic adjustment clause recovery (i) would allow EPE to recover costs on a per kilowatt-hour basis; (ii) would be the least costly recovery mechanism, resulting in the lowest costs to EPE customers; (iii) would most timely allow one hundred percent of net proceeds from the sale of any excess RECs to be credited back to customers (although EPE does not intend to purchase RECs in excess of its REA compliance requirements); and (iv) was authorized by EPE’s Stipulation and Final Order in its last rate case. The Commission also filed testimony, which staff witness Charles W. Gunter, a Utility Economist for the Utility Division of the Commission, adopted, in support of EPE’s proposed automatic adjustment clause recovery, concluding that it (i) is the most appropriate method of cost recovery; (ii) is authorized by the REA and PUA; and (iii) will result in the lowest cost to EPE customers. NMIEC, Western Water and Power Production Limited, the Coalition for Clean Affordable Energy, and New Mexico State University (“NMSU”) filed motions to intervene in the proceeding.

9 The Commission held a public hearing on October 26, 2005, at which EPE witness Busser and Commission witness Gunter testified in favor of automatic adjustment clause recovery of EPE’s REC costs. NMIEC and NMSU cross-examined the witnesses to establish that RECs are not “purchased power” under the PUA, and thus their costs cannot be recovered automatically through the automatic adjustment clause.

10 On December 8, 2005, the Commission issued a Final Order, which concluded that automatic adjustment clause recovery is the appropriate method for recovery of EPE’s REC costs. In reaching its decision, the Commission first determined that automatic adjustment clauses are part of the “rate-making process,” contemplated in Section 62-16-6(A), based on (i) a previous Commission determination that they are (NMPRC Case No. 04-00334-UT) and (ii) Commission Rule 572, which “expressly recognizes the [automatic adjustment clause] may be used as part of a utility’s rates for renewable cost recovery.” Next, the Commission explained that it has “wide latitude to determine that the cost of purchasing or acquiring RECs are purchased power costs” because the PUA “grants the Commission ‘latitude’ and ‘discretion’ to include costs closely related to the broad categories of purchased power.” See § 62-8-7. The Commission noted that it has previously allowed automatic recovery of gas hedging costs, “which demonstrate[s] the breadth of the Commission’s authority to determine which costs to include in the adjustment clauses.” The Commission agreed with EPE that “[b]ecause RECs are a requirement of EPE’s energy supply mix, their cost is a purchased power cost.” Thus, “[c]haracterizing RECs in this way, as ‘part of the overall cost’ of energy, is consistent with Commission precedent and with the express provisions and REC requirements of the REA.”

11 The Commission went on to determine that, as a policy matter, it should not treat cost recovery differently for RECs with delivered energy and RECs without delivered energy because both require generation of renewable energy which must be contracted for delivery in New Mexico. The Commission reasoned that “[a] utility should not be adversely affected through the ratemaking process for its renewable energy procurement decisions,” especially in this case because EPE (i) chose to comply with the REA by purchasing RECs without the accompanying energy because they were “the lowest cost option for its customers” and (ii) sought automatic adjustment clause recovery of the REC costs as “the most economical means to recover the cost of compliance with the Act.” The Commission stated that cost recovery of RECs through the automatic adjustment clause “makes a great deal of sense” because “RECs are an integral part of purchased power and are created and come about because renewable power is generated . . . [and] do not exist without actual renewable energy generation that is contracted for delivery in New Mexico.”

12 Finally, the Commission determined, after examining the two other cost recovery alternatives, a separate rate rider or deferral of REC costs with carrying charges, that
automatic adjustment clause recovery is the “proper and most efficient method of rate recovery.” The Commission concluded that automatic adjustment clause recovery “will best assure that costs are recovered concurrently with their expenditure, on an equitable [kilowatt-hour] basis, and it will avoid additional costs associated with other collection alternatives. Recovery through the [automatic adjustment clause] results in the lowest cost collection from customers.” The Commission found these to be “compelling” reasons for automatic adjustment clause recovery of REC costs. While NMIEC contended that automatic adjustment clause recovery of REC costs would compromise the Commission’s ability to address the prudence of EPE’s REC procurement, the Commission found numerous safeguards exist to address such concerns, including monthly and annual reporting as well as automatic adjustment clause reconciliation and continuation filings. As part of the Order, the Commission granted a variance that would add separate line items to EPE’s monthly Rule 550 Reports “to separately track REC costs and potential credits” recovered through the automatic adjustment clause.

III. STANDARD OF REVIEW

{13} We review administrative orders to determine whether “the [Commission]’s decision is arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency’s authority, or otherwise inconsistent with law,” Dona Ana Mut. Domestic Water Consumers Ass’n v. N.M. Pub. Regulation Comm’n, 2006-NMSC-032, ¶ 9, 140 N.M. 6, 139 P.3d 166, with the burden on the appellant to make this showing, see NMSA 1978, § 62-11-4 (1965). In reviewing the Commission’s decision, we “begin by looking at two interconnected factors: whether the decision presents a question of law, a question of fact, or some combination of the two; and whether the matter is within the agency’s specialized field of expertise.” Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n, 120 N.M. 579, 582, 904 P.2d 28, 31 (1995).

IV. DISCUSSION

{14} NMIEC appeals the Final Order of the Commission directly to this Court, pursuant to Section 62-11-1. NMIEC argues that the Final Order should be vacated on the ground that it is unlawful because it allows for recovery of EPE’s REC costs through EPE’s automatic adjustment clause, even though RECs do not constitute “purchased power” or any of the other specific costs which Section 62-8-7(E) authorizes for automatic cost recovery. NMIEC goes on to argue that the Commission exceeded its authority by finding that RECs are “closely related to” purchased power, when EPE purchased only the RECs and not the associated power that they represent, and are thus inappropriate for automatic adjustment clause recovery. The Commission’s logic, according to NMIEC, renders the limitation language in Section 62-8-7(E) —“taxes or cost of fuel, gas or purchased power” —meaningless and would lead to the unreasonable result of “virtually any utility cost [being] ‘related to’ purchased power and therefore eligible for [automatic adjustment] clause recovery.”

{15} The Commission and EPE, on the other hand, argue that this appeal centers on the question of substantial evidence in the record to support the Commission’s Order, which they contend is within the Commission’s broad rate-setting authority and discretion. The Commission advocates a two-step review. According to the Commission, we must first decide “whether the Commission’s determination that RECs are closely related to purchased power costs in the context of the [REA] was supported by substantial evidence in the record and was within the Commission’s authority.” Next, we “must establish whether, after the Commission determined that RECs are closely related to purchased power costs in the context of theREA, it acted within its authority and ratemaking discretion by deciding that those costs are properly recoverable through a[n] [automatic] adjustment clause.”

{16} The Commission begins by explaining that the exclusive method of complying with the REA is through the filing of RECs with the Commission, and that the REA does not require utilities to purchase the accompanying power in order to comply. The REA provides for recovery of the reasonable costs of compliance through the “rate-making process,” and the Commission contends that it has broad discretion in setting rates, and that it has already determined that automatic adjustment clauses are part of the rate-making process. Therefore, since the Commission has determined that RECs, even without the purchase of energy, are “closely related to purchased power,” in its discretion, the Commission can allow for REC cost recovery through EPE’s automatic adjustment clause, in the same way it has previously allowed for such recovery of costs like gas hedging agreements, which likewise are not specifically enumerated in Section 62-8-7(E). El Paso Electric, the Real Party in Interest, also submitted a brief in which it makes essentially the same argument as the Commission.

{17} We view this case as involving two related questions. First, we are confronted with a matter of pure statutory interpretation, wherein we must determine the “rate-making process” contemplated in Section 62-16-6(A) of the REA. Based on the following analysis, we conclude that the “rate-making process” includes both rate cases and automatic adjustment clauses. Second, we review whether substantial evidence supports a finding that EPE’s REC costs constitute “purchased power” or, in the alternative, whether the Commission had the authority to allow for automatic recovery of EPE’s REC costs by determining that they are “closely related to purchased power.”

A. THE “RATE-MAKING PROCESS” CONTEMPLATED BY THE REA INCLUDES BOTH GENERAL RATE CASES AND AUTOMATIC ADJUSTMENT CLAUSE RECOVERY, DEPENDING ON THE TYPE OF COST INVOLVED

{18} The REA authorizes public utilities to recover the reasonable costs of compliance thereto through “the rate-making process,” Section 62-16-6(A). As a threshold matter, we note that EPE’s REA compliance costs are presumed reasonable, as the Commission approved EPE’s 2004 and 2005 Plans. Thus, we must determine what constitutes “the rate-making process” referred to in Section 62-16-6(A).

{19} Statutory interpretation is an issue of law, which we review de novo. Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm’n, 1999-NMSC-040, ¶ 14, 128 N.M. 309, 992 P.2d 860 (quoting State v. Rowell, 121 N.M. 111, 114, 908 P.2d 1379, 1382 (1995)). We will reverse the agency’s interpretation of a law if it is unreasonable or unlawful. NMSA 1978, § 62-11-5 (1982); Morningstar Water Users Ass’n, 120 N.M. at 583, 904 P.2d at 32. Where as here an agency is construing the same statutes by which it is governed, we accord some deference to the agency’s interpretation. Morningstar Water Users Ass’n, 120 N.M. at 583, 904 P.2d at 32. The deference we accord the agency’s interpretation depends on the legal question involved. As we have explained in the past,
[the] the PUA, to inform the meaning of Section
in the REA, so we look to a related statute,
different one was intended.

meaning, unless the Legislature indicates a
the statute, giving the words their ordinary
legislative intent. The Legislature did not
of Section 62-16-6(A) to ascertain the
562, 564-65 (1993)).

We look first to the plain language
canons of statutory construction.

In ascertaining legislative intent, we are aided by
legislative intent.

sions in its Final Order.
apparent reliance on those legal conclu-
construction as well as the Commission's
omitted). Because statutory construction
omitted). Because statutory construction

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able energy generated and contracted for delivery in New Mexico without the utility itself purchasing the energy.

{26} In the instant case, EPE purchased RECs representing a certain quantity of kilowatt-hours of renewable energy that had been generated by PNM and contracted for delivery in New Mexico. EPE did not, however, purchase the generated renewable energy represented by the RECs. In other words, EPE took credit for renewable energy generated by another source, in this case PNM, to fulfill its compliance requirements under the REA.

In addition to the fact that EPE did not purchase any actual power when it incurred the REC costs, the record is replete with admissions by the Commission and EPE that EPE’s RECs, indeed, do not constitute “purchased power.” The first set of admissions came at the Commission hearing. EPE witness Busser stated, “When you are purchasing a REC you are not purchasing power, correct, in our situation.” Commission witness Gunter stated, “A REC is not purchased electric power, that’s correct.” With specific respect to EPE’s RECs, Gunter stated, “EPE is not purchasing renewable electric power but the REC itself comes about in connection with that generation of renewable energy.” Gunter also stated that EPE’s RECs are “not electric power strictly speaking.” Then, at oral argument, the Commission’s counsel stated, in reference to EPE’s RECs, “I don’t think that the Commission can contend that it is literally purchased power.”

{27} Beyond these admissions, allowing for automatic adjustment clause recovery of EPE’s REC costs would directly contradict the stated purpose of automatic adjustment clauses set forth in the Commission’s own Rule 550. The rule states that the purpose of an automatic adjustment clause “is to flow through to the users of electricity the increases or decreases in Applicable Fuel and Purchased Power costs per kilowatt-hour of delivered energy above or below a Base Cost.” 17.9.550.6(D) NMAC (emphasis added).

Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” In re Comm’n’s Investigation of the Rates for Gas Serv. of PNM’s Gas Servs., 2000-NMSC-008, ¶ 11, (quoting Consol. Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). The evidence of record does not support a conclusion that EPE’s REC costs are “purchased power.” Indeed, the record supports the opposite conclusion.

2. THE COMMISSION EXCEEDED ITS AUTHORITY BY CHARACTERIZING EPE’S REC COSTS AS “CLOSELY RELATED TO PURCHASED POWER” AND THUS RECOVERABLE THROUGH EPE’S AUTOMATIC ADJUSTMENT CLAUSE

The Commission determined that EPE’s REC costs were “so closely related to purchased power” so as to constitute “purchased power” and thus be automatically recoverable. Both the Commission and EPE rested on the argument that REC costs are “so closely related to” and “an integral part” of “purchased power” because (i) RECs represent renewable energy; (ii) RECs would not exist unless renewable energy were generated; and (iii) the Commission has “wide latitude” to determine what constitutes “purchased power” and what is appropriate for automatic adjustment clause recovery. At oral argument, Commission counsel stated the Commission’s reasoning as follows: EPE’s REC costs are “in fact closely enough related to literally energy or literally power that [they] were appropriately included in that clause.” Having concluded that EPE’s REC costs do not constitute “purchased power,” we review the Commission’s decision that it has the authority and discretion to determine that EPE’s REC costs are “closely related to purchased power” and thus recoverable through EPE’s automatic adjustment clause.

{30} At the outset, we note this Court’s long recognition of the broad authority of the Commission in setting utility rates. N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm’n (In re Ratemaking Methodology), 111 N.M. 622, 635, 808 P.2d 592, 605 (1991) (“The Commission is vested with broad discretion to pursue its statutory mandate to set just and reasonable rate or rates.” (internal quotation marks and quoted authority omitted)).

The evidence of record does not support a conclusion that EPE’s REC costs are “purchased power.” Indeed, the record supports the opposite conclusion.

3PNM cannot also take credit for that same renewable energy to fulfill its REA compliance requirements. See § 62-16-5(B)(1)(b)-(c).

The required information includes information regarding the facility that generated the renewable energy associated with the REC; the type of generator and fuel type; the location and capacity of the generating facility; and the quantity in kilowatt-hours that the REC represents. 17.9.572.13(A) NMAC.
limit the Commission to any one particular method; the touchstone is the reasonableness of the ultimate decision”). However, the instant case does not implicate the Commission’s expertise and discretion in setting utility rates, as both the Commission and EPE paint the issue. Rather, our inquiry centers on the Commission’s construction of the related provisions of the REA and the PUA, a matter not within the Commission’s expertise and to which we accord little deference.

{31} The language of Section 62-8-7(E) is plain and unambiguous: only “taxes or cost of fuel, gas or purchased power” may be recovered automatically. In addition, the Commission’s own Rule 550 and Rule 550 Form I for calculating the automatic cost adjustment factor specifically enumerate only these four costs for automatic recovery. The Legislature authorized automatic cost recovery for only limited types of costs in order to regulate the use of automatic adjustment clauses and to avoid the massive abuses of the past. Commission rate cases involving notice, hearing, and approval remain the general rule for cost recovery, while automatic adjustment clause recovery is a narrow exception.

{32} The Legislature never amended the PUA provisions regarding automatic adjustment clauses when it approved the REA, nor did it create any exceptions in the REA itself to the limitations on automatic adjustment clause recovery. Indeed, the Commission has not amended its own Rule 550 to make special provision for REA compliance costs. We acknowledge that the Commission has the authority to promulgate rules regarding “which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner.” Section 62-8-7(E)(3). However, this provision does not authorize the Commission to expand the list of costs eligible for automatic adjustment clause recovery. Otherwise, the limitation language of Section 62-8-7(E) would be rendered meaningless, and the abuses that the Legislature was concerned about could come to fruition. Rather, we read Section 62-8-7(E)(3) as granting the Commission the authority to promulgate rules that safeguard against abuses and thus fulfill the intent of the Legislature that automatic cost recovery be limited to the specifically enumerated costs set forth in Section 62-8-7(E). Likewise, the fact that the Commission has in the past allowed automatic recovery of gas hedging agreements and other costs not enumerated in Section 62-8-7(E) does not mean that we will sanction such a practice in the instant case.

{33} In light of its plainly exclusive language, we interpret Section 62-8-7(E) narrowly and decline to read into it “language which is not there, particularly if it makes sense as written.” Pub. Serv. Co. of N.M., 1999-NMSC-040, ¶ 18 (quoting Burroughs v. Bd. of County Comm’rs, 88 N.M. 303, 306, 540 P.2d 233, 236 (1975)). Based on the fact that EPE did not purchase the renewable energy associated with the RECs as well as the admissions of both the Commission and EPE that EPE’s REC costs are not, in fact, “purchased power,” we conclude that the Commission exceeded its authority by allowing EPE to recover its REC costs through its automatic adjustment clause by categorizing them as “closely related to purchased power.” Consequently, the Commission’s Order is unlawful. Because EPE did not purchase the renewable energy represented by the RECs, we do not pass on the propriety of automatic adjustment clause recovery for the costs of RECs which represent actual renewable energy purchased by the utility.

{34} In closing, we note that the Commission and EPE focused, in part, on the efficiency and cost-effectiveness of automatic adjustment clause recovery of EPE’s REC costs, particularly in light of the mandatory nature of REA compliance. The Commission determined that automatic adjustment clause recovery would be the most efficient and cost-effective method for recovering EPE’s REC costs, both for EPE and for consumers. While cost-effectiveness and efficiency are important goals, they are not the standard for automatic adjustment clause recovery which the Legislature has set forth in the PUA. In the final analysis, EPE may recover the reasonable costs of complying with the REA through a general rate case. Nevertheless, this case highlights the need for the Legislature to harmonize the antecedent PUA with the related provisions of the REA. However, until the Legislature does so, we will continue to read the PUA as written and allow for automatic recovery only of the costs specifically enumerated in Section 62-8-7(E), “taxes or cost of fuel, gas or purchased power.”

V. CONCLUSION

{35} The REA allows utilities to recover reasonable compliance costs though the “rate-making process.” Section 62-16-6(A). We read this provision together with Section 62-8-7(E) of the PUA and hold that the “rate-making process” refers to both general rate cases and automatic adjustment clauses, depending on the type of cost involved. Automatic adjustment clauses may be used to recover only “taxes or cost of fuel, gas or purchased power.” Section 62-8-7(E). Substantial evidence does not support the conclusion that EPE’s REC costs are “purchased power.” Moreover, the Commission exceeded its authority in declaring these costs “closely related to purchased power” and thus recoverable through EPE’s automatic adjustment clause. Consequently, the Commission’s Order is unlawful and is hereby vacated. We remand to the Commission for proceedings in accordance with this Opinion.

{36} IT IS SO ORDERED.

PATRICIO M. SERNA, Justice

WE CONCUR:
EDWARD L. CHÁVEZ, Chief Justice
PETRA JIMENEZ MAES, Justice
RICHARD C. BOSSON, Justice
PAMELA B. MINZNER, Justice
(not participating)
From the New Mexico Supreme Court

Opinion Number: 2007-NMSC-054


ORIGINAL PROCEEDING ON CERTIORARI
CAROL J. VIGIL, District Judge

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1 The Monastery also agreed to continue purchasing certain goods from St. Benedictine Biscop Benedictine Corporation, another Canadian corporation affiliated with Monks Own. St. Benedictine was a plaintiff in the original proceedings in Canada, the proceeding in the New Mexico district court to domesticate the Canadian judgment, and on appeal to the Court of Appeals. Monks Own Ltd. v. Monastery of Christ in the Desert, 2006-NMCA-116, ¶ 3, 140 N.M. 367, 142 P.3d 955. However, St. Benedictine is not a named party in this appeal.

OPINION

RICHARD C. BOSSON, JUSTICE

{1} In this case we are asked to examine the New Mexico Uniform Foreign Money-Judgments Recognition Act (the UFMJRA), NMSA 1978, §§ 39-4B-1 to -9 (1991). Specifically, we address whether New Mexico courts apply New Mexico or Canadian law to determine if the Canadian court had personal jurisdiction over the New Mexico party when it entered a judgment against that party. In other words, we are asked to determine which law is to be applied, and in what order we apply that law, when determining personal jurisdiction of the foreign court. This question is important because if the Canadian court did not have personal jurisdiction, then under the UFMJRA a New Mexico court need not domesticate the judgment. Although we utilize a somewhat different analysis from the Court of Appeals, we reach the same conclusion and affirm.

BACKGROUND

{2} Plaintiff, Monks Own Limited (Monks Own), a Canadian corporation, entered into a contractual agreement with Defendant Monastery of Christ in the Desert (the Monastery), for sale of its tradename. The contract stipulated that the Monastery pay $150,000 for the name. After receiving only half the agreed-upon price for the trade name, Monks Own filed a complaint for breach of contract in the Ontario Superior Court of Justice. Although having received proper service, the Monastery refused to defend in the Canadian court because the Monastery did not recognize that court’s jurisdiction over it as a New Mexico business. The Canadian court subsequently entered a default judgment against the Monastery. {3} Monks Own then retained New Mexico counsel and filed a petition in New Mexico district court for recognition of its Canadian judgment under the authority of the UFMJRA, which “applies to any foreign judgment that is final and conclusive and enforceable where rendered.” Section 39-4B-3. Under the UFMJRA, any such foreign judgment is “conclusive between the parties to the extent that it grants or denies recovery of a sum of money,” and such judgments are “enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.” Section 39-4B-4. Thus, the UFMJRA sets out procedures for the courts of this state to follow when determining whether a foreign judgment should be enforced against a New Mexico party. An important part of the UFMJRA addresses personal jurisdiction of the foreign court over a New Mexico party. Section 39-4B-6. Specifically, the UFMJRA enumerates situations in which personal jurisdiction of the foreign court is conclusive, therefore allowing for the domestication of the foreign judgment. Id.

{4} It is the personal jurisdiction section of the UFMJRA with which we are most concerned in this appeal. In response to Monks Own’s petition, the Monastery filed a motion to dismiss claiming the judgment could not be domesticated under the UFMJRA because the Canadian court lacked personal jurisdiction over it. The Monastery claimed that Monks Own could not demonstrate sufficient minimum contacts between the Monastery and Canada to satisfy due process standards under American jurisprudence. The district court disagreed and domesticated the judgment. The Court of Appeals affirmed. Monks Own Ltd. v. Monastery of Christ in the Desert, 2006-NMCA-116, ¶ 2, 140 N.M. 367, 142 P.3d 955. We take this opportunity to examine the UFMJRA, which we have had few prior occasions to address.

DISCUSSION

{5} At the outset of our discussion, we note that the Court of Appeals correctly observed that “a party is not required to raise an objection to personal jurisdiction before the foreign forum in order to preserve the issue for our appellate review.” Monks Own, 2006-NMCA-116, ¶ 6. Accordingly, although the Monastery never appeared before the Canadian court to raise its personal jurisdiction defense, the issue was properly preserved by being raised before the New Mexico court in response to Monks Own’s petition. Id.

{6} Based on the Court of Appeals opinion, the petition for certiorari, and the conditional cross-petition filed by Monks Own, we frame the issues as follows: (1) When enforcing a judgment from a foreign court under the UFMJRA, should a New Mexico court apply the law of the foreign state or the law of New Mexico to determine if...
the foreign court had personal jurisdiction over the defendant? See id. ¶ 13; (2) if applicable, did the Monastery have sufficient minimum contacts with the Canadian jurisdiction to satisfy our principles of due process of law? See id. ¶¶ 14-23.

{7} In regard to the first issue, we must determine whether, under the UFMJRA, Canadian law or New Mexico law applies to the determination of whether the Canadian court had personal jurisdiction. To do so, we must interpret the UFMJRA, which is a question of law that we review de novo. State v. Simmons, 2006-NMCA-044, ¶ 6, 140 N.M. 311, 142 P.3d 899 (citing Romero Excavation & Trucking, Inc. v. Bradley Constr., Inc., 1996-NMSC-010, ¶ 6, 121 N.M. 471, 913 P.2d 659).

Law to Apply to Determine Personal Jurisdiction

{8} The UFMJRA lists situations in which a foreign judgment should not be recognized. Section 39-4B-5. One such reason for non-recognition is if the foreign court did not have personal jurisdiction over the New Mexico party. Section 39-4B-5(A)(2).

As noted above, the UFMJRA addresses personal jurisdiction in depth. The UFMJRA lists six situations in which “[t]he foreign judgment shall not be refused recognition for lack of personal jurisdiction.” Section 39-4B-6(A). Under the UFMJRA, jurisdiction cannot be found lacking if:

1. the defendant was served personally in the foreign state;
2. the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
3. the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
4. the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
5. the defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or
6. the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of that operation.

Id.

{9} None of these factors apply to the Monastery. The Monastery was not served in Canada, did not appear before the Canadian court, was not domiciled or incorporated in Canada, did not have a business office in Canada, and the proceedings involved a contractual dispute, not the operation of a motor vehicle or airplane. The contract did include a provision stating that it “shall be governed pursuant to the laws of the Province of Ontario,” thereby calling into question whether Section 39-4B-6(A)(3) applies. Monks Own, 2006-NMCA-116, ¶ 10. However, the contract did not state that the Monastery was “submit[ting] to the jurisdiction of the foreign court,” id., but rather that Canadian laws would apply to disputes regarding the contract. Id. (citing Telephonic, Inc. v. Rosenblum, 88 N.M. 532, 537, 543 P.2d 825, 830 (1975)).

Thus, none of the factors listed in Section 39-4B-6(A) apply to this case to establish personal jurisdiction.

{10} Importantly, however, the six situations listed in Section 39-4B-6(A) for finding personal jurisdiction are not exclusive. Section 39-4B-6(B) goes on to state, “courts of this state may recognize other bases of jurisdiction.” Thus, under the UFMJRA personal jurisdiction can be found if the New Mexico court, in its discretion, finds another basis for jurisdiction. Since this specific section of the UFMJRA is at issue in this case, the core question we must answer is whether the New Mexico court, in considering whether to recognize “other bases of jurisdiction,” applies the foreign jurisdiction’s law, or only New Mexico law as it relates to federal due process standards, to determine whether the foreign court had a “recognizable” basis for personal jurisdiction other than those specifically enumerated under the UFMJRA.

{11} Monks Own argues that the law of the foreign state rendering the judgment, not New Mexico law, should be used to determine the personal jurisdiction of the foreign court that entered the judgment. Monks Own relies in part on the language of the UFMJRA. Section 39-4B-4 specifically states that a “foreign judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.” Monks Own correctly notes that when the issue is whether a court in a sister state had personal jurisdiction, the law of the sister state applies, not New Mexico law. See Thoma v. Thoma, 1997-NMCA-016, ¶ 9, 123 N.M. 137, 934 P.2d 1066. Monks Own, therefore, concludes that because the UFMJRA states that a judgment from a foreign court is enforceable in the same manner as a judgment from a sister state, the New Mexico court should have applied Canadian law to determine the jurisdiction of the Canadian court. As will be seen, it is undisputed that Canadian law granted personal jurisdiction of the Canadian court over the Monastery.

{12} The Monastery, on the other hand, points out the due process concerns that arise from recognizing foreign judgments. The Monastery does not agree that under the UFMJRA personal jurisdiction of a foreign court should be determined in the same manner as determining personal jurisdiction of a sister state. The Monastery asserts that because “the Canadian laws regarding personal jurisdiction do not meet the requirements of American due process,” New Mexico law, not Canadian law, should determine whether the Canadian court had personal jurisdiction. The Monastery claims that in Canada a court can recognize jurisdiction over a non-resident regardless of whether “the foreign defendant had the requisite minimum contact with the forum that is constitutionally required in the United States” under the Due Process Clause. Accordingly, the Monastery argues that a challenge to a foreign country’s personal jurisdiction cannot be determined in the same way as a judgment from a sister state because, in the sister-state context, there is an assurance that due process will be protected. The Monastery concludes that when the judgment is from a foreign country such a guarantee is not present, and thus New Mexico law should apply to determine if the foreign court had personal jurisdiction.

{13} The Court of Appeals dealt quickly with this issue. See Monks Own, 2006-NMCA-116, ¶ 13. The Court noted that the UFMJRA listed “specific criteria that guides the enforcing court in determining whether personal jurisdiction exists in the rendering court,” see § 39-4B-6, and that other courts have held that personal jurisdiction is determined by applying the state’s own law. Monks Own, 2006-NMCA-116, ¶ 13 (citing Pure Fishing, Inc. v. Silver Star Co., 202 F. Supp. 2d 905, 913-17 (N.D. Iowa 2002); Canadian Imperial Bank of Commerce v. Saxony Carpet Co., 899 F. Supp. 1248, 1252 (S.D.N.Y. 1995)). The Court of Appeals concluded that “the New Mexico district court as the enforcing court applies New Mexico law, not Canadian law,
to determine whether the Canadian court had personal jurisdiction over the Monastery under the UFMJRA.” Id.
{14} We agree that the list enumerated in Section 39-4B-6(A) specifically governs the issue of personal jurisdiction. If any one of the listed elements are present, personal jurisdiction exists in the foreign court. Thus, we agree with the Court of Appeals that if one of these elements is present, New Mexico law, specifically Section 39-4B-6(A) of the UFMJRA applies, and the court need not inquire further. See also Soc’y of Lloyd’s v. Reinhart, 402 F.3d 982, 993 (10th Cir. 2005) (stating that, in part because there is no federal statute or treaty governing foreign judgments, the “recognition and enforcement of foreign judgments are governed by state law,” specifically the UFMJRA, rather than the Full Faith and Credit Clause under federal law). The Monastery is therefore correct that New Mexico law does govern the question of personal jurisdiction to the extent that Section 39-4B-6(A) applies.
{15} But in this case the six enumerated situations in Section 39-4B-6(A) do not apply. Accordingly, the Court of Appeals applied Section 39-4B-6(B) to determine whether the Canadian court had personal jurisdiction under the “other bases of jurisdiction” provision. Monks Own, 2006-NMCA-116, ¶ 14. In applying this Section, the Court of Appeals continued to use New Mexico law, specifically this state’s long-arm statute, to determine personal jurisdiction. See NMSA 1978, § 38-1-16 (1971) (New Mexico’s long-arm statute). However, Section 39-4B-6(B) is not clear on what law, that of New Mexico or that of the foreign jurisdiction, applies to determine “other bases of jurisdiction.” The correct answer seems to be that the laws of both jurisdictions are applied, first the foreign law as to the foreign court’s jurisdiction, and then American constitutional principles regarding due process of law. Thus, both arguments are correct to a certain extent.
{16} We first turn to other states with statutes similar to our UFMJRA to determine what law is used when the “other bases of jurisdiction” category is applied. At least thirty states and the District of Columbia have adopted versions of the UFMJRA. Pure Fishing, Inc., 202 F. Supp. 2d at 912 n.2. The other states’ acts that we viewed utilize the same language as Section 39-4B-6 of the UFMJRA. These acts list six reasons why a foreign judgment should not be refused based on personal jurisdiction and include the catch-all “other bases of jurisdiction” language. See, e.g., Pure Fishing, Inc., 202 F. Supp. 2d at 913 (quoting Iowa Code § 262B.4.); Bank of Montreal v. Kough, 612 F.2d 467, 470 n.3 (9th Cir. 1980) (quoting Cal. Civ. Proc. Code § 1713.5). We look for guidance to these other states, in part, because the UFMJRA specifically requires that it “shall be so construed as to effectuate its general purpose to make uniform the law of those states that enact it.” Section 39-4B-9.
{17} In Bank of Montreal, where a Canadian judgment was being domesticated in a California court, the Ninth Circuit Court of Appeals addressed application of the “other bases of jurisdiction” category of the California Act. 612 F.2d at 470. The court noted that the category “intended to leave the door open for the recognition by California courts of foreign judgments.” Id. at 471. The court then discussed how the Canadian court had determined jurisdiction under its own laws. Id. at 471 n.4. Thus, the court first inquired into Canadian law to determine if the Canadian court had personal jurisdiction. The Ninth Circuit went on to determine that as long as the jurisdictional determination was “in accordance with American principles of jurisdictional due process,” the California court should accept the Canadian court’s determination of its own personal jurisdiction. Id. at 471.
{18} Accordingly, after discussing Canadian law on jurisdiction, the court examined whether “minimum contacts with the forum state and adequate notice” were satisfied to ensure that exercise of jurisdiction complied with American due process standards. Id. Finding that minimum contacts and adequate notice were satisfied, the Ninth Circuit held that the Canadian court’s exercise of personal jurisdiction under its own laws was recognizable under the California version of the UFMJRA. Id.
{19} The majority of courts that have examined this question appear to employ a similar analysis. See, e.g., id.; In re Birting Fisheries, Inc., 300 B.R. 489, 502 (B.A.P 9th Cir. 2003) (stating that “[a] judgment is ‘conclusive,’ within the meaning of the UFMJRA, to the extent that it...was rendered under a system that provided impartial tribunals and procedures compatible with due process”); Pure Fishing, Inc., 202 F. Supp. 2d at 914 (stating that under the “other bases for jurisdiction” category, exercise of personal jurisdiction under the laws of a foreign country will be recognized so long as they “comply with the requirements of traditional notions of fair play and substantial justice under the Due Process Clause”); Canadian Imperial Bank of Commerce v. Saxony Carpet Co., Inc., 899 F. Supp. 1248, 1252-53 (S.D.N.Y. 1995) (examining first how the Canadian court exercised personal jurisdiction and then turning to New York law to determine if sufficient minimum contacts existed to comply with American due process standards), aff’d, 104 F.3d 352 (2d Cir. 1996). Moreover, other courts dealing with this issue state that when carrying out this analysis, the court should be mindful that when a foreign jurisdiction has “‘procedures akin to our own,’” such as Canada, the jurisdictional application of that foreign court need not be examined as closely or narrowly as other foreign jurisdictions. Canadian Imperial Bank of Commerce, 899 F.Supp. at 1252 (citing Clarkson Co. v. Shaheen, 544 F.2d 624, 630 (2d Cir. 1976); DeYoung v. Beddome, 707 F. Supp. 132, 135 (S.D.N.Y. 1989)).
{20} The American Law Institute follows a similar analysis in its proposed federal statute on the enforcement of foreign judgments in courts of the United States. See Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute § 3(b) (2005). The American Law Institute developed its proposed statute because of the perceived need for uniformity within the courts of this country regarding recognition of foreign judgments. Id. at 1.
{21} The proposed statute states that for the foreign judgment to be enforced in the United States, the foreign court must have jurisdiction over the defendant under its laws, and the basis for that jurisdiction cannot be unacceptable in the United States. Id. § 3(b). The comments to the proposed statute specifically state that it is “consistent with the practice for recognition and enforcement of sister-state judgments.” Id. at 45 (cmt. a). The commentary to the proposed statute goes on to explain that when jurisdiction of the foreign court is challenged, “the court in the United States must be satisfied that the...rendering court had jurisdiction, both under its own law and under standards accepted in the United States.” Id. cmt. e., at 46. Thus, when personal jurisdiction is at issue, the American Law Institute proposes to apply the law of the foreign country first, then this nation’s due process standards, to verify that the foreign judgment deserves to be recognized in our courts. We find the American Law Institute’s position on this subject instructive.
{22} In this case, Monks Own presented evidence to the district court that the Ontario court had personal jurisdiction over the Monastery according to Canadian law. Based on this evidence the district court found that the Canadian court did have personal jurisdiction and domesticated the judgment. The Monastery does not
The court must determine whether sufficient minimum contacts are present to satisfy "traditional notions of fair play and substantial justice," otherwise known as due process of law. State Farm Mut. Ins. Co. v. Conyers, 109 N.M. 243, 245, 784 P.2d 986, 988 (1989) (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945)). The precise inquiry is not so much whether the New Mexico long-arm statute has been satisfied when determining whether the Monastery had sufficient minimum contacts to satisfy American due process standards. The inquiry is focused on constitutional principles, but the long-arm statute can be used to illustrate the types of contacts that clearly meet constitutional standards. See Sublett v. Wallin, 2004-NMCA-089, ¶ 14, 136 N.M. 102, 94 P.3d 845 (noting that "the analysis of whether the [defendant] transacted business ... within New Mexico merges with the inquiry regarding whether such activities constitute minimum contacts sufficient to survive due process concerns") (quoting Tercero v. Roman Catholic Diocese, 2002-NMSC-018, ¶ 8, 132 N.M. 312, 48 P.3d 50)). While the long-arm statute can be used as an illustration, we acknowledge that, at least hypothetically, there could be other such contacts that satisfy traditional notions of fair play and substantial justice under due process, yet not be included in a particular state’s long-arm jurisdiction statute.

The parties agree that the only applicable basis of long-arm jurisdiction is Section 38-1-16(A)(1), Monks Own, 2006-NMCA-116, ¶ 19. Under Section 38-1-16(A)(1), a party submits to personal jurisdiction as to any cause of action arising from "the transaction of any business within this state." "Transaction of any business" in this context is defined as "doing a series of similar acts for the purpose of thereby realizing pecuniary benefit, or otherwise accomplishing an object, or doing a single act for such purpose with the intention of thereby initiating a series of such acts." Sublett, 2004-NMCA-089, ¶ 14 (quoting Tercero, 2002-NMSC-018, ¶ 10)). We look to "the facts in each case," to determine if the transaction of business category is met. CABA Ltd. Liab. Co. v. Mustang Software, Inc., 1999-NMCA-089, ¶ 12, 127 N.M. 556, 984 P.2d 803 (quoted authority omitted).

The pertinent contacts between the Monastery and Canada that relate to the transaction of business in Canada are:

1. The contract underlying this dispute was to buy a Canadian trade name.
2. Prior to entering into the contract an agent of the Monastery traveled to Canada at least in part for business purposes.
3. The sale of the trade name involved filing the assignment of the trademark with a Canadian governmental office, the Canadian Intellectual Property Office.
4. An agent of the Monastery met in Canada with an Investment Development Officer with the Ontario Ministry of Agriculture and Food regarding the business for which the trade name was bought.
5. The contract included a choice of law provision stating that Ontario law governed the agreement.

Based on these contacts the Court of Appeals found that "the Monastery had sufficient minimum contacts with Canada under our own long-arm statute and common law." Monks Own, 2006-NMCA-116, ¶ 21. The Monastery argues that the Court of Appeals confused doing business with a foreign corporation with transacting business within a foreign country when applying the long-arm statute. Based on our precedent regarding the “transaction of any business,” we are not persuaded and agree with the Court of Appeals.

The Monastery asserts that this case is similar to CABA where our Court of Appeals decided that a California company had not transacted sufficient business within New Mexico to meet the long-arm statute. 1999-NMCA-089, ¶ 29. In CABA, the only contacts with New Mexico were contacts with a New Mexico company via "telephone, fax and mail from California," which did not satisfy the transaction of business standard in New Mexico. Id. ¶ 21. However, for the reasons that follow, we see more contact between the Monastery and the Canadian company in Canada than was present between the California company and New Mexico in CABA.

While the contract was not finalized in Canada, the Monastery was buying a Canadian trade name. To do so, the names had to be registered with a Canadian governmental office. Thus, the Monastery purposefully availed itself of Canadian governmental protection and to some extent Canadian law. Then, the Monastery’s agents had further dealings with the Canadian government while present in Canada that dealt with issues surrounding the trade name purchase. Additionally, the contract itself contained a choice of law clause stating that Canadian law, not New Mexico law, governed the contract. As the Court of Appeals correctly noted, this choice of law provision is “insufficient to establish that one has agreed in advance to submit to the jurisdiction of the courts in any forum.” Monks Own, 2006-NMCA-116, ¶ 10 (citing Telephonic, Inc. v. Rosenblum, 88 N.M. 532, 537, 543 P.2d 825, 830 (1975)). However, the choice of law provision is another example of how the Monastery purposefully availed itself of the protections of the Canadian legal system. See CABA, 1999-NMCA-089, ¶ 21. In other words, the Monastery “has a connection with [Canada] and has acted in [Canada] in such a manner that [they] ‘should reasonably anticipate being haled into court there.’” Id. ¶ 20.

We find Conyers, 109 N.M. 243, 784 P.2d 986 to be of some guidance as well. In Conyers we held that a New Mexico court had personal jurisdiction over a non-resident couple who had been involved in a car accident in another state because the insurance agreement had been entered into in New Mexico. 109 N.M. at 244-45, 784 P.2d at 987-88. We noted that because the couple had transacted business in New Mexico through the purchase of insurance, there were “sufficient minimum contacts with New Mexico for the court to exercise personal jurisdiction.” Id. at 245, 784 P.2d at 988.

In this case, while the contract was not actually executed in Canada, the Monastery traveled to Canada for business purposes, met with Canadian government officials for business purposes, and agreed to have Canadian law govern the contract. If a Canadian company were to perform similar acts in New Mexico resulting in a legal dispute, our courts would likely have jurisdiction over the Canadian party; there would be sufficient contacts between the Canadian company and this state to satisfy due process. Such actions are at least equal to entering a contract in New Mexico, without any other contact with the state, as was the case in Conyers.

CONCLUSION

For the foregoing reasons, we affirm the Court of Appeals, and in doing so also affirm the district court order domesticiating the Canadian judgment.

IT IS SO ORDERED.

RICHARD C. BOSSON,
Justice

WE CONCUR:
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PATRICIO M. Serna, Justice
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MONEY BACK GUARANTEE: You may cancel at any time and receive a refund for all unmailed issues.
classified

Positions

Assistant City Attorney
City of Alamogordo
The City of Alamogordo is accepting applications for the position of Assistant City Attorney. The Assistant City Attorney will provide legal advice and research for the Mayor, City Manager, City Commission, and other City departments as directed by the City Attorney. Starting salary will be $46,848.26 - $68,867.04, DOQ, plus fully paid health, dental and life insurance and an additional generous benefit package. The full vacancy announcement and employment application can be found at http://ci.alamogordo.nm.us/coa/personnel/coajoblist.htm or at City Hall 1376 E. Ninth Street, Alamogordo, NM 88310. Position is open until filled. Contact: ewest@ci.alamogordo.nm.us or (505) 439-4296.

Associate Attorney
Silva, Saucedo & Gonzales, P.C., an AV rated litigation firm, seeks an attorney with three to six years experience, interested in working in a congenial atmosphere on complex civil, employment, personal injury, white collar and wrongful death cases. Strong academic credentials and excellent research and legal writing skills required. All inquiries confidential. Excellent salary and benefits. Please mail resume to Office Manager at PO Box 100, Albuquerque, New Mexico 87103-0100 or email tsilva@silvalaw.org. Position available immediately.

Assistant Trial Attorney and Senior Trial Attorney
Third Judicial District Attorney’s Office
The Third Judicial District Attorney’s Office has vacancies for Assistant Trial Attorney and Senior Trial Attorney. Qualifications and salary are pursuant to the New Mexico District Attorney’s Personnel & Compensation Plan. Resumes may be faxed to Kelly Kuenstler at (505) 524-6379, or mailed to the Third Judicial District Attorney’s Office, ATTN: Kelly Kuenstler, District Office Manager, 845 N. Motel Blvd., 2nd Floor, Ste D, Las Cruces, NM 88007.

City Attorney
City Of Alamogordo
The City of Alamogordo is accepting applications for the position of City Attorney. The City Attorney performs a variety of complex, high level administrative, technical and professional work. Conducts civil lawsuits, draws up legal documents, advises city officials and departments as to legal rights, obligations, practices and other related phases of applicable local, state or Federal law. The incumbent supervises secretarial and support staff, monitors and drafts City ordinances, responds to public inquiries and maintains law-related contacts with outside entities. Starting salary: will be $62,787 – $98,576 DOQ, plus fully paid health, dental and life insurance and an additional generous benefit package. The full vacancy announcement and employment application can be found at http://ci.alamogordo.nm.us/coa/personnel/coajoblist.htm or at City Hall 1376 E. Ninth Street, Alamogordo, NM 88310. Position is open until filled. Contact: ddcraine@ci.alamogordo.nm.us or (505) 439-4206.

Attorney
Wanted: half-time attorney for research, writing and motion practice. Minimum two years experience or one year as a judicial clerk. Fax resumes to Shapiro Bettinger Chase LLP at 888-6465. No phone calls please.
Assistant City Attorney
The City of Rio Rancho is accepting applications for the position of Assistant City Attorney. This is a challenging position for those who wish immediate immersion into the broad area of municipal law. General responsibilities include contract review and drafting, land use, planning & zoning, law enforcement and personnel matters, drafting ordinances, resolutions, policies and procedures, and opinions of counsel, as directed by the City Attorney. May attend public meetings, conduct trainings and presentations, participate in FEMA exercises, and assist in legislative matters and supervision of outside counsel in litigation matters. Applicants must be admitted to the New Mexico Bar and have a minimum of five years’ experience, preferably with some experience in local government. Requires excellent written and oral communication skills; extensive knowledge of various areas of law, including litigation, constitutional law, land use law, contracts, tort liability, and labor law; ability to read, analyze and interpret complex and sensitive documents; ability to respond timely and effectively to sensitive inquiries and complaints from elected officials, staff and the public. Salary DOQ; includes bar dues, MCLE, and other fringe benefits. Please send resume to City of Rio Rancho, Human Resources Department, 3200 Civic Center Circle NE, Rio Rancho, NM 87144-4501. Applications must be received no later than November 30, 2007. EOE.

Assistant District Attorney
The 11th Judicial District Attorney’s office, Division I, in Farmington, NM is accepting resumes for positions of Assistant District Attorney. Salary DOE. New Mexico has a 1 year temporary license available for those who have not taken the New Mexico Bar. Please send resume to: Mr. Lyndy Bennett, District Attorney, 710 E. 20th St., Farmington, NM 87401. Equal Opportunity Employer.

Attorney
The Sixth Judicial District Attorney’s Office has an opening for an Attorney for our Deming office. Salary DOE with high expected approximately $55-58,000. New Mexico bar admission required. Prefer attorney with prosecution or relevant trial experience, but will consider other candidates with appropriate commitment and skills. Deming is a very enjoyable small town within easy reach of great outdoor recreational opportunities, plus good highway access to Las Cruces, El Paso, and Tucson. Interested applicants please submit your resume with a cover letter and three references with phone numbers to: Mary Lynne Newell, District Attorney, P.O. Box 1025, Silver City, New Mexico 88062; fax: 505-388-5184, attn: Mary Lynne; email mnewell@da.state.nm.us.

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Extended Closing Date
The City Of Las Cruces has an Opening for an Assistant City Attorney (LEGAL/Administration)
Full-Time, Regular
MINIMUM QUALIFICATIONS: Juris Doctor Degree AND some experience as a law clerk or practicing attorney. A combination of education, experience, and training may be applied in accordance with City of Las Cruces policy. LICENSES/CERTIFICATIONS: Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico and remain active with all New Mexico Bar annual requirements. Class D driver’s license is desirable. ESSENTIAL JOB FUNCTIONS: Performs legal prosecution work involving research, investigations, trials and appeals and other activities; and provides legal counsel and representation to the various City departments and City officials. This position is primarily involved with domestic violence cases and related proceedings in City and State courts. Performs as a prosecutor in City and State courts. Appears in City and State courts on a regular basis and represents the City of Las Cruces against individuals charged with offenses under the Las Cruces Municipal Code or State law; conducts trials and negotiations with opposing counsel; appears in District Court and represents the City of Las Cruces in competency proceedings; drafts pleadings, motions, correspondence, and legal memoranda; conducts research; reviews police reports, criminal complaints, and citations for legal significance; examines physical evidence; interviews witnesses; and develops strategy in preparation for presentation of cases for prosecution. Coordinates with members of the Las Cruces Police Department, members of other law enforcement agencies, and other outside professionals to establish and verify basis for prosecution; responds to questions and complaints received from the general public, local media, and City employees; coordinates with a legal assistant regarding daily tasks; advises the City Attorney on matters involving City and State courts and the Las Cruces Police Department. Represents the City of Las Cruces in a variety of legal proceedings at the local, state and Federal levels; drafts ordinances, contracts, and resolutions as assigned by the City Attorney; conducts research, interviews clients and witnesses, prepares legal briefs, and develops strategy in preparation for presentation of cases in state and Federal courts; files briefs with court clerk adhering to strict deadlines; represents the City by attending state and Federal court hearings; conducts trials and negotiations with opposing counsel at state and Federal levels; drafts pleadings, motions, correspondence, and legal memoranda; responds to questions and complaints received from the general public, local media, and City employees; coordinates with support staff and other attorneys regarding daily tasks; attends meetings of municipal bodies and provides legal advice to City staff by interpreting laws, rulings, and regulations. KNOWLEDGE, SKILLS AND ABILITIES: Knowledge of: State of New Mexico statutes, rules, case law, and Federal rules and regulations; hearings and trial court processes and protocols; legal research methods, techniques, sources, databases and other research tools; legal case management procedures and techniques; principles and protocols for the evidentiary gathering of information, documents, financial records and other data that may be used in court and legal hearings; City Attorney’s protocols and strategies of negotiation and litigation; principles of the development, refinement and presentation of legal strategies; City ordinances, codes, policies, resolutions, and agreements; business and personal computers, and technical software applications. Ability to: Analyze, appraise and organize facts, evidence and precedents and to present such materials in a clear and logical form, both verbally and in writing; present oral and written information in a clear and concise manner; effectively present cases in court; establishing and maintaining effective working relationships with public officials, outside agencies, City staff, and other participants in the justice process. Skills in: Researching and identifying precedents in case law; negotiating agreements; litigating cases in a legal hearing and courtroom setting; reviewing and assessing legal issues and documents; effectively assessing, interpreting and applying criminal and civil laws to information, evidence and other data compiled; utilizing and evaluating electronic legal research and on-line systems; assessing and prioritizing multiple tasks, projects and demands; interpreting technical instructions and analyzing complex variables. ENVIRONMENT FACTOR: Work is performed in a standard office environment. PHYSICAL FACTORS: Light physical demands; mostly desk work. Frequent to constant use of a personal computer. WORK SITUATION FACTORS: Position involves competing demands, performing multiple tasks, working to deadlines, occasional work beyond normal business hours, and responding to customer issues. TEST: Written test and skills assessment may be administered. HIRING RANGE: $51,958.00-$64,947.00 plus benefits. SALARY RANGE: $51,958.00-$77,936.00. APPLICATIONS WILL BE REVIEWED ON A REGULAR BASIS UNTIL THE POSITION IS FILLED. THE CITY IS AN EQUAL OPPORTUNITY EMPLOYER. Apply at the Human Resources Department, 575 S. Alameda Boulevard, Room 136, mail application to PO Box 20000, Las Cruces, NM 88004, or submit online at www.las-cruces.org. Selected applicants must pass applicable background investigation. Applications are available in alternative formats. It is policy to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. If you need assistance or accommodation to interview and/or test because of a disability, please contact the Human Resources Department at 505-528-3100/Voice or 528-3109/TTY.
Request For Proposals
General Counsel Services
(Re-Issuance)
Albuquerque Metropolitan
Arroyo Flood Control Authority
(AMAFCA)
The Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) invites law firms and attorneys with offices located in the Greater Albuquerque area to submit proposals in accordance with the specifications contained in the Request for Proposals (“RFP”). This RFP is a re-issuance of the RFP previously first published June 6, 2007 and readvertised in August, 2007. Firms who responded to the first two RFP’s will need to resubmit a proposal if they wish to be considered. Services will be required in the following areas of law (Area of Law, % Effort): Real Estate and Condemnation, 30; Contracts and Agreements, 30; Environmental / Water Law, 10; Inter-governmental Affairs, 10; Personnel and Administration, 10; Construction Law, 10. It is also estimated that about 30–40 hours per month are required to perform these services. A copy of the Scope of Services and complete RFP can be obtained from the AMAFCA office located at 2600 Prospect, NE, Albuquerque, NM 87107, or via AMAFCA’s website at www.amafca.org. Proposals must be submitted to AMAFCA in six (6) copies by 2:00 p.m. (local time) on November 29, 2007. The Proposal shall include the mandatory participation contribution disclosure form that is attached to and is made part of the scope of services. Failure to submit the campaign contribution disclosure form shall be cause to reject the proposal. AMAFCA reserves the right to reject any or all proposals and to waive any informality or technicality in any proposal.

Prosecutors
The First Judicial District Attorney’s Office is seeking an attorney for a position in the Santa Fe office. Salary will be based upon experience. Please email resume to sweinstein@da.state.nm.us or mail to Shari Weinstein, Chief Deputy District Attorney, PO Box 2041, Santa Fe, NM, 87504-2041.

Assistant City Attorney I
The City of Farmington, New Mexico is seeking an Assistant City Attorney I. Qualifications include graduation from an accredited law school with a Juris Doctor degree in law, a license to practice law in New Mexico, be a member in good standing of the state Bar Association. Must have considerable knowledge of state statutes relating to municipal affairs; considerable knowledge of laws relating to the purchase of goods and services, contracting, labor, employment, land use, environment and traffic. Hiring Range is $4,221.51 to $5,002.20 per month. Closing date is November 26, 2007. A more detailed description of the requirements for this position may be viewed by visiting our website at www.farmington.nm.us.

Attorney
Keleher & McLeod, P.A. is seeking an attorney with 3–5 years experience in litigation. Excellent salary and benefits. All replies will be kept confidential. Please send a letter of interest and resume to Recruiting Coordinator, P.O. Box AA, Albuquerque, NM 87103 or e-mail to so@keleher-law.com.

Attorney
Attorney wanted for uptown law firm that strongly emphasizes the quality of life for its employees. General civil practice with primary focus on business matters and domestic relations. 2+ years experience preferred. Spanish speaking a plus, but not required. Excellent benefits including health, dental, life insurance, disability insurance, 401(k), and free gym membership. Salary DOE. Send resume and salary requirements to Wolf & Fox, P.C., 1200 Pennsylvania NE, Albuquerque, New Mexico 87110 or fax to (505) 268-7000.

Experienced Paralegal - Santa Fe
Full-time experienced paralegal needed for 10-attorney intensive business and real estate litigation practice. Candidate must be able to perform under pressure and work as a dependable, positive team member. Must be willing to learn calendaring software, MS Word and state/federal court rules and procedures. Competitive salary and benefits, 401k, and collegial work atmosphere. Reply in confidence to: freyes@simonsfirm.com or to Simons & Slattery, LLP, P.O. Box 5333, Santa Fe, NM 87502-5333.

Part-Time Legal Secretary
Nob Hill Area
Massey Law Office, LLC seeks legal secretary with civil litigation experience in insurance defense. Experienced in Word Perfiec, Timeslips. Detail oriented and organized. M-Th 5 hours/day 20 hour/wk. Please send resume and references to John P. Massey, 3616 Campus Blvd. N.E., Albuquerque, New Mexico 87106 or fax to (505) 268-6629 or email mlollc@qwest.net.

Paralegal
Downtown law firm seeks a Paralegal to work in a small growing firm. Must have at least four years experience in trial preparation/organization. Requires exceptional organizational skills with a commitment to excellent quality of work. Must have superior computer skills, including Word and Word Perfect. Knowledge of Timeslips, Abacus and Summation a plus. Competitive salary and excellent benefit package. Please mail resume to Office Manager at Silva, Saucedo & Gonzales, P.C., PO Box 100, Albuquerque, NM 87103-0100 or email tcsilva@silvalaw.org. Position available immediately. No Phone calls please.

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

Legal Assistant (Office Automation)
Legal Assistant needed for position with the United States Attorney’s Office. Position is located in Albuquerque, NM. Complete application information can be obtained on the U.S. Attorney’s Office, District of New Mexico website at http://www.usdoj.gov/usao/nm/ under Employment Opportunities. For further information contact (505) 224-1416.

Consulting
Forensic Psychiatrist
Board certified in adult and forensic psychiatry, available for psychiatric evaluations, consultation, case review, competency evaluations, and expert testimony. Licensed in New Mexico, Connecticut and New York. Please leave a message for Dr. Kelly at 866 317 7959 or email forensicspsychiatry@comcast.net.

Commercial Real Estate Issues
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Leased Office Building
Leased Office Building in Santa Fe on St. Francis Dr. Appraised at $2,400,000. Possible Owner Financing. Call (505) 983-7983 for details.

Office Furniture For Sale
Kindly used solid, medium oak, 72x36 x30" desk with matching credenza, 72x17x30" and black leather office chair with oak arms. Contemporary design. $300 for all. 897-7174.

Conference Room Table
Executive solid wood table with glass top, 12 feet long, 4-1/2 feet wide, exquisite, $2,300.00, contact Ken or Sheila at 242-6300 or 280-3599.

miscellaneous

Seeking Will or Trust
Richard Davis Rieser passed away on February 8, 2007. We are seeking information regarding any estate planning that Mr. Rieser may have done in New Mexico. If you prepared a will or trust on behalf of Mr. Rieser, please contact Michael Pottow, Catron, Catron & Pottow, P.A. at 505/982-1947 or by email at mtpottow@catronlaw.com.

Will Search
Seeking Will for Florian Crestino Romero. Drafted within the past five years in Albuquerque. Contact Chris, 505.975.7520 or cristinor@aol.com

Ski Colorado at Christmas

Office Space

Prime Office Suite
Prime Office Suite on St Francis Dr. In Santa Fe for lease. Three private offices with reception and waiting room. $2,000 per month including utilities and CAM costs. Call for showing (505) 983-7983.

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

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Best location in town, one block or less from the new federal, state, metropolitan courts. Includes secretarial space, phones and service, parking, library, janitorial, security, receptionist, runner, etc. Contact Thomas Nance Jones, (505) 247-2972.

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Center for Legal Education
New Mexico State Bar Foundation

Terence F. MacCarthy, Esq.

Thursday, November 29, 2007 • State Bar Center, Albuquerque
6.0 General CLE Credits

Co-Sponsor: Trial Practice Section
Standard Fee $169 • Trial Practice Section Members, Government, Legal Services Attorney, Paralegal $159

Terence F. MacCarthy has been called one of America's most popular and respected teacher of lawyers having taught trial advocacy to lawyers and law students in every state in the country. Described as "...constitutionally incapable of boring anybody for long...", he is the author of numerous legal articles and serves on the Permanent Faculty of six law schools. He is also a permanent faculty member of the National Criminal Defense College, has served on Gerry Spence's Trial Lawyers College, and has lectured for the Federal Judicial Center, the Department of Justice, and State Bar Associations across the nation.

8:30 a.m. Registration
9:00 a.m. Impeachment
10:00 a.m. Break
10:15 a.m. Impeachment (continued)
Noon Lunch (provided at the State Bar Center)
12:45 p.m. Trial Practice Section Annual Meeting
1:00 p.m. Cross-Examination
3:00 p.m. Break
3:15 p.m. Cross-Examination (continued)
4:30 p.m. Adjourn

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

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