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From the New Mexico Court of Appeals

2010-NMCA-089, No. 29,425:
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Please join the Equal Access to Justice Board of Directors to honor three outstanding advocates for civil legal services to the needy.

**TIMOTHY SHEEHAN, ESQ.**
**F. DOUG MOELLER, ESQ.**
**MONTGOMERY ANDREWS PA**

If you are a civil legal service provider, we would be honored if you would be our guest for this breakfast. All attendees must RSVP.

Please see the invitation below.

_Nearby reasonable hotels: the Pyramid Marriott ($150) or La Quinta ($79)._
NOVEMBER VIDEO REPLAYS
State Bar Center - Albuquerque

9  2010 Probate Institute
   6.4 G, 1.0 E
   8:15 a.m. - 4:15 p.m.
   $229

   Putting Your Best Face on a Case (2010)
   4.7 G, 1.0 E, 1.0 P
   9:00 a.m. - 4:15 p.m.
   $209

   Malpractice in an Uncertain Economy
   (from Surviving to Thriving in Private Practice) (2009)
   1.0 G
   11:00 a.m. - 12:00 p.m.
   $49

   The Write Way to Write Persuasively (2009)
   3.0 G
   1:00 - 4:00 p.m.
   $129

16  Immigrant Rights in New Mexico (2009)
    5.5 G, 1.0 E
    8:30 a.m. - 3:30 p.m.
    $209

    Improving the Attorney/HR Relationship (2009)
    5.0 G
    9:00 a.m. - 2:30 p.m.
    $179

    How to Do Your First PI Case (2009)
    4.0 G, 1.0 E, 1.0 P
    8:45 a.m. - 3:15 p.m.
    $199

TWO WAYS TO REGISTER

INTERNET: www.nmbarcle.org  FAX: (505) 797-6071, 24 hour access

Name ___________________________________________________________________ NM Bar # _________________________________
Street ____________________________________________________________________________________________________________
City/State/Zip _____________________________________________________________________________________________________
Phone ____________________________________________________ Fax  ____________________________________________________
E-mail ____________________________________________________________________________________________________________
Credit Card # ________________________________________________________________ Exp. Date ________________ CVV# ________________
Authorized Signature _______________________________________________________________________________________________
**INTELLECTUAL PROPERTY INSTITUTE:**
Recent Developments in Intellectual Property Law

Thursday, December 2, 2010 • State Bar Center, Albuquerque
4.5 General, 1.0 Ethics, & 1.0 Professionalism CLE Credits

| Standard Fee $209 | Intellectual Property Section Member, Government, Legal Services Attorney, Paralegal $179 |

**Co-Sponsor:** Intellectual Property Section

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:30 a.m.</td>
<td>Registration</td>
</tr>
<tr>
<td>9:00 a.m.</td>
<td>International Patent Prosecution Strategies&lt;br&gt;Colin Cahoon, Esq., Carstens &amp; Cahoon LLP, Dallas&lt;br&gt;• Mechanisms for foreign prosecution&lt;br&gt;• Typical prosecution pathway&lt;br&gt;• First filing and foreign filing license considerations&lt;br&gt;• Cost and Speed Considerations&lt;br&gt;• PCT Option&lt;br&gt;• Factors for Considering National Stage Filings&lt;br&gt;• Timeline needed to achieve objectives&lt;br&gt;• Prosecution factor and difficulties&lt;br&gt;• Enforceability&lt;br&gt;• Post allowance considerations&lt;br&gt;• Oppositions, Annuities&lt;br&gt;• Use requirements, Logistical pointers&lt;br&gt;• Docketing and Annuity Programs and Services</td>
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<tr>
<td>10:00 a.m.</td>
<td>10:45 a.m.</td>
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<tr>
<td>10:45 a.m.</td>
<td>PCT-PPH Requirements&lt;br&gt;• PCT-PPH Pilot Program Summary&lt;br&gt;• PCT-PPH Relationship Examples&lt;br&gt;• How does the PPH Change International Prosecution?&lt;br&gt;• New Options for Non-US and PCT Applicants&lt;br&gt;• Future of PPH&lt;br&gt;• PCT PPH agreements</td>
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<td>1:45 p.m.</td>
<td>1:45 p.m.</td>
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<td>2:45 p.m.</td>
<td>Web 2.0: Ethics Issues for New Mexico Lawyers&lt;br&gt;Anthony Claiborne&lt;br&gt;Current Trends in Trade Secrets&lt;br&gt;Charles A. Armgardt, Esq., Modrall Sperling Roehl Harris &amp; Sisk PA&lt;br&gt;Plaintiff’s prima facie case for misappropriation&lt;br&gt;• Misappropriation and Trade Secret definitions&lt;br&gt;• Secrecy and Competitive Advantage&lt;br&gt;• Disclosure and Confidential Relationships&lt;br&gt;• Plaintiff’s Lost Profits and Exemplary and Compensatory Damages&lt;br&gt;• Defendant’s benefit&lt;br&gt;• Time Period for Damages&lt;br&gt;• Injunctive Relief</td>
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<tr>
<td>3:45 p.m.</td>
<td>Barbie/Bratz Case Study&lt;br&gt;Jeffrey H. Albright, Esq., Lewis and Roca LLP&lt;br&gt;Case Study on Branding Issues.</td>
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<tr>
<td>4:15 p.m.</td>
<td>cycles</td>
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<td>5:00 p.m.</td>
<td>5:00 p.m.</td>
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**TWO WAYS TO REGISTER**

INTERNET: www.nmbarcle.org  FAX: (505) 797-6071, 24 hour access

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

<table>
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<tr>
<th>Name</th>
<th>NM Bar #</th>
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<tbody>
<tr>
<td>Street</td>
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<td>City/State/Zip</td>
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<td>Phone</td>
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<td>E-mail</td>
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<tr>
<td>Credit Card #</td>
<td>Exp. Date</td>
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<tr>
<td>Authorized Signature</td>
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</tbody>
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MEETINGS

NOVEMBER
1
Attorney Support Group, 5:30 p.m., First United Methodist Church
2
Disability Committee, noon, State Bar Center
3
Real Property, Trust and Estate BOD, 11:30 a.m., via teleconference
3
Bankruptcy Law Section BOD, noon, U.S. Bankruptcy Court
3
Employment and Labor Law Section, noon, State Bar Center
4
Elder Law Section, noon, State Bar Center

STATE BAR WORKSHOPS

NOVEMBER
10
Estate Planning Workshop 6 p.m., State Bar Center, Albuquerque
17
Lawyer Referral for the Elderly Workshop 10–11:30 a.m., Presentation 1:30–4 p.m., Clinics Belen Senior Center, Belen

DECEMBER
8
Consumer Debt/Bankruptcy Workshop 6 p.m., State Bar Center, Albuquerque

From the Cover Artist: Santa Fe artist Mike Mahon paints from what he knows best—the colors and people of Texas, northern New Mexico, and Mexico. His landscapes, portraits, and slice-of-life vignettes depict a taste for the unusual scenes, expressions, and ordinary moments that most of us miss. Mahon is represented by The Adobe in Ruidoso, Art Exchange in Santa Fe, Mountain Treasures in Red River, Nichols in Taos, and Weems Old Town in Albuquerque. To see the cover art in its original color, visit www.nmbar.org and click on Attorneys/Members/Bar Bulletin.
Courts and other tribunals:
I will be a vigorous and zealous advocate on behalf of my client, but I will remember that excessive zeal may be detrimental to my client's interests or the proper functioning of our justice system.

Professionalism Tip

Address Changes

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court
E-mail: attorneyinfochange@nmcourts.gov
Fax: (505) 827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar
E-mail: address@nmbar.org
Fax: (505) 828-3755
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org

Address Changes

Pursuant to the Judicial Records Retention and Disposition Schedules, exhibits (see specifics for each court below) filed with the courts 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 (see specifics for each court below) can be retrieved by the dates shown below. Attorneys who have cases with exhibits may verify exhibit 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 not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

<table>
<thead>
<tr>
<th>Court</th>
<th>Exhibits</th>
<th>For Years</th>
<th>May Be Retrieved Through</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Judicial District Court (505) 455-8275</td>
<td>Exhibits in criminal, civil, domestic relations, and children’s court</td>
<td>1978–1995</td>
<td>Nov. 5</td>
</tr>
<tr>
<td>5th Judicial District Court</td>
<td>Exhibits in criminal cases</td>
<td>1971–2009</td>
<td>Nov. 12</td>
</tr>
</tbody>
</table>

Local Government Law
Nann Winter

Commission on Access to Justice November Meeting
The next meeting of the Commission on Access to Justice will be held from noon to approximately 4 p.m., Nov. 5, at the State Bar Center. Interested parties from the private bar and the public are welcome to attend. Further information about the commission is available on the State Bar’s website, www.nmbar.com.

Proposed Rule Revisions
Proposed Revisions to the Rules of Appellate Procedure
The Rules of Appellate Procedure Committee is considering whether to recommend for the Supreme Court’s consideration proposed amendments to the Rules of Appellate Procedure.

Proposed Revisions to the Supreme Court General Rules and Civil Forms
The ATJ Commission is considering whether to recommend for the Supreme Court’s consideration proposed amendments to the Supreme Court General Rules and Civil Forms.

To comment on the proposed amendments before they are submitted to the Court for final consideration, either submit a comment electronically through the Supreme Court’s website at http://nmsupremecourt.nmcourts.gov/ or send written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
PO Box 848
Santa Fe, New Mexico 87504-0848

Comments must be received on or before Nov. 8 to be considered by the Court. Note that any submitted comments may be posted on the Supreme Court’s website for public viewing. For reference, see the Oct. 18 (Vol. 49, No. 42) Bar Bulletin.

2nd Judicial District Court Nominating Commission
Eleven applications have been received in the Judicial Selection Office as of 5 p.m., Oct. 18, for the judicial vacancy on the 2nd
Judicial District Court due to the retirement of the Honorable Angela J. Jewell.

The District Judicial Nominating Commission will meet at 9 am on Nov. 8, at the 2nd Judicial District Courthouse, 400 Lomas Blvd. NW, Albuquerque, to evaluate the applicants for this position. The Commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are:

- Robert J. Aragon
- Merrie L. Chappell
- Rosemary Cosgrove-Aguilar
- William A. DeRaad
- Alisa A. Hadfield
- The Honorable Victor S. Lopez
- Arnold Padilla
- James J. Owens
- Debra S. Ramirez
- The Honorable Frank A. Sedillo
- Edna F. Sprague

13th Judicial District Court
Change in Business Hours for all Clerks’ Offices

The clerks’ offices in Cibola, Sandoval and Valencia counties will have new business hours on Fridays beginning Nov. 19. The new Friday hours are 9 a.m. to noon. The front counters will be closed from 1 to 5 p.m. on Fridays only. The new hours will not affect court hearings or the business hours of the judges’ offices. Due to inadequate staffing and an increase in filings, the Friday afternoon closures of the front counters will assist the clerks’ offices in processing cases and documents. The district appreciates everyone’s cooperation in advance and anticipates these hours to be a temporary measure due to the current budget crisis.

U.S. District Court for the District of New Mexico
Proposed Revisions to Local Rules of Civil Procedure

Proposed revisions to the Local Rules of Civil Procedure of the United States District Court for the District of New Mexico are being considered. A “redline” version (with proposed additions underlined and proposed deletions stricken out) with an index of changes, and a clean version are posted on the Court’s website at www.nmdc.gov. Comments may be submitted via e-mail to localrules@nmcd.gov or by mail to U.S. District Court, Clerk’s Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: Local Rules. All comments must be received no later than Nov. 24.

STATE BAR NEWS
Attorney Support Group

- Nov. 15, 7:30 a.m.–Morning groups meet regularly on the third Monday of the month.
- Nov. 1, 5:30 p.m.–Afternoon groups meet regularly on the first 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.

Business Law Section
Annual Meeting, CLE and Award Ceremony

The Business Law Section will hold its annual meeting during lunch, Nov. 5, at the 2010 Business Law Institute. Send agenda items to Chair Jim Bozarth, jbozarth@hinkelelawfirm.com. See the CLE-At-a-Glance insert in the Oct. 11 (Vol 49, No. 41) Bar Bulletin for details. Register online at www.nmbarcle.org or fax to (505) 797-6071.

The Business Lawyer of the Year Award will be presented at 4:30 p.m. immediately following the CLE. The board of directors of the Business Law Section awarded Bruce R. Kohl its Business Lawyer of the Year award in recognition of his significant services to the citizens of New Mexico and the business law community in the field of securities law. Kohl served as director of the New Mexico Securities Division from 1981 to 1984, during 1987, and from 2003 to 2010. Visit http://www.nmbar.org/AboutSBNM/sections/BusinessLaw/bllawyerawards.html.

Committee on Women and the Legal Profession
Minzner Award Nominations

Nominations are now being accepted for the 2010 Justice Pamela B. Minzner Outstanding Advocacy for Women Award, which recognizes attorneys who have distinguished themselves during the prior year by providing legal assistance to women who are underrepresented or underserved or by advocating for causes that will ultimately benefit and/or further the rights of women.
The Committee on Women and the Legal Profession will review the nominations and select a recipient. Submit a letter of nomination summarizing the work and efforts of the nominee to Jocelyn Castillo, PO Box 27047, Albuquerque, NM 87125-7047; fax to (505) 247-3213; or e-mail jocelyn@moseslaw.com. The nomination deadline is Nov. 5.

Employment and Labor Law Section
Board Meeting
The Employment and Labor Law Section board of directors welcomes section members to attend its meetings, which are usually held on the first Wednesday of each month. The next meeting will be held at noon, Nov. 3, at the State Bar Center. Lunch is provided to those who R.S.V.P. to membership@nmbar.org. For information about the section, visit the State Bar website, www.nmbar.org, or contact Chair Aaron Viets, (505) 766-7588 or aviets@rodey.com.

Indian Law Section
Annual Meeting and CLE
The Indian Law Section will hold its annual meeting at 1 p.m. after lunch, Nov. 4, in conjunction with the Tribal Law and Order Act: Changes in the Landscape of Indian Criminal Law at the State Bar Center. Send agenda items to Christina West, csw@sutinfirm.com. See the CLE-At-a-Glance insert in the Oct. 18 (Vol. 49, No. 42) Bar Bulletin for details. Register online at www.nmbarcle.org or fax to (505) 797-6071.

Paralegal Division
Luncheon CLE Series
The Paralegal Division invites members of the legal community to bring a lunch and attend Understanding the Law of Damages (1.0 general CLE credit) presented by David Fine, Fine Law Firm. The program will be held from noon to 1 p.m., Nov. 10, at the State Bar Center. The registration fee is $16 for attorneys, $10 for members of the Paralegal Division, and $15 for non-members. Registration begins at the door at 11:45 a.m. For more information, contact Cheryl Passalaqua, (505) 247-0411, or Evonne Sanchez, (505) 222-9356.

Senior Lawyers Division
Board of Directors Election
The Senior Lawyers Division Nominating Committee has nominated the members listed below.

<table>
<thead>
<tr>
<th>Position</th>
<th>Term</th>
<th>Nominee</th>
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<tbody>
<tr>
<td>#1</td>
<td>2009–2011</td>
<td>Donald Becker</td>
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<tr>
<td>#2</td>
<td>2009–2011</td>
<td>Brad Zeikus</td>
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<td>#3</td>
<td>2009–2011</td>
<td>Mike Milligan</td>
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<td>#4</td>
<td>2009–2011</td>
<td>Ronald T. Taylor</td>
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<td>#5</td>
<td>2009–2011</td>
<td>Anthony J. Williams</td>
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<td>#6</td>
<td>2011–2013</td>
<td>William J. Arland</td>
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<td>#7</td>
<td>2011–2013</td>
<td>Daniel J. Behles</td>
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<td>#8</td>
<td>2011–2013</td>
<td>John P. Burton</td>
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<tr>
<td>#9</td>
<td>2011–2013</td>
<td>Virginia L. Ferrara</td>
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<tr>
<td>#10</td>
<td>2011–2013</td>
<td>David L. Mathews</td>
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13th Judicial District Court
The e-Filing Master Service Contact List

How to ensure you get all your case information and notifications by e-mail

On July 1, e-filing became mandatory in civil cases in the 13th Judicial District Court. Attorneys involved in a case must enter their e-mail contact information on the Master Service Contact List for each case in which they are involved; otherwise, attorneys will not receive e-mail notification of filings involving their cases. The Master Service Contact List should also include contact for support staff.

Note that the Master Service Contact List is different from the Firm Service Contact List. The Firm Service Contact List:

- is not attached to a specific case;
- is not used to notify parties by e-mail of any filings in any given case; and
- can be used to transfer or paste contact information to the Master Service Contact List.

Only the names entered in the Master Service Contact List for each case will receive e-mail notifications of any documents that are e-filed and served (EFS).

For example, Plaintiff A files a complaint against Defendants B and C. Attorney for A is listed on the Firm Service Contact List but does not enter or transfer his/her e-mail contact information from the Firm Service Contact List to the Master Service Contact List. Attorney for B files an answer and enters his/her e-mail contact information in the Master Service Contact List for that case. Attorney for C files an answer and enters his/her e-mail contact information in the Master Service Contact List for that case. Because both the attorney for B and the attorney for C are on the Master Service Contact List, they each receive by e-mail a copy of the answer each of them filed. Attorney for A receives nothing by e-mail because he/she never transferred their e-mail contact information from the Firm Service Contact List to the Master Service Contact List for that case.

The 13th Judicial District also encourages attorneys utilizing e-filing to check their e-mails frequently to ensure that any e-mails from the e-filing service provider, Wiznet, are not being categorized as spam and going unopened.

Nominee: Anita Podell Miller

Trial Practice Section
Law Student Writing Competition
The Trial Practice Section is sponsoring a writing competition for UNM law students. The goal of the competition is to encourage and reward law student writings on legal subjects within the scope of the section and of general and current interest. It is also designed to attract students to the civil trial field and to strongly encourage scholarship in these areas. The deadline to submit entries is Nov. 19. For complete contest rules, visit http://www.nmbar.org/AboutSBNM/sections/TrialPractice/trialpracticesection.html.
Young Lawyers Division
Lunch With Justice Chávez
The Young Lawyers Division will host a luncheon with Justice Edward Chávez from noon to 1:30 p.m., Nov. 2, at Lorenzo’s Italian Restaurant, 3961 E. Lohman Ave., Las Cruces. Join YLD for this ongoing series of informal discussions with Justice Chávez about the practice of law. Space is limited to the first 13 YLD members who respond. Lunch will be provided. R.S.V.P. by Nov. 1 to Martha Chicoski, martha@chicoskilaw.com.

Other Bars
Albuquerque Bar Association Member Luncheon
The Albuquerque Bar Association’s Member Luncheon will be held at noon, Nov. 2, at the Embassy Suites Hotel, 1000 Woodward Pl. NE, Albuquerque. The luncheon speaker is UNM School of Law Dean Kevin Washburn. The CLE (1.0 professionalism CLE credit) will immediately follow the luncheon from 1:15 to 2:15 p.m. Bill Lang, Hillary Noskin, Briggs Cheney, Jill Anne Yeagley, and Bill Stratvert will present Coping with Stress.

Lunch only: $25 members/$35 non-members with reservations; lunch and CLE: $55 members/$75 non-members with reservations; CLE only: $30 members/$40 non-members. Register for lunch by noon, Oct. 29. To register:
1. Call (505) 842-1151 or (505) 243-2615;
2. E-mail abqbar@abqbar.org; or
3. Fax to (505) 992-0287; or
4. E-mail libref@law.unm.edu.

Other News
Center for Civic Values Mock Trial Coaches Needed
Attorneys are needed at New Mexico high schools to provide legal expertise as coaches for the 2011 Gene Franchini High School Mock Trial Program: Alamogordo High School, Animas High School, Piedra Vista High School, Farmington, Cleveland High School, Rio Rancho. The Rio Rancho team will meet at an elementary school located at the corner of Southern and Unser.

The time invested will be decided by the attorney/coach and the teacher advisor, but teams usually meet at least once each week. Regionals are February 25–26 and state finals are March 25–26. Your mission will be to help your team with the finer points of presenting their case before panels of judges and jurors. The case problem and rules were published on October 4 so the teams have just begun their preparation. Information about the role and responsibilities of attorney/coaches is available on the “Tips and Advice” pages in the mock trial section of the Center for Civic Values’ website at www.civicvalues.org. If you have a few hours a week to devote toward helping to provide an outstanding educational experience to New Mexico high school students or would like to know more, contact Michelle Giger, (505) 764-9147, ext. 11. The 33rd annual mock trial program is a co-sponsored activity of CCV, the State Bar of New Mexico and the UNM School of Law.

Santa Fe Neighborhood Law Center CLE Conference
New Mexico Supreme Court Justice Charles W. Daniels and New Mexico Attorney General Gary K. King will be featured at the 3rd Annual Neighborhood Law Center CLE. The conference will be held from 8 a.m.–4:30 p.m., Dec. 9 and 10, at the Santa Fe Community Convention Center. Tuition is $325, reduced to $300 for early registrations received by Nov. 19. A free continental breakfast and box lunch will be provided both days on site for CLE attendees and faculty. Conference attendees will earn 12 CLE credits, including 1 credit for legal ethics and 1 credit for professionalism. The conference will be free to the public to the extent seating is available; however, pre-registration is required plus optionally $25 for box lunches.

2nd Judicial District Attorney’s Office Retirement Celebration
Adolph C. Sutton, a long-time prosecutor of 25 years, is retiring from the 2nd Judicial District Attorney’s office. There will be a customary celebration at 3:30 p.m., Nov. 19, at the District Attorney’s office followed by a farewell gathering at the Copper Lounge, Albuquerque.
Welcome, New Members of the State Bar

New member packets have been mailed to all new admittees to the State Bar of New Mexico. The packet includes the 2010–2011 Bench & Bar Directory, a description of services offered by the State Bar, and the 2010 registration fee statement. Visit http://www.nmbar.org/Attorneys/dues/dues.html for more information, due dates, and instructions on paying online. If you need assistance, call (505) 797-6035.

COMMISSION/BOARD VACANCIES

Client Protection Fund Commission
The Board of Bar Commissioners will make one appointment to the Client Protection Fund Commission (http://www.nmbar.org/Attorneys/CPF/ClientProtectionFund.pdf) for a three-year term. Send a letter of interest and brief resume by Nov. 19 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 828-3765; or e-mail jconte@nmbar.org.

DNA People’s Legal Services, Inc.
The Board of Bar Commissioners will make one appointment to the DNA People’s Legal Services, Inc., board for a partial term due to the resignation of the board’s appointee. The term will expire May 31, 2011. Send a letter of interest and brief resume by Nov. 19 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 828-3765; or e-mail jconte@nmbar.org.

New Mexico Legal Aid
The Board of Bar Commissioners will make two appointments to the New Mexico Legal Aid Board (http://www.nmlegalaid.org/). One of the terms is for one year and the other term is for three years. Send a letter of interest and brief resume by Nov. 19 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 828-3765; or e-mail jconte@nmbar.org.

Judicial Performance Evaluation Commission
There is one vacancy on the Judicial Performance Evaluation Commission (http://www.nmjpec.org/) for a five-year term. The State Bar president is the nominating authority for this appointment, which will be made by the Supreme Court. The Court seeks geographic diversity for the commission and is specifically requesting candidates from the 4th and 11th judicial districts for this vacancy. Send a letter of interest and brief resume by Nov. 8 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 828-3765; or e-mail jconte@nmbar.org.

Ethics Advisory Committee
The State Bar Ethics Advisory Committee (http://www.nmbar.org/legalresearch/ethicsadvisoryopinions.html) meets once a month to analyze and respond to specific requests for ethics advisory opinions from members of the State Bar. Work is done throughout the month via e-mail. Committee members outside of Albuquerque can participate via teleconference or video conference. Contact Richard Spinello, rspinello@nmbar.org.

Board of Editors
Five attorney positions on the Board of Editors will expire at the end of 2010. New appointees will serve two-year terms (January 2011 to December 2012), with the option of serving a second two-year term. The Board of Editors reviews and approves articles submitted for publication in the Bar Bulletin and the New Mexico Lawyer. Board members are asked to be available to review articles regularly, work with writers when needed, and attend quarterly board meetings in person or by teleconference. Interested attorneys with experience in publishing/editing should send resumes by Nov. 22 to Dorma Seago, dseago@nmbar.org. Appointments are made by the president of the Board of Bar Commissioners. Visit http://www.nmbar.org/AboutSBNM/Committees/boardeditorscommittee.html.

Have you told your client you’re not insured?
Rule 16-104 (C) NMRA requires New Mexico attorneys who do not maintain professional liability insurance within specified limits to disclose that fact in writing to all clients. The Lawyers Professional Liability and Insurance Committee has information to assist members regarding questions and compliance with this disclosure rule. For more information go to: http://www.nmbar.org/AboutSBNM/Committees/LPL/LPL.html.

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STATE BAR
of NEW MEXICO
The 2010 election of Commissioners for the State Bar of New Mexico Board of Bar Commissioners will be held on Nov. 30. The First and Third Bar Commissioner Districts have contested elections. Three candidates are running for two positions in the First District and two candidates are running for one position in the Third District. Ballots for the contested elections are currently being mailed to members of the First and Third Bar Commissioner Districts and must be returned by noon on Nov. 30. The other three districts with vacancies (Fourth, Sixth and Seventh) were uncontested; therefore, the candidates won by acclamation.

**Fourth Bar Commissioner District**
Brigitte U. Lotze

**Sixth Bar Commissioner District**
Andrew J. Cloutier

**Seventh Bar Commissioner District**
Roxanna M. Chacon

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

Michelle Lujan Grisham has lead efforts to shift public policy to improve the quality, dignity and independence of New Mexicans. She served as Director of Lawyer Referral for the Elderly Program from 1987 until 1991 when Governor King appointed her Director of the State Agency on Aging, where she served continuously until Governor Richardson appointed her Secretary of Aging and Long-Term Services in 2002. During her tenure Lujan-Grisham took a small program and turned it into a groundbreaking agency, known nationwide for such innovative practices as undercover evaluations of nursing homes and enhanced legal protections for elders; and she spearheaded reorganization of state programs for seniors and people with disabilities. In 2004 Governor Richardson appointed Lujan-Grisham as Secretary of Department of Health, where she served until stepping down to run for Congress in 2007. Lujan-Grisham is currently a small business owner specializing in health and long term care consulting.

**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 State Bar has a responsibility to serve and support its membership while also promoting justice and facilitating the delivery of legal services to those in need of such services. The State Bar represents the profession to the public and should promote the highest degree of integrity and competence while fostering the ability of members to serve clients. The State Bar should lead through the provision of continuing legal education, coordinating public policy development, working with local bars and the judiciary to promote justice and improve access to legal services.

**Q** Give your perspective on any important issues you believe the profession and State Bar should be addressing.

**A** I believe there is a growing gap for people who need legal services and don’t have access, particularly during these poor economic times. A lack of sufficient resources creates a disparity for people who need legal services to address issues such as guardianship, domestic relations, consumer protection, predatory lending, accessing public programs and health care. To address this gap the State Bar and its members need to be engaged in not just providing direct legal service but advocating for protective public policy and educating the public on preventive measures to avoid common legal pitfalls. Engaging the profession in such efforts requires a balance between recruiting members to assist in delivery of legal services while supporting them to fulfill their personal practice goals.

**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** To best represent my district, I will commit to personal engagement with community organizations and commissions engaging in legal services as well as local bar associations. In addition I will work to solicit input from bar members on issues of concern and how I might assist and better serve them.

**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 have worked closely with the State Bar since I was the Director of the Lawyer Referral for the Elderly Program in the 1980s and a founding member of the Elder Law and Health Law Sections. I have actively participated in Access to Justice, served many years as a judge for Mock Trials, presented numerous CLE, assisted in the development of Senior Citizens Legal Handbook (published by the State Bar) and, as Director of the State Agency on Aging as Secretary of the Aging and Long-Term Services Department, I funded and sponsored programs of the State Bar. In my first term and a Board of Bar Commissioner I served on both Finance and Governmental Affairs committees and worked with the State Bar on several legislative matters.

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In 2006, I received a scholarship from the American Bar Association Young Lawyers Division Minorities in the Profession Committee.

If elected to the BBC, I would welcome members of my district to share any thoughts and/or concerns they may have with me, whether I believe the State Bar does an excellent job of promoting professional excellence and public service. It provides numerous resources for both attorneys and the public, such as CLEs, lawyer assistance programs, and referral programs. The State Bar’s commitment to public service is clear through its strong support of the Young Lawyers Division and its many community service projects.

Give your perspective on any important issues you believe the profession and State Bar should be addressing.

The State Bar’s multi-faceted mission is set forth in its Mission Statement, which addresses membership, professionalism, member education, the legal system, public service, public legal education, and internal management. The State Bar is committed to raising the professionalism, competence, and integrity of its members. It also strives to provide programs and services to the public, thus enhancing the public’s respect for the legal system.

I believe the State Bar does an excellent job of promoting professional excellence and public service. It provides numerous resources for both attorneys and the public, such as CLEs, lawyer assistance programs, and referral programs. The State Bar’s commitment to public service is clear through its strong support of the Young Lawyers Division and its many community service projects.

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?

The State Bar provides many channels of communication such as sending e-blasts, postings in the weekly ENews, and publishing notices in the Bar Bulletin—all of which I already utilize in my capacity on the Young Lawyers Division Board. I would continue to do so as a Commissioner.

If elected to the BBC, I would welcome members of my district to share any thoughts and/or concerns they may have with me, whether by email or in person. If needed, I would bring up the issue with the Board of Bar Commissioners for input and advice from fellow Commissioners, as well as possible action by the Board.

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

In 2006, a year after moving to Albuquerque, I became involved with YLD by implementing the Junior Judges program in New Mexico. In 2007, I was elected as the YLD Region 5 Director. In 2008, I was elected Vice Chair. I served as Acting Chair in 2009, and I currently serve as the Chair. For the past two years, I have been the YLD Liaison to the Board of Bar Commissioners, attending every BBC meeting over the past two years.

In 2006, I received a scholarship from the American Bar Association Young Lawyers Division Minorities in the Profession Committee. I served on the ABA YLD Affiliates Assistance team the following year. I co-chaired the Host Committee for the 2010 ABA YLD Fall Conference, which took place in Santa Fe in October 2010.

Jessica M. Hernandez grew up in Albuquerque and received her undergraduate degree in economics and her law degree from the University of New Mexico. She is married and has two children. After graduating from law school, Hernandez joined the Rodey Law Firm. In August 2003, she accepted a judicial clerkship with the Honorable James O. Browning, United States District Judge. Following her clerkship, Hernandez returned to the Rodey Law Firm. She became a director in January 2009. She practices in the areas of products liability, premises liability, and general tort liability. She serves on her firm’s Recruiting and Diversity committees and has been the chair of the firm’s summer associate program since 2009. Hernandez is active in State Bar and related activities.

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 stated mission is to serve the legal profession and the public. This mission embodies important roles of both service and leadership. In terms of service, the State Bar must be aware of and sensitive
to new issues as they develop within New Mexico and its legal community. Acting on that awareness involves an
on-going process of evaluating current goals, programs, and services to determine whether they are satisfactorily addressing the needs
of the membership. In terms of leadership, the State Bar is responsible for formulating a vision for the legal profession within New
Mexico. Acting on that vision involves developing and implementing innovative strategies to promote excellence within the profession
to accomplish the ultimate goal of serving the public.

Q Give your perspective on any important issues you believe the profession and State Bar should be addressing.
A I believe that the State Bar has done an excellent job of establishing goals to achieve its ultimate mission of serving the legal profession
and the public. Member education, public service, professionalism, mentoring, and supporting the integrity of the judicial system
are just a few of the issues I believe are critical to continuing to achieve our mission. Mentoring young attorneys to strive for a legal
community distinguished by professionalism and excellence should be an on-going focus. In addition, that mentoring process should
include encouraging participation in State Bar and related activities so that each new generation of lawyers is invested in strengthening
the profession and preserving our legal community's traditional spirit of cooperation and collegiality.

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 intend to communicate with members of my district both as a group and individually. E-mail communication is an efficient way
to provide focused and relevant updates to members. However, my goal is to achieve dialogue with members and not just provide
information. Every interaction with other members of the State Bar is an opportunity for meaningful dialogue about how the State
Bar can better serve its membership. Those interactions happen in courtrooms, conference rooms, and a multitude of organized social
events within the legal community. I intend to capitalize on those interactions to learn more about members' circumstances so that I
can be responsive to them in my service as a commissioner. I also intend to follow up with members to inform them of the status of
concerns or ideas they communicate to me.

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 am actively involved in the State Bar and related organizations. I am a member of the State Bar Unauthorized Practice of Law Task
Force. I have a special interest in the quality and integrity of the judicial selection process and am a current member of the Judicial
Nominating Commission in the Second Judicial District (on which I also served in 2008) and the Magistrate Judge Merit Selection
Panel for the United States District Court. Because of my commitment to professionalism and mentoring, I serve on the board of
directors of the H. Vearle Payne American Inn of Court and am an active member of that group. Through the UNM Law Student
Mentorship Program, I am mentoring two law students during the 2010–2011 school year.

Yasmin Dennig is the General Counsel at the State Treasurer's Office in Santa Fe. She was previously affiliated with
Jewell Law Offices, during which time she also served as a Guardian ad Litem for Advocacy Inc., and a mediator
through the First and the Thirteenth Judicial Districts. Prior to moving to New Mexico, Ms. Dennig was a Vice
President at JP Morgan Chase in the Commercial Real Estate Department where she worked for 10 years. She was
also an intern with the United Nations Environment Program in Nairobi, Kenya.

She has a Joint Honors Bachelors degree in Chemical Engineering and Business Management from Loughborough
University, England, a Masters in Environmental Engineering from the New Jersey Institute of Technology, an MBA
from Manhattan College and a Law Degree from Pace Law School. She is licensed to practice in New York, Con-
necticut and New Mexico.

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 State Bar's mission is to provide the finest professional legal services to the public, and I think promoting excellence in the legal
profession is an appropriate objective for the State Bar. The State Bar has set up seven well thought out goals to achieve its mission.

Q Give your perspective on any important issues you believe the profession and State Bar should be addressing.
A I believe that the State Bar effectively meets five of the seven goals of its mission. However, more could be done to promote access to
the judicial system and the integrity of the legal profession. These are two important areas that need more focus.

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 normally communicate via e-mail, but if telephonic communication seemed more appropriate in certain instances, then that
would be the mode I would use.
I make it a priority to be responsive to questions, concerns, etc. I also like to let people know when I do not have the information that is being sought i.e. if I am waiting for a response from another party. I believe that it is a responsibility of the position to assure people that their matter is being pursued diligently.

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 am an active member of the Albuquerque Lawyers Club and I have helped increase their membership. I have also assisted in putting together CLEs for the Club. I am a member of the New Mexico Mediation Association and the New Mexico Black Lawyers Association. I am affiliated with the Employment and Labor Law Section, the Public Law Section and the First Judicial District Bar Association. I was previously a member of the Albuquerque Bar Association and American Inns of Court.

Deborah Armstrong is co-owner of Delta Consulting Group and Executive Director of New Mexico Medical Insurance Pool. Armstrong is former Cabinet Secretary of New Mexico Aging & Long Term Services Department, having served four years under Governor Richardson. Prior to appointment as Secretary, she was ALTSD Director of Elder Rights and also taught legal-medical ethics as university adjunct faculty. Armstrong currently serves on numerous professional boards and commissions, including the Acupuncture and Oriental Medicine Licensing Board, and chairs the legislature's Health Reform Working Group. Armstrong obtained her JD from University of New Mexico (2001), receiving the “Judge Oliver Seth Scholarship” for legal ethics, the Health Law Scholar Award and Honors in Clinical Law. Armstrong has 35 years experience in healthcare, administration and regulatory compliance in both public and private sectors and is also a licensed physical therapist with a Bachelor's Degree from University of Michigan (1975).

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 mission of the State Bar is threefold: 1) to serve membership through continuing legal education that enhances competency and other services that support members' ability to practice; 2) to represent the profession through public education, community engagement and activities that promote a professional image of integrity; and 3) to promote access to justice through provision and support of legal services, selection of competent judges and facilitating an effective and efficient legal system. The BBC has the additional duty of ensuring the organization is managed in a fiscally responsible and transparent way. The State Bar is currently addressing all these areas but, as a dynamic organization, self-evaluation and strategy modifications should be an on-going process to assure the State Bar's mission continues to be met effectively.

Q Give your perspective on any important issues you believe the profession and State Bar should be addressing.

A With the current State budget crisis, as well as the general economic downturn, there will be an increasing strain on the legal and judicial systems due to decrease in public services and state and local government programs—at the same time there is an increase in need for social services and legal supports. In addition, the health care system is about to undergo massive change in the regulatory framework and how individuals and businesses access and navigate the system. For legal professionals to be able to step up and meet the resultant increased demand for our services, the State Bar must provide support in relevant continuing legal education, public education and services that support the private and public practice of law.

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 believe it will be incumbent upon me, as a Commissioner, to be visible and responsive to the needs and concerns of the constituency that elected me. As such, I will maintain active membership in the local bars of my district and participate in State Bar and local bar activities to the extent I am able. I also plan to provide periodic e-mail updates to members of my district and commit to responding to issues and concerns brought to my attention. Further, I believe the State Bar and Commissioners should facilitate a variety of modes for soliciting input and responding to inquiries and requests from members of our respective districts.

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

A Throughout my career I have been purposeful in supporting my profession(s) and, thus, have been an active member of the State Bar. I have served on the Elder Law Section Board of Directors since 2002, the Women's Bar Association Board of Directors 2008-2010 and joined the Health Law Section Board of Directors in 2010. I also attended the Bar's Leadership Training Institute, participated on the Legal Services Committee's Planning and Pro Bono Subcommittees and have made numerous CLE presentations. In addition, while at the Aging & Long-Term Services Department, I redesigned and helped author the revised New Mexico Senior Citizens Legal Handbook (published by the State Bar) and was responsible for funding and oversight of the State Bar's Lawyer Referral for the Elderly Program.
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<td>2</td>
<td>2010 Professionalism and Ethics: Responding to Crisis Through Limited Representation</td>
<td>VR Center for Legal Education of NMSBF</td>
<td>1.0 E, 1.0 P</td>
<td>(505) 797-6020</td>
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<td>Creditors Rights, Collections, and Bankruptcy (2010)</td>
<td>Center for Legal Education of NMSBF</td>
<td>4.0 G, 1.0 E</td>
<td>(505) 797-6020</td>
<td><a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>The Inbox Ninja (Adriana Linares, 2010 Annual Meeting)</td>
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<td>Maximizing Tax Benefits in Real Estate, Parts 1 and 2</td>
<td>NBI, Inc.</td>
<td>5.6 G, 1.0 E</td>
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<td>Success as a Lawyer (David Gross, 2010 Annual Meeting)</td>
<td>VR Center for Legal Education of NMSBF</td>
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<td>(505) 797-6020</td>
<td><a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>5.6 G, 1.0 E</td>
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<td><a href="http://www.nbi-sems.com">www.nbi-sems.com</a></td>
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<td>4</td>
<td>The Tribal Law and Order Act: Changes in the Landscape of Indian Criminal Law</td>
<td>State Bar Center Center for Legal Education of NMSBF</td>
<td>2.2 G, 1.0 P</td>
<td>(505) 797-6020</td>
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<td>2010 Business Law Institute</td>
<td>State Bar Center Center for Legal Education of NMSBF</td>
<td>6.5 G</td>
<td>(505) 797-6020</td>
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<td>VR Center for Legal Education of NMSBF</td>
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<td>9</td>
<td>Current Challenges in Local Government Law</td>
<td>Albuquerque NBI, Inc.</td>
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<td>Malpractice in an Uncertain Economy (2009)</td>
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<td>Putting Your Best Face on a Case (2010)</td>
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<td>4.7 G, 1.0 E, 1.0 P</td>
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<td>Uniform Commercial Code Toolkit, Part 1: Promissory Notes</td>
<td>Teleseminar Center for Legal Education of NMSBF</td>
<td>1.0 G</td>
<td>(505) 797-6020</td>
<td><a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>10</td>
<td>Understanding the Law of Damages</td>
<td>State Bar Center Paralegal Division</td>
<td>1.0 G</td>
<td>(505) 247-0411 or (505) 222-9356</td>
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<td>Uniform Commercial Code Toolkit, Part 2: Equipment Leases</td>
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**G** = General  
**E** = Ethics  
**P** = Professionalism  
**VR** = Video Replay  
Programs have various sponsors; contact appropriate sponsor for more information.
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<td>When Prosecutors Test the Outer Limits</td>
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<td>Advanced Settlement Skills: How to Settle a Case</td>
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<td>Center for Legal Education of NMSBF (505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>15</td>
<td>Lawyer Substance Abuse Addictions: Causes and Results</td>
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<td>NBI, Inc. 1-800-930-6182 <a href="http://www.nbi-sems.com">www.nbi-sems.com</a></td>
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<td>Immigrant Rights in New Mexico</td>
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<td>Center for Legal Education of NMSBF (505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>5.0 G</td>
<td>(505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>Tax Concepts for Closely Held Companies</td>
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<td>Webcast</td>
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<td>Likeable Lawyer 1-800-524-2396 <a href="http://www.likeablelawyer.com">www.likeablelawyer.com</a></td>
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<td>How to Do Your First PI Case</td>
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<td>Center for Legal Education of NMSBF (505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>17</td>
<td>Disciplinary Administrative Adjudications in New Mexico 2010</td>
<td>VR</td>
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<td>Center for Legal Education of NMSBF (505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>17</td>
<td>Ethics Risks Practicing Law (from Surviving to Thriving in Private Practice) 2009</td>
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<td>Center for Legal Education of NMSBF (505) 797-6020 <a href="http://www.nmbarcle.org">www.nmbarcle.org</a></td>
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<td>19</td>
<td>Lessons from Aristotle</td>
<td>Webcast</td>
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**WRITS OF CERTIORARI**

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

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

**Effective November 1, 2010**

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(Prepared by the Clerk of the Court)

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Slip Opinions for Published Opinions may be read on the Court’s website:
http://coa.nmcourts.gov/documents/index.htm
**Recent Rule-Making Activity**

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

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

**Effective November 1, 2010**

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| 1-071.1 Statutory stream system adjudication suits; service and joinder of water rights claimants; responses. | 06/08/10 |
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To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court’s website at http://nmsupremecourt.nmcourts.gov.

To view recently approved rule changes, visit the New Mexico Compilation Commission’s website at http://www.nmcompcomm.us.
RULES/ORDERS
From the New Mexico Supreme Court

No. 10-8300-027

IN THE MATTER OF THE AMENDMENTS OF RULE 12-504 NMRA OF THE RULES OF APPELLATE PROCEDURE

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Appellate Rules Committee to amend Rule 12-504 NMRA of the Rules of Appellate Procedure, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rule 12-504 NMRA of the Rules of Appellate Procedure hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rule 12-504 NMRA shall be effective December 3, 2010; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the above-referenced amendments by publishing the same in the Bar Bulletin and NMRA and posting the same on the New Mexico Compilation Commission web site <www.nmcompcomm.us/nmrules>.

IT IS SO ORDERED.

WITNESS, Honorable Chief Justice Charles W. Daniels of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of October, 2010.

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

12-504. Extraordinary writs.

A. Scope of rule. This rule governs the procedure for the issuance of all writs in the exercise of the Supreme Court’s original jurisdiction except for writs of certiorari to the Court of Appeals pursuant to Rule 12-502 NMRA and the district courts pursuant to Rule 12-501 and writs of error.

B. Initiation of proceedings.

(1) Extraordinary writ proceedings in the exercise of the Supreme Court’s original jurisdiction shall be initiated by filing with the Supreme Court clerk a verified petition of the party seeking the writ. Subject to the provisions of Rule 12-304 NMRA and Rule 23-114 NMRA, the appropriate docket fee shall accompany the petition. As used in this rule, a “verified petition” is one which contains a statement under oath that the signer has read the petition and that the statements contained in the petition are true and correct to the best of the signer’s knowledge, information and belief. The statement under oath need not be notarized. The petition shall set forth the following:

(a) the grounds on which jurisdiction of the Supreme Court is based;
(b) the circumstances making it necessary or proper to seek the writ in the Supreme Court if the petition might lawfully have been made to some other court in the first instance;
(c) the name or names of the real parties in interest, if any, if the respondent is a justice, judge, or other public officer or employee, court, board or tribunal, purporting to act in the discharge of official duties;
(d) the ground or grounds upon which the petition is based, and the facts and law supporting the same stated in concise form; and
(e) a concise statement of the relief sought.

(2) The petition shall have attached as exhibits any opinions, orders, transcripts or other papers indicating the respondent’s position on the matter in question, if available. The petition may have attached as exhibits any pleadings or other papers that are necessary and appropriate to inform the Court adequately regarding the circumstances out of which the petition arises and the basis for granting relief.

(3) If the circumstances giving rise to the petition appear to the petitioner to require the Court to act on an emergency basis, the petition shall clearly be designated in its title as an “emergency” petition.

C. Proceedings and disposition.

(1) The respondent, the real parties in interest, and the attorney general may file a response to the petition. A response shall comply with the requirements of Paragraphs G and H of this rule. The Court may act on a petition prior to the filing of a response.

(2) If it appears to a majority of the Court that the petition is without merit, concerns a matter more properly reviewable by appeal, or seeks relief prematurely, it may be denied summarily.

(3) If the petition is not summarily denied, the Court may direct the respondent, the real parties in interest, and the attorney general to file a response or further response to the petition, may request briefs on the issues presented in the petition, or may set a hearing on the petition, and the matter shall proceed accordingly or as otherwise ordered by the Court.

(4) If the petitioner is entitled to a writ or relief other than that requested in the petition, the petition shall not be denied but the Court shall grant the writ or relief to which the petitioner is entitled.

D. Stays.

(1) A party filing a petition for an extraordinary writ and also seeking a stay of some action by the respondent pending disposition of the petition shall include the phrase “and Request for Stay” in the title of the petition in addition to complying with other requirements of this paragraph. The respondent, the real parties in interest, and the attorney general may file a response to the request for stay, which may be joined with a response to the petition. The Court may act on a request for stay prior to the filing of a response.

(2) The Court may issue a stay to the respondent without notice to the respondent or the real parties in interest only if:

(a) it clearly appears from the verified petition or by affidavit filed with the Court that immediate and irreparable injury, loss or damage will result to the petitioner before the respondent or real parties in interest can be heard in opposition;
(b) it clearly appears from the verified petition or by affidavit filed with the Court that no loss or damage will result to the respondent or any real parties in interest, or, if loss or damage will occur, what that loss or damage will be; and

ORDER


NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 5-116, 5-303, 5-304, 5-821, 5-822, and 5-825, and 5-825, and Forms 9-406, 9-406A, 9-408, 9-408A, 9-408C, 9-806, and 9-807 NMRA of the Rules of Criminal Procedure for the District Courts hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 5-116, 5-303, 5-304, 5-821, 5-822, and 5-825, and Forms 9-406, 9-406A, 9-408, 9-408A, 9-408C, 9-806, and 9-807 NMRA of the Rules of Criminal Procedure for the District Courts shall be effective December 3, 2010; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the above-referenced amendments by publishing the same in the Bar Bulletin and NMRA and posting the same on the New Mexico Compilation Commission web site <www.nmcompcomm.us/nmrules>.

IT IS SO ORDERED.

WITNESS, Honorable Chief Justice Charles W. Daniels of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of October, 2010.

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

5-116. Witness use immunity.

A. Issuance of order. If a person has been or may be called to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of a court or grand jury, the district court for the judicial district in which the official proceeding is or may be held may issue a written order requiring the person to testify or to produce the record, document or other object notwithstanding the person’s privilege against self-incrimination. The court may issue an order under this rule upon the written application of the prosecuting attorney, the accused, or upon the court’s own motion. The written application shall be provided to all parties.

B. Application. The court may grant the application and issue a written order pursuant to this rule if it finds the following:

(1) the testimony, or the record, document or other object may be necessary to the public interest; and

(2) the person has refused or is likely to refuse to testify or to produce the record, document or other subject on the basis of the person’s privilege against self-incrimination.

C. Effect of order. The use of any testimony or other evidence given pursuant to an order issued under this rule is subject to the provisions of Rule 11-412 NMRA.

[As amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

Committee Commentary. — This rule, together with Rule
11-412 NMRA, creates a procedure for supplanting the privilege against self-incrimination by a grant of use immunity from the court.

There are two types of witness immunity, the so-called “use and derivative use” immunity rule and the so-called “transactional immunity” rule. Use and derivative use immunity was held to be co-extensive with the scope of the Fifth Amendment privilege against self-incrimination in Kastigar v. United States, 406 U.S. 441 (1972). See also Zicarelli v. New Jersey State Comm’n, 406 U.S. 472 (1972). The so-called “transactional immunity” rule affords the witness considerably broader protection than does the Fifth Amendment privilege. Kastigar, 406 U.S. at 453; see also Murphy v. Waterfront Comm’n, 378 U.S. 52 (1964); see generally, Note, 82 Yale L.J. 171 (1972); Note, 58 Va. L. Rev. 1099 (1972); Note, 32 Md. L. Rev. 289 (1972).

Although prior to the 1980 amendments, this rule did not specifically require a party to make a written application for the court to issue a written order granting immunity, the New Mexico Supreme Court held that the application and order must be written. See Campos v. State, 91 N.M. 745, 580 P.2d 966 (1978). This rule was amended in 1979 to require a written application in accordance with the Campos decision. Prior to the New Mexico Supreme Court’s decision in State v. Belanger, 2009-NMSC-025, the court could only issue an order granting use immunity upon application of the prosecuting attorney. However, Belanger removed that restriction, and this rule has been revised to allow the court to issue an order granting use immunity upon application of the prosecuting attorney, the accused, or upon the court’s own motion.

If the court is considering whether to grant a defense witness use immunity over the opposition of the prosecution, Belanger provides the following guidance to district courts:

district courts should perform a balancing test which places the initial burden on the accused. The defendant must show that the proffered testimony is admissible, relevant and material to the defense and that without it, his or her ability to fairly present a defense will suffer to a significant degree. If the defendant meets this initial burden, the district court must then balance the defendant’s need for the testimony against the government’s interest in opposing immunity. A court cannot determine whether a judicial grant of use immunity is necessary “without assessing the implications upon the Executive Branch.” Turkish, 623 F.2d at 776. In opposing immunity, the State must demonstrate a persuasive reason that immunity would harm a significant governmental interest. If the State fails to meet this burden, and the defendant has already met his burden, the court may then exercise its informed discretion to grant use immunity which our appellate courts would review for abuse of discretion.


[As amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

5-303. Arraignment.
A. Arraignment. The defendant shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the information or indictment or the date of arrest, whichever is later. The defendant may appear at arraignment as follows:

(1) through a two way audio-visual communication in accordance with Paragraph I of this rule; or
(2) in open court.

If the defendant appears without counsel, the court shall advise the defendant of the defendant’s right to counsel.

B. Reading of indictment or information. The district attorney shall deliver to the defendant a copy of the indictment or information and shall then read the complaint, indictment or information to the defendant unless the defendant waives such reading. Thereupon the court shall ask the defendant to plead.

C. Bail review. At arraignment, upon request of the defendant, the court shall evaluate conditions of release considering the factors stated in Rule 5-401 NMRA. If conditions of release have not been set, the court shall set conditions of release.

D. Pleas. A defendant charged with a criminal offense may plead as follows:

(1) guilty;
(2) not guilty; or
(3) no contest, subject to the approval of the court.

E. Refusal to plead. If a defendant refuses to plead or stands mute, the court shall direct the entry of a plea of not guilty on the defendant’s behalf.

F. Advice to defendant. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, informing the defendant of and determining that the defendant understands the following:

(1) the nature of the charge to which the plea is offered;
(2) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered, including any possible sentence enhancements;
(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made;
(4) that if the defendant pleads guilty or no contest there will not be a further trial of any kind, so that by pleading guilty or no contest the defendant waives the right to a trial;
(5) that, if the defendant pleads guilty or no contest, it may have an effect upon the defendant’s immigration or naturalization status, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea;
(6) that, if the defendant is charged with a crime of domestic violence or a felony, a plea of guilty or no contest will affect the defendant’s constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence or a felony; and
(7) that, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act.

G. Ensuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the defendant, defense counsel and the attorney for the government as to whether the defendant’s willingness to plead guilty or no contest results from prior discussions between the attorney for the government and the defendant or the defendant’s attorney.

H. Record of proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or no contest, the record shall include,
without limitation, the court’s advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

I. Audio-visual appearance. The arraignment or first appearance of the defendant before the court may be through the use of a two-way audio-video communication if the following conditions are met:

(1) the defendant and the defendant’s counsel are together in one room at the time of the first appearance before the court;
(2) the judge, legal counsel and defendant are able to communicate and see each other through a two-way audio-video system which may also be heard and viewed in the courtroom by members of the public; and
(3) no plea is entered by the court except a plea of not guilty.

J. Waiver of arraignment. With the consent of the court, a defendant may waive arraignment by filing a written waiver of arraignment and plea of not guilty with the court and serving a copy on the state in time to give notice to interested persons. A waiver of arraignment shall not be filed and is not effective unless signed by the district court judge. A waiver of arraignment and entry of a plea of not guilty shall be substantially in the form approved by the Supreme Court.

[As amended, effective October 1, 1974; October 1, 1976; July 1, 1980; May 19, 1982; October 1, 1983; March 1, 1987; September 1, 1990; August 1, 1992; as amended by Supreme Court Order 06-8300-010, effective April 15, 2006; by Supreme Court Order 07-8300-29, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

Committee Commentary. — Paragraphs A, B, D and E of this rule were included in this rule as originally adopted in 1972. Paragraphs A, B and E of this rule conformed to the then existing practice for New Mexico arraignments. By referring only to indictments and informations in Paragraph B of this rule the rule tacitly acknowledges that misdemeanors will rarely be prosecuted on a complaint in the district court. However, the same procedure would be used for arraignment on a complaint.

Paragraph D of this rule, by eliminating the plea of not guilty by reason of insanity, introduced a change in New Mexico procedure. See, e.g., State v. Wilson, 85 N.M. 552, 514 P.2d 603 (1973). The elimination of this plea brought the New Mexico practice into line with the federal practice. See generally 1 Wright, Federal Practice and Procedure, § 176 (1969). However, under Rule 5-602 NMRA, the defendant must give notice of the defense of insanity at the arraignment or within twenty (20) days thereafter. See also Rule 12.2 of the Federal Rules of Criminal Procedure. 62 F.R.D. 271, 295-98 (1974).

Paragraph G of Rule 5-304 NMRA provides for an inquiry to determine the factual basis of any guilty plea.

Paragraph D of this rule also specifically allows the plea of no contest with the approval of the court. The provision was taken from Rule 11 of the Federal Rules of Criminal Procedure. See generally 1 Wright, Federal Practice and Procedure, § 177 (1969). Rule 11(b) of the Federal Rules of Criminal Procedure would add a provision that the court consider the views of the parties and the interests of the public before accepting a plea of no contest. See 62 F.R.D. 271, 275 (1974).

A plea of no contest is, for the purposes of punishment, the same as a plea of guilty. North Carolina v. Alford, 400 U.S. 25, 35-36 (1970); cf. State v. Raburn, 76 N.M. 681, 417 P.2d 813 (1966); see generally, 62 F.R.D. 271, 277-78 (1974). Consequently, Paragraphs F and G of this rule require the court to give the defendant the same advice given when a plea of guilty is entered and also insure that the plea is voluntary. However, unlike the case in which the defendant pleads guilty, a court need not inquire into whether or not there is a factual basis for the no contest plea. See Paragraph G of Rule 5-304 NMRA.

Elimination of the inquiry into the factual basis for the no contest plea is consistent with the use of the plea where the defendant does not want to admit any wrongdoing. A defendant may want to avoid pleading guilty because a guilty plea can be introduced in subsequent litigation. Under Rule 11-410 NMRA, a plea of no contest is not admissible. (The Rules of Evidence contain an inconsistency, however, in that the no contest plea, declared inadmissible under Rule 11-410 NMRA, is declared to be not excluded by the hearsay rule under Paragraph V of Rule 11-803 NMRA.) The fact that the plea of no contest will not be admissible in subsequent litigation should be considered in the court’s decision to approve the plea. See generally, 63 F.R.D. 271, 277-78, 286 (1974).

Paragraphs F, G and J, governing plea procedures, were added in 1974. They were taken from Rules 11(c), (d) and (g) of the Federal Rules of Criminal Procedure. See 62 F.R.D. 271, 275-86 (1974).

Paragraph F of this rule prescribes the advice the court must give to the defendant as a prerequisite to the acceptance of a plea of guilty. Except for Subparagraphs (5), (6) and (7), added in 1990 and 2007, the rule codifies the constitutional requirements set forth in Boykin v. Alabama, 395 U.S. 238 (1969). See also Henderson v. Morgan, 426 U.S. 637 (1976), holding that the trial judge must explain the nature of the charge of murder, i.e., the court must explain intent to kill to the defendant if intent to kill is an element of the offense, prior to acceptance of a plea of guilty. The trial judge may want to refer to essential elements in UJI Criminal, particularly when they have not been set forth in the accusatory pleading. Although it has been a common practice in New Mexico to also advise the defendant that he is giving up a right to appeal, that advice is not included in either the rule or in the approved form for a guilty plea proceeding. A guilty plea does not prevent an appeal in New Mexico. Cf. State v. Vigil, 85 N.M. 328, 512 P.2d 88 (Ct. App. 1973). Subparagraph (5), requiring the court to “warn” the defendant that a conviction could affect the defendant’s immigration or naturalization status, was added in 1990. Subparagraphs (6) and (7), added in 2007, require the court to advise the defendant of certain limitations on the right to bear arms and sex offender registration requirements that might result depending on the crimes that are the subject of the plea. In 2009, Subparagraph (2) was amended to make clear that, when advising the defendant of the mandatory minimum and maximum possible penalties, the court must also advise the defendant of any possible sentence enhancements that may result based on any prior convictions the defendant may have. See Marquez v. Hatch, 2009-NMSC-040, ¶13 (providing that “if the district court is aware of the defendant’s prior convictions that would require a sentence enhancement if subsequently requested by the State, the court should inform the defendant of the maximum potential sentence, including enhancements. If the defendant enters a guilty or no contest plea without being advised of possible sentence enhancements and then the possible existence of prior convictions comes to light when the State files a subsequent supplemental information seeking to enhance the defendant’s sentence based on those prior convictions, the court should conduct a supplemental plea proceeding to advise the defendant of the likely sentencing enhancements that will result and, determine whether the defen-
Paragraph G of this rule requires the court to determine that a plea of guilty or no contest is voluntary before accepting either plea. As noted above, Paragraph G of Rule 5-304 NMRA also requires that the court satisfy itself that there is a factual basis for a plea of guilty. Both of these requirements have been in the federal rules since 1966, and also have a basis in constitutional law. See Santobello v. New York, 404 U.S. 257 (1971). The court must not only inquire of the defendant, but must, “make a separate and distinct inquiry” of defense counsel and counsel for the government as to the existence of any agreement or discussions relative to the plea. State v. Lucero, 97 N.M. 346, 639 P.2d 1200 (Ct. App. 1981).

Finally, it should be noted that Paragraph H of this rule makes it clear that plea proceedings before the court must be on the record. See Santobello, 404 U.S. 257.

AUDIO-VISUAL ARRAIGNMENTS.

Paragraph I provides that a defendant may be arraigned by way of a two-way closed circuit audio-video communication between the defendant, his legal counsel and the court and the prosecutor. The committee assumes that proper equipment will be installed prior to conducting an audio-video arraignment pursuant to Paragraph I. Proper equipment includes a direct cable connection to the court’s audio recording system to assure that a “record” is made of the arraignment. Right of Confrontation.


Actual presence in the courtroom, however, is not always necessary. The right can be waived in misdemeanor cases by the accused’s counsel. The defendant’s presence is not required during a pretrial detention hearing. See United States v. Zuccaro, 645 F.2d 104, 106 (2d Cir. 1981) (cert. denied, 454 U.S. 823, 102 S. Ct. 110, 70 L.Ed2d 96 (1981)). The continued presence of an accused is not required if the accused voluntarily absents himself after the trial has commenced or if the accused engages in conduct which justifies his being excluded from the courtroom. See Rule 5-112 NMRA.

Although the general rule is that the accused has a right to a face to face confrontation, this rule is subject to policy or necessity considerations. See State v. Tafoya, 105 N.M. 117, 729 P.2d 1371 (Ct. App. 1986), finding that the right to face to face confrontation must give way when necessary to protect a child who is a victim of a sex offense from further mental or emotional harm. In Tafoya, the New Mexico Court of Appeals held that a defendant is “present” during a deposition when the defendant is in a control booth in constant contact with his attorney and can view all of the proceedings. Use of Audio-Video System during Arraignment Proceedings.

The use of a two-way audio-video system to arraign a defendant while in jail is apparently becoming fairly common in many areas. Although the use of an audio-video system in which the defendant would participate in the trial from a hospital by use of a single television and a telephone by which he could communicate with counsel may be insufficient, People v. Piazza, 92 Misc.2d 813, 401 N.Y.S.2d 371 (1977), the conducting of an arraignment on felony charges via a closed circuit two-way audio-video system has been upheld. Commonwealth of Pennsylvania v. Terebieniec, 408 A.2d 1120 (1979).

Guilty Plea.

It is clear that a guilty plea cannot be accepted without a record showing that the defendant intelligently and voluntarily entered the plea. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 170, 23 L. Ed. 2d 274 (1969). Paragraph I limits audio-video arraignments to those proceedings in which the defendant will have his rights explained and enter a plea of not guilty. [As amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

5-304. Pleas.

A. Alternatives

(1) In general. The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty, no contest or guilty but mentally ill to a charged offense or to a lesser or related offense, the attorney for the state will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.

(2) With the approval of the court and the consent of the state, a defendant may enter a conditional plea of guilty, no contest or guilty but mentally ill, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

B. Notice. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty, no contest or guilty but mentally ill it shall be reduced to writing substantially in the form approved by the Supreme Court. The court shall require the disclosure of the agreement in open court at the time the plea is offered and shall advise the defendant as required by Paragraph F of Rule 5-303 NMRA. If the plea agreement was not made in exchange for a guaranteed, specific sentence and was instead made with the expectation that the state would only recommend a particular sentence or not oppose the defendant’s request for a particular sentence, the court shall inform the defendant that such recommendations and requests are not binding on the court. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report.

C. Acceptance of plea. If the court accepts a plea agreement that was made in exchange for a guaranteed, specific sentence, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement. If the court accepts a plea agreement that was not made in exchange for a guaranteed, specific sentence, the court may inform the defendant that it will embody in the judgment and sentence the disposition recommended or requested in the plea agreement or that the court’s judgment and sentence will embody a different disposition as authorized by law.

D. Rejection of plea. If the court rejects a plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford either party the opportunity to withdraw the agreement and advise the defendant that if the defendant persists in a guilty plea, plea of no contest or guilty but mentally ill the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. This paragraph does not apply to a plea for which the court rejects a recommended or requested sentence but otherwise accepts the plea.

E. Time of plea agreement procedure. Except for good cause
shown, notification to the court of the existence of a plea agreement shall be given at such time, as may be fixed by the court.

F. Inadmissibility of plea discussions. Evidence of a plea of guilty, later withdrawn, a plea of no contest or guilty but mentally ill, or of an offer to plead guilty, no contest or guilty but mentally ill to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

G. Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty or guilty but mentally ill, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

H. Form of written pleas. A plea and disposition agreement or a conditional plea shall be submitted substantially in the form approved by the Supreme Court.

[As amended, effective August 1, 1989; January 15, 1998; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

Committee Commentary. — Paragraphs A through F of this rule provide for a “plea bargaining” procedure. They originally were taken verbatim from proposed Rule 11(e) of the Federal Rules of Criminal Procedure. See 62 F.R.D. 271, 276, 280-86 (1974). Prior to the adoption of Paragraph A of this rule, judicial involvement in plea bargaining in New Mexico varied with the interest of the individual district court judges. The propriety of judicial involvement had been questioned by the Supreme Court. See State v. Scarbourough, 75 N.M. 702, 708, 410 P.2d 732 (1966). By the adoption of this rule, the Court has specifically eliminated all judicial involvement in the plea bargaining discussions. The judge’s role is explicitly limited to acceptance or rejection of the bargain agreed to by counsel for the state, defense counsel, and defendant. See generally, 62 F.R.D. 271, 283-84 (1974).

Paragraph B of this rule requires the parties to reduce the agreement to writing. It may be held that the defendant was denied effective assistance of counsel if he is advised to plead guilty without a written plea agreement. See State v. Lucero, 97 N.M. 346, 351, 639 P.2d 1200, 1205 (Ct. App. 1981).

With the exception of Paragraph D of this rule, providing for withdrawal of the plea when the court rejects the plea bargain, this rule does not govern the withdrawal of a plea. Withdrawal of a voluntary plea is within the discretion of the court. State v. Brown, 33 N.M. 98, 263 P. 502 (1927); Santobello v. New York, 404 U.S. 257 (1971). The American Bar Association Standards for Criminal Justice: Pleas of Guilty, Section 14-2.1 (3d ed. 1999), recommends the following considerations in dealing with a request to withdraw a plea of guilty:

(a) After entry of a plea of guilty or nolo contendere and before sentence, the court should allow the defendant to withdraw the plea for any fair and just reason. In determining whether a fair and just reason exists, the court should also weigh any prejudice to the prosecution caused by reliance on the defendant’s plea.

(b) After a defendant has been sentenced pursuant to a plea of guilty or nolo contendere, the court should allow the defendant to withdraw the plea whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice. A timely motion for withdrawal is one made with due diligence, considering the nature of the allegations therein.

(i) Withdrawal may be necessary to correct a manifest injustice when the defendant proves, for example, that:

(A) the defendant was denied the effective assistance of counsel guaranteed by constitution, statute, or rule;

(B) the plea was not entered or ratified by the defendant or a person authorized to so act in the defendant’s behalf;

(C) the plea was involuntary, or was entered without knowledge of the charge or knowledge that the sentence actually imposed could be imposed;

(D) the defendant did not receive the charge or sentence concessions contemplated by the plea agreement and the prosecuting attorney failed to seek or not to oppose these concessions as promised in the plea agreement; or

(E) the defendant did not receive the charge or sentence concessions contemplated by the plea agreement, which was either tentatively or fully concurred in by the court, and the defendant did not affirm the plea after being advised that the court no longer concurred and after being called upon to either affirm or withdraw the plea; or

(F) the guilty plea was entered upon the express condition, approved by the judge, that the plea could be withdrawn if the charge or sentence concessions were subsequently rejected by the court.

(ii) The defendant may move for withdrawal of the plea without alleging that he or she is innocent of the charge to which the plea has been entered.

(c) As an alternative to allowing the withdrawal of a plea of guilty or nolo contendere, the court may order the specific performance by the government of promises or conditions of a plea agreement where it is within the power of the court and the court finds, in its discretion, that specific performance is the appropriate remedy for a breach of the agreement.

In State v. Pieri, 2009-NMSC-019, ¶ 29, 146 N.M. 155, 207 P.3d 1132, the Court overruled Eller v. State, 92 N.M. 52, 582 P.2d 824 (1978), and held that “if the court rejects a sentence recommendation or a defendant’s unopposed sentencing request, and the defendant was aware that the court was not bound to those recommendations or requests, the court need not afford the defendant the opportunity to withdraw his or her plea.” But within the context of a plea that leads to a subsequent request by the State to enhance the sentence for the crime that was the subject of the plea, the Court in Marquez v. Hatch, 2009-NMSC-040, ¶ 13, 146 N.M. 556, 212 P.3d 1110, held that if the defendant is not advised of the possible sentence enhancements at the time of the plea “the court should conduct a supplemental plea proceeding to advise the defendant of the likely sentencing enhancements that will result, and determine whether the defendant wants to withdraw the plea in light of the new sentencing enhancement information.”

[As amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

5-821. Arraignment and commitment hearing prior to issuance of the governor’s rendition warrant.

A. Time. If the defendant has not been arraigned in the magistrate or metropolitan court, the defendant shall be brought before the district court for an arraignment and commitment hearing, as soon as practicable, but in no event later than forty-eight (48) hours after arrest as a fugitive.

B. Procedure. At the arraignment, the court shall:

(1) inform the defendant of the defendant’s right to retain
counsel;
(2) provide the defendant with copies of any documents on which the prosecution has relied;
(3) inform the defendant of the right to the issuance and service of a warrant of extradition before being extradited and of the right to petition for a writ of habeas corpus pursuant to law; and
(4) ask the defendant to admit or deny that the defendant is the person described in the fugitive complaint.

C. Waiver of extradition. The defendant may waive extradition proceedings by signing a written waiver of extradition substantially in the form approved by the Supreme Court. If the court finds the waiver is voluntary, the court shall issue an order to hold the defendant without bail for delivery to an authorized agent of the demanding state.

D. Identity question. If the defendant denies being the person described in the fugitive warrant, the court shall examine the information on which the arrest was made and determine whether it appears that the defendant is the person sought.

E. Conditions of release. If the defendant does not waive extradition or denies being the person described in the fugitive complaint, the court may set conditions of release pending the issuance of the rendition warrant by the governor.

F. Time limits for governor’s rendition. If the defendant does not waive extradition or denies being the person described in the fugitive complaint, the defendant may be held in custody for a period of not more than thirty (30) days pending arrest on a rendition warrant from the governor. On motion, the court may extend the commitment or conditions of release pending arrest on a governor’s rendition warrant for a period of not more than sixty (60) additional days.

G. Dismissal of fugitive complaint. If a governor’s rendition warrant is not filed pursuant to Rule 5-822 NMRA before the expiration of the time for holding the defendant in custody as provided by Paragraph F of this rule, the fugitive complaint shall be dismissed without prejudice and the defendant released. The time limits set forth in Paragraph F in this rule do not constitute the deadline for the completion of extradition proceedings under Rule 5-822 NMRA.

[Approved, effective January 1, 2002; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

5-825. Bail after arrest on a governor’s rendition warrant; dismissal for failure to deliver defendant.

After arrest on a governor’s rendition warrant, the accused person shall be ordered held without bail pending delivery to agents of the demanding state for at least thirty (30) days after the arrest. The accused person shall be ordered held without bail pending delivery to agents of the demanding state for at least thirty (30) days after final action on a petition for writ of habeas corpus if the accused files a timely petition for writ of habeas corpus. After arrest on a governor’s rendition warrant, if the accused person has pending criminal charges in New Mexico, and the governor exercises the governor’s discretion under New Mexico law to hold the accused person until the accused person has been tried and discharged, or convicted and punished, the accused person shall be ordered held in detention or upon conditions of release pending delivery to agents of the demanding state while those charges are pending and for at least thirty (30) days after final action on those charges. If agents of the demanding state do not appear within those time periods, the court may dismiss the action and discharge the accused, or, upon good cause shown, may extend the time period for not more than thirty (30) days, during which the accused person shall be eligible for release on bail.
[Approved, effective January 1, 2002; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

9-406. Guilty plea proceeding.

[For use with District Court Rule 5-303 NMRA]
STATE OF NEW MEXICO
COUNTY OF _____________________
IN THE DISTRICT COURT No. _____________

STATE OF NEW MEXICO
v.
________________________, Defendant

GUilty Plea Proceeding

The defendant personally appearing before me, I have ascertained the following facts, noting each by initialing it.

Judge’s Initial

_______ 1. That the defendant understands the charges set forth in the [complaint] [information] [indictment] __________________________.

_______ 2. That the defendant understands the range of possible sentences for the offenses charged, including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows: __________________________.

_______ 3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [guilty but mentally ill]:

_______ (a) the right to trial by jury, if any;

_______ (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;

_______ (c) the right to confront the witnesses
CERTIFICATE BY DEFENDANT
I have conferred with my client with reference to the execution of this certificate and I have explained to my client its contents in detail.

______________________________
Defense Counsel

USE NOTE
For use in the district court when there is no plea and disposition agreement.
[As amended, effective September 1, 1990; withdrawn, effective May 1, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

9-406A. Guilty plea or no contest plea proceeding.
[For use with Magistrate Court Rule 6-502 NMRA, Metropolitan Court Rule 7-502 NMRA and Municipal Court Rule 8-502 NMRA]

STATE OF NEW MEXICO
[COUNTY OF ______________________]
[CITY OF ______________________]
[STATE OF NEW MEXICO]

v. No. __________

______________________________
Defendant.

GUilty PleA OR NO CONTEST PleA PROCEDUrE¹
The defendant personally appearing before me, I have ascertained the following facts:

1. That the defendant understands the charges set forth in the complaint and agrees to plead [guilty] [no contest] to the following _____________________________.

2. That the defendant understands the range of possible sentences for the offense charged, including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows: _____________________________.

3. That, if pleading no contest, the defendant has been advised and understands that a plea of no contest has the same effect as a plea of guilty in this court.

4. That the defendant has been advised and understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:
   (a) the right to trial;
   (b) the right to trial by jury, if any²;
   (c) the right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
   (d) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
   (e) the right to present evidence and to have the court compel witnesses to appear and testify;
   (f) the right to remain silent and to be presumed innocent until proven guilty beyond a reason-

   (Indicate “NONE” if a plea agreement has not been signed.)

   (e) the right to present evidence and to have the court compel witnesses to appear and testify;
   (f) the right to remain silent and to be presumed innocent until proven guilty beyond a reason-

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [guilty but mentally ill] to the above charges and accept such plea. A copy of this affidavit shall be made a part of the record in the above-styled case.

______________________________
District Judge

Date

CERTIFICATE BY DEFENDANT
I certify that the judge personally advised me of the matters noted above, that I understand the constitutional rights that I am giving up by pleading [guilty] [guilty but mentally ill] and that I desire to plead [guilty] [guilty but mentally ill] to the charges stated.

______________________________
Defendant
ABLE DOUBT;
the right to appeal the conviction.

5. That the defendant wishes to give up those constitutional rights of which the defendant has advised.

6. That there is a factual basis for the plea.

7. That the plea is voluntary and the result of force, threats or promises (other than a plea agreement).

8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].

9. That the defendant understands that a plea of guilty or no contest may have an effect upon the defendant’s immigration or naturalization status, as well as the defendant’s legal rights and personal opportunities, and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.

(For use only in Magistrate and Metropolitan Court.)

10. (Domestic violence cases only) That the defendant understands that a plea of guilty or no contest for a crime of domestic violence will affect the defendant’s constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

(For use only in Magistrate and Metropolitan Court.)

11. That, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978].

The judge advised me of the matters noted above. I understand the constitutional rights that I am giving up and plead [guilty] [no contest] to the charges specified above.

Date ___________________ Defendant

I certify that prior to the defendant’s entry of a plea of guilty or no contest in this case1:
I have discussed this case with my client in detail and I have advised my client of my client’s constitutional rights and all possible defenses.
I explained the consequences of a plea of guilty or a plea of no contest.
In my opinion the plea of [guilty] [no contest] was voluntarily and understandingly made.

Date ___________________ Attorney for defendant

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the specified charges and accept such plea.

Date ___________________ Judge

USE NOTE

1. This form is to be used if the defendant may be incarcerated in jail. This form may be used in all cases in which the defendant is charged with a domestic violence offense, a battery, a violation of substance abuse laws, driving while under the influence or with an offense which has a mandatory minimum jail term.

2. 4(b) is not applicable to municipal court and may be elimi-
court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(Domestic violence or felony cases only) I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register. [ ] (check here if inapplicable)

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury, to confront, cross-examine and compel the attendance of witnesses and my privilege against self-incrimination.

I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

Date
Defendant

DEFENSE COUNSEL REVIEW
I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client’s constitutional rights and possible defenses.

Defense counsel
Date

PROSECUTOR REVIEW
I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor
Date

DISTRICT COURT APPROVAL
The defendant personally appearing before me and I have concluded as follows:

1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
2. That the defendant understands the range of possible sentences for the offenses charged, from probation to a maximum of ___________________________________.
3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:
   (a) the right to trial by jury, if any;
   (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
   (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
   (d) the right to present evidence on the defendant’s own behalf, and to have the state compel witnesses of the defendant’s choosing to appear and testify;
   (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.

4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.
5. That there exists a basis in fact for believing the defendant [is guilty of] [committed] the offenses charged and that an independent record for such factual basis has been made.
6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.
7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].
9. That the defendant understands that a conviction may have an effect upon the defendant’s immigration or naturalization status and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.
10. That the defendant understands that a conviction may require the defendant to register as a sex offender under the Sex Offender Registration and Notification Act and that if the defendant is represented by counsel, the defendant has been advised by counsel of the requirement to register.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.

District Judge
Date

USE NOTE
1. This form is used instead of Form 9-406 NMRA if there is a plea agreement. This form is not used for conditional plea. See Criminal Form 9-408C NMRA if there is a conditional plea.
2. If the plea agreement is not made in exchange for a guaranteed, specific sentence, this paragraph should state as follows: “The State agrees to recommend the following sentence ___________________________________ – or agrees not to oppose the defendant’s request for a particular sentence, and the defendant understands that the court is not bound to those recommendations or requests and may sentenced the defendant to a more unfavorable disposition.”
3. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

[As amended, effective September 1, 1990; May 1, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]
PLEA AND DISPOSITION AGREEMENT

The [state] [county] [city] and the defendant hereby agree to the following disposition of this case:

Plea:
The defendant agrees to plead [guilty] [no contest] to the following offenses:

Terms:
On the following understandings, terms and conditions:

[1. Agreement as to sentence. That the following disposition will be made of the charges: ________________________________ .]

[2. Additional charges. That the following charges will be dismissed, or if not yet filed, shall not be brought against the defendant: ________________________________ .]

[3. Effect on charging document. That this agreement, unless rejected or withdrawn, serves to amend the complaint to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

[4. Waiver of defenses and appeal. Unless this plea is rejected or withdrawn, that the defendant hereby gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court’s entry of judgment and imposition of a sentence consistent with this agreement.

[5. Withdrawal permitted if agreement rejected. That, if after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement shall be null and void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, my privilege against self-incrimination, and my right to appeal my conviction. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this agreement, I am granted probation, a suspended sentence or a deferred sentence by the court, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, as well as my legal rights and personal opportunities, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(For use only in Magistrate and Metropolitan Court.)
(Domestic violence cases only) I understand that an entry of a plea for a crime of domestic violence will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

(For use only in Magistrate and Metropolitan Court.)
I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978], and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

(Conditional plea)
I understand that the plea of guilty that I have entered is conditioned upon my appeal. If I file an appeal on the issue of ________________________________ (describe pre-trial motion upon which appeal will be based) and I win my appeal on this issue I may withdraw my plea.

Date Defendant

I have discussed this case with my client in detail and I have advised my client of my client’s constitutional rights and all possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date Defense Counsel

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date Prosecutor

Approved: Judge

USE NOTE

1. If the plea agreement is not made in exchange for a guaranteed, specific sentence, this paragraph should state as follows: “The State agrees to recommend the following sentence ________________________________ – or agrees not to oppose the defendant’s request for a particular sentence, and the defendant understands that the court is not bound to those recommendations or requests and may sentence the defendant to a more unfavorable disposition.”
2. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

3. The list of rights the defendant is giving up may exclude the right to a trial by jury in municipal court.

[Adopted, effective May 1, 1997; as amended May 15, 2003; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; by Supreme Court Order No. 08-8300-48, effective December 31, 2008; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

9-408C. Conditional Plea
[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____________________
IN THE DISTRICT COURT
No. ________________
STATE OF NEW MEXICO
v. ________________________, Defendant

CONDITIONAL PLEA

I, ________________________, (name of defendant), with the approval of the court, am entering a plea of [guilty] [no contest] to the above charges.

The maximum penalties for the above charges are (set forth offense and statutory sentence):

Count 1. ________________________
Count 2. ________________________
Count 3. ________________________

I understand my plea is conditioned upon the filing of an appeal on the issue of ____________________ (describe pretrial motion upon which appeal will be based).

I understand that, if the judge approves my plea of [guilty] [no contest], a judgment and sentence will be entered and that I may appeal on the issue specified above in the manner provided by the Rules of Appellate Procedure.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest].

I understand that a conviction may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(Domestic violence or felony cases only) I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that a conviction may require me to register as a sex offender under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

Date ____________________________
Defendant _______________________

DEFENSE COUNSEL REVIEW
I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client’s constitutional rights and possible defenses.

Date ____________________________
Defense counsel ____________________

PROSECUTOR APPROVAL
I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Date ____________________________
Approved: _________________________
District Judge _______________________

[Adopted, effective January 15, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

9-806. Motion to extend time.
[For use with District Court Rule 5-821 NMRA, Magistrate Court Rule 6-811 NMRA and Metropolitan Court Rule 7-811 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____________________
[_______________ JUDICIAL DISTRICT]
[___________________________COURT]

STATE OF NEW MEXICO
[STATE OF NEW MEXICO]
[COUNTY OF ________________]
[___________________________]

v. No. ________________, Defendant.

MOTION TO EXTEND TIME

I, _______________________, (name and title of prosecutor) moves the court to extend the time for the confinement or conditions of release of Defendant pending arrest on the Governor’s rendition warrant for extradition in this case for ______ days after _______ (date previously granted) because the demanding state has been unable to perfect its extradition within the time allotted.

Date ____________________________
Defendant _______________________

Prosecutor _______________________

I hereby certify that a copy of the foregoing pleading was sent to _______________________
___________________________, N.M.
on the ___ day of ____________,.
1. __________________ (Name of the defendant) was the employer of ________________ (name of the employee);

2. __________________ (Name of the defendant) knew or should have known that [hiring] [retaining] [supervising] [____________________ (insert other employer conduct)] (name of the employee) would create an unreasonable risk of injury to [a group or class that includes the plaintiff] [____________________ (insert name of the plaintiff)];

3. __________________ (Name of the defendant) failed to use ordinary care in [hiring] [retaining] [supervising] [____________________ (insert other employer conduct)] (name of employee);

4. __________________ (Name of the defendant)’s negligence in [hiring] [retaining] [supervising] [____________________ (insert other employer conduct)] was a cause of __________________ (name of the plaintiff)’s injury.

USE NOTE
1. In addition to this instruction, the jury should be instructed on negligence, UJI 13-1601 NMRA, ordinary care, UJI 13-1603 NMRA, and causation, UJI 13-305 NMRA.

2. See Lessard v. Coronado Paint and Decorating Center, Inc., 2007-NMCA-122, ¶¶ 28, 37, 142 N.M. 583, 168 P.3d 155 (quoting the Restatement (Third) of Agency § 7.05(1) (2006) for the proposition that “[a] principal who conducts activity through an agent is subject to liability for harm to a third party caused by the agent’s conduct if the harm was caused by the principal’s negligence in selecting, training, retaining, supervising, or otherwise controlling the agent”). [Adopted by Supreme Court Order No. 10-8300-029, effective December 3, 2010.]

Committee Commentary.—While the question of whether a duty exists to a plaintiff is a legal question for the judge, the questions of whether the duty was breached and whether the breach caused the plaintiff’s injuries are for the jury to decide. See Spencer v. Health Force, Inc., 2005-NMSC-002, ¶¶ 22, 23, 137 N.M. 64, 107 P.3d 504. Under the common law, liability for negligence in hiring, retaining, or supervising “flows from a direct duty running from the employer to those members of the
public whom the employer might reasonably anticipate would be placed in a position of risk of injury as a result of the hiring.” Id. ¶ 10 (internal quotation marks and citation omitted). Any limitations on the duty are imposed as a matter of policy. See Herrera v. Quality Pontiac, 2003-NMSC-018, ¶ 9, 134 N.M. 43, 73 P.3d 181 (explaining that duty comprises foreseeability of the plaintiff and a determination that the defendant’s obligation is one to which the law will give recognition and effect).

A plaintiff injured by an employee sometimes may also sue the employer under a theory of respondeat superior. See Les-sard, 2007-NMCA-122, ¶ 10. In order to recover under a theory of respondeat superior, the plaintiff must demonstrate that the employee was acting within the scope of his employment. Id. ¶ 11 (citing Medina v. Graham’s Cowboys, Inc., 113 N.M. 471, 475, 827 P.2d 859, 863 (Ct. App. 1992)). In contrast, recovery under the theory of negligent hiring, retention and supervision does not require that the employee be acting within the scope of his employment at the time of the occurrence which injures the plaintiff. Id. ¶ 40; Pittard v. Four Seasons Motor Inn, Inc., 101 N.M. 723, 729, 688 P.2d 333, 339 (Ct. App. 1984).

[Adopted by Supreme Court Order No. 10-8300-029, effective December 3, 2010.]

No. 10-8300-030

IN THE MATTER OF THE AMENDMENTS OF RULES 6-502 AND 6-811 NMRA OF THE RULES OF CRIMINAL PROCEDURE FOR MAGISTRATE COURTS

ORDER

WHEREAS, this matter came on for consideration upon by the Court upon recommendation of the Courts of Limited Jurisdiction Committee to amend Rules 6-502 and 6-811 NMRA of the Rules of Criminal Procedure for Magistrate Courts, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-502 and 6-811 NMRA of the Rules of Criminal Procedure for Magistrate Courts hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 6-502 and 6-811 NMRA of the Rules of Criminal Procedure for Magistrate Courts shall be effective December 3, 2010, and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules by publishing the same in the Bar Bulletin and NMRA and posting the same on the New Mexico Compilation Commission web site <www.nmcompcomm.us/nmrules>

IT IS SO ORDERED.

WITNESS, Honorable Chief Justice Charles W. Daniels of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of October, 2010.

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

6-502. Pleas and plea agreements.

A. Pleas. A defendant who elects to waive the right to a trial may enter:

(1) a plea of guilty; or
(2) a plea of no contest, subject to the approval of the court.

B. Advice to defendant. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, which shall include an appearance through an audio-visual proceeding under Rule 6-110A NMRA, informing the defendant of and determining that the defendant understands the following:

(1) the nature of the charge to which the plea is offered;
(2) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered, including any possible sentence enhancements;
(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made;
(4) that if the defendant pleads guilty or no contest there will not be a trial in this case, so that by pleading guilty or no contest the defendant waives the right to a trial;
(5) that, if the defendant pleads guilty or no contest, it may have an effect upon the defendant’s immigration or naturalization status, and if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea;
(6) that, if the defendant is charged with a crime of domestic violence or a felony, a plea of guilty or no contest will affect the defendant’s constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence or a felony; and
(7) that, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978].

C. Ensuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant’s willingness to plead guilty or no contest results from prior discussions between the government and the defendant or the defendant’s attorney.

D. Plea agreement procedure.

(1) the government or its agent and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or no contest to a charged offense or to a lesser or related offense, the government or its agent will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.
(2) If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or no contest, it shall be reduced to writing substantially in the form approved by the Supreme Court, and the court shall require the disclosure of the
agreement in open court at the time that the plea is offered. If the plea agreement was not made in exchange for a guaranteed, specific sentence and was instead made with the expectation that the State would only recommend a particular sentence or not oppose the defendant’s request for a particular sentence, the court shall inform the defendant that such recommendations and requests are not binding on the court. Thereupon, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) If the court accepts a plea agreement that was made in exchange for a guaranteed, specific sentence, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement. If the court accepts a plea agreement that was not made in exchange for a guaranteed, specific sentence, the court may inform the defendant that it will embody in the judgment and sentence the disposition recommended or requested in the plea agreement or that the court’s judgment and sentence will embody a different disposition as authorized by law.

(4) If the court finds the provisions of the agreement unacceptable after reviewing it and any presentence report, the court will allow the withdrawal of the plea, and the agreement will be void. This subparagraph does not apply to a plea for which the court rejects a recommended or requested sentence but otherwise accepts the plea.

(5) Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

E. Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

[As amended, effective May 1, 1986; January 1, 1987; May 1, 1997; as amended by Supreme Court Order 07-8300-30, effective December 15, 2007; as amended by Supreme Court Order No. 08-8300-44, effective December 31, 2008; by Supreme Court Order No. 10-8300-030, effective December 3, 2010.]

Committee Commentary. — In 2010, Subparagraph (2) of Paragraph B was amended to make clear that, when advising the defendant of the mandatory minimum and maximum possible penalties, the court must also advise the defendant of any possible sentence enhancements that may result based on any prior convictions the defendant may have. See Marquez v. Hatch, 2009-NMSC-019, ¶ 13, 146 N.M. 556, 212 P.3d 1110 (providing that “[i]f the district court is aware of the defendant’s prior convictions that would require a sentence enhancement if subsequently requested by the State, the court should inform the defendant of the maximum potential sentence, including enhancements. If the defendant enters a guilty or no contest plea without being advised of possible sentence enhancements and then the possible existence of prior convictions comes to light when the State files a subsequent supplemental information seeking to enhance the defendant’s sentence based on those prior convictions, the court should conduct a supplemental plea proceeding to advise the defendant of the likely sentencing enhancements that will result, and determine whether the defendant wants to withdraw the plea in light of the new sentencing enhancement information”).

Subparagraphs (2), (3) and (4) of Paragraph D were also amended in 2010 to clarify the potential consequences of rejected plea recommendations in light of State v. Pieri, 2009-NMSC-019, ¶ 29, 146 N.M. 155, 207 P.3d 1132, which held that “if the court rejects a sentence recommendation or a defendant’s unopposed sentencing request, and the defendant was aware that the court was not bound by those recommendations or requests, the court need not afford the defendant the opportunity to withdraw his or her plea.”

[Adopted by Supreme Court Order No. 10-8300-030, effective December 3, 2010.]

6-811. Arraignment and commitment hearing prior to issuance of the governor’s rendition warrant.

A. Time. Within two (2) business days after arrest, the defendant shall be brought before the court for an arraignment and commitment hearing.

B. Procedure. At the arraignment, the court shall:

(1) inform the defendant of the defendant’s right to retain counsel;

(2) provide the defendant with copies of any documents on which the prosecution will rely at the commitment hearing;

(3) inform the defendant of the right to the issuance and service of a warrant of extradition before being extradited and of the right to obtain a writ of habeas corpus pursuant to law; and

(4) ask the defendant to admit or deny that the defendant is the person described in the fugitive complaint.

C. Waiver of extradition. The defendant may waive extradition proceedings by signing a written waiver of extradition substantially in the form approved by the Supreme Court. If the court finds the waiver is voluntary, the court shall enter an order to hold the defendant without bail for delivery to an authorized agent of the demanding state.

D. Identity question. If the defendant denies being the person described in the fugitive warrant, the court shall examine the information on which the arrest was made and determine whether it appears that the defendant is the person sought.

E. Conditions of release. If the defendant does not waive extradition or denies being the person described in the fugitive complaint, the court may set conditions of release on the surrender of the defendant upon issuance of the rendition warrant by the governor.

F. Time limits for governor’s rendition. If the defendant does not waive extradition or denies being the person described in the fugitive complaint, the defendant may be held in custody for a period of not more than thirty (30) days pending arrest on a rendition warrant from the governor. On motion, the court may extend the commitment or conditions of release pending arrest on a governor’s rendition warrant for a period of not more than sixty (60) additional days.

G. Dismissal of fugitive complaint. If a governor’s rendition warrant is not filed pursuant to Rule 5-822 NMRA before the expiration of the time for holding the defendant in custody as provided by Paragraph F of this rule, the fugitive complaint shall be dismissed without prejudice and the defendant released. The time limits set forth in Paragraph F in this rule do not constitute the deadline for the completion of extradition proceedings under Rule 5-822 NMRA.

[Adopted, effective October 1, 1996; as amended by Supreme Court Order No. 10-8300-030, effective December 3, 2010.]
The district court reversed the magistrate court’s order revoking Defendant’s probation and remanded the case to the magistrate court for a full hearing on the probation revocation. Defendant appeals, and we reverse. The district court erred in failing to conduct a de novo hearing on the revocation and in remanding for an additional hearing at the magistrate court level on this issue. We remand for a de novo hearing by the district court consistent with this opinion.

I. BACKGROUND

A. Proceedings in Magistrate Court

Defendant was convicted of DWI, third offense, and was sentenced to 364 days of incarceration with 306 suspended, followed by a twenty-eight-day stay at a treatment facility, and then 364 days of supervised probation including an unspecified aftercare program. An aftercare contract was signed by Defendant and filed with the magistrate court specifying that Defendant would receive outpatient treatment from the Salvation Army Adult Rehabilitation Program (Salvation Army Program). After completing a large portion of the Salvation Army Program, Defendant was terminated. On November 20, 2008, Don Teel, the adult rehabilitation program residence manager for the Salvation Army Program, sent a letter addressed “To Whom it May Concern” indicating that on November 19, 2008, Defendant was terminated from the Salvation Army Program for non-compliance with the established program policy. The letter alleged violations including “[d]isrespecting staff[,]” giving false statement implicating another beneficiary of misconduct[; and] giving false statement on conduct report write[-]up.” On the face of the letter, there is what appears to be a photocopied post-it note to “Ethan” from “Traci” indicating that Teel had died on December 27.

Defendant’s probation was revoked in magistrate court on January 6, 2009, and he was sentenced to 265 days in jail. Defendant appealed the probation revocation to district court.

B. Proceedings in District Court

At the initial hearing in district court held on February 17, 2009, Defendant argued that the magistrate court revoked his probation without an evidentiary basis and that he was denied a full hearing. The State did not have enough information to respond and requested the probation violation paperwork from Defendant. The court also requested the paperwork and requested that Defendant identify the issues on appeal.

The next day, Defendant filed a motion to re-examine revocation of probation. He argued that his probation should not have been revoked because he did not violate any of the conditions of probation. He claimed that his attendance in the Salvation Army Program was entirely voluntary and, as it was not ordered by the magistrate court, his premature termination from the program did not violate a condition of probation. Defendant also argued that there was insufficient evidence regarding his termination from the Salvation Army Program to establish a violation of his probation to a reasonable certainty. He stated his position that the only evidence introduced at the revocation hearing in magistrate court was the hearsay evidence of unverified facts consisting of Teel’s letter. He argued that the hearsay evidence was particularly unpersuasive because it consisted of only a conclusion of misbehavior, not a “narrative of specific events.”

The district court conducted a hearing on March 2, 2009. The State conceded that the only evidence supporting termination was Teel’s letter, which was hearsay. Although the State and district court determined that there had not been a full hearing in magistrate court, Defendant informed the court that he was not seeking a remand for another hearing because there was no evidence for the State to present. He further asserted that a remand was unwarranted.
because he was entitled to a new probation revocation hearing in district court because this was a de novo appeal. The State disagreed because there had yet to be a full hearing in magistrate court.

[7] The district court found that the propriety of the revocation was questionable because there appeared to be no admissible evidence to support the magistrate court’s findings. The district court also found that Defendant was not entitled to a de novo hearing on the probation revocation so it issued an order remanding to the magistrate court for a new hearing on the probation revocation. It orally indicated that the magistrate court should be instructed not to take hearsay into account in redesminating whether Defendant violated his probation, but there is nothing in the order so stating.

[8] In its order of remand and mandate, the district court included findings that: (1) Defendant was not entitled to a de novo hearing on the revocation hearing for a revocation hearing not a trial; (2) the parties stipulated that revocation was based on Teel’s letter of November 20, 2008, and that Teel had died prior to the hearing; (3) the parties’ stipulations call into question the propriety of the evidence used on the revocation hearing; and (4) there appeared to be no appropriate evidence to support the revocation.

[9] Defendant appealed to this Court, and the parties were specifically instructed to brief two questions: (1) when is an order on probation revocation subject to de novo review and when is such an order subject to on-record review, and (2) which magistrate and/or district court rules apply to appeals of probation revocation orders.

II. DISCUSSION
A. Finality

[10] The State contends that Defendant’s appeal is improper because the order remanding to the magistrate court is not a final order for purposes of appeal. We disagree.

[11] “In general, the right to appeal is restricted to final judgments and decisions.” High Ridge Hinkle Joint Venture v. City of Albuquerque, 119 N.M. 29, 33, 888 P.2d 475, 479 (Ct. App. 1994) (citing NMSA 1978, § 39-3-2 (1966)), rev’d on other grounds by 1999-NMCA-050, ¶ 126 N.M. 413, 970 P.2d 599. A final order is commonly defined as an order that decides all issues of fact and law necessary to be determined or which completely disposes of the case to the extent the court had the power to dispose of it. See B.L. Goldberg & Assocs. v. Uptown, Inc., 103 N.M. 277, 278, 705 P.2d 683, 684 (1985). However, finality “is to be given a practical, rather than a technical, construction.” Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992), limited on other grounds by Trujillo v. Hilton of Santa Fe, 115 N.M. 397, 398, 851 P.2d 1064, 1065 (1993); see State v. Apodaca, 1997-NMCA-051, ¶ 15, 123 N.M. 372, 940 P.2d 478 (recognizing that “the constitutional right to appeal must be given a practical construction”).

[12] The State notes that the district court’s order does not address sentencing, and the State asserts that the district court remanded the case to the magistrate court so that Defendant could be afforded a full hearing in accordance with Rule 6-802(C) NMRA and NMSA 1978, Section 31-21-15(B) (1989). It then argues that the district court’s order is not sufficiently final because Defendant is awaiting a new hearing consistent with the order of trial, and the outcome of the State’s motion to revoke probation has yet to be determined. We are unpersuaded that the district court’s order is not final.

[13] “Ordinarily, an order remanding a case for further proceedings in a lower court is not considered ‘final’ for purposes of appeal.” State v. Ahasteen, 1998-NMCA-158, ¶ 11, 126 N.M. 238, 968 P.2d 328. The rationale is that, after remand, the appellant has another opportunity to obtain review in the district court and then in this Court. See id. However, this rationale does not apply in a case such as this one where dismissal of Defendant’s appeal for lack of finality would in effect deny the appeal on its merits.

B. Merits

[15] The question of whether Defendant is entitled to a de novo hearing in district court on the State’s motion to revoke his probation requires us to interpret and apply Rule 6-802(D) and, as such, presents a question of law that we review de novo.

[16] Rule 6-802(D) provides:

The decision of the court to revoke probation may be appealed to the district court as otherwise provided in these rules. The only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the magistrate court.

The State acknowledges that multiple authorities provide that appeals from magistrate court are subject to de novo review, except as otherwise provided by law. See, e.g., N.M. Const. art. VI, § 27 (“Appeals shall be allowed in all cases from the final judgments and decisions of . . . inferior courts to the district courts, and in all such appeals, trial shall be had de novo unless otherwise provided by law.”); NMSA 1978, § 39-3-1 (1955) (“All appeals from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law.”); NMSA 1978, § 35-13-2(A) (1996) (“Appeals from the magistrate courts shall be tried de novo in the district court.”); Rule 6-703(J) NMRA (“Trials upon appeals from the magistrate court to the district court shall be de novo.”). However, the State argues
that this authority should be interpreted as only applying to de novo trials as opposed to special proceedings such as a probation revocation hearing which, the State contends, may only be reviewed for errors of law. We reject this contention.

{17} First, there is nothing in the language of Rule 6-802(D) or any other rule or statute specifically providing that the district court only reviews probation revocation orders for errors of law. To the contrary, as previously stated, numerous rules and statutes provide that appeals to district court are de novo unless some rule or provision of law specifically states otherwise. We are not aware of any such contrary provision; there is no other standard of review indicated in Rule 6-802(D), and there is no other rule supporting the State’s position that the district court was correct in holding “a deferential hearing on the magistrate court’s ruling.” See State v. Garcia, 2003-NMCA-045, ¶ 5, 133 N.M. 444, 63 P.3d 1164 (filed 2002) (observing that “[t]he only law of which we are aware indicates that magistrate court appeals to district court are to be heard by trial de novo”).

{18} Likewise, we are not convinced that the inability of the district court to alter the sentence or the limitation on its review to the propriety of the revocation impacts Defendant’s right to a de novo hearing on the propriety of the revocation. See Rule 6-802(C) (outlining the magistrate court’s probation and sentencing options once a probation violation is established); Rule 6-802(D) (stating that when reviewing a probation revocation on appeal, the district court may not modify the sentence of the magistrate court). To the contrary, we interpret the limitation as merely reflecting that the district court’s review of the propriety of a probation revocation does not warrant the additional exercise of its discretion to determine the effect of that revocation on sentencing. It recognizes that, unless the district court disagrees with the magistrate court’s revocation decision, the latter court’s decision as to the effect of revocation on sentencing should be allowed to stand. See State v. Gallegos, 2007-NMCA-112, ¶ 21, 142 N.M. 447, 166 P.3d 1101 (noting that a common sense approach should be taken when “determining the jurisdiction of the district court to entertain de novo appeals”).

{19} Although this case presents an issue of first impression in that it requires us to interpret Rule 6-802(D), we are guided by previous cases establishing that when a court is not of record, de novo review is necessary. For example, although the State contends that this Court’s opinion in Foster supports its position, we disagree. In Foster, we noted that “[w]hether a lower court is of record determines whether a trial will be de novo.” Foster, 2003-NMCA-099, ¶ 9. We also observed that “[t]he magistrate court . . . is not a court of record [and] [t]herefore, appeals from magistrate courts are de novo.” Id. (citations omitted).

{20} We further note that Foster did not concern a de novo trial. Instead, the defendant was convicted in magistrate court, appealed to district court, and filed a pretrial motion claiming that the trial in magistrate court had violated double jeopardy. Id. ¶ 4. The state argued that the district court should not be allowed to consider the defendant’s claim of double jeopardy because, given that trial was de novo, it was as if the magistrate court trial never existed. Id. ¶ 10. This Court disagreed and held that a de novo appeal was an appropriate avenue for the defendant to assert his double jeopardy claim. Id.

{21} In Foster, we recognized the broad appellate jurisdiction of district courts to conduct trials de novo and, “when called upon, [to] hear pretrial motions in de novo appeals.” Id. ¶ 11; see State v. Hicks, 105 N.M. 286, 287, 731 P.2d 982, 983 (Ct. App. 1986) (“[T]he right of appeal [from courts not of record] is the right to a trial or hearing de novo in the district court.” (emphasis added)). As in Foster, “[w]e see no justification for limiting the authority of the district court to hear [the] motion in this case [and] hold that the district court has jurisdiction as well as a constitutional and statutory obligation to consider [the] motion on the merits.” 2003-NMCA-099, ¶ 11; see Hicks, 105 N.M. at 287, 731 P.2d at 983.

{22} A similar issue, albeit with the state taking a contrary position, was considered by this Court in Hicks. In Hicks, the metropolitan court dismissed the complaint filed against the defendant because the complaint was not filed in a timely manner, and the district court affirmed the dismissal, finding that the metropolitan court did not abuse its discretion. 105 N.M. at 287, 731 P.2d at 983. On appeal, the state argued that the district court erred in applying an “appellate standard of review” and that it should have made an independent determination of whether dismissal was proper. Id. The defendant argued that the district court proceeding was not a “trial” in the ordinary meaning of that word and, thus, a de novo proceeding was not required. Id.

This Court agreed with the state and found the defendant’s argument was “not consistent with the meaning of the word ‘appeal’ in the context of [Article] VI, Section 27.” Hicks, 105 N.M. at 287, 731 P.2d at 983. {23} In Hicks, this Court held that, because criminal actions in metropolitan court were not of record at that time, “the right of appeal in such actions is the right to a trial or hearing de novo in the district court[, and] [j]n de novo proceedings, the district court is not in any way bound by the proceedings in the lower court.” Id. (citation omitted). We held that the district court was required to independently determine whether the requirements of the metropolitan court were complied with and thus remanded the case to district court to make such a determination. Id. Compare State v. Spillman, 2010-NMCA-019, ¶ 6, 147 N.M. 676, 227 P.3d 1058 (filed 2009) (holding that before a defendant could contest the validity of a plea entered in metropolitan court by appealing to district court, he had to first move to set aside his plea in metropolitan court because in an on-the-record appeal to district court, that court is the equivalent of an appellate court), cert. denied, 2010-NM-CERT-001, 147 N.M. 673, 227 P.3d 1055, with Gallegos, 2007-NMCA-112, ¶¶ 3-8 (conducting an evidentiary hearing in district court to determine the validity of the defendant’s plea entered in magistrate court).

{24} In this case, because the probation revocation in magistrate court was not of record, Defendant was entitled to a hearing de novo in the district court in which the court was in no way “bound by the proceedings in the lower court.” Hicks, 105 N.M. at 287, 731 P.2d at 983. After such a hearing, the district court should either reverse the order revoking probation and remand for enforcement of that judgment or if de novo review indicates that the probation revocation was proper, remand for enforcement of the sentence imposed by the magistrate court. See Rule 6-703(P); Rule 6-802(D).

{25} While acknowledging that the magistrate court is not a court of record, the State argues that a sufficient “record can be made by requiring the party filing an appeal in district court to request that the magistrate court enter findings of fact and conclusions of law to be incorporated in [its] judgment and sentence orders following probation revocation hearings.” The propriety of the revocation proceeding could then be determined from the findings and conclusions and, if not, remand would be the proper remedy. The State suggests
that this Court could “mandate as a matter of procedure that the magistrate courts make such findings and conclusions as part of the record on appeal,” and probation revocation orders issued by magistrate courts could be amended to reflect that on appeal defendants are not entitled to de novo review.

{26} We construe these procedures and requirements suggested by the State as a request for a change in the Rules of Criminal Procedure because there are no current magistrate or district court rules mandating such procedures and requirements. See generally Rule 6-703 (setting forth the requirements for an appeal from magistrate court to district court). Specifically, there is nothing in the current rules requiring the record on appeal to contain findings and conclusions when a magistrate court revokes a probationer’s probation. See Rule 6-703(F) (setting forth the contents of the record in an appeal from magistrate court). Any development or change in this area should be directed to our Supreme Court, our state’s rule-making authority. See Pub. Serv. Co. of N.M. v. Lyons, 2000-NMCA-077, ¶ 23, 129 N.M. 487, 10 P.3d 166 (discussing the law of privilege). Nor do we perceive any need to adopt such procedures or to require the magistrate court to make findings and conclusions because the availability of de novo review obviates the need for such new procedures, findings, and conclusions. See Gallegos, 2007-NMCA-112, ¶ 3 (recognizing that because the magistrate court is not a court of record, any “record” on appeal would only consist of papers filed in that court).

{27} Finally, we note that the State is correct that a probation revocation hearing is not a trial, that a defendant is not entitled to all of the rights afforded during a criminal prosecution, and that the State’s burden of proof is different for a probation revocation proceeding. See State v. Phillips, 2006-NMCA-001, ¶ 17, 138 N.M. 730, 126 P.3d 546 (filed 2005) (stating that the trial court’s finding of a probation violation must be based on verified facts sufficient to establish the violation of probation to a “reasonable certainty” (internal quotation marks omitted)); State v. Martinez, 108 N.M. 604, 606, 775 P.2d 1321, 1323 (Ct. App. 1989) (recognizing that the state must introduce proof which would incline “a reasonable and impartial mind to the belief that a defendant has violated the terms of probation”). However, we fail to see how these differences negate the need for a de novo hearing when the appeal is from a magistrate court proceeding that is not of record.

III. CONCLUSION

{28} Based upon our holding that the district court erroneously remanded to give the magistrate court another opportunity to conduct a full hearing, we reverse and remand so that the district court can conduct a de novo hearing on the revocation.

{29} IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

JONATHAN B. SUTIN, Judge
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New Mexico Legal Aid (NMLA) seeks a respected, experienced, innovative and dynamic leader who is passionate and has a demonstrated commitment to advocate on behalf of low-income people in civil matters. NMLA is seeking an Executive Director who is an experienced attorney (strongly preferred but will consider non-attorneys who have strong management background experience). The applicant must be knowledgeable in public interest law, federal and state government administration and operations; and has an understanding of organization and operation of non-profit corporations. NMLA, an equal opportunity employer, is a high quality, nonprofit legal service organization that serves the entire state, with offices in Albuquerque, Clovis, Las Cruces, Santa Fe, Gallup, Roswell, Taos, Silver City, Las Vegas, Santa Ana, and Socorro, as well as a Migrant unit located in our Las Cruces office, which serves the southern part of New Mexico. Our Santa Ana office serves the Native American population of New Mexico. NMLA is the largest legal services program in New Mexico, with a staff of over 80 employees that serves almost 5,000 clients per year. The Administrative offices are in Albuquerque, and the Executive Director’s office will be there. Candidates must have at least ten (10) years legal or equivalent experience. Attorney applicants must be admitted or eligible for admission to practice in New Mexico. Candidates must also have demonstrated successful experience in grant development, management and fundraising, and be skilled in personnel and financial management, program planning, and administration. Preference will be given to candidates with a minimum of five (5) years of legal services management experience, with 10 or more years preferred. Comparable experience with another legal advocacy organization will also be considered. Compensation is competitive and based on experience. Applications should include a cover letter expressing in detail why the candidate is interested in the position of Executive Director of NMLA as well as what the candidate believes he/she can contribute to the future of the organization and its client community. A current resume and names and contact information for at least three (3) professional references.

Deadline: Wednesday, December 15, 2010 at 5:00 PM. Please forward your application to the following PO Box and/or email address. Please, no phone calls. NMLA Board Search Committee, New Mexico Legal Aid, PO Box 25486. Albuquerque, NM 87125-5486; jobs@nmlegalaid.org

Associate Attorney:

5-10 years experience in Family Law, Guardianships, Estate Planning, Probate, and Civil Litigation: 2019 Galisteo, C3, SF, NM, 87505. Fax 505.989.3440

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Litigation Attorneys

Lewis and Roca’s Albuquerque office seeks qualified New Mexico-licensed attorneys with four to ten years’ civil litigation experience. The ideal candidate will have knowledge and experience in a wide range of litigation matters. Excellent academic credentials and strong writing, analytical, and problem-solving skills are required. Lewis and Roca actively fosters the career growth and development of our attorneys, and encourages a collegial work environment balanced with an innovative, highly productive practice. We provide our clients with a full range of services, and creative and thorough representation in all types of litigation matters. To accomplish that, our attorneys work in a team-oriented environment, participate in a broad range of sophisticated matters, and have significant client involvement. We offer a competitive salary commensurate with experience and a full benefits package. Please send resume, writing sample and law school transcript to Mary W. Kiley. Lewis and Roca LLP, Recruiting@LRLaw.com, or fax materials to (602) 734-3930. Lewis and Roca is an Equal Opportunity Employer. We do not discriminate on the basis of race, sex, sexual orientation, religion, national origin, color, age, disability or veteran status.

Legal Secretary

Experienced Legal Secretary needed for family law firm in Albuquerque. We are looking for a highly organized, friendly and positive person who can work independently. Must be able to multi-task in a fast paced environment. Exceptional people skills are needed due to substantial client interaction. Family law experience preferred. Excellent work environment, benefits and salary. Please email resume and salary requirements glendam@waltherfamilylaw.com.

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Paralegal

Paralegal position available. 3+ years experience required and working knowledge of computerized data bases. Civil defense work preferred. Looking for highly organized individual with attention to detail. Salary D.O.E. Please email resume to aw@stelznerlaw.com.

Bookkeeping and Payroll

Le Rose Enterprises (505) 271-2760. Full Service Bookkeeping and Payroll, Bonded

Overloaded?

Competent, experienced NM licensed attorney available for contract/project work for litigation or transactional matters. Email nmcontractattorney@gmail.com

Briefs, Research, Appeals:

Leave the writing to me. Experienced, Reasonable. Contact cpearlman7@comcast.net (505) 281 6797

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Paralegal

Paralegal position available. 3+ years experience required and working knowledge of computerized data bases. Civil defense work preferred. Looking for highly organized individual with attention to detail. Salary D.O.E. Please email resume to aw@stelznerlaw.com.

Legal Secretary:

Downtown insurance defense firm seeking FT legal secretary with 5+ yrs. recent, litigation experience. Current knowledge of State and Federal District Court rules a must. Prior insurance defense experience preferred. Strong work ethic, positive attitude and superior grammar, clerical and organizational skills required. Good benefits. Salary DOE. Send resume and salary history to: Personnel, Madison, Harbour & Mroz, P.A., P.O. Box 25467, Albuquerque, NM 87125 or fax to 242-7184.

Experienced Legal Secretary

Experienced legal secretary needed for litigation partner and 2 associates in eight-layer law firm. Must have knowledge of Windows and Microsoft Office. Salary DOE with excellent benefits. Mail resume to 316 Osuna Rd NE, Albuquerque, NM 87107 or fax to (505) 247-8881 to the attention of the Office Manager.

Legal Secretary/Assistant

Legal secretary/assistant w/ extensive civil litigation and practice management experience for established law firm. Seeking professional, organized, and highly skilled individual with attention to detail. Excellent communication & computer/word processing skills required. All inquiries confidential. Competitive benefits. Office Manager, Atkinson, Thal, & Baker, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or Fax to (505) 247-8881 to the attention of the Office Manager.

www.nmbar.org
**Office Space**

**Beautiful Adobe**
Close to downtown, courthouses, hospitals. Reception area, conference rooms, employee lounge included. Copy machine available. Ample free parking and easy freeway access. From $250.00 per mo. Utilities included. Oak Street Professional Bldg., 500 Oak St. N. E. Call Jon, 507-5145; Orville or Judy, 867-6566.

**Law Office Spaces Available**
Near Old Town and downtown, located at 1905 Lomas Blvd NW and 19 Street. Share office space with two sole practitioners. Law office, big conference room, Secretarial area and/or front receptionist area available. Rent includes utilities and janitorial service. Copy machine, scanner, server, printer e-fax, phones, phone service and high speed internet available at pro-rata charge. Monthly rent $400.00. Contact Joe @ joe@jromerolaw.com (505) 239-8985 / Dinorah (505) 489-9195

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**Prime Uptown Location**
Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, two-story atrium, extensive landscaping, ample parking, full-service lease. Available in January is 2937 SF, top floor, glass entry, well improved and appointed reception, offices, and conference room at $18.00PSF. Three (3) year lease minimum. Single attorney shared office space available within well-improved and appointed 2695 square foot office. Best mountain views. Includes shared reception area, secretarial area, conference room, coffee bar, and lounge with three other small attorney firms. Rent of $1,000.00 per month includes reception coverage. One (1) year lease required. Comcast Business Class is now available at Uptown Square (includes High-Speed Internet, Telephone and Television). Call Ron Nelson or John Whisenant 883-9662 - Uptown Square

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

**Offices for Lease:**
- Lomas & Broadway, former law office space, 2500-4780 SF; - Lomas & First, remodeled office space, 2650 SF. Competitive lease rates, close to courthouses. Available immediately. Contact Anne Apicella @ Grubb & Ellis 880-7059

**Miscellaneous**

**Will Search**
Has anyone in Albuquerque prepared a Last Will and Testament for Virginia D. Benoit since May 25, 1993? Please contact the Law Office of Roger A. Stansbury, Esq. 505-275-0017, or e-mail at rstansb549@aol.com.
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Brenda Castello, Executive Director
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