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Changes are coming!

Starting with the January 12, 2011 issue color advertising opportunities will be available on all covers!

For more information on advertising contact Marcia Ulibarri at 505-797-6058 or e-mail mulibarri@nmbar.org.

More details to come...
INTERNET FOR LAWYERS: Legal & Investigative Research, Free Office Technology Applications, Social Media, and Ethics

Monday, December 20, 2010 • State Bar Center, Albuquerque
5.0 General & 1.0 Ethics CLE Credits

Presenters: Carole Levitt, Esq., and Mark Rosch
Authors of The Cybersleuth's Guide to the Internet and ABA best sellers Google for Lawyers and Find Info Like A Pro

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<th>A.M. SESSION</th>
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<td>8:30 a.m.</td>
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| 9:00 a.m. | Free Internet Legal Research  
- Discover Casemaker – a free resource from the State Bar  
- It’s more than just case law!  
- New Casemaker features to increase your research capabilities  
- Preview of upcoming improvements  
- Finding elusive government documents  
- All new federal digital system (fdsys)  
- USA.gov  
- Municipal ordinances and more |
| 10:30 a.m. | Break |

<table>
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<tr>
<th>P.M. SESSION</th>
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| 1:00 p.m. | How to Use Social Networking Sites For Investigative Research: What, Why and How  
- What is social networking?  
- Why should lawyers care?  
- Lawyer survey results about social networking use  
- Use social networking sites effectively for: investigative research about defendants, witnesses, and the opposition; discovery; trial preparation; background checks; locating missing people; and more.  
- Tap into Myspace, Facebook: basic and advanced search techniques  
- Key into information that can be the turning point in a case  
- Tag, you’re it!  
- Discovery and evidentiary issues |
| 2:30 p.m. | Break |
| 2:45 p.m. | How to Use Professional Networking Sites and Micro-Blogging Sites (Twitter) For Investigative Research  
- LinkedIn, and Twitter: basic and advanced search techniques  
- Evaluate potential jurors before trial  
- Get juror background information to craft effective openings and closings  
- Other social networking sites |
| 3:15 p.m. | How To Avoid Social Networking Ethical Traps and Why Your Firm Needs A Social Networking Usage Policy (1.0 E)  
- Using information from social networks for investigative purposes: What’s ethical and what’s not  
- Who is your friend? Can ‘friending’ ever be construed as deceptive, or as a misrepresentation, or an ex parte communication?  
- Does your own profile conform to ethics rules and advertising regulations?  
- Can social networking ever be construed as the unauthorized practice of law?  
- Could your social networking inadvertently form an attorney-client relationship?  
- Advice to clients regarding their social networking pages—your duty or not?  
- Can information on your (or your staffs’) profiles jeopardize client confidentiality?  
- How to configure security/privacy settings in your profile to avoid ethical traps and potential bias  
- Does your law firm need a social networking policy?  
- Sample social networking policies |
| 4:15 p.m. | Adjourn |

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<th>TWO WAYS TO REGISTER</th>
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| INTERNET: www.nmbarcle.org  
FAX: (505) 797-6071, 24 hour access  
Please Note: For all WEBCASTS, you must register online at www.nmbarcle.org |

Name ____________________________________________  
NM Bar # ________________________________________
Street ____________________________________________
City/State/Zip ____________________________________
Phone __________________________ Fax __________________________
E-mail ____________________________________________
Credit Card # __________________________ Exp. Date ________ CVV# ________
Authorized Signature ____________________________________________
Billing Zip Code ____________________________________________
(A.M.) CRITICAL SKILLS CRASH COURSE
(P.M.) DIGGING FOR BURIED TREASURE
with Stuart I. Teicher, Esq.

Wednesday, December 22, 2010
State Bar Center, Albuquerque

☐ Standard Fee (A.M. only) 3.0 General CLE Credits $129
☐ Standard Fee (P.M. only) 2.0 Ethics & 1.0 Professionalism CLE Credits $129
☐ Standard Fee (Both A.M. and P.M.) 3.0 General, 2.0 Ethics, and 1.0 Professionalism CLE Credits $219

Stuart I. Teicher, Esq. is a professional legal educator and ethics specialist. A practicing attorney for over 17 years, he is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession through his entertaining and educational CLE Performances.

Teicher is a Supreme Court appointee to the New Jersey District Ethics Committee where he investigates and prosecutes grievances filed against attorneys, an adjunct Professor of Law at Rutgers Law School in Camden, New Jersey where he teaches Professional Responsibility and an adjunct Professor at Rutgers University in New Brunswick where he teaches undergraduate writing courses.

A.M. Session: Critical Skills Crash Course
8:30 a.m. Registration
9:00 a.m. Persuasive Legal Writing
9:15 a.m. Powerful Negotiating for Lawyers
10:30 a.m. Break
10:45 a.m. Powerful Negotiating (continued)
11:00 a.m. Effective Legal Speaking
12:15 p.m. Lunch (provided at the State Bar Center)

P.M. Session: Digging for Buried Treasure: How a Search through the Rules of Ethics and Professionalism Reveal the Seven Secrets to Attorney Success
1:00 p.m. Digging for Buried Treasure in the Creed of Professionalism (1.0 P)
2:00 p.m. Digging for Buried Treasure in the Code of Professional Conduct (1.0 E)
2:30 p.m. Break
2:45 p.m. Digging for Buried Treasure in the Code of Professional Conduct (1.0 E) (continued)
4:15 p.m. Adjourn

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

Name ___________________________________________ NM Bar # _______________________________
Street __________________________________________________________________________________________________________
City/State/Zip _____________________________________________________________________________________________________
Phone ____________________________________________________ Fax ____________________________________________________
E-mail __________________________________________________________________________________________________________
Credit Card # ___________________________________________ Exp. Date ________________ CVV# ________________
Authorized Signature ___________________________________________ Billing Zip Code ______________________________
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MEETINGS

DECEMBER
13
Section Leadership Forum, 10 a.m., State Bar Center
15
Law Practice Management Committee, noon, State Bar Center
17
Trial Practice Section Annual Meeting, noon, State Bar Center
17
Family Law Section BOD, 9 a.m., via teleconference
17
Immigration Law Section BOD, noon, State Bar Center
17
NREEL Annual Meeting, noon, State Bar Center
20
Attorney Support Group, 7:30 a.m., First United Methodist Church

STATE BAR WORKSHOPS

DECEMBER
15
Social Security Workshop
6 p.m., State Bar Center, Albuquerque

JANUARY
12
Lawyer Referral for the Elderly Workshop
9:45–11 a.m., Presentation
8–9:30 a.m. and 1–3 p.m., Clinics
Robert Munson Senior Center, Las Cruces
26
Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center, Albuquerque

FEBRUARY
9
Estate Planning Workshop
6 p.m., State Bar Center, Albuquerque
22
Lawyer Referral for the Elderly Workshop
1:15–2:30 p.m., Presentation
8:30–noon, Clinics
Meadowlark Senior Center, Rio Rancho

Cover Artist: Robert Martin (http://www.flickr.com/photos/94779902@N00/) practiced in New Mexico for 36 years
before changing to inactive status in 2003. He started his photography hobby at age eight and still enjoys it, especially
with digital mode rather than film. To see the cover art in its original color, visit www.nmbar.org and click on Attorneys/
Members/Bar Bulletin.
NOTICES

COURT NEWS

N.M. Supreme Court Commission on Access to Justice

Commission goals include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness through communication and message development, encouraging more pro bono work by attorneys, and improving training and technology. The next meeting of the commission is from noon to 4 p.m., Dec. 17, at the State Bar. Interested parties are welcome to attend. Further information about the commission is available on the State Bar’s website, www.nmbar.org.

Committee/Board Vacancies

Two vacancies exist on the Metropolitan Courts Rules Committee due to the resignations of two members. Applicants should practice in Bernalillo County Metropolitan Court. One vacancy exists on the Minimum Continuing Legal Education Board due to the expiration of one member’s term. Persons interested in volunteering may send a letter of interest and/or resume to Kathleen Jo Gibson, Chief Clerk PO Box 848 Santa Fe, NM 87504-0848. Deadline for submissions is Jan. 5, 2011.

Disciplinary Board Reception for Virginia Ferrara

After many years of devoted service as the chief disciplinary counsel for the Disciplinary Board of the Supreme Court, Virginia Ferrara took senior status Dec. 1 when William Slease succeeded her. State Bar members are invited to a reception in her honor to be held from 4:30 to 7 p.m., Jan. 19, 2011, at the State Bar Center. R.S.V.P. to receptionist@nmbar.org or (505) 797-6000 by Jan. 17, 2011.

Proposed Revisions to the Rules Governing the Public Inspection and Sealing of Court Records for New Mexico State Courts

The Joint Committee on Rules for the Public Inspection and Sealing of Court Records for New Mexico State Courts has recommended proposed rule amendments for the Supreme Court’s consideration. All of the proposed rule amendments may be viewed on the Supreme Court’s web site. To comment on the proposed amendments before they are submitted to the Court for final consideration, submit comments 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, NM 87504-0848

Comments must be received by the Clerk on or before Dec. 27 to be considered by the Court. Note that any submitted comments may be posted on the Supreme Court’s web site for public viewing. For reference, See the Dec. 6, (Vol. 48, No. 49) Bar Bulletin.

2011 Judicial Branch Holiday Schedule

New Year’s Day 2011 will be observed on Friday, Dec. 31
Martin Luther King’s Birthday will be observed on Monday, Jan. 17, 2011
President’s Day will be observed on Monday, Nov. 28, 2011
Memorial Day will be observed on Monday, May 30, 2011
Independence Day will be observed on Monday, July 4, 2011
Labor Day will be observed on Monday, Sept. 5, 2011
Columbus Day will be observed on Monday, Oct. 10, 2011
Veterans Day will be observed on Monday, Nov. 11, 2011
Thanksgiving Day will be observed on Thursday, Nov. 24, 2011
Christmas Day will be observed on Monday, Dec. 26, 2011
New Year’s Day 2012 will be observed on Monday, Jan. 2, 2012

Judicial Records Retention and Disposition Schedules

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>
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<tbody>
<tr>
<td>(505) 455-8275</td>
<td></td>
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<tr>
<td>(505) 841-7596/7401</td>
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PROFESSIONALISM TIP

With respect to the courts and other tribunals:
When hearings or depositions are cancelled, I will notify opposing counsel, necessary parties, and the court (or other tribunal) as early as possible.
First Judicial District Court
Judicial Investiture

The 1st Judicial District Court cordially invites the legal community to the formal swearing-in ceremony for the Honorable T. Glenn Ellington at 4:30 p.m., Dec. 17, at the Santa Fe County Courthouse Board of County Commission Chambers, 100 Grant Avenue, Santa Fe.

Mass Reassignment

Effective Nov. 29, a mass reassignment of all Division VII cases in the 1st Judicial District Court previously assigned to District Judge David Thomson will be reassigned to District Judge T. Glenn Ellington. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Dec. 20 to challenge or excuse the judge pursuant to Rule 1-088.1.

Third Judicial District Court
Judicial Vacancies

Two vacancies on the 3rd Judicial District Court will exist in Las Cruces as of Jan. 1, 2011. The first vacancy is due to the retirement of the Honorable Jerald A. Valentine, and the second vacancy is due to the retirement of the Honorable Stephen Bridgfirth. The chief judge of the district has indicated that both judgeships will be assigned to domestic relations. Kevin K. Washburn, chair of the District Court Nominating Commission, solicits applications for these positions from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website at http://lawschool.unm.edu/judsel/application.php, or via e-mail by calling Sandra Bauman, (505) 277-4700. The deadline for applications is 5 p.m., Jan. 3, 2011. Applications received after that date will not be considered. The Judicial Selection office follows the University of New Mexico calendar and will be closed Dec. 24, 2010–Jan. 2, 2011. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Commission will meet Jan. 13, 2011, at the District Courthouse, Las Cruces, to evaluate the applicants and recommend names to the governor to fill the vacancies. The meeting is open to the public.

Fifth Judicial District Court
Reassignment of Cases
Lea County

Effective Dec. 6, all cases previously assigned to the Honorable James E. Templeman, Division IV, will be reassigned to the Hon. Mark T. Sanchez, Division IV. Parties who have not previously exercised their rights to challenge or excuse will have until Jan. 3, 2011, to challenge or excuse the newly assigned judge pursuant to Rule 1-088.1.

Twelfth Judicial District Court
Mass Judge Reassignment

Effective Dec. 13, all Otero/Lincoln County court cases previously assigned to the Honorable David I. Rupp will be reassigned to the Honorable William H. Brogan, elected to Division IV of the 12th Judicial District. Pursuant to Rule 1-088.1, parties who have not previously exercised their right to challenge or excuse will have until Dec. 28 to challenge or excuse the newly assigned judge.

Bernalillo County Metropolitan Court
Judicial Vacancy

A vacancy on the Bernalillo County Metropolitan Court will exist in Albuquerque as of Jan. 1, 2011, due to the non-retention of the Honorable Rachel Walker Al-Yaissy. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. Kevin K. Washburn, Chair of the Bernalillo County Metropolitan Court Nominating Commission, solicits applications for this position from lawyers who meet the statutory qualifications in Section 34, Article 8A-4b of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection website at http://lawschool.unm.edu/judsel/application.php, or via e-mail by calling Sandra Bauman, (505) 277-4700. The deadline for applications has been extended to 5 p.m., Jan. 3, 2011. Applications received after that date will not be considered. The Judicial Selection office follows the University of New Mexico calendar and will be closed Dec. 24, 2010–Jan. 2, 2011. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State.

U. S. District Court for the District of New Mexico

2011 Federal Bar Dues

Collection of the attorney dues for the calendar year 2011 has been ordered at the rate of $25. Submit dues to the Clerk of Court, U.S. District Court, Pete V. Domenici U. S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102. The Judicial Nominating Commission will meet Jan. 20, 2011, at the Bernalillo County Metropolitan Courthouse, Albuquerque, to evaluate the applicants for this position. The meeting is open to the public.

Projected 2001 Expenditures

The following is the Federal Bar Association 2011 projected total expenditures: WiFi@Domenici, Campos and Las Cruces Courthouses, $6,600; WiFi @ 500 Gold for Bankruptcy Court, $1,200; Campos Courthouse Attorney Lounge copier/printer/fax annual maintenance/supplies, $800; Domenici Courthouse Attorney Lounge copier/printer/fax annual maintenance/supplies, $900; Las Cruces Attorney Lounge copier/printer/fax annual maintenance/supplies, $800; computer software maintenance/upgrades, $1,300; Court ceremonies, $6,000; ABQ Bar Law Day, $1,500; Federal Bar seminars, $30,000; PDF training for attorneys and paralegals, $7,500; financial audit of the Bench and Bar Fund for 2007, 2008, 2009 & 2010, $6,000; District Judge
Contact Bill Stratvert, (505) 242-6845. For more information, visit the Methodist Church at Fourth and Lead SW, Albuquerque. For more information, see the "Federal Bar Association Fund Reports" page on the Court’s web site at http://www.nmcourt.fed.us.

State Bar News

Attorney Support Group
- Dec. 20, 7:30 a.m.—Morning groups meet regularly on the third Monday of the month.
- Jan. 3, 2011, 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.

Board of Bar Commissioners Election Results
The 2010 election of commissioners for the State Bar of New Mexico Board of Bar Commissioners was held Nov. 30. The 1st Bar Commissioner District had a contested election; however, Jessica M. Hernandez accepted a position with Governor-Elect Susana Martinez’s office, which made Hernandez ineligible. Below are the results of the 3rd Bar Commissioner District election and the uncontested districts. The terms are all three years except as noted.

- 1st Bar Commissioner District (Bernalillo County)
  - Martha Chicoski
  - Michelle Lujan Grisham
- 3rd Bar Commissioner District (Los Alamos, Sandoval, Santa Fe and Rio Arriba counties)
  - Deborah A. Armstrong
- 4th Bar Commissioner District (Colfax, Guadalupe, Harding, Mora, San Miguel, Taos, and Union counties)
  - Brigitte U. Lotze
- 6th Bar Commissioner District (Chaves, Eddy, Lea, Lincoln, and Otero counties)
  - Andrew J. Cloutier
- 7th Bar Commissioner District (Catron, Dona Ana, Grant, Hidalgo, Sierra, Socorro and Torrance counties)
  - Roxanna M. Chacon

Division Representatives
- Young Lawyers Division Chair
  - Ernestina R. Cruz (one-year term)
- Paralegal Division Liaison
  - Kay L. Homan (one-year term)
- Senior Lawyers Division Delegate
  - John P. (Jack) Burton (one-year term)

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.

NREEL Section Annual Meeting and CLE
The Natural Resources, Energy and Environmental Law Section will hold its annual membership meeting during lunch at the When Agendas Collide: New Mexico’s Natural Resources and its Threatened and Endangered Species Winter CLE Program Dec. 17 at the State Bar Center. Contact Jennifer Pruett, Jennifer.Pruett@state.nm.us, to place an item on the agenda. See the CLE-At-a-Glance insert in the Nov. 22 (Vol 49, No. 47) Bar Bulletin for program details. Register online at www.nmbarcler.org or fax to (505) 797-6071.

Indian Law Section Holiday Mixer
Join the Indian Law Section for a Holiday Mixer, 5:30–7:30 p.m., Dec. 16, at Coaches Sports Grill, 1414 Central Avenue SE, Albuquerque. Appetizers will be served and a cash bar will be available. Section members are admitted for free. Non-section members can join the section for $20. All other guests can join the fun for $20. All attendees will be eligible for door prizes to be given away at the event. Direct questions to Georgene Louis, georgenelouis@yahoo.com.

Other Bars

Albuquerque Bar Association Live Video Replays
The Albuquerque Bar Association will sponsor three live video replays from 9 a.m. to 4 p.m., Dec. 17, at the UNM School of Law, Room 2401.

May It Pieve the Court: Further Observations from the Bench (1.0 ethics, 1.0 professionalism CLE credits), $60 members/$80 nonmembers, 12:00 p.m. – 2:00 p.m. Techniques for a Successful Settlement Facilitation and What Your Clients Need to Know About the Use of ‘Workplace’ Mediation (2.0 general CLE credits), $60 members/$80 nonmembers, noon to 2:00 p.m.

Coping with Stress (1.0 professionalism CLE credit) $30 members/$40 nonmembers, 2:30 to 3:30 p.m. To register:
1. log onto www.abqbar.org;
2. e-mail abqbar@abqbar.org;
3. call (505) 842-1151 or (505) 243-2615;
4. fax to (505) 842-0287; or
5. mail to PO Box 40, Albuquerque, NM 87103.

New Mexico Defense Lawyers Association 2010 Annual Civil Rights Seminar
Join the New Mexico Defense Lawyers Association for its 2010 Annual Civil Rights Seminar (5.0 general and 1.2 ethics CLE credits) Dec. 17, at the Embassy Suites in Albuquerque. The program will feature current developments, supervisory liability law under Iqbal, and the keys to litigating a successful civil rights appeal. Register early—seats are limited. For more information and registration, visit www.nmdla.org, e-mail nmdefense@nmdla.org or call (505) 797-6021.

UNM School of Law
Children’s Law Institute
The 18th Annual Children’s Law Institute will be held Jan. 12–14, 2011, at the Hotel Albuquerque in Old Town. The conference brings together judges, lawyers, volunteer advocates, social workers, juvenile probation officers, educators and others who work with children and families in abuse and neglect and juvenile justice.
For the second year in a row, the State Bar of New Mexico was named one of the top ten New Mexico Business Weekly’s Best Places to Work in the medium-sized company category. Staff and members of the Board of Bar Commissioners were on hand at a high energy awards breakfast Dec. 2 at the Embassy Suites in Albuquerque to accept the award. The State Bar placed eighth in the field of finalists.

The program seeks to identify and recognize the best employers in New Mexico based on employee responses to 37 statements that employees could agree or disagree with. In order for a company to become eligible to be a top ten finalist, a certain percentage of the workforce had to complete the questionnaire. Each company was given a numerical score based on the results and finalists were ranked accordingly. Companies with at least 10 employees in New Mexico were eligible to nominate themselves and more than 90 companies responded this year. They were grouped by the size of their workforce: small companies (10 to 12 employees), medium companies (26 to 150 employees) and large companies (151 or more employees). A top ten list was produced in each category.

“Considering we just missed the small category size and competed with a lot of for-profit companies much bigger than we, this is super,” said Executive Director Joe Conte. “Thank you to everyone who made this honor possible. You are a terrific group of people.”

An off shoot of the program is what can be learned from successful companies who have created an environment wherein staff are enthusiastic, committed and happy in the workplace. The list of benefits and perks for employees is long: 100 percent company-paid health insurance, 401(k) plans, take-home vehicles, ample vacation and sick time, half-day Fridays, sports tickets, team-building events, fitness programs, continuing education... and the list goes on. To read more about the program and this year’s award winners, pick up the Dec. 2 issue of the New Mexico Business Weekly or visit them online at http://www.bizjournals.com/albuquerque.

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Staff and members of the Board of Bar Commissioners were on hand at a high energy awards breakfast Dec. 2 at the Embassy Suites in Albuquerque to accept the New Mexico Business Weekly’s Best Places to Work award. The State Bar placed eighth in a field of ten finalists in the medium-sized company category.
**VANZI RECOGNIZED FOR ADVOCACY FOR WOMEN**

By Jocelyn Castillo

The Justice Pamela B. Minzner Outstanding Advocacy for Women Award was presented to Judge Linda Vanzi of the New Mexico Court of Appeals at a reception held Dec. 2 at the Sheraton Hotel in Albuquerque. The award is given by the Committee on Women and the Legal Profession to recognize 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. Judge Vanzi is a very visible, outstanding role model for women in New Mexico. During the 15 years since Judge Vanzi graduated from UNM School of Law, she has been a pioneer in the legal community. She served New Mexico in a distinguished manner on the district court and earned her appointment to the Court of Appeals through uncommon wisdom and excellent judgment. Her judicial career is already distinguished, with numerous outstanding opinions and rulings in complex cases. This year, she stood for election to remain on the Court of Appeals. Taking the high road, Judge Vanzi campaigned with dignity and class, which was remarkable in an election year where smear campaigns were commonplace. Judge Vanzi has been very generous in sharing her time and talents by speaking often to groups of young attorneys and helping others along the path in their legal careers. She inspires the community to promote and advance the causes of women in the legal profession.

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**ROEHL INDUCTS NEW MEMBERS TO ROEHL CIRCLE OF HONOR**

Randi McGinn, John Robb, Leland Sedberry and Jim Toulouse join the Circle.

By Jerry Roehl

The Roehl Circle of Honor for Trial Lawyers inducted Randi McGinn, John Robb, Leland Sedberry and Jim Toulouse as new members on Nov. 17. The Roehl Circle of Honor for Trial Lawyers was established in 1997 at the State Bar Center in memory of Joseph E. Roehl, prominent trial lawyer, by his son, Jerrald J. Roehl. The Circle of Honor recognizes those trial lawyers in New Mexico who are, or have been, the very best as proven over many years.

Randi McGinn, the first woman inductee, has been at the forefront of precedent-setting civil and criminal trials, including several top jury awards. Nationally-recognized as a speaker and innovative trial lawyer, particularly in the use of multimedia presentations, she is the founding partner of McGinn, Carpenter, Montoya & Love in Albuquerque.

John Robb has been a role model for all lawyers due to his unstinting devotion to assisting the less fortunate in need of legal services. Robb has been lead defense counsel in the largest and most complex cases filed in New Mexico courts. He is a senior and name partner in Rodey, Dickason, Sloan, Akin & Robb, one of New Mexico’s largest law firms.

Leland Sedberry was known among Albuquerque attorneys for his zealous representation of his clients tempered with fairness and justice. Elected to membership in several organizations which recognized his abilities as a trial lawyer, he was also active in community groups.

Jim Toulouse was a tenacious trial lawyer who fought hard for his clients. He was always willing to right a wrong and did not care whether his client was rich or poor—he represented them the same. Toulouse set several precedents in New Mexico law. Among many prominent attorneys with whom he practiced until his death in 2002, his favorite was his daughter, Charlotte Mary Toulouse.
R.E. Thompson, president of Modrall Sperling, was named the 2010 Outstanding Civil Defense Lawyer of the Year and Lorena Olmos, an associate with Modrall Sperling, was named the 2010 “Young Lawyer of the Year,” by the New Mexico Defense Lawyers Association at its annual meeting Oct. 14. Thompson is board certified in New Mexico as a civil trial specialist and concentrates his practice in civil litigation involving commercial disputes, products liability, class actions, malpractice, negligence, insurance and nursing homes. In addition, he handles administrative law hearings and lobbies extensively for clients before the state legislature. Olmos’ practice includes business litigation, employment law, and healthcare law. Olmos received her JD from UNM the same year she earned a master’s degree in Latin American studies.

Jennifer M. Anderson has joined the Albuquerque office of Lewis and Roca in the firm’s environmental and natural resources practice group. Anderson received her J.D., magna cum laude, from the UNM School of Law and her B.A. in English creative writing and Spanish from the University of Denver. Prior to law school, Anderson worked as an analyst for the New Mexico State Senate for three consecutive sessions and spent one year living in South Korea teaching English as part of a Fulbright fellowship.

Wade L. Jackson has been appointed by the U.S. Commission on Civil Rights to serve a two-year term on its New Mexico State Advisory Committee. Jackson is an attorney with the Rodey Law Firm, where he practices in the Products/General Liability Practice Group. He also provides insurance coverage opinions and advice to insurers and represents insurers in insurance coverage disputes and insurance bad faith litigation.

Elizabeth V. Friedenstein has joined the Turner Law Firm LLC as an associate. Her practice will focus on litigation and transaction work in the areas of real estate, estate planning, business, commercial, contracts and entity formation and maintenance. She has a bachelor’s degree from UNM and a law degree from Oklahoma City University.

Matthew C. Sanchez has joined Sheehan & Sheehan PA as an associate. He will practice in the areas of general commercial litigation, construction employment and insurance. He has a master’s degree in organizational behavior and human resources and a law degree, cum laude, both from UNM.

After more than a quarter of a century in publication, Best Lawyers in America has selected “Lawyers of the Year” in high-profile legal specialties. Only a single lawyer in each specialty and in each community receives this honor. The following Rodey attorneys have been named 2011 Best Lawyers of the Year in their respective specialties:

- John P. Burton—Santa Fe Real Estate
- Nelson Franse—Albuquerque Professional Malpractice
- Catherine T. Goldberg—Albuquerque Banking
- Bruce Hall—Albuquerque Appellate
- Richard C. Minzner—Albuquerque Administrative
- Donald B. Monnheimer—Albuquerque Mergers & Acquisitions
- Julie P. Neerken—Albuquerque Employee Benefits
- Robert M. St. John—Albuquerque Corporate

In addition, six Rodey lawyers, all members of Rodey’s full-service Labor and Employment Practice Group which represents local, regional and national employers, are included in the November issue of Super Lawyers-Corporate Counsel Edition.

- Scott D. Gordon – Employment & Labor Law
- Jeffrey L. Lowry – Employment & Labor Law
- Julie P. Neerken – Employee Benefits/ERISA
- Theresa W. Parrish – Employment & Labor Law
- Thomas L. Stahl – Employment & Labor Law
- Charles J. Vigil – Employment & Labor Law

John A. Bannerman of Bannerman and Johnson was named Albuquerque Health Care Lawyer of the Year by Best Lawyers in America 2011. Only a single lawyer in each specialty in each community is receives this honor. Bannerman grew up in Grants and attended UNM (B.A., political science, 1969; J.D. 1972).

Jan Gilman-Tepper was named Albuquerque Family Lawyer of the Year by Best Lawyers in America 2011. Gilman-Tepper, a founding shareholder of Little, Gilman-Tepper & Batley, PA, has over 30 years’ experience in complex matters of family law including dissolution of marriage, division and valuation of property, support, custody and prenuptial and postnuptial agreements.

Bonnie J. Paisley of Brownstein Hyatt Farber Schreck was named Albuquerque Securities Lawyer of the Year by Best Lawyers in America 2011. Honored by the publication since its eleventh edition in 2005, Paisley is a member of the firm’s corporate and business practice as well as the public finance group.
LEgal Education

December

13 2010 Bridge the Gap
VR
Center for Legal Education of NMSBF
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13 2010 Employment and Labor Law Institute
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13 2010 Family Law Institute, Day One
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13 Persuasive Lawyer
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14 2009 Professionalism: An Attorney’s Guide to Good Lawyering for People With Disabilities
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14 2010 Family Law Institute, Day Two
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14 From Headaches to Handshakes
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14 Hindsight, Foresight and Insight
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14 Multitasking Gone Mad: Learning to Cope in a Wired, Demanding World (2010)
VR
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14 Success as a Lawyer (David Gross) (2010 Annual Meeting)
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14 What Employment Lawyers Need to Know About Social Media
Teleseminar
Center for Legal Education of NMSBF
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15–16 Partnership/LLC Agreement Drafting, Parts 1 and 2
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Center for Legal Education of NMSBF
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15 Trials of the Century
State Bar Center
Center for Legal Education of NMSBF
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www.nmbarcle.org

16 Making Your Case With a Better Memory
State Bar Center
Center for Legal Education of NMSBF
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16 New Negotiation Skills and Tactics: Necessary Upgrades for the Litigator’s Toolbox
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Center for Legal Education of NMSBF
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(505) 797-6020
www.nmbarcle.org

16 Plaintiff’s Personal Injury from Start to Finish
Albuquerque
NBI, Inc.
5.0 G, 1.0 E
1-800-930-6182
www.nbi-sems.com

17 2010 Annual Civil Rights Seminar
Albuquerque
New Mexico Defense Lawyers Association
5.0 G, 1.2 E
(505) 797-6021
nmdefense@nmdla.org
www.nmdla.org

G = General  E = Ethics  P = Professionalism  VR = Video Replay
Programs have various sponsors; contact appropriate sponsor for more information.
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### Petitions for Writ of Certiorari Filed and Pending:

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<td>(COA 29,870) 3/10/10</td>
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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 December 13, 2010**

#### Pending Proposed Rule Changes

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14-1694 Fraudulent acts by merchants or their employees; representing that something of value has been furnished; essential elements. 12/31/10
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14-2201 Aggravated assault on a peace officer; attempted battery with a deadly weapon; essential elements. 12/31/10
14-2202 Aggravated assault on a peace officer; threat or menacing conduct with a deadly weapon; essential elements. 12/31/10
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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.
The Senior Citizens’ Law Office
(SCLO) was started in
Albuquerque in 1983 and has
since expanded to serve
Sandoval, Valencia and Torrance
counties.

Since the opening of its doors, it
has been the mission of the
SCLO to provide critically
needed advocacy and legal
representation to residents over sixty years of age in order to
uphold their rights, maximize their autonomy and ensure
that they receive the benefits to which they are entitled.
SCLO gives special priority to seniors who are economically
needy, socially isolated, medically frail and institutionalized.
The program is unique because it is the only legal services
agency whose program provides direct legal representation
for the problems and needs of the elderly. SCLO utilizes a
comprehensive approach to legal assistance, including
community education through presentations and
workshops, direct legal advocacy through clinics,
representation at administrative hearings, negotiation and
litigation, and systemic advocacy.

Our clients, almost without exception, present with myriad
non-legal issues and problems. For example, many are
unable to put food on their table, access healthcare,
maintain their homes, secure safe and sanitary housing, or
obtain necessary services. Some clients’ disabilities impair
their ability to effectively communicate their needs, issues
and problems to us and to other service providers. On
occasion, our clients disclose to us suicidal ideations. They
frequently seek psychological and emotional support from
us.

Our clients’ non-legal issues frequently have a direct and
negative impact upon the legal situation with which they
present; indeed, the problems are frequently inextricably
interwoven. We, as lawyers, therefore face a professional
obligation to identify and address the underlying problems,
so that we may effectively communicate with our clients and
successfully represent their legal interests. But our
obligation goes beyond the professional – there is also a
moral imperative to provide holistic services to our clients
who frequently have nowhere else to turn.

In our attempts to provide non-legal services to all of our
clients and to communicate effectively with clients suffering
from mental or other disabilities, we face the reality that this
requires a different skill set and knowledge base than our
legal training provides us. Moreover, it takes up a
tremendous amount of advocate time. These factors
hamper our ability to communicate effectively with clients,
to help them access a full range of services, and ultimately,
to provide the most effective legal services possible.

In an effort to meet our clients’ non-legal needs, SCLO is
partnering with Jewish Family Service New Mexico (JFS) in
a groundbreaking project to provide holistic services to low-
icome seniors. JFS has been providing vital human
services to people of all ages, religions and ethnicities for
over 20 years. Their case managers conduct comprehensive
assessments to determine clients’ needs and link them to
appropriate services such as medication management,
housekeeping/companion services and transportation, and
provide follow-up and further coordination as needed.

This project is the first of its kind in New Mexico and
greatly benefits clients who receive comprehensive services
under one roof. By providing an integrated service
approach, a more holistic set of options is available to
clients at a time of crisis. This can alleviate future problems
or, at least, give the senior some tools for better dealing with
problems. We see that working together, we can help
seniors to deal with the problems and uncertainties that
frequently plague them. It is the only real solution that
makes any measurable difference.

by Lisa Schatz-Vance, Executive Director
Thank You IOLTA Grant Committee

The Board of Directors of the Center for Civic Values extends its sincere thanks to the members of the 2010 IOLTA Grant Committee for their dedicated service during the 2011 IOLTA application process. There were requests totaling more than $620,000, with $275,000 available for distribution. The Committee’s recommendations will be reviewed by the CCV Board and submitted to the State Supreme Court for its approval in December. The group is chaired by Kathy Silva and includes members Kim Griffith, Justice Petra Jimenez-Maes, Cerianne Mullins, Tom Keleher, Ed O’Leary and Judge John Pope.

National News and Notes from the ABA Commission on IOLTA

FDIC Insurance Cover for IOLTA Accounts—Until December 31, 2010, there is no doubt that funds held in IOLTA accounts will receive unlimited FDIC insurance coverage if held at financial institutions participating in the FDIC’s Transaction Account Guarantee (TAG) Program. This program was created in November 2008 to “strengthen confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and by providing full coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount.” In response to advocacy by the American Bar Association, the National Association of IOLTA Programs and many other organizations and individuals, the category of non-interest bearing transaction accounts included IOLTA and functionally equivalent accounts, and provided for unlimited insurance for such accounts held in participating financial institutions through December 31, 2009. The TAG Program has been extended several times by the FDIC and most recently until December 31, 2010.

In July, President Obama signed the Dodd Frank Wall Street Reform and Consumer Protection Act into law. While that legislation continued the unlimited FDIC insurance for non-interest bearing accounts until December 31, 2012, it inadvertently did not extend that coverage to IOLTA accounts. At the end of September, just before Congress recessed for the November elections, legislation was introduced in the Senate to address this problem and to once again extend unlimited FDIC insurance to IOLTA accounts through December 31, 2012. Congress is expected to take up this legislation when it returns during the week of November 15th. In order for the unlimited FDIC insurance coverage of IOLTA accounts to continue uninterrupted, Congress must act by the end of the year. If it does not, each client will be eligible for $250,000 in FDIC insurance coverage at an FDIC insured financial institution, which would include the amount held in the IOLTA account for that client and the amounts contained in other accounts, if any, held by the client at that financial institution.

Revenue Enhancements—Both the District of Columbia Court of Appeals and the Delaware Supreme Court have approved amendments to their IOLTA rules. These amendments, which became effective in D.C. on August 1, 2010, and in Delaware on November 1, 2010, converted the IOLTA programs from opt-out to mandatory and adopted rate comparability. Mandatory IOLTA requires that all lawyers who hold client funds establish IOLTA accounts for the deposit of those funds that cannot earn net interest for the client. Rate comparability requires that all lawyers hold IOLTA accounts only in financial institutions that pay those accounts the highest interest rate or dividend generally available to other customers of the institution when IOLTA accounts meet the same minimum balance or other qualifications.
Important Notice About Your 2011 Dues Form

If you are licensed to practice law in New Mexico, you are required to certify your Trust Account Information and IOLTA Compliance using the form below, which you will receive with your annual licensing from the State Bar of New Mexico. Complete all three sections of the form and return it with your dues to the State Bar, which will forward the form to IOLTA. There are NO exceptions! Questions? Contact IOLTA at 764-9417 or 800-451-1941, extension 14.

SECTION 7. TRUST ACCOUNT CERTIFICATION/IOLTA COMPLIANCE FORM

I. ATTORNEY INFORMATION—All attorneys licensed in New Mexico are required to complete in full sections I, II and III. Non-compliance will be reported to the State Supreme Court and may subject the attorney to suspension.

Attorney Name: ____________________________ NM Bar Card #: ____________________________
Firm Name: ____________________________
Firm Contact: ____________________________ Phone/E-Mail: ____________________________

Firm administrators may report for the entire firm by completing the information below and enclosing it with a list of the firm’s attorneys and their bar card numbers.

II. ATTORNEY TRUST ACCOUNT INFORMATION—If your trust account is NOT in NM, DO NOT provide financial institution information. Instead, select the appropriate exemption below.

☐ My firm maintains the client trust accounts below (please attach a separate page for additional accounts).

<table>
<thead>
<tr>
<th>Financial Institution Name</th>
<th>Account Name</th>
<th>Account Number</th>
<th>IOLTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>**NO</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Yes</td>
<td>**NO</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Yes</td>
<td>**NO</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Yes</td>
<td>**NO</td>
<td></td>
</tr>
</tbody>
</table>

If this account contains IOLTA-eligible funds, it MUST be enrolled in the New Mexico IOLTA program at an eligible financial institution (please refer to Rule 24-109). If you circled “no” above, please explain:

☐ I am exempt because I am a judge, an employee of a local, state, federal or tribal government, corporate counsel or a teacher of law or am otherwise not engaged in the private practice of law; OR

☐ I am exempt because the nature of my practice is such that my firm does not hold IOLTA-eligible funds of any client or third person; OR

☐ I am exempt because my firm does not have an office within the State of New Mexico, and if my firm has received the client’s or third person’s permission to hold the funds out of state; OR

☐ I am exempt because my firm has applied for and obtained an exemption from the Center for Civic Values pursuant to Rule 24-106(B)(c).

III. ATTORNEY CERTIFICATION OF TRUST ACCOUNT INFORMATION AND IOLTA COMPLIANCE

By providing the information above, I certify that I am in compliance with Rule 16-115 of the Rules of Professional Conduct, Rule 17-204 of the Rules Governing Disciplinary and Rule 24-109 of the Rules Governing the New Mexico Bar. With this signature I certify under penalty of perjury that the above and foregoing information is true and correct.

Signature ____________________________ Date ____________________________
IOLTA Financial Institutions

CCV has certified as “eligible” those financial institutions that agree to comply with the comparability and other requirements of the Rule 24-109, of the Rules Governing the New Mexico Bar. If you currently maintain a non-IOLTA pooled client trust account, you are required to enroll in IOLTA, convert the account to interest-bearing and maintain the account at an eligible financial institution. If you currently hold an IOLTA pooled client trust account at an institution that is ineligible, you are required to move that account to a CCV-certified financial institution.

CCV extends sincere thanks to our Honor Roll financial institutions below! When opening an IOLTA account, PLEASE remember that due to their waiver of minimum balance requirements or processing fees to CCV, thousands of additional dollars are available annually to help the nearly 1/2 million New Mexicans who benefit from services provided by IOLTA-funded organizations.

HONOR ROLL INSTITUTIONS
AmBank
American Heritage Bank
Bank 1st
Bank of Albuquerque
Bank of the Rio Grande
Bank of the Southwest at Roswell
BBVA Compass Bank
Century Bank of Santa Fe
Charter Bank
Citizens Bank of Farmington
Citizens Bank of Las Cruces
City Bank NM
Community 1st Bank Las Vegas
Community Bank
First American Bank (formerly High Desert)
First Community Bank
First Financial Bank NA
First Financial Credit Union
First National Bank in Alamogordo
First National Bank of Ruidoso
First National Bank of Santa Fe
First New Mexico Bank
First Savings Bank
First State Bank of Socorro
Four Corners Community Bank
Grants State Bank
James Polk Stone Community Bank
Lea County State Bank
Los Alamos National Bank
Main Bank
My Bank
New Mexico Bank & Trust
Peoples Bank
Pinnacle Bank of Gallup
Pioneer Bank
Southwest Securities FSB
Sunrise Bank of Albuquerque
The Bank of Clovis
The Carlsbad National Bank
The First National Bank of New Mexico
Union Savings Bank
Valley Bank of Commerce
Valley National Bank
VectraBank
Wells Fargo Bank New Mexico
Western Bank of Alamogordo
Western Bank of Clovis
Western Bank of Lordsburg
Western Commerce Bank

Other IOLTA-Eligible Institutions
Bank of America
Bank of Las Vegas
Bank of the West
Centinel Bank of Taos
Farmers & Stockmens Bank
Farmington Savings Bank
First Federal Bank
Gallup Federal Savings Bank
International State Bank
Ironstone Bank
The Citizens Bank of Clovis
Western Heritage Bank

IMPORTANT NOTICE REGARDING FINANCIAL INSTITUTION ELIGIBILITY
CCV has certified that the above financial institutions are “eligible” because they voluntarily offer IOLTA accounts, and they are in compliance with Rule 24-109, as it pertains to interest paid on IOLTA accounts. The designation of a financial institution as eligible does not constitute a warranty representation or guaranty by CCV as to the financial soundness, business practices or other attributes of the financial institution. In addition, CCV takes no position as to whether the institution provides insurance for funds deposited into those accounts. Each attorney should discuss the issue of insurance with a representative of the institution that holds her/his IOLTA funds.

IOLTA Grants-Inception to Date
Total Awarded-$4,335,818

IOLTA News

Winter 2010
the Uniform Jury Instructions for Criminal Cases

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation from the Uniform Jury Instructions Committee to approve amendments of uniform jury instructions 14-210, 14-211, 14-925, 14-926, 14-927, 14-930, 14-931, 14-932, 14-933, 14-934, 14-935, 14-945, 14-957, 14-982, 14-1601, 14-1610, 14-1611, 14-1640, 14-1641, 14-1643, 14-1644, 14-1650, 14-1660, 14-1689, 14-1690, 14-1691, 14-1692, 14-1693, 14-1694, 14-1701, 14-1702, 14-2201, 14-2202, 14-2203, 14-2204, 14-2205, 14-2206, 14-2207, 14-2208, 14-2209, 14-2210, 14-2211, 14-2212, 14-2213, 14-2214, 14-2216, 14-2801, and 14-6018 NMRA for criminal cases, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricia 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 uniform jury instructions 14-210, 14-211, 14-925, 14-926, 14-927, 14-930, 14-931, 14-932, 14-933, 14-934, 14-935, 14-945, 14-957, 14-982, 14-1601, 14-1610, 14-1611, 14-1640, 14-1641, 14-1643, 14-1644, 14-1650, 14-1660, 14-1689, 14-1690, 14-1691, 14-1692, 14-1693, 14-1694, 14-1701, 14-1702, 14-2201, 14-2202, 14-2203, 14-2204, 14-2205, 14-2206, 14-2207, 14-2208, 14-2209, 14-2210, 14-2211, 14-2212, 14-2213, 14-2214, 14-2216, 14-2801, and 14-6018 NMRA for criminal cases hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of the above-reference uniform jury instructions for criminal cases shall be effective December 31, 2010;

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 uniform jury instructions by publishing the same in the Bar Bulletin and NMRA and posting the same on the New Mexico Compilation Commission web site <http://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 29th of November, 2010.

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

14-210. Second degree murder; voluntary manslaughter lesser included offense; essential elements.

For you to find the defendant guilty of second degree murder as charged in Count __________, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant killed __________________ (name of victim);
2. The defendant knew that his acts created a strong probability of death or great bodily harm to __________________ (name of victim) or any other human being);
3. The defendant did not act as a result of sufficient provocation;
4. This happened in New Mexico on or about the ______ day of __________, ________

USE NOTE

1. This instruction is to be given only when provocation is an issue.
2. Insert the count number if more than one count is charged.
3. Use this bracketed phrase when the intent was directed to someone other than the victim. UJI 14-235 NMRA must also be given following UJI 14-220 NMRA, Voluntary manslaughter; lesser included offense.
4. The following instructions must also be given after UJI 14-220 NMRA, voluntary manslaughter, lesser included offense: UJI 14-141 NMRA, general criminal intent; UJI 14-131 NMRA, definition of great bodily harm; UJI 14-222 NMRA, definition of sufficient provocation;

UJI 14-250 NMRA, jury procedure for various degrees of homicide.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See Committee Commentary to UJI 14-211 NMRA for a discussion of instructions on second degree murder.

Essential Element Number 3, providing for the jury to consider the issue of provocation, is consistent with the requirements of Mullaney v. Wilbur, 421 U.S. 684 (1975). Parties must be aware that an attempt to commit reckless or unintentional murder is “a crime that does not exist.” State v. Carrasco, 2007-NMCA-152, ¶ 7, 143 N.M. 62, 172 P.3d 611. Therefore, to avoid potential confusion, if the charge of attempt to commit second degree murder proceeds to a jury, the instructions should be drafted to take into account the holding below from Carrasco and the specific facts of the case.

Attempt to commit a felony is the commission of “an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.” NMSA 1978, § 30-28-1 (1963). It is a specific intent crime. Jernigan, 2006-NMSC-003, ¶ 18, 139 N.M. 1, 127 P.3d 537. Attempted second degree murder, however, is not a valid crime in all circumstances because second degree murder can be committed either intentionally or unintentionally. See Johnson, 103 N.M. at 368-70, 707 P.2d at 1178-80. When second degree murder is committed as a general intent crime, it requires that the defendant kill the victim with the knowledge that the defendant’s acts “create a strong probability of death or great bodily harm.” Section 30-2-1(B). As a general intent crime, it does not require an intent to kill; a reckless killing satisfies the statutory requirements.

Carrasco, 2007-NMCA-152, ¶ 7.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-211. Second degree murder; voluntary manslaughter not lesser included offense; essential elements.

For you to find the defendant guilty of second degree murder as charged in Count __________, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant killed __________________ (name of victim);
2. The defendant knew that his acts created a strong probability of death or great bodily harm to __________________ (name of victim) or any other human being);
3. The defendant did not act as a result of sufficient provocation;
4. This happened in New Mexico on or about the ______ day of __________, ________

USE NOTE

1. This instruction is to be given only when provocation is an issue.
2. Insert the count number if more than one count is charged.
3. Use this bracketed phrase when the intent was directed to someone other than the victim. UJI 14-235 NMRA must also be given following UJI 14-220 NMRA, Voluntary manslaughter; lesser included offense.
4. The following instructions must also be given after UJI 14-220 NMRA, voluntary manslaughter, lesser included offense: UJI 14-141 NMRA, general criminal intent; UJI 14-131 NMRA, definition of great bodily harm; UJI 14-222 NMRA, definition of sufficient provocation;

UJI 14-250 NMRA, jury procedure for various degrees of homicide.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See Committee Commentary to UJI 14-211 NMRA for a discussion of instructions on second degree murder.

Essential Element Number 3, providing for the jury to consider the issue of provocation, is consistent with the requirements of Mullaney v. Wilbur, 421 U.S. 684 (1975). Parties must be aware that an attempt to commit reckless or unintentional murder is “a crime that does not exist.” State v. Carrasco, 2007-NMCA-152, ¶ 7, 143 N.M. 62, 172 P.3d 611. Therefore, to avoid potential confusion, if the charge of attempt to commit second degree murder proceeds to a jury, the instructions should be drafted to take into account the holding below from Carrasco and the specific facts of the case.

Attempt to commit a felony is the commission of “an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.” NMSA 1978, § 30-28-1 (1963). It is a specific intent crime. Jernigan, 2006-NMSC-003, ¶ 18, 139 N.M. 1, 127 P.3d 537. Attempted second degree murder, however, is not a valid crime in all circumstances because second degree murder can be committed either intentionally or unintentionally. See Johnson, 103 N.M. at 368-70, 707 P.2d at 1178-80. When second degree murder is committed as a general intent crime, it requires that the defendant kill the victim with the knowledge that the defendant’s acts “create a strong probability of death or great bodily harm.” Section 30-2-1(B). As a general intent crime, it does not require an intent to kill; a reckless killing satisfies the statutory requirements.

Carrasco, 2007-NMCA-152, ¶ 7.
satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant killed __________________ (name of victim);
2. The defendant knew that his acts created a strong probability of death or great bodily harm to __________________ (name of victim) [or any other human being]4;
3. This happened in New Mexico on or about the __________________ day of ______________, ___________.

USE NOTE
1. This instruction is to be used only when second degree murder is the lowest degree of homicide to be considered by the jury.
2. Insert the count number if more than one count is charged.
3. UJI 14-131 NMRA, the definition of great bodily harm, must be given.
4. Use this bracketed phrase when the intent was directed to someone other than the victim. In such a case, UJI 14-255 NMRA must also be given.
5. UJI 14-141 NMRA, general criminal intent, must also be given.

Committee Commentary. — See NMSA 1978, § 30-2-1(B) (1994). Second degree murder is committed when death results from acts which the defendant knew created a strong probability of death or great bodily harm. This was formerly known as “depraved-heart” murder, which is also murder in the first degree. See NMSA 1978, § 30-2-1(A)(3) (1994). The intent necessary for this crime was formerly defined by the courts as “implied” or “inferred” malice. See commentary to UJI 14-201 NMRA and 14-203 NMRA and State v. Smith, 26 N.M. 482, 488, 194 P. 869 (1921). See generally Perkins, Criminal Law 34-35, 88, 770 (2d ed. 1969) and LaFave & Scott, Criminal Law 529 (1972).

Implied malice, the intent required as an element of the crime, may be inferred from certain facts, for example, the use of a deadly weapon. See, e.g., State v. Duran, 83 N.M. 700, 496 P.2d 1096 (Ct. App. 1972), cert. denied, 83 N.M. 699, 496 P.2d 1095 (1972). Although the New Mexico court in Duran and in other cases refers to the inference as “implying malice,” the committee believed that the inference of malice was more appropriate. See UJI 14-5061 NMRA. See generally Perkins, “A Reexamination of Malice Aforethought,” 43 Yale L.J. 537, 549 (1934). Malice may also be inferred where the defendant does not use a deadly weapon. See State v. Garcia, 61 N.M. 291, 299 P.2d 467 (1956). See generally Amnot., 22 A.L.R.2d 854 (1952).

The New Mexico Supreme Court in State v. Welch, 37 N.M. 549, 25 P.2d 211 (1933), a felony murder case, indicated that second degree murder could be found where there is “independent” evidence of an intent to kill. It is assumed that this decision was impliedly overruled by State v. Reed, 39 N.M. 44, 39 P.2d 1005 (1934).

The court in State v. Reed, supra, held that where the evidence clearly indicates a certain means was used, for example, the torture used by the defendants in that case, a conviction for second degree murder could not be sustained and the defendants were discharged. This case supports the approach of the committee to the lesser included offense problem and requires the district judge to exercise careful judgment in submitting second degree murder to the jury.

The decision in Reed was sought to be overruled by a statute which says that the defendant cannot complain if convicted of a lesser degree of homicide although the evidence clearly establishes that a higher degree was actually committed. This law has not been repealed but is no longer in the annotated statutes. N.M. Laws 1937, ch. 199, § 1 (formerly compiled as Section 41-13-1 NMSA 1953 Comp.). This law is unconstitutional insofar as it purports to authorize conviction of a lesser included offense when there is no evidence of one or more elements of the lesser offense. Smith v. State, 89 N.M. 770, 558 P.2d 39 (1976).

Element 2 of UJI 14-210 NMRA and of UJI 14-211 NMRA was revised in 1981 to be consistent with the 1980 amendments to NMSA 1978, § 30-2-1 (1980).

Although the 1980 Legislature amended NMSA 1978, § 30-2-1 (1980) to provide that murder in the second degree is a lesser included offense of the crime of murder in the first degree, an instruction on second degree murder should not be given when the evidence only supports murder in the first degree.

Parties must be aware that an attempt to commit reckless or unintentional murder is “a crime that does not exist.” State v. Carrasco, 2007-NMCA-152, ¶ 7, 143 N.M. 62, 172 P.3d 611. Therefore, to avoid potential confusion, if the charge of attempt to commit second degree murder proceeds to a jury, the instructions should be drafted to take into account the holding below from Carrasco and the specific facts.

Attempt to commit a felony is the commission of “an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.” NMSA 1978, § 30-28-1 (1963). It is a specific intent crime. Jernigan, 2006-NMSC-003, ¶¶ 18, 139 N.M. 1, 127 P.3d 537. Attempted second degree murder, however, is not a valid crime in all circumstances because second degree murder can be committed either intentionally or unintentionally. See Johnson, 103 N.M. at 368-70, 707 P.2d at 1178-80. When second degree murder is committed as a general intent crime, it requires that the defendant kill the victim with the knowledge that the defendant’s acts “create a strong probability of death or great bodily harm.” Section 30-2-1(B). As a general intent crime, it does not require an intent to kill; a reckless killing satisfies the statutory requirements.

Carrasco, 2007-NMCA-152, ¶ 7.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-925. Criminal sexual contact of a minor in the [third] [second] degree; child under thirteen; essential elements.

For you to find the defendant guilty of criminal sexual contact of a child under the age of thirteen (13) [as charged in Count __________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant touched or applied force to the [unclothed] ______ of __________________ (name of victim);[3]

[OR]
2. __________________ (name of victim) was a child under the age of thirteen (13);[3]

3. The defendant’s act was unlawful;[3]

4. This happened in New Mexico on or about the _____ day of __________________. _____.

[3. The defendant’s act was unlawful.

[4. Use this bracketed phrase when the intent was directed to someone other than the victim. In such a case, UJI 14-255 NMRA must also be given.

[5. UJI 14-141 NMRA, general criminal intent, must also be given.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]
Committee Commentary. — See Section 30-9-13A(1) NMSA 1978: third degree felony.
This instruction contains the essential elements for the crime of criminal sexual contact of a child under 13. If the victim is under the age of 13 years, no force or coercion is necessary.
Mistake of the defendant as to the age of a child under the age of 13 is not a defense. Perez v. State, 111 N.M. 160, 162, 803 P.2d 249 (1990); Perkins, Criminal Law, 168 (2d ed. 1969).
If the child is “spouse” to the defendant, sexual contact is not a crime. Marriage may be permitted at any age by the children’s court or family court and therefore the contact would not be unlawful. See Section 40-1-6B NMSA 1978.
This instruction was revised in 1992 to comply with the Supreme Court’s opinion in State v. Osborne, 111 N.M. 654, 808 P.2d 624 (1991). See also footnote 3 of State v. Orosco, 113 N.M. 780, 833 P.2d 1146 (1992) the New Mexico Supreme Court which further clarifies the Court’s earlier decision in Osborne.
In 1991, Section 30-9-13 NMSA 1978 was amended to delete “other than one’s spouse”. To be consistent with this 1991 amendment, the Supreme Court approved in 1992 the deletion of former element 3, “victim was not the spouse of the defendant”. [As revised, September 10, 1993.]

14-926. Criminal sexual contact of a minor in the [third] [second] degree; use of coercion by person in position of authority; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor by use of coercion by a person in a position of authority [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant² [touched or applied force to the [unclothed] ________³ of __________________ (name of victim)];
   [OR]
   [caused __________________ (name of victim) to touch the ________³ of the defendant;]
2. The defendant was a [parent] [relative] [household member] [teacher] [employer]⁴ [person who by reason of the defendant’s relationship to __________________ (name of victim) was able to exercise undue influence over __________________ (name of victim)]
   AND used this authority to coerce __________________ (name of victim) to submit to sexual contact;
3. __________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
4. The defendant’s act was unlawful;⁵
5. This happened in New Mexico on or about the _____ day of ___________________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after the instruction; otherwise, no definition need be given unless the jury requests one.
4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
   [As amended, effective October 1, 1992; January 20, 2005; as amended by Supreme Court Order No. No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — This instruction contains the essential elements of criminal sexual contact of a minor perpetrated through the use of coercion by a person in a position of authority.

Only one instruction was prepared for this method of committing the crime of criminal sexual contact of a minor because the term “force or coercion”, with its three definitions, has no application. The meaning of “coerce” in this offense is uniquely related to the status of the defendant. The defendant must occupy a position which enables that person to exercise undue influence over the victim and that influence must be the means of compelling submission to the contact. The committee recognized that such coercion might take many forms but is less overtly threatening than physical force or threats.

See also the commentary to UJI 14-921 NMRA.

14-927. Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; personal injury; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor causing personal injury [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant² [touched or applied force to the [uncovered] ________³ of __________________ (name of victim)];
   [OR]
   [caused __________________ (name of victim) to touch the ________³ of the defendant;]
2. The defendant used physical force or physical violence;
3. The defendant’s acts resulted in __________________;⁴
4. __________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
5. The defendant’s act was unlawful;⁵
6. This happened in New Mexico on or about the _____ day of ___________________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after the instruction; otherwise, no definition need be given unless the jury requests one.
4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
   [As amended, effective January 20, 2005; as amended by Supreme Court Order No. No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — This instruction contains the essential elements of criminal sexual contact of a minor perpetrated through the use of coercion by a person in a position of authority.

Only one instruction was prepared for this method of committing the crime of criminal sexual contact of a minor because the term “force or coercion”, with its three definitions, has no application. The meaning of “coerce” in this offense is uniquely related to the status of the defendant. The defendant must occupy a position which enables that person to exercise undue influence over the victim and that influence must be the means of compelling submission to the contact. The committee recognized that such coercion might take many forms but is less overtly threatening than physical force or threats.

See also the commentary to UJI 14-921 NMRA.

14-927. Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; personal injury; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor causing personal injury [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant² [touched or applied force to the [uncovered] ________³ of __________________ (name of victim)];
   [OR]
   [caused __________________ (name of victim) to touch the ________³ of the defendant;]
2. The defendant used physical force or physical violence;
3. The defendant’s acts resulted in __________________;⁴
4. __________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
5. The defendant’s act was unlawful;⁵
6. This happened in New Mexico on or about the _____ day of ___________________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after the instruction; otherwise, no definition need be given unless the jury requests one.
4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
   [As amended, effective January 20, 2005; as amended by Supreme Court Order No. No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — This instruction contains the essential elements of criminal sexual contact of a minor perpetrated through the use of coercion by a person in a position of authority.

Only one instruction was prepared for this method of committing the crime of criminal sexual contact of a minor because the term “force or coercion”, with its three definitions, has no application. The meaning of “coerce” in this offense is uniquely related to the status of the defendant. The defendant must occupy a position which enables that person to exercise undue influence over the victim and that influence must be the means of compelling submission to the contact. The committee recognized that such coercion might take many forms but is less overtly threatening than physical force or threats.

See also the commentary to UJI 14-921 NMRA.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.
4. Name victim and describe personal injury or injuries. See Section 30-9-10(D) NMSA 1978 for types of personal injuries.
5. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — Four separate instructions have been prepared for criminal sexual contact of a minor which results in personal injury to the victim. UJI 14-927 NMRA (physical force or physical violence), 14-928 NMRA (threats) and 14-929 NMRA (unconscious, etc.) contain separate definitions for “force or coercion.” Section 30-9-10(A) NMSA 1978.

UJI 14-927, 14-928, 14-930 and 14-930 NMRA are the same as UJI 14-921, 14-922, 14-923 and 14-924 NMRA, respectively, with the additional element of personal injury to the victim. UJI 14-940 combines UJI 14-927, 14-928 and 14-929 NMRA with the three definitions of “force or coercion” set out in the alternative. If there is evidence of more than one type of force or coercion, this instruction may be used. However, in some circumstances the individual and particularized uniform jury instructions may be more clear and therefore preferable. The court has discretion as to which instruction should be given for these essential elements.

The statutory definition of personal injury is broad and includes various types of personal injuries. It is therefore a question of law as to whether a particular injury constitutes an aggravating factor sufficient to support the charge. “Personal injury” includes but is not limited to: disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ. Section 30-9-10(D) NMSA 1978.

See commentaries to UJI 14-902, 14-903 and 14-904 NMRA for a discussion of each of the definitions of force or coercion. See also the commentary to UJI 14-921 NMRA.

14-930. Criminal sexual contact of a minor in the [third] [second] degree; force or coercion; personal injury; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor causing personal injury [as charged in Count _____]; the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant1 [touched or applied force to the [unclothed] _______4 of _______2 of the defendant;]

[OR]

[caused _______4 of the defendant;]

[2. [The defendant used physical force or physical violence;]3

[OR]

[The defendant caused _______4 (name of victim) to touch the _______4 through the use of threats of physical force or physical violence against _______5 (name of victim) believed that the defendant would carry out the threat;]2

[OR]

[_________4 (name of victim) was [unconscious]3 (asleep) [physically helpless] [suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing]; AND the defendant knew or had reason to know of the condition of _______4 (name of victim);]

3. The defendant’s acts resulted in _______6;

4. _______4 (name of victim) was at least thirteen (13) but less than eighteen (18) years old;

5. The defendant’s act was unlawful;]7

6. This happened in New Mexico on or about the _____ day of _____________, _______.

USE NOTE

1. This instruction sets forth the elements of all three types of “force or coercion” in Section 30-9-10(A) NMSA 1978: (1) use of physical force or physical violence; (2) threats; (3) mental or other incapacity of the victim. If the evidence supports two or more of these theories of “force or coercion”, this instruction may be used.

2. Insert the count number if more than one count is charged.

3. Use only the applicable alternatives.

4. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

5. Describe threats used against the victim or another in layman’s language. See Section 30-9-10(A)(3) NMSA 1978 for examples of types of threats.

6. Name victim and describe personal injury or injuries. See Section 30-9-10(D) NMSA 1978 for types of personal injuries.

7. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See committee commentary under UJI 14-927 NMRA.

14-931. Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; aided or abetted by another; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor when aided or abetted by another [as charged in Count _____]; the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant2 [touched or applied force to the [unclothed] _______3 of _______2 of the defendant;]

[OR]

[caused _______3 of the defendant;]

[2. [The defendant used physical force or physical violence;]3

[OR]

[The defendant caused _______4 (name of victim) to touch the _______4 through the use of threats of physical force or physical violence against _______5 (name of victim) believed that the defendant would carry out the threat;]2

[OR]

[_________4 (name of victim) was [unconscious]3 (asleep) [physically helpless] [suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing]; AND the defendant knew or had reason to know of the condition of _______4 (name of victim);]

3. The defendant’s acts resulted in _______6;

4. _______4 (name of victim) was at least thirteen (13) but less than eighteen (18) years old;

5. The defendant’s act was unlawful;]7

6. This happened in New Mexico on or about the _____ day of _____________, _______.

USE NOTE

1. This instruction sets forth the elements of all three types of “force or coercion” in Section 30-9-10(A) NMSA 1978: (1) use of physical force or physical violence; (2) threats; (3) mental or other incapacity of the victim. If the evidence supports two or more of these theories of “force or coercion”, this instruction may be used.

2. Insert the count number if more than one count is charged.

3. Use only the applicable alternatives.

4. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina”. When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

5. Describe threats used against the victim or another in layman’s language. See Section 30-9-10(A)(3) NMSA 1978 for examples of types of threats.

6. Name victim and describe personal injury or injuries. See Section 30-9-10(D) NMSA 1978 for types of personal injuries.

7. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See committee commentary under UJI 14-927 NMRA.
4. ______________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
[5. The defendant’s act was unlawful];
6. This happened in New Mexico on or about the ______ day of ____________________, ______.

USE NOTE
1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina.” When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.
4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]
Committee Commentary. — See Section 30-9-13A(2)(c) NMSA 1978; third degree felony.
Four separate instructions have been prepared for criminal sexual contact of a minor when the perpetrator is aided or abetted by one or more persons. UJI 14-931 NMRA (physical force or physical violence), UJI 14-932 NMRA (threats) and UJI 14-933 NMRA (unconscious, etc.) contain separate definitions for “force or coercion.” Section 30-9-10A NMSA 1978.
UJI 14-931, 14-932, 14-933 and 14-934 NMRA are the same as UJI 14-921, 14-922, 14-923 and 14-924 NMRA, respectively, with the additional element of “aided or abetted.”
UJI 14-934 NMRA combines UJI 14-931, 14-932 and 14-933 NMRA with the three definitions of “force or coercion” set out in the alternative. If there is evidence of more than one type of force or coercion, this instruction may be used. However, in some circumstances the individual and particularized uniform jury instructions may be more clear and therefore preferable. The court has discretion as to which instruction should be given for these essential elements.
See the commentary to UJI 14-910 NMRA for a discussion of the element of “aided or abetted.”
See commentaries to UJI 14-902, 14-903 and 14-904 NMRA for a discussion of each of the definitions of “force or coercion.” See also the commentary to UJI 14-921 NMRA.

Committee Commentary. — See committee commentary under UJI 14-931 NMRA.

14-933. Criminal sexual contact of a minor in the [third] [second] degree; victim unconscious, asleep, physically or mentally helpless; aided or abetted by another; essential elements.
For you to find the defendant guilty of criminal sexual contact of a minor when aided and abetted by another [as charged in Count ______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
1. The defendant2 [touched or applied force to the [unclothed] ______________ 3 of ______________________ (name of victim);]
[OR]
[caused ______________ (name of victim) to touch the ______________ 3 of the defendant;]

(name of victim) was [unconscious]2 [asleep] [physically helpless] [suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing];
2. The defendant knew or had reason to know of the condition of ______________________ (name of victim);
3. The defendant acted with the help or encouragement of one or more persons;
4. ______________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
[5. The defendant’s act was unlawful];
6. This happened in New Mexico on or about the ______ day of ____________________, ______.

USE NOTE
1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina.” When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.
4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]
Committee Commentary. — See Section 30-9-13A(2)(c) NMSA 1978 for examples of types of threats.
5. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]
Committee Commentary. — See committee commentary under UJI 14-931 NMRA.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina.” When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

                  (As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.)

Committee Commentary. — See committee commentary under UJI 14-931 NMRA.

14-934. Criminal sexual contact of a minor in the [third] [second] degree; force or coercion; aided or abetted by another; essential elements.¹

For you to find the defendant guilty of criminal sexual contact of a minor when aided or abetted by another [as charged in Count ______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant¹ [touched or applied force to the [unclothed] ________ of ________ (name of victim);

[OR]

[caused ____________ (name of victim) to touch the ________ of the defendant;]

2. [The defendant used physical force or physical violence;²

[OR]

[The defendant [used threats of physical force or physical violence against ________ (name of victim or other person)]² [OR] [threatened to ____________];

AND ____________ (name of victim) believed that the defendant would carry out the threat;]

[OR]

[__________ (name of victim) was [unconscious];³ [asleep] [physically helpless] suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing]; AND the defendant knew or had reason to know of the condition of ____________ (name of victim);

3. The defendant acted with the help or encouragement of one or more persons;

4. ____________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;

5. The defendant’s act was unlawful;⁴

6. This happened in New Mexico on or about the ______ day of ________, ______.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina.” When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

5. Describe threats used against the victim or another in layman’s language. See Section 30-9-10(A)(3) NMSA 1978 for examples of types of threats.

6. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See committee commentary under UJI 14-931 NMRA.

14-935. Criminal sexual contact of a minor in the [third] [second] degree; deadly weapon; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor when armed with a deadly weapon [as charged in Count ______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant¹ [touched or applied force to the [unclothed] ________ of ________ (name of victim);

[OR]

[caused ____________ (name of victim) to touch the ________ of the defendant;]

2. The defendant was armed with and used a ________ (name of object) with the intent to use it as a weapon and a ________ (name of object), when used as a weapon, is capable of inflicting death or great bodily harm;⁵

3. ____________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;

4. The defendant’s act was unlawful;

5. This happened in New Mexico on or about the ______ day of ________, ______.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: “buttock”, “breast”, “groin”, “anus”, “mons pubis”, “penis”, “testicles”, “mons veneris”, “vulva” or “vagina.” When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

4. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12(B) NMSA 1978.

5. UJI 14-131 NMRA, the definition of “great bodily harm”, must also be given.

6. This alternative is given only if the object used is not specifically listed in Section 30-1-12(B) NMSA 1978.

7. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See Section 30-9-13A(2)(d) NMSA 1978: third degree felony.
This instruction sets forth the charge of criminal sexual contact of a minor when the perpetrator is armed with a deadly weapon. See the commentary to UJI 14-914 NMRA for a discussion of the meaning of “while armed with a deadly weapon.”

This instruction was revised in 1999 to address the issue raised in State v. Montano, 1999-NMCA-023, 126 N.M. 609, 973 P.2d 861 and State v. Bonham, 1998-NMCA-178, 126 N.M. 382, 970 P.2d 154.

See also the commentary to UJI 14-921 NMRA.

14-945. Criminal sexual penetration of a 13 to 18 year old in the second degree; use of coercion by person in position of authority; essential elements.

For you to find the defendant guilty of criminal sexual penetration of a child at least thirteen (13) but less than eighteen (18) years old by use of coercion by a person in a position of authority [as charged in Count _______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant
caused __________________ (name of victim) to engage in ___________.
[OR]
caused the insertion, to any extent, of a ______ into the ________ of __________________ (name of victim);
2. __________________ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;
3. The defendant was a [parent] [relative] [household member] [teacher] [employer] [person who by reason of the defendant’s relationship to __________________ (name of victim) was able to exercise undue influence over __________________ (name of victim)]
AND used this authority to coerce __________________ (name of victim) to submit to sexual contact;
[4. The defendant’s act was unlawful.]
5. This happened in New Mexico on or about the _____ day of _____________.

USE NOTE
1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name the sexual act or acts: i.e., “sexual intercourse”, “anal intercourse”, “cunnilingus”, or “fellatio.” The applicable definition or definitions from Instruction 14-982 NMRA must be given after this instruction.
4. Identify the object used.
5. Name the part or parts of the body: i.e., “vagina”, “penis” or “anus”. The applicable definition or definitions from Instruction 14-981 NMRA must be given after this instruction.
6. Use the applicable alternative. See Subsection E of Section 30-9-10 NMSA 1978 for the definition of “position of authority”.
7. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — This instruction contains the essential elements of criminal sexual penetration of a child at least thirteen and less than eighteen years of age perpetrated through the use of coercion by a person in a position of authority. Only one instruction was prepared for this method of committing the crime of criminal sexual penetration because the term “force or coercion”, with its three definitions, has no application. The meaning of “coerce” in this offense is uniquely related to the status of the defendant. The defendant must occupy a position which enables that person to exercise undue influence over the victim and that influence must be the means of compelling submission to the penetration. The committee recognized that such coercion might take many forms but is less overtly threatening than physical force or threats.

See also the commentary to UJI 14-941 NMRA.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-957. Criminal sexual penetration; child under 13; essential elements.

For you to find the defendant guilty of criminal sexual penetration of a child under the age of thirteen (13) [as charged in Count _______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant
caused __________________ (name of victim) to engage in ___________.
[OR]
caused the insertion, to any extent, of a ______ into the ________ of __________________ (name of victim);
2. __________________ (name of victim) was a child under the age of thirteen (13);
3. This happened in New Mexico on or about the _____ day of _____________.

USE NOTE
1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name the sexual act or acts: i.e., “sexual intercourse”, “anal intercourse”, “cunnilingus” or “fellatio.” The applicable definition or definitions from Instruction 14-982 NMRA must be given after this instruction.
4. Identify the object used.
5. Name the part or parts of the body: i.e., “vagina”, “penis” or “anus”. The applicable definition or definitions from Instruction 14-981 NMRA must be given after this instruction.
6. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined”, must be given after this instruction.
[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — This instruction contains the essential elements of criminal sexual penetration of a child under 13. If the victim is under the age of 13 years, no force or coercion is necessary.

Mistake of the defendant as to the age of the child is not a defense. Perkins, Criminal Law, 168 (2d ed. 1969). Compare Sections 40A-9-3 and 40A-9-9 NMSA 1953 (repealed) (a reasonable belief that the child was 16 years of age or older is a defense to statutory rape and sexual assault, respectively).

See also the commentary to UJI 14-941 NMRA.
14-982. “Sex acts”: defined.

Sexual intercourse means the penetration of the vulva or vagina, the female sex organ, by the penis, the male sex organ, to any extent.

Cunnilingus means the touching of the edge or inside of the female sex organ with the lips or tongue.

Fellatio means the touching of the penis with the lips or tongue.

Anal intercourse means the penetration of the anus by the penis to any extent.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — The definition of “cunnilingus” and “fellatio” are dictionary definitions. The definition of “sexual intercourse” is an adaptation of the definition of “sexual intercourse.” The definition of “sexual intercourse” is the legal definition of that element of rape. See, e.g., State v. Harbert, 20 N.M. 179, 147 P. 280 (1915). It is not an accurate dictionary definition of “sexual intercourse” because the statute provides that no emission is required for criminal sexual penetration. 30-9-11 NMSA 1978.

The committee considered the question of whether the legislature intended to restrict the definitions of “cunnilingus” and “fellatio” to those acts involving penetration. It was concluded that the legislature used those terms in the sense set out in these definitions. In the Encyclopedia Britannica, Macropededia, v. 16, p. 610 (1975), the term “fellatio” is defined as oral stimulation of the penis, and the term “cunnilingus” is defined as oral stimulation of the vulva or clitoris.” In the Random House Dictionary of the English Language (unabridged ed., 1971), the term “fellatio” is defined as “oral stimulation of the penis, especially to orgasm,” and the term “cunnilingus” is defined as “act, practice, or technique of orally stimulating the female genitalia.” See also People v. Hunter, 158 C.A.2d 500, 322 P.2d 942 (1958), in which the term “cunnilingus” was defined as placing the mouth upon the genital organ, and the act was held to constitute a violation of a statute proscribing “oral copulation.”

In State v. Tafoya, 2010-NMCA-010, ¶ 52, 147 N.M. 602, 227 P.3d 92, the New Mexico Court of Appeals clarified that the definition of “sexual intercourse,” as used in the jury instructions for criminal sexual penetration, includes penetration of the vulva.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-1601. Larceny; essential elements.

For you to find the defendant guilty of larceny [as charged in Count __________][1], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant took and carried away2 (describe property), belonging to another, which had a market value3 [over $__________4];5

2. At the time he took this property, the defendant intended to permanently deprive the owner of it;

3. This happened in New Mexico on or about the day of __________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. See UJI 14-1603 if “asportation” is in issue.
3. See UJI 14-1602 for definition of market value. Use this bracketed provision for property other than money if the value is over $250. State whether the value of merchandise at issue is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.
4. If the charge is a second degree felony (over $20,000), use $20,000 in the blank. If the charge is a third degree felony (over $2,500), use $2,500 in the blank. If the charge is a fourth degree felony (over $500), use $500 in the blank. If the charge is a misdemeanor (over $250), use $250 in the blank.
5. This bracketed provision should not be used if: (a) the property is a firearm with a value of less than $2,500; (b) the property is livestock; or (c) if the property has a value of less than $250.00 or less. In these cases, value is not in issue.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction does not use the words “without consent” or the like to indicate that larceny involves a trespassory taking. See generally Perkins, Criminal Law 245-46 (2d ed. 1969). The committee believed that the element of trespassory taking was covered by this instruction together with the instruction on general criminal intent, UJI 14-141.

The statute provides that larceny of livestock is a third degree felony without regard to the value of the property. The constitutionality of this provision was upheld in State v. Pacheco, 81 N.M. 97, 463 P.2d 521 (Ct. App. 1969).

14-1610. Shoplifting; conversion of property without payment; essential elements.

For you to find the defendant guilty of shoplifting [as charged in Count __________][3], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [took possession7 of]3 [concealed] (describe merchandise);

2. This merchandise had a market value4 over $__________5;

3. This merchandise was offered for sale to the public in a store;[6]

4. At the time the defendant took this merchandise, the defendant intended to take it without paying for it;

5. This happened in New Mexico on or about the day of __________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use UJI 14-130 if “possession” is in issue.
3. Use applicable alternative.
4. See UJI 14-1602 for definition of market value. Use this bracketed provision for merchandise if the value is over $250. State whether the value of the merchandise at issue is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.
5. If the charge is a second degree felony (over $20,000), use $20,000 in the blank. If the charge is a third degree felony (over $2,500), use $2,500 in the blank. If the charge is a fourth degree felony (over $500), use $500 in the blank.

6. For use if there is an issue as to whether or not the items taken were merchandise in a store.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — UJI 14-1610 is to be used when the defendant is accused of taking possession of or concealing merchandise with the intent to convert it without paying for it. UJI 14-1611 is to be used when the defendant is accused of altering a price tag or other marking on the merchandise or transferring the merchandise from one container to another with the intent to deprive the merchant of all or part of its value.

Although the statute, in defining degrees of the offense, uses the term “value,” without specifying how value is to be determined, the statute is interpreted to mean “market value.” State v. Richardson, 89 N.M. 30, 546 P.2d 878 (Ct. App. 1976). See also commentary to UJI 14-1602.

Section 30-16-22 NMSA 1978 creates two presumptions in the offense of shoplifting. The first is the presumption that one who willfully conceals merchandise intends to convert it. The second is the presumption that merchandise found concealed on a person or in his belongings has been willfully concealed. If the state is relying on either of these presumptions, UJI 14-5061, Presumptions or inferences, should be given.

14-1611. Shoplifting; alteration of label or container; essential elements.

For you to find the defendant guilty of shoplifting [as charged in Count [_________]1], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant altered a label, price tag or marking upon ________________ (describe merchandise)2 [transferred (describe merchandise) from the container [in] [on]3 which it was displayed to another container];

2. The [altered] [transferred]2 merchandise had a market value4 [over $______5];

3. The [altered] [transferred]2 merchandise was offered for sale to the public in a store;6

4. The defendant intended to deprive __________________ (name of merchant) of all or some part of the value of this merchandise;

5. This happened in New Mexico on or about the ________ day of ______________, __________.

USE NOTE

1. Insert the count number if more than one count is charged.

2. Use applicable bracketed phrase.

3. If money is involved, state whether the amount charged is “over $20,000” or “over $2,500” or “over $500” or “over $250.”

4. See UJI 14-1602 for definition of “market value.”

5. Use this bracketed provision for property other than money if the value is over $250. State whether the value of the property at issue is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 less), do not use this bracketed provision.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


Fraudulent intent must exist at the time the defendant obtains the property or the crime is embezzlement. State v. Gregg, 83 N.M. 397, 492 P.2d 1260 (Ct. App.) cert. denied 83 N.M. 562, 494 P.2d 975 (1972).

“Fraudulent intent” and “fraudulently” are frequently defined as “with intent to defraud” or “with intent to cheat or deceive.” See e.g., State v. Probert, 19 N.M. 13, 140 P. 1108 (1914); State v. Harris, 313 S.W.2d 664 (Mo. 1958); People v. Leach, 168 Cal. App. 2d 463, 336 P.2d 573 (1959); Roderick v. State, 9 Md. App. 120, 262 A.2d 783 (1970); Clark v. State, 287 A.2d 660 appeal dismissed and cert. denied, 409 U.S. 812, 93 S.Ct. 139, 34 L.Ed. 2d 67 (Del. 1972). Perkins, supra. See also State v. Dozier, 88 NM. 32, 536 P.2d 1088 (Ct. App.) cert. denied, 88 N.M. 28, 536 P.2d 1084 (1975).
14-1641. Embezzlement; essential elements.

For you to find the defendant guilty of embezzlement [as charged in Count [____]]1, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was entrusted with [name of property] [made a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original];

2. The defendant converted this [value] [this money] [this property or money] to the defendant’s own use. “Converting something to one’s own use” means keeping another’s property rather than returning it, or using another’s property for one’s own purpose [rather than]2 [even though the property is eventually used] for the purpose authorized by the owner;

3. At the time the defendant converted [name of property or money], the defendant fraudulently intended to deprive the owner of the owner’s property. “Fraudulently intended” means intended to deceive or cheat;

4. This happened in New Mexico on or about the __________ day of [name of writing] [made a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original];

USE NOTE

1. Insert the count number if more than one count is charged.

2. Describe property. If money is involved, state the amount.

3. See UJJ 14-1602 for definition of “market value”.

4. Use this bracketed provision for property other than money if the value is over $250. State whether the value alleged to have been embezzled or converted is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.

5. Use the applicable bracketed phrase.

[As amended, effective March 15, 1995; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—See Section 30-16-8 NMSA 1978. Embezzlement, like larceny, is divided into degrees depending on the value of the property. See generally LaFave & Scott, Criminal Law 654 (1972). For the purpose of this crime, money has its face value, and the state need not prove that its value is something else. Territory v. Hale, 13 N.M. 181, 81 P. 583 (1905). The same rule applies to checks. State v. Peke, 70 N.M. 108, 371 P.2d 226 (1962).

In State v. Moss, 83 N.M. 42, 487 P.2d 1347 (Ct. App. 1971), the court held that the term “entrusted” had an ordinary meaning and need not be defined in the instructions. In State v. Archie, 1997-NMCA-058, ¶ 8-9, 123 N.M. 503, 943 P.2d 537, the court determined the term “use” applies when a person having possession of another’s property treats it as their own, whether the person uses it, sells it, or discards it; the details are less important than the interference.

In contrast to the intent to permanently deprive in larceny, this crime requires only intent to deprive the owner of his property, even temporarily. Archie, 1997-NMCA-058, ¶ 4; State v. Gonzales, 99 N.M. 734, 735, 663 P.2d 710, 711 (Ct. App. 1983); Moss, 83 N.M. at 43, 487 P.2d at 1348; State v. Prince, 52 N.M. 15, 18, 189 P.2d 993, 995 (1948). “Fraudulent intent” is defined in this instruction. See State v. Green, 116 N.M. 273, 278-79, 861 P.2d 954, 959-60 (1993).


[Committee revised, June 24, 1999; amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-1643. Forgery; essential elements.

For you to find the defendant guilty of forgery [as charged in Count [____]]1, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant2 [made up a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original];

2. At the time, the defendant intended to injure, deceive or cheat __________ (name of victim) or another;

3. The damage was over __________ ;

4. The writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting the title to real property;]

5. This happened in New Mexico on or about the __________ day of [name of writing] [made a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original];

USE NOTE

1. Insert the count number if more than one count is charged.

2. Use only the applicable alternative bracketed provisions.

3. For use if the damage was quantifiable and exceeds $2,500. If the damage was over $2,500, use “$2,500” in the blank. If the damage was over $20,000, use “$20,000” in the blank.

4. For use if the writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting the title to real property. If the type of writing is in issue, please add an instruction containing the relevant legal definition. See, e.g., Sections 45-1-201 and 46A-1-103 NMSA 1978.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


The four types of forgery listed in this instruction are derived from the following decisions: false writing - State v. Smith, 32 N.M. 191, 252 P. 1003 (1927), State v. Nation, 85 N.M. 291, 511 P.2d 777 (Ct. App. 1973); false signature - State v. Crouch, 75 N.M.

[14-1643. Forgery; essential elements. For you to find the defendant guilty of forgery [as charged in Count [____]]1, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime: 1. The defendant [made up a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original]; 2. At the time, the defendant intended to injure, deceive or cheat __________ (name of victim) or another; 3. The damage was over __________ ; 4. The writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting the title to real property; 5. This happened in New Mexico on or about the __________ day of [name of writing] [made a false __________ (name of writing) [made a false signature] [made a false endorsement] [changed a genuine __________ (name of writing) so that its effect was different from the original]; USE NOTE 1. Insert the count number if more than one count is charged. 2. Use only the applicable alternative bracketed provisions. 3. For use if the damage was quantifiable and exceeds $2,500. If the damage was over $2,500, use “$2,500” in the blank. If the damage was over $20,000, use “$20,000” in the blank. 4. For use if the writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting the title to real property. If the type of writing is in issue, please add an instruction containing the relevant legal definition. See, e.g., Sections 45-1-201 and 46A-1-103 NMSA 1978. [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]]
must determine the commercial law question as a matter of law.

A transfer, etc., which does not come within the commercial law definitions, the court of appeals has held that this crime requires an element of forgery. Since the writing must be forged, this instruction contains all of the elements of forgery. The instruction containing the relevant legal definition.

In dicta, the Committee was of the view that although the thief may not be convicted of both stealing and acquiring stolen property, he may restore the property to its owner should be treated as a defense rather than a negative “specific intent” element which must be proven by the state. Knowledge that the goods are stolen may be proven by inference from all of the facts and circumstances. See § 30-16-11 (2006). This is a general intent crime. See State v. Viscarra, 84 N.M. 217, 501 P.2d 261 (Ct. App. 1972). The committee concluded that the statutory provision “unless received, etc. with intent to restore the property to its owner” should be treated as a defense rather than a negative “specific intent” element which must be proven by the state. Knowledge that the goods are stolen may be proven by inference from all of the facts and circumstances. State v. Elam, 86 N.M. 595, 526 P.2d 189 (Ct. App. 1974).

In State v. Tapia, 89 N.M. 221, 549 P.2d 636 (Ct. App. 1976), it was held that a thief, convicted of larceny under Section 30-16-1 NMSA 1978, can also be convicted of receiving stolen property by disposing of it in violation of Section 30-16-11 NMSA 1978. In dicta, the Tapia decision also indicates that the thief may not be convicted of unlawfully retaining the stolen property. The committee was of the view that although the thief may not be convicted of both stealing and acquiring stolen property, he may be convicted of either offense.


14-1644. Issuing or transferring a forged writing; essential elements.

For you to find the defendant guilty of forgery [as charged in Count __________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant gave or delivered to [name of victim] a __________________ (name of writing) knowing it to be a false __________________ (name of writing) [have a false signature] [have a false endorsement] [have been changed so that its effect was different from the original or genuine] intending to injure, deceive or cheat __________________ (name of victim) or another;

[2. The damage was over ____________________];

3. The writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting title to real property;

4. This happened in New Mexico on or about the __________ day of ______________, __________.

USE NOTE

1. Insert the count number if more than one count is charged.

2. Use only applicable alternative bracketed provisions.

3. For use if the damage was quantifiable and exceeds $2,500. If the damage was over $2,500, use "$2,500" in the blank. If the damage was over $20,000, use "$20,000" in the blank.

4. For use if the writing was a will, codicil, trust instrument, deed, mortgage, lien, or any other instrument affecting title to real property. If the type of writing is in issue, please add an instruction containing the relevant legal definition. See, e.g., Sections 45-1-201, 46A-1-103 NMSA 1978.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—See NMSA 1978, § 30-16-11 (2006). This is a general intent crime. See State v. Viscarra, 84 N.M. 217, 501 P.2d 261 (Ct. App. 1972). The committee concluded that the statutory provision “unless received, etc. with intent to restore the property to its owner” should be treated as a defense rather than a negative “specific intent” element which must be proven by the state. Knowledge that the goods are stolen may be proven by inference from all of the facts and circumstances. State v. Elam, 86 N.M. 595, 526 P.2d 189 (Ct. App. 1974).

In State v. Tapia, 89 N.M. 221, 549 P.2d 636 (Ct. App. 1976), it was held that a thief, convicted of larceny under Section 30-16-1 NMSA 1978, can also be convicted of receiving stolen property by disposing of it in violation of Section 30-16-11 NMSA 1978. In dicta, the Tapia decision also indicates that the thief may not be convicted of unlawfully retaining the stolen property. The committee was of the view that although the thief may not be convicted of both stealing and acquiring stolen property, he may be convicted of either offense.

In State v. Bryant, 99 N.M. 149, 655 P.2d 161 (Ct. App. 1982),
14-1660. Unlawful taking of vehicle or motor vehicle; essential elements.

For you to find the defendant guilty of unlawfully taking a [vehicle] [motor vehicle]1 as charged in Count ______________, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant took a ____________________ (describe vehicle) without the owner’s consent;
2. This happened in New Mexico on or about the ______________ day of ______________, __________.

USE NOTE
1. Insert the applicable bracketed phrase.
2. Insert the count number if more than one count is charged.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—For a discussion of the elements of this crime, see State v. Austin, 80 N.M. 748, 461 P.2d 230 (Ct. App. 1969), and State v. Eckles, 79 N.M. 138, 441 P.2d 36 (1968). The “intentional” element of this crime was not included in this instruction because it would duplicate UJI 14-141.

The “intentional” element of this crime was not included in this instruction because it would duplicate UJI 14-141. See NMSA 1978, §§ 66-1-4.11(H) (2007) and 66-1-4.19(B) (2005) (for the definitions of “motor vehicle” and “vehicle”).

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-1689. Fraudulent use of credit cards obtained in violation of law; essential elements.

For you to find the defendant guilty of fraudulent use of a credit card [as charged in Count ______________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant used a credit card2 to obtain __________________________ (describe money, goods or services obtained with the credit card);
2. These goods or services had a market value3 [over __________________________];
3. The defendant intended to deceive or cheat;
4. [The credit card was taken from the person, possession, custody or control of another with the intent to permanently deprive the cardholder of possession of the credit card]; or [The credit card was stolen, and possession was transferred to another person who intended to use, sell or transfer the credit card]; or [The credit card was lost, mislaid or delivered under a mistake as to the identity or address of the cardholder, and was retained by someone with the intent to use, sell or transfer the credit card to another person other than the cardholder or [issuer]]; or [The credit card was given to someone other than the cardholder with the intent to deceive or cheat]; or [The credit card was received by someone who intended to deceive or cheat]; or [The credit card was acquired by the making of a false statement about identity or financial condition]; or [The credit card was forged with the intent to deceive or cheat]; or [The credit card was signed by someone other than the cardholder with the intent to deceive or cheat];
5. This happened in New Mexico on or about the ______________ day of ______________, __________.

USE NOTE
1. Insert the applicable bracketed phrase.
2. Insert the count number if more than one count is charged.
3. If the jury requests a definition of “credit card,” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.

Committee Commentary.—See UJI 14-1602 for definition of “market value.”

4. Use this bracketed provision for goods and services if the value is over $250.

5. Use only the applicable bracketed phrase or phrases.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

1. The defendant took a ____________________ (describe vehicle) without the owner’s consent;
2. This happened in New Mexico on or about the ______________ day of ______________, __________.

USE NOTE
1. Insert the applicable bracketed phrase.
2. Insert the count number if more than one count is charged.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]
or violations shall constitute a felony. . .
Idaho Code Section 18-3119.

In Boyenger, the defendant was charged under the aggregation clause, and he appealed alleging that this provision was unconstitutional. The court upheld the statute stating “the distinction between felony and misdemeanor based on value of goods obtained is a rational distinction based on the police power of the state and therefore is not a violation of equal protection of the laws.” State v. Boyenger, supra, at 1324. This is analogous to our Section 30-16-33B which differentiates between a third and fourth degree felony based on the value of things obtained by the fraudulent use of credit cards. Therefore, the committee is of the opinion, using the reasoning in State v. Salazar; supra, and State v. Boyenger; supra, that if an individual’s fraudulent use of a credit card results in obtaining goods of a value less than $300.00, each individual use should be charged under the applicable subparagraph of Section 30-16-33A. If a single use or the aggregation of amounts is over $300.00, the charge should be brought under Subsection B. It would seem that if an individual made two separate charges of $350.00 each, he could only be charged with one violation of Subsection B, unless those transactions occurred in a time span of over six months apart.

The committee is of the opinion that more than one of the alternatives set forth in Element 4 may be given. See UJI 14-1686.

14-1690. Fraudulent use of invalid, expired or revoked credit card; essential elements.

For you to find the defendant guilty of fraudulent use of [an invalid] [an expired] [a revoked] credit card [as charged in Count _______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant used a credit card to obtain (describe money, goods or services obtained with the credit card);
2. These goods or services had a value [over $________].
3. At the time the defendant used the credit card, the credit card [was invalid] [had expired] [had been revoked];
4. The defendant intended to deceive or cheat;
5. This happened in New Mexico on or about the _______ day of ______________, __________.

USE NOTE
1. Use applicable alternative.
2. Insert the count number if more than one count is charged.
3. If the jury requests a definition of “credit card,” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.
4. See UJI 14-1602 NMRA for a definition of “market value.” Use this bracketed provision for goods and services if the value is over $250. State whether the value of the merchandise is over $250, “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.

As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.

Committee Commentary. — For general information on credit card crimes, see committee commentary to UJI 14-1680 NMRA. Also see commentary to UJI 14-1689 NMRA for a discussion of fraudulent use of credit cards.

14-1691. Fraudulent use of credit card by person representing that he is the cardholder; essential elements.

For you to find the defendant guilty of fraudulent use of a credit card by representing that he was the cardholder [as charged in Count _______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant used a credit card to obtain (describe money, goods or services obtained with the credit card);
2. These goods or services had a value [over $________].
3. The defendant was not the cardholder;
4. The defendant represented by words or conduct [that he was the cardholder] [that he was authorized by the cardholder to use the credit card];
5. The defendant intended to deceive or cheat;

This happened in New Mexico on or about the _______ day of ______________, __________.

USE NOTE
1. Insert the count number if more than one count is charged.
2. If the jury requests a definition of “credit card” or “cardholder,” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.
3. Use this bracketed provision for goods and services if the value is over $250. State whether the value of the merchandise is over $250, “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.
4. Use applicable bracketed phrase.

As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.

Committee Commentary. — For general information on credit card crimes, see committee commentary to UJI 14-1680 NMRA. Also see commentary to UJI 14-1689 NMRA for a discussion of fraudulent use of credit cards.

14-1692. Fraudulent use of credit card without consent of the cardholder; essential elements.

For you to find the defendant guilty of fraudulent use of a credit card without consent, [as charged in Count _______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant used a credit card to obtain (describe money, goods or services obtained with the credit card);
2. These goods or services had a value [over $________].
3. The defendant used the credit card without the cardholder’s consent;
4. The defendant intended to deceive or cheat;
5. This happened in New Mexico on or about the _______ day of ______________, __________.

USE NOTE
1. Insert the count number if more than one count is charged.
2. If the jury requests a definition of “credit card” or “cardholder,” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.
3. Use this bracketed provision for goods and services if the value is over $250. State whether the value of the merchandise
at issue is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**Committee Commentary.** — For general information on credit card crimes, see committee commentary to UJI 14-1680 NMRA. Also see commentary to UJI 14-1689 NMRA for a discussion of fraudulent use of credit cards.

**14-1693. Fraudulent acts by merchants or their employees; fraudulently furnishing something of value; essential elements.**

For you to find the defendant guilty of fraudulently furnishing something of value [as charged in Count [___________] [it, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. In his capacity as [a merchant] [an employee of [___________]], the defendant [furnished] [allowed to be furnished] [___________] (describe money, goods or services furnished);
2. These goods or services had a market value [over [___________]] [___________];
3. The defendant accepted for payment a credit card [over [___________]] [___________];
4. The defendant intended to deceive or cheat;
5. This happened in New Mexico on or about the ______ day of ____________ , __________ .

1. Insert the count number if more than one count is charged.
2. If the jury requests a definition of “merchant” or “credit card” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.
3. Use applicable bracketed phrase.
4. See UJI 14-1602 NMRA for definition of “market value.”
5. Use this bracketed provision for goods and services if the value is over $250. State whether the value of the merchandise at issue is “over $250,” “over $500,” “over $2,500,” or “over $20,000.” If the charge is a petty misdemeanor ($250 or less), do not use this bracketed provision.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**Committee Commentary.** — For general information on credit card crimes, see committee commentary to UJI 14-1680 NMRA.

Section 30-16-34A NMSA 1978 deals with the fraudulent furnishing of something of value upon presentation of a credit card which in some way is invalid. Section 30-16-34B NMSA 1978 deals with the situation where a credit slip is filled out, but no merchandise is actually furnished.

In the former situation there seems to be an assumption of collusion between the merchant or employee and the individual presenting the credit card. An example of an offense under Subsection B would be when the merchant or employee accepts a credit card for a valid purchase, and makes two credit slips; the customer signs one not knowing about the second and the merchant or employee signs the cardholder’s name to the second credit slip and pockets the money from the alleged sale.

For a discussion on the aggregation of amounts provided for in this section, see committee commentary to UJI 14-168 NMRA.

**See UJI 14-1640 NMRA for a review of the elements of fraud.**

**14-1694. Fraudulent acts by merchants or their employees; representing that something of value has been furnished; essential elements.**

For you to find the defendant guilty of fraudulently representing that something of value has been furnished [as charged in Count [___________]], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. In the defendant’s capacity as [a merchant] [an employee of [___________]], the defendant falsely represented in writing to [_________________________] that he furnished [___________] (issuer or participating party) [___________] (describe money, goods or services allegedly furnished) on a credit card [of the issuer [___________]], which had a market value [of [___________]];  
2. The defendant [did not furnish such goods or services] [furnished goods or services of a market value only of [___________]];  
3. The difference between the represented market value and the actual market value is [___________];  
4. The defendant intended to deceive or cheat; and  
5. This happened in New Mexico on or about the ______ day of ____________, __________ .

1. Insert the count number if more than one count is charged.
2. If the jury requests a definition of “merchant,” “credit card,” “issuer” or “participating party,” the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.
3. Use applicable alternative.
4. See UJI 14-1602 for definition of “market value.”
5. Insert the applicable represented or actual value.

1. If the charge is a second degree felony (over $20,000), use “over $20,000” in the blank. If the charge is a third degree felony (over $2,500), use “over $2,500” in the blank. If the charge is a fourth degree felony (over $500), use “over $500” in the blank. If the charge is a misdemeanor (over $250), use “over $250” in the blank.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**Committee Commentary.** — See NMSA 1978, § 30-16-34(C) (2006). For general information on credit card crimes, see committee commentary to UJI 14-1680. Also see commentary to UJI 14-1673 for a discussion of fraudulent acts by merchants or their employees.

**See UJI 14-1640 for a review of the elements of fraud.**

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**14-1701. Arson; with purpose of destroying or damaging property; essential elements.**

For you to find the defendant guilty of arson [as charged in Count [___________]], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intentionally or maliciously [started a fire] [or] [caused an explosion];
2. The defendant did so with the intent to destroy or damage [___________] (identify property), which belonged to another and which had a [market] [value of over $__________];  
3. This happened in New Mexico on or about the _______ day of ____________, __________ .
USE NOTE
1. Insert the count number if more than one count is charged.
2. Use applicable bracketed phrase.
3. Unless the property has no market value, this bracketed word should be used and UJI 14-1707 also given. If the charge is a second degree felony (over $20,000), use "$20,000" in the blank. If the charge is a third degree felony (over $2,500), use "$2,500" in the blank. If the charge is a fourth degree felony (over $500), use "$500" in the blank. If the charge is a misdemeanor (over $250), use "$250" in the blank.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See § 30-17-5 NMSA 1978. The prior statute, N.M. Laws 1963, ch. 303, § 17-5, which made criminal the “intentional damaging by any explosive substance or setting fire to” certain structures, was held unconstitutional in State v. Dennis, 80 N.M. 262, 454 P.2d 276 (Ct. App. 1969). Since both the New Mexico statute prior to 1963 (N.M. Laws 1927, ch. 61, § 1) and common-law arson required a willful and malicious state of mind, the court concluded that the legislature intended to eliminate that element. The court held that to eliminate this mental element was not a reasonable exercise of the police power by the legislature since the statute then made criminal what could be a burning for innocent and beneficial purposes.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-1702. Arson; with purpose of collecting insurance; essential elements.

For you to find the defendant guilty of arson [as charged in Count ________]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intentionally or maliciously [started a fire]² [or] [caused an explosion]² with the intent to destroy or damage ___________ (identify property) which had a [market]³ value of over $______;
2. The defendant did so for the purpose of collecting insurance for the loss;
3. This happened in New Mexico on or about the ________ day of ______________, ________.

1. Insert the count number if more than one count is charged.
2. Use the applicable bracketed phrase.
3. Unless the property has no market value, this bracketed word should be used and UJI 14-1707 NMRA must also be given. If the charge is a second degree felony (over $20,000), use "$20,000" in the blank. If the charge is a third degree felony (over $2,500), use "$2,500" in the blank. If the charge is a fourth degree felony (over $500), use "$500" in the blank. If the charge is a misdemeanor (over $250), use "$250" in the blank.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See § 30-17-5A NMSA 1978. See the commentary to UJI 14-1701 NMRA. Arson with intent to defraud an insurer is a statutory addition to common-law arson.

This type of arson is divided into degrees depending on the value of the property, not on the amount of the insurance. This arson applies to all types of property and is not limited to that “of another.”

14-2201. Aggravated assault on a peace officer; attempted battery with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a peace officer [as charged in Count ________]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant tried to touch or apply force to ______________________ (name of peace officer) by ______________________ (name of weapon) on or about the ________ day of __________________, ________.[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

2. At the time, ______________________ (name of peace officer) was a peace officer and was performing duties of a peace officer;
3. The defendant knew ______________________ (name of peace officer) was a peace officer;
4. The defendant’s conduct [threatened the safety of ______________________ (name of peace officer);]
   [or]² challenged the authority of ______________________ (name of peace officer);
5. The defendant acted in a rude, insolent or angry manner;
6. The defendant intended to touch or apply force to ______________________ (name of peace officer) by ______________________ (name of weapon). The defendant used a ______________________ (name of object) [deadly weapon. The defendant used a ______________________ (name of object)]. A ______________________ (name of object) is a deadly weapon only if you find that a ______________________ (name of object), when used as a weapon, could cause death or great bodily harm]³;
7. This happened in New Mexico on or about the ________ day of __________________, ________.

1. Insert the count number if more than one count is charged.
2. Use ordinary language to describe the touching or application of force.
3. Use applicable bracketed phrase.
4. Use only applicable alternative or alternatives.
5. In State v. Padilla, 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be “unlawful” the state must prove “injury or conduct that threatens an officer’s safety or meaningfully challenges his or her authority.” If any other issue of unlawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5183 to UJI 14-5184 NMRA.
6. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.
7. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
8. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.
9. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978 and UJI 14-2216 NMRA. If there is an issue as
to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA. [Adopted effective October 1, 1976; UJI Criminal Rule 22.00 NMSA 1978; UJI 14-2201 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction was amended in 2009 to be consistent with **State v. Nozie,** 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. NMSA 1978, § 30-22-22(A)(1)(1971) provides that the peace officer must be in the lawful discharge of duty at the time of the assault. If the officer was attempting to make an arrest while not in the lawful discharge of duty, an appropriate defense instruction for “resisting an unlawful arrest” must be prepared. See **State v. Doe,** 92 N.M. 100, 583 P.2d 464 (1978) for a discussion of “lawful discharge of duties.” [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**14-2202. Aggravated assault on a peace officer; threat or menacing conduct with a deadly weapon; essential elements.**

For you to find the defendant guilty of aggravated assault on a peace officer by use of a deadly weapon [as charged in Count ____________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant __________________ (describe unlawful act, threat or menacing conduct);
2. At the time, __________________ (name of peace officer) was a peace officer and was performing duties of a peace officer;
3. The defendant knew __________________ (name of peace officer) was a peace officer;
4. The defendant’s conduct caused __________________ (name of peace officer) to believe the defendant was about to intrude on __________________ (name of peace officer) bodily integrity or personal safety by touching or applying force to __________________ (name of peace officer) in a rude, insolent or angry manner;
5. The defendant’s conduct __________________ (threatened the safety of __________________ (name of peace officer);)
   [or] __________________ (challenged the authority of __________________ (name of peace officer);]
6. A reasonable person in the same circumstances as __________________ (name of peace officer) would have had the same belief;
7. The defendant used a __________________ (deadly weapon). A __________________ (name of object) is a deadly weapon only if you find that a __________________ (name of object), when used as a weapon, could cause death or great bodily harm];
8. This happened in New Mexico on or about the ____________ day of ____________, ____________.

**USE NOTE**

1. If the evidence supports both this theory of assault as well as that found in UJI 14-2201 NMRA, then UJI 14-2203 NMRA should be given instead of this instruction.
2. Insert the count number if more than one count is charged.
3. In **State v. Padilla,** 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be “unlawful” the state must prove “injury or conduct that threatens an officer’s safety or meaningfully challenges his or her authority.” If any other issue of unlawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “unlawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
4. Use only applicable alternative or alternatives.
5. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.
6. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
7. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.
8. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA. [Adopted, effective October 1, 1976; UJI Criminal Rule 22.01 NMSA 1978; UJI 14-2202 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**Committee Commentary.** — See committee commentary for UJI 14-2201 NMRA. This instruction was amended in 2009 to be consistent with **State v. Nozie,** 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**14-2203. Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with a deadly weapon; essential elements.**

For you to find the defendant guilty of aggravated assault on a peace officer by use of a deadly weapon [as charged in Count ____________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant tried to touch or apply force to __________________ (name of peace officer) by __________________;  
2. At the time, __________________ (name of peace officer) was a peace officer and was performing duties of a peace officer;
3. The defendant knew ______________ (name of peace officer) was a peace officer;
4. The defendant acted in a rude, insolent or angry manner;
5. The defendant intended to touch or apply force to ____________________ (name of peace officer) by ________________1;
6. The defendant’s conduct caused ____________________ (name of peace officer) to believe the defendant was about to intrude on ____________________’s (name of peace officer) bodily integrity or personal safety by touching or applying force to ____________________ (name of peace officer) in a rude, insolent or angry manner;
7. The defendant used a ____________________ (deadly weapon. The defendant used a ____________________ (name of object). A ____________________ (name of object) is a deadly weapon only if you find that a ____________________ (name of object), when used as a weapon, could cause death or great bodily harm);
8. This happened in New Mexico on or about the __________ day of __________, 20__.

USE NOTE
1. This instruction combines the elements of UJI 14-2201 and 14-2202 NMRA. If the evidence supports both of the theories of assault set forth in UJI 14-2201 and 14-2202 NMRA, use this instruction.
2. Insert the count number if more than one count is charged.
3. Use ordinary language to describe the touching or application of force.
4. In State v. Padilla, 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be “unlawful” the state must prove “injury or conduct that threatens an officer’s safety or meaningfully challenges his or her authority.” If any other issue of unlawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
5. Use only applicable alternative or alternatives.
6. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.
7. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
8. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.

9. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.02 NMSA 1978; UJI 14-2203 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See committee commentary for UJI 14-2201 NMRA. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2204. Aggravated assault on a peace officer; attempted battery with intent to commit a felony; essential elements.

For you to find the defendant guilty of aggravated assault on a peace officer with intent to commit __________1 as charged in Count __________2, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
1. The defendant tried to touch or apply force to ____________________ (name of peace officer) by ________________3;
2. At the time, ____________________ (name of peace officer) was a peace officer and was performing duties of a peace officer;
3. The defendant knew ____________________ (name of peace officer) was a peace officer;
4. The defendant acted in a rude, insolent or angry manner;
5. The defendant intended to touch or apply force to ____________________ (name of peace officer) by ________________3;
6. The defendant intended to commit the crime of ____________________1;
7. This happened in New Mexico on or about the __________ day of __________, 20__.

USE NOTE
1. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction.
2. Insert the count number if more than one count is charged.
3. Use ordinary language to describe the touching or application of force.
4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
5. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was
within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.03 NMSA 1978; UJI 14-2204 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See NMSA 1978, § 30-22-22(A) (3) (1971). This crime includes the elements of an aggravated assault with intent to commit a felony. See comment on UJI 14-308, 14-309, and 14-310 NMRA. See also commentary to UJI 14-2201, 14-2202, and 14-2203 NMRA.

This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M.142, 207 P.3d 1119. [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2206. Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with intent to commit a felony; essential elements.

For you to find the defendant guilty of aggravated assault on a peace officer with intent to commit __________________ 1 [as charged in Count __________]; the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant __________________ (name of peace officer) was a peace officer with intent to commit __________________ 1 [as charged in Count __________]; the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

2. The defendant __________________ (name of peace officer) was a peace officer;
3. The defendant knew __________________ (name of peace officer) was a peace officer;
4. The defendant’s conduct caused __________________ (name of peace officer) to believe the defendant was about to intrude on __________________ (name of peace officer)’s bodily integrity or personal safety by touching or applying force to __________________ (name of peace officer) in a rude, insolent or angry manner2;
5. A reasonable person in the same circumstances as __________________ (name of peace officer) would have had the same belief;
6. The defendant intended to commit the crime of __________________ 1;
7. This happened in New Mexico on or about the ________ day of ______________, ________.

USE NOTE

1. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction.
2. Insert the count number if more than one count is charged.
3. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
4. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was
The essential elements of each felony must also be given immediately following this instruction.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.

6. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.05 NMSA 1978; UJI 14-2206 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—See committee commentary for UJI 14-2204 NMRA. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2207. Aggravated assault on a peace officer; attempted battery with intent to commit a violent felony; essential elements.

For you to find the defendant guilty of aggravated assault on a peace officer with intent to kill [as charged in Count __________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant __________________ (describe unlawful act, threat or menacing conduct);

2. At the time, ____________________ (name of peace officer) was a peace officer and was performing duties of a peace officer;

3. The defendant knew ____________________ (name of peace officer) was a peace officer;

4. The defendant’s conduct caused ____________________ (name of peace officer) to believe the defendant was about to intrude on ____________________’s (name of peace officer) bodily integrity or personal safety by touching or applying force to ____________________ (name of peace officer) in a rude, insolent or angry manner;

5. A reasonable person in the same circumstances as ____________________ (name of peace officer) would have had the same belief;

6. The defendant intended to kill ____________________ (name of peace officer);

7. This happened in New Mexico on or about the ______ day of ____________, __________.

USE NOTE

Insert the count number if more than one count is charged.

2. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.

3. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines...
“peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.07 NMSA 1978; UJI 14-2208 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—See Committee Commentary for UJI 14-2207 NMRA. See also UJI 14-312 NMRA for aggravated assault by threat or menacing conduct with intent to commit a violent felony. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2209. Aggravated assault on a peace officer; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.¹

For you to find the defendant guilty of aggravated assault on a peace officer with intent to kill [as charged in Count ________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant tried to touch or apply force to ___________________ (name of peace officer) by ___________________;¹

2. The defendant intended to touch or apply force to ___________________ (name of peace officer) by ___________________;¹

3. At the time, ___________________ (name of peace officer) was a peace officer;¹

4. The defendant knew ___________________ (name of peace officer) was a peace officer;

5. The defendant acted in a rude, insolent or angry manner;¹

OR

1. The defendant ___________________ (describe unlawful act, threat or menacing conduct);

2. At the time, ___________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;¹

3. The defendant knew ___________________ (name of peace officer) was a peace officer;

4. The defendant’s conduct caused ___________________ (name of peace officer) to believe the defendant was about to intrude on ___________________’s (name of peace officer) bodily integrity or personal safety by touching or applying force to ___________________ (name of peace officer) in a rude, insolent or angry manner;¹

5. A reasonable person in the same circumstances as ___________________ (name of peace officer) would have had the same belief;

AND

6. The defendant intended to kill ___________________ (name of peace officer);

7. This happened in New Mexico on or about the __________ day of __________, ________.

¹ Insert the count number if more than one count is charged.

¹ Use ordinary language to describe the touching or application of force.

¹ If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.

5. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.08 NMSA 1978; UJI 14-2209 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary.—See committee commentary for UJI 14-2207 NMRA. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2210. Aggravated assault in disguise on a peace officer; essential elements.

For you to find the defendant guilty of aggravated assault in disguise on a peace officer [as charged in Count ________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant ___________________ (describe unlawful act, threat or menacing conduct);

2. At the time, ___________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;

3. The defendant knew ___________________ (name of peace officer) was a peace officer;

4. The defendant’s conduct caused ___________________ (name of peace officer) to believe the defendant was about to intrude on ___________________’s (name of peace officer) bodily integrity or personal safety by touching or applying force to ___________________ (name of peace officer) in a rude, insolent or angry manner;

5. A reasonable person in the same circumstances as ___________________ (name of peace officer) would have had the same belief;

6. At the time ___________________ (name of defendant) was [wearing a ___________________] [or] [disguised] for the purpose of concealing ___________________’s (name of defendant) identity;

7. This happened in New Mexico on or about the __________ day of __________, ________.

1. Insert the count number if more than one count is charged.

2. If the “unlawfulness” of the act is in issue, add unlawfulness
as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.

3. Identify the mask, hood, robe or other covering upon the face, head or body.

4. Use either or both alternatives.

5. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the victim was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.09 NMSA 1978; UJI 14-2210 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — See NMSA 1978, § 30-22-22(A) (2) (1971). This crime includes the elements of regular aggravated assault in disguise. See UJI 14-307 NMRA and commentary. See also commentary to UJI 14-2201 NMRA, UJI 14-2202 NMRA, and UJI 14-2203 NMRA. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2211. Battery upon a peace officer; essential elements.

For you to find the defendant guilty of a battery upon a peace officer [as charged in Count ________, ________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intentionally [and unlawfully] touched or applied force to ______________________ (name of peace officer) by ______________________;

2. The defendant knew ______________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;

3. The defendant’s conduct caused an actual injury to ______________________ (name of peace officer);

4. [an actual threat to the safety of ______________________ (name of peace officer)];

5. [a meaningful challenge to the authority of ______________________ (name of peace officer)];

6. This happened on New Mexico on or about the ______ day of __________, 20__.

USE NOTE

Insert the count number if more than one count is charged.

2. The bracketed language is given if an issue is raised as to the lawfulness of the battery. In State v. Padilla, 1996-NMSC-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be “unlawful” the state must prove “injury or conduct that threatens an officer’s safety or meaningfully challenges his or her authority.”

If any other issue of unlawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA. See also State v. Jones, 2000-NMCA-047, ¶ 1, 129 N.M. 165, 3 P.3d 142, cert. denied, 129 N.M. 207, 4 P.3d 35.

Use ordinary language to describe the touching or application of force.

Use only applicable alternative or alternatives.

5. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.10 NMSA 1978; UJI 14-2211 SCRA; as amended, effective January 15, 1998; November 1, 2001; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2212. Aggravated battery on a peace officer with a deadly weapon; essential elements.

For you to find the defendant guilty of aggravated battery on a peace officer with a deadly weapon [as charged in Count ________, ________], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [unlawfully] touched or applied force to ______________________ (name of peace officer) by ______________________. with a ______________________ (name of object) is a deadly weapon. A ______________________ (name of object) is a deadly weapon only if you find that a ______________________ (name of object) could cause death or great bodily harm; when used as a weapon, could cause death or great bodily harm; when used as a weapon, could cause death or great bodily harm; when used as a weapon, could cause death or great bodily harm; when used as a weapon, could cause death or great bodily harm;

2. At the time, ______________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;

3. The defendant knew ______________________ (name of peace officer) was a peace officer;
The state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [unlawfully] touched or applied force to ________________________ (name of peace officer) by
   3.

2. At the time, ________________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;

3. The defendant knew ________________________ (name of peace officer) was a peace officer;

4. The defendant’s conduct [caused injury to ________________________ (name of peace officer)];
   [or]
   [threatened the safety of ________________________ (name of peace officer)];
   [or]
   [challenged the authority of ________________________ (name of peace officer)];

5. The defendant intended to injure ________________________ (name of peace officer);

6. The defendant [caused great bodily harm] to ________________________ (name of peace officer);
   [or]
   [acted in a way that would likely result in death or great bodily harm] to ________________________ (name of peace officer);

7. This happened in New Mexico on or about the ______ day of ______________, __________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. The bracketed language is given if an issue is raised as to the lawfulness of the battery. If the issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
3. Use ordinary language to describe the touching or application of force.
4. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Subsection B of Section 30-1-12 NMSA 1978.
5. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
6. This alternative is given only if the object used is not specifically listed in Subsection B of Section 30-1-12 NMSA 1978.
7. Use only applicable alternative or alternatives.

8. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

   [Adopted, effective October 1, 1976; UJI Criminal Rule 22.11 NMSA 1978; UJI 14-2212 SCRA; as amended, effective January 15, 1998; February 1, 2000; November 1, 2001; as amended by Supreme Court Order No. 88-3800-60, effective February 2, 2009; by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction was revised in 1999 to address the issue raised in State v. Montano, 1999-NMCA-023, 126 N.M. 609, 973 P.2d 861 and State v. Bonham, 1998-NMCA-178, 126 N.M. 382, 970 P.2d 154. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

   [As amended by Supreme Court Order No. 08-8300-60, effective February 2, 2009; by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2213. Aggravated battery on a peace officer; great bodily harm; essential elements.

For you to find the defendant guilty of aggravated battery with great bodily harm on a peace officer [as charged in Count ______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant unlawfully touched or applied force to ________________________ (name of peace officer) by
   3.

2. At the time, ________________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;

3. The defendant knew ________________________ (name of peace officer) was a peace officer;

4. The defendant’s conduct [caused injury to ________________________ (name of peace officer)];
   [or]
   [threatened the safety of ________________________ (name of peace officer)];
   [or]
   [challenged the authority of ________________________ (name of peace officer)];

5. The defendant intended to injure ________________________ (name of peace officer);

6. The defendant [caused great bodily harm] to ________________________ (name of peace officer);
   [or]
   [acted in a way that would likely result in death or great bodily harm] to ________________________ (name of peace officer);

7. This happened in New Mexico on or about the ______ day of ______________, __________.

USE NOTE

1. Insert the count number if more than one count is charged.
2. The bracketed language is given if an issue is raised as to the lawfulness of the battery. If the issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
3. Use ordinary language to describe the touching or application of force.
4. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Subsection B of Section 30-1-12 NMSA 1978.
5. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
6. This alternative is given only if the object used is not specifically listed in Subsection B of Section 30-1-12 NMSA 1978.
7. Use only applicable alternative or alternatives.

8. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

   [Adopted, effective October 1, 1976; UJI Criminal Rule 22.11 NMSA 1978; UJI 14-2212 SCRA; as amended, effective January 15, 1998; February 1, 2000; November 1, 2001; as amended by Supreme Court Order No. 88-3800-60, effective February 2, 2009; by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction was revised in 1999 to address the issue raised in State v. Montano, 1999-NMCA-023, 126 N.M. 609, 973 P.2d 861 and State v. Bonham, 1998-NMCA-178, 126 N.M. 382, 970 P.2d 154. This instruction was amended in 2009 to be consistent with State v. Nozie, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

   [As amended by Supreme Court Order No. 08-8300-60, effective February 2, 2009; by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2213. Aggravated battery on a peace officer; great bodily harm; essential elements.

For you to find the defendant guilty of aggravated battery with great bodily harm on a peace officer [as charged in Count ______], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
14-2214. Aggravated battery on a peace officer; without great bodily harm; essential elements.

For you to find the defendant guilty of aggravated battery on a peace officer without great bodily harm [as charged in Count ________]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [unlawfully]² touched or applied force to ________________________ (name of peace officer) by ________________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;³
2. At the time, ________________________ (name of peace officer) was a peace officer and was performing the duties of a peace officer;³
3. The defendant knew ________________________ (name of peace officer) was a peace officer;
4. The defendant’s conduct [caused injury to ________________________ (name of peace officer)]; [or]⁴ [threatened the safety of ________________________ (name of peace officer)]; [or]⁴ [challenged the authority of ________________________ (name of peace officer)];
5. The defendant intended to injure ________________________ (name of peace officer); ⁴
6. ________________________’s (name of peace officer) injury was not likely to cause death or great bodily harm⁵;
7. The defendant caused ________________________ (name of peace officer) [painful temporary disfigurement] [or]⁴ [a temporary loss or impairment of the use of ________________________ (name of organ or member of the body)];
8. This happened in New Mexico on or about the ________________________ day of ________________________.

USE NOTE
1. Insert the count number if more than one count is charged.
2. The bracketed language is given if an issue is raised as to the lawfulness of the battery. If the issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
3. Use ordinary language to describe the touching or application of force.
4. Use only the applicable bracketed element established by the evidence.
5. UJI 14-131 NMRA, the definition of “great bodily harm” must be given if this alternative is used.
6. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into UJIs 14-2201 NMRA to 14-2215 NMRA. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2216. “Peace officer”; defined.¹

A “peace officer” is any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

USE NOTE
1. The definition of “peace officer” is taken from Subsection C of Section 30-1-12 NMSA 1978.

[Adopted, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into UJIs 14-2201 NMRA to 14-2215 NMRA. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2801. Attempt to commit a felony; essential elements.

For you to find the defendant guilty of an attempt to commit the crime of ________________________ [as charged in Count ________]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [unlawfully]² began to do an act which constituted a substantial step in the commission of the crime of ________________________ (name of peace officer) but failed to commit the crime;
2. ________________________ but failed to commit the crime;
3. ________________________ but failed to commit the crime;
4. ________________________ but failed to commit the crime;
5. ________________________ but failed to commit the crime;
6. ________________________ but failed to commit the crime;
7. ________________________ but failed to commit the crime;
8. ________________________ but failed to commit the crime.

This happened in New Mexico on or about the ________ day of ________________________.

USE NOTE
1. Insert the name of the felony. A separate one of these instructions is required for each of such felonies. The essential elements of the felony must be given immediately following this instruction, unless they are set out in an instruction dealing with the completed offense.
2. Insert the count number if more than one count is charged.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]


This instruction sets forth the essential elements of an attempt to commit a felony. The instruction should be given only when there is sufficient evidence to establish an attempted crime which failed to be completed. In State v. Andrade, 82 N.M. 543, 484 P.2d 763 (Ct. App. 1971), cert. denied, 82 N.M. 534, 484 P.2d 754 (1971), the court rejected the defendant’s claim that a jury should always be instructed on attempt as a lesser offense, stating that when there is no evidence of failure to complete the crime such an instruction presents a false issue.

The evidence must establish overt acts which show the intent to commit the felony. See, e.g., State v. Trejo, 83 N.M. 511, 494 P.2d 173 (Ct. App. 1972) (attempted anal intercourse); State v. Lopez, 81 N.M. 107, 464 P.2d 23 (Ct. App. 1969), cert. denied,
Do you unanimously find beyond a reasonable doubt that the defendant inflicted physical injury upon __________________?

______ (Yes or No)

FOREPERSON

Do you unanimously find beyond a reasonable doubt that the defendant committed a sexual offense upon __________________?

______ (Yes or No)

FOREPERSON

1. This instruction is to be used if there is an issue as to whether the defendant voluntarily freed the victim in a safe place or as to whether the defendant inflicted physical injury on the victim or as to whether the defendant committed a sexual offense upon the victim. Kidnapping is a second degree offense unless the state meets its burden under Section 30-4-1(B) of proving that the defendant did not voluntarily free the victim in a safe place or inflicted physical injury or a sexual offense upon the victim. The defendant may be found guilty of first degree kidnapping if the jury answers any or all of the above questions, “yes.” If none of the questions is answered “yes,” the defendant is guilty of second degree kidnapping.

   Insert the count number if more than one count is charged.

3. Use applicable alternative or alternatives.

4. For use if more than one question is given to the jury.

5. Unless the court has instructed on the essential elements of the sexual offense, these elements must be given in a separate instruction, generally worded as follows: “For you to find that the defendant committed ________________, the state must prove to your satisfaction beyond a reasonable doubt that the defendant committed a sexual offense upon __________________.” (Add elements of the sexual offense unless they are set out in another essential elements instruction.) [Effective for crimes occurring after February 3, 2004.]

   [Adopted, effective August 1, 1997; as amended by Supreme Court Order No. 09-8300-028, effective September 16, 2009; by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

Committee Commentary. — The uniform jury instructions do not include any definition of “physical injury” because the term is not defined by statute or case law.

[As adopted by Supreme Court Order No. 09-8300-028, effective September 16, 2009.]
OPINION

TIMOTHY L. GARCIA, JUDGE

The question before us is whether the workers’ compensation judge (WCJ) erred in not combining a work-related impairment of Worker’s left leg with a preexisting impairment in Worker’s right leg to award scheduled benefits for the right leg impairment. We conclude there was no error and affirm the WCJ’s decision.

BACKGROUND

Worker is a licensed practical nurse who injured her left knee at work when a reverse osmosis machine fell on her. The injury left Worker with a permanent physical impairment of fifty percent in her left knee. Worker suffered a permanent loss of use of her left knee as a direct and proximate result of the work accident. Worker’s left knee injury was to a member listed on the scheduled list in NMSA 1978, Section 52-1-43(A) (2003) of the Workers’ Compensation Act (WCA), and the WCJ awarded loss of use benefits for Worker’s left knee impairment. Worker also had a preexisting sixteen percent lower extremity permanent impairment in her right knee. The WCJ determined that Worker was not permanently disabled as a result of the accident and that the preexisting right knee injury did not combine with her left knee injury to result in an additional disability. Worker appealed the WCJ decision.

ANALYSIS

[3] Worker argues on appeal that the WCJ should have combined the work-related impairment in her left knee with the preexisting impairment in her right knee to issue a scheduled injury loss award for her right knee. Whether Worker can recover additional benefits under this theory is a question of law that we review de novo. See Meyers v. W. Auto, 2002-NMCA-089, ¶ 13, 132 N.M. 675, 54 P.3d 79 (applying a de novo standard of review when interpreting a statute).

In order to recover compensation for a scheduled injury, a worker has to demonstrate that a specific body member was injured as a result of an accidental injury. See § 52-1-43(A) (allowing compensation for “disability resulting from an accidental injury to specific body members”); Smith v. Ariz. Pub. Serv. Co., 2003-NMCA-097, ¶ 9, 134 N.M. 202, 75 P.3d 418 (explaining that a scheduled injury is “the total or partial loss or loss of use of a specific body member listed in Section 52-1-43(A)” (alteration omitted) (internal quotation marks omitted)). If a work-related injury combines with a preexisting injury to further affect the scheduled member and create impairment, a worker is entitled to a scheduled benefit for the total impairment. Smith, 2003-NMCA-097, ¶¶ 13, 16 (affirming a scheduled benefit award for the total impairment amount when the worker had a preexisting loss of hearing condition that was worsened by a work-related accident to result in a fifty-nine percent hearing loss). The total impairment loss must be a direct and natural consequence of the work-related injury. Id. ¶ 18.

In this case, Worker concedes that her preexisting right knee impairment was not a consequence of the work-related accident, and there was no evidence that her preexisting right knee impairment became worse as a result of the accident. Worker’s two doctors had not evaluated her right knee impairment since the work-related injury to her left knee and, therefore, could not testify that her right knee impairment had increased as a consequence of her left knee injury. Since Worker’s preexisting right knee impairment was not a consequence of the work-related accident, she cannot be compensated for a scheduled injury under Section 52-1-43 for her right knee.

[4] Under our workers’ compensation statutory scheme, “when a preexisting condition combines with a work-related injury to cause a disability, an employee is entitled to benefits commensurate with the total disability sustained[.]” Edmiston v. City of Hobbs, 1997-NMCA-085, ¶¶ 8, 24, 123 N.M. 654, 944 P.2d 883 (holding that the worker’s preexisting cancer combined with the work-related spinal injury to result in permanent disability). This principle was also applied in Reynolds and Leo where the
injured workers were compensated when a preexisting condition combined with an impairment sustained in a work-related accident to result in overall permanent partial disability. *Reynolds v. Ruidoso Racing Ass’n, Inc.*, 69 N.M. 248, 258, 365 P.2d 671, 678 (1961) (holding that the worker was permanently partially disabled when the worker’s preexisting osteoporosis combined with the work-related spinal compression fracture injury); *Leo v. Cornucopia Rest.*, 118 N.M. 354, 359-60, 881 P.2d 714, 719-20 (Ct. App. 1994) (holding that the worker was permanently partially disabled when the worker’s preexisting lung and heart conditions combined with the worker’s work-related back injury); see *NMSA 1978, § 52-1-26 (1990)*. Worker did not seek below and does not argue on appeal that the WCJ should have awarded permanent partial disability for her preexisting right knee condition combined with her work-related left knee injury. She is seeking only a scheduled benefit award for a right knee injury that was preexisting. Therefore, we do not review whether her preexisting right knee impairment combined with her left knee injury to result in a permanent partial disability.

{7} Worker is asking this Court to conclude that she is eligible for additional scheduled right knee benefits when there is no direct causal connection between her right knee condition and the work-related injury. Worker does not provide any authority to support her argument, and therefore, we assume that none exists. *In re Adoption of Doe*, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984). We allow recovery for a preexisting condition when it combines with a workplace injury to produce an overall scheduled disability or a permanent disability. *See Smith*, 2003-NMCA-097, ¶¶ 16-18; *Edmiston*, 1997-NMCA-085, ¶¶ 23-25. However, when there is no causal relationship between the preexisting condition and the workplace injury, we decline increased benefits under the WCA. *See Holliday v. Talk of the Town Inc.*, 98 N.M. 354, 356, 648 P.2d 812, 814 (Ct. App. 1982) (holding that an illness that was not causally related to the work injury or the employment could not combine with the work-related injury to increase benefits). Based on the current status of Worker’s two knee injuries, she is not entitled to scheduled benefits for her right knee when there is no causal connection between the accidental injury and her preexisting right knee impairment. See *NMSA 1978, § 52-1-28(A)(3) (1987)* (“Claims for workers’ compensation shall be allowed only . . . when the disability is a natural and direct result of the accident.”).

**CONCLUSION**

{8} We affirm the WCJ’s decision.

{9} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

LINDA M. VANZI, Judge
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**Tuesdays, 4:00-6:00**
Jan. 18-April 26, 2011

UNM School of Law
1117 Stanford Dr. NE,
Albuquerque

*Some Knowledge of Spanish is Required*

This course has been approved by the NMMCLE Board for 27.5 general credits.

For more information and on-line registration visit:
http://lawschool.unm.edu/cle/live_programs/spanish-for-lawyers2.php or email cle@law.unm.edu.
12/31/10 Compliance Deadline:
Remember to complete all 2010 MCLE requirements by December 31, 2010. Minimum requirements are 10 general, 1 ethics and 1 professionalism credits.

Avoid Sanctions:
As of January 1, 2011 late compliance sanctions are in effect and 2010 non-compliant attorneys will be required to pay a $100 late compliance fee. As of April 1, 2011 attorneys who continue to be in non-compliance and/or have failed to pay the initial $100 fee will be subject to a second late compliance fee of $250.

Check your credits earned online at www.nmmcle.org.

Locating Approved Courses:
• Access all approved courses on www.nmmcle.org. Choose “Search for Courses” on the menu.
• Can’t find the course you want to take? Contact MCLE at (505) 821-1980 or email mcle@nmmcle.org.

MCLE – mcle@nmmcle.org or www.nmmcle.org

Friends and staff of HANK FARRAH announce his retirement after 34 years of distinguished legal practice. You are invited to send reminiscences, shared war stories, or congratulations/best wishes to the following address:
Hank Farrah
1400 Central Ave SE, Suite 2000
Albuquerque, NM 87106

No need for another associate
Bespoke lawyering for a new millennium
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(505) 888-4300
www.eavesandmendenhall.com
Assistant District Attorney
The Fifth Judicial District Attorney’s office has an immediate position open to a new or experienced attorney in our Hobbs office. Salary will be based upon the District Attorney Personnel and Compensation Plan with starting salary range of an Associate Trial Attorney to a Senior Trial Attorney ($41,685.00 to $72,575.00). Please send resume to Janetta B. Hicks, District Attorney, 400 N. Virginia Ave., Suite G-2, Roswell, NM 88201-6222 or e-mail to jhicks@da.state.nm.us.

Assistant County Attorney for Santa Fe County
Now hiring for the position of Assistant County Attorney for Santa Fe County. This job is ideal for those who are happy in a fast paced environment with a diverse practice including land use regulation, government procurement, labor law, election reform, advising public officials and civil litigation. We have a collaborative work environment where our small group of attorneys work together to meet the needs of Santa Fe County. Adaptability, independence, a strong work ethic, good interpersonal and communication skills are critical. Experience in representing local government is preferred. The job remains open until filled. For a competitive salary and benefits second to none in a beautiful work setting at the heart of historic Santa Fe, apply with the Santa Fe County Human Resources Department located at 949 West Alameda Street. The position is full-time, at will, FLSA exempt and applicants must be licensed to practice law in the State of New Mexico and eligible to practice law in federal court. Minimum of three years experience is required.

Attorney III
Job ID # 1932
Location: Albuquerque, NM
PNM Resources, Inc is seeking an experienced energy/natural resources attorney to work on a broad range of legal matters, including legal work relating to generation, transmission, distribution, energy operations, wholesale electricity and gas trading, natural resources, business transactions, including with tribes, and the environment. Litigation experience and a working knowledge of utility regulation are desirable. This position will be based at PNMR’s corporate headquarters in Albuquerque, NM and offers a desirable combination of competitive salary, excellent benefits, and dynamic work environment within the utility industry. As an energy/natural resources lawyer with PNM Resources Inc., you would interface closely with the Generation and New Mexico Operations Departments. Minimum qualifications include a Juris Doctorate from an accredited law school and a minimum of seven years of experience as a practicing energy/natural resources lawyer, as well as experience supervising and managing the work of other attorneys, including outside counsel. Must be licensed to practice law in New Mexico. Additionally, membership in the Texas State Bar is highly desirable. Some travel required. To apply go to www.pnm.com/careers and read a full job description, register, upload a resume and answer all posting questions. Deadline is December 31, 2010. PNM is an EEO/AA employer. Women, minorities, disabled individuals and veterans are encouraged to apply.

Lawyer Position
Guebert Bruckner P.C. seeks an attorney with up to five years experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.
Full-Time Legal Secretary
Keleher & McLeod seeking full-time legal secretary proficient in all aspects of civil litigation, including electronic court filing, calendaring and client billing. Must have five years of recent experience dealing with rules of civil procedure and an ability to prioritize tasks at hand. Microsoft Word, transcription and proofreading skills are key, along with good communication and problem solving. Successful candidate will show initiative, attention to detail and work well under pressure. References required. We offer a professional work environment with excellent benefits. E-mail résumés to pk@keleher-law.com or fax to 346-1370.

Office Administrator
Doughty & West, P.A., a downtown Law firm, seeks a full-time Office Administrator. Responsibilities include bookkeeping, accounts receivable and accounts payable. The applicant must be proficient with all general office software and Quickbooks. Experience with Orion Law Management System a plus. Excellent benefits and a great work environment. Send resume, references and cover letter to Rob Doughty, Doughty & West, P.A., 20 First Plaza, NW, Suite 412, Albuquerque, NM 87102 or fax to 242-8707.

Legal Secretary
A top Albuquerque, New Mexico law firm is hiring a Legal Secretary with 2-3 years experience. Civil litigation, high volume foreclosure, and/or bankruptcy experience a plus. Attention to detail, ability to multitask, and strong communication skills. Proficient in all Microsoft Office applications. To be considered for this opportunity, please email your resume to: elysetimpan@yahoo.com.

Services

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

Insurance Broker/Agent Expert
Expertise in Commercial Insurance and Contract Bonding. Successful in several cases and can offer consulting/ or expert witness services. Call Mark Menicucci at 505-238-6139.

Freelance Paralegal
Freelance paralegal with 20+ years experience available for all aspects of civil litigation. Excellent references. Call 503-6322 in Albuquerque or email civilpara@yahoo.com.

Office Space

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 at Grubb & Ellis 880-7059

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 For Rent:
Law office for rent, sharing office space with three other attorneys. Located at 8010 Meaul NE. Front door parking. Hal Simmons, 299-8999.

Available in February
Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, extensive landscaping, ample parking, full-service lease. 2937SF, top floor, glass entry, well improved and appointed reception, offices, kitchen, and conference room. Building signage available. Three (3) year lease. 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

Office Space for Lease!
Suites as small as one or two office, only $300.00 per month. Larger suites up to 3,910/ sf. Electric, gas janitorial all included. Parking available for tenants and clients. High speed internet available. Building located in the heart of downtown. 320 Gold SW. Call Martha Carpenter 998-1567 or Keith Bandoni 998-1578 at Maestas & Ward Commercial Real Estate for more information.

Office Space/Building Available
Office space/building available just minutes walking distance to Albuquerque courts. Ample parking. Stop by 1019 2nd Street NW, Albuquerque. Flexible terms, nice landlord. Lisa Torraco 244-0530

For Sale

Hopi Indian Bolo Ties
A rare antique collection of these strikingly elegant pieces is now available. Suitable for Court, office and personal wear for men and women. Priced from $200-$650, 20 authentic all silver pieces with designs e.g. Eagle kachinas and maidens. Serious inquiries only: J. Bent Ricks, brentric@aol.com, 269 0876.

BAR Bulletin

Holiday Submission Deadlines

Advertising for the January 12, 2011, Bar Bulletin must be submitted by December 27.

Happy Holidays!

Marcia Ulibarri,
Account Executive
505-797-6058
mulibarri@nmbar.org

www.nmbar.org
The Center for Civic Values and the State Bar of New Mexico are co-sponsoring the 2012 National High School Mock Trial Championship in Albuquerque, May 3-6, 2012, and we need your support to host this impressive event.

The goal is to raise $100,000 to cover the cost of transportation, meals, printing and mailing, facility expenses, and awards for more than 1,000 high school juniors and seniors.

“Not all students who participate in mock trial become lawyers. What they do become is better and more active citizens.”
–The Hon. Gene E. Franchini

The 2012 National High School Mock Trial Championship is dedicated in loving memory to Justice Gene Franchini, the “Godfather” of mock trial in New Mexico. He was a dedicated CCV board member and a passionate champion of this program that has touched the lives of thousands of high school students since 1978.

To make a tax-deductible donation, visit http://www.civicvalues.org/donate_now.htm
Wishing you a happy holiday season with the best of everything in the coming year.

Valencia County Courthouse c. 1930, Tomé, New Mexico
From an original pen and ink drawing by Susan Blair-Hunt.
Part of a collection established by Atkinson & Kelsey, P.A.