

BAR BULLETIN

OFFICIAL PUBLICATION OF THE STATE BAR OF NEW MEXICO

MARCH 11, 2004 • VOLUME 43, No. 10



Kelley S. Hestir

Doña Ana County Courthouse
(circa 1914), Las Cruces, NM

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General Rules

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Commissioners Rule 24-101 and Adoption
of New Rules 20-115 Governing Paralegal
Services and Board of Bar Commissioners
Rule 24-101A

CLERK'S CERTIFICATES

Just for Members

STATE BAR LENDING LIBRARY A Free Membership Service

Visit the State Bar's Lending Library at the State Bar or online at www.nmbar.org and obtain advice on the following topics:

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- Legal Careers
- Marketing
- Risk Management and Professionalism
- Solo and Small Firm Practice
- Technology

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www.nmbar.org

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PROFESSIONALISM TIPS

LAWYER'S PREAMBLE

AS A LAWYER, I WILL STRIVE TO MAKE OUR SYSTEM OF JUSTICE WORK FAIRLY AND EFFICIENTLY. IN ORDER TO CARRY OUT THAT RESPONSIBILITY, I WILL COMPLY WITH THE LETTER AND SPIRIT OF THE DISCIPLINARY STANDARDS APPLICABLE TO ALL LAWYERS, AND I WILL ALSO CONDUCT MYSELF IN ACCORDANCE WITH THE FOLLOWING CREED OF PROFESSIONALISM WHEN DEALING WITH MY CLIENT, OPPOSING PARTIES, THEIR COUNSEL, THE COURTS, AND ANY OTHER PERSON INVOLVED IN THE LEGAL SYSTEM, INCLUDING THE GENERAL PUBLIC.

MEETINGS

MARCH

- 16**
Solo and Small Firm Practitioners Section,
noon, Albuquerque Petroleum Club
- 17**
Membership Services Advisory Committee,
11:30 a.m., State Bar Center
- 18**
Health Law Section Board of Directors,
7:30 a.m., State Bar Center
- 19**
Family Law Section Board of Directors,
9 a.m., via teleconference
- Prosecutors Section Board of Directors,**
2 p.m., State Bar Center
- 23**
Technology Utilization Committee,
2 p.m., State Bar Center
- 24**
Committee on Women and the Legal Profession, noon, Jontz, Dawe, Gulley, & Crowne, P.C.

STATE BAR WORKSHOPS

MARCH

- 18**
Consumer Debt/Bankruptcy Workshop
6 - 8 p.m., New Mexico Highlands University
University Ave., Las Vegas, NM
- 24**
Family Law Workshop
5 - 7 p.m., ENMU Campus
(Vowell Classroom) Ruidoso, NM
- Family Law Workshop**
5:30 - 7:30 p.m., Branigan Library (2nd Floor-Pearl Higgins Room), Las Cruces, NM
- Consumer Debt/Bankruptcy Workshop**
6 - 8 p.m., State Bar of New Mexico
Albuquerque, NM
- 25**
Consumer Debt/Bankruptcy Workshop
5:30 - 7:30 p.m., Branigan Library (2nd Floor-Pearl Higgins Room), Las Cruces, NM
- For more information call Marilyn Kelley
505) 797-6048 or (800) 876-6227;
or visit www.nmbar.org.*

BAR BULLETIN

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NOTICES

MCLE 2003 – Annual Compliance Reports

The 2003 Annual Compliance Reports have been mailed to all active licensed New Mexico attorneys. The reports include all information for courses taken by Dec. 31, 2003.

All noncompliant attorneys have been assessed a late compliance fee, and the invoice for payment of the fee is included with the Annual Report. Noncompliant attorneys must complete their requirements immediately. On April 1, a second late compliance fee will be assessed for those attorneys who continue to be in noncompliance.

On May 1, the MCLE office will submit to the Supreme Court a list of all attorneys who have not completed their 2003 requirements and/or failed to pay assessed late compliance fees. The Supreme Court will then begin to initiate the suspension process for those attorneys on the list. For more information, call MCLE at (505) 797-6015; e-mail mcle@nmba.org, or write to MCLE, PO Box 92860, Albuquerque, NM 87199-2860.

COURT NEWS

Judicial Performance Evaluation Commission Improving the Performance of Judges

The Judicial Performance Evaluation Commission (JPEC) created by the New Mexico Supreme Court evaluates the performance of appellate, district and metropolitan court judges standing for retention in New Mexico.

The commission's work in 2004 focuses on the interim evaluations of 11 Bernalillo County Metropolitan Court judges: Charles Barnhart, Sandra Clinton, Kevin Fitzwater, Frank Gentry, Theresa Gomez, Victoria Grant, J. Michael Kavanaugh, Anna Martinez, Judith Nakamura, Frank Sedillo and Sharon Walton. The results of the interim evaluation will not be shared with the public since the primary objective is self-improvement. A final evaluation of the Bernalillo County Metropolitan Court judges is planned for 2006. These results will be released to the public at least 45 days before the November 2006 general election.

Beginning the week of April 5, lawyers who appeared before the Bernalillo County Metropolitan Court judges between Jan. 1 and Dec. 31, 2003, will receive a questionnaire to complete. The project depends on lawyer feedback. The JPEC would like to see the response rates increase from attorneys with direct experience with the judges.

The questionnaires are to be returned to Research and Polling, Inc., consult-

ant to the JPEC. Research and Polling puts together aggregate results for the JPEC by population group (lawyers, jurors, court staff and resource staff). The JPEC does not see individual results. The comments are retyped and submitted to the JPEC for review and not provided to the judges. Research and Polling destroys the individual responses, thus, the JPEC does not know who completed the survey.

Anyone who might have questions regarding the survey may contact Felix Briones, Jr., chair of the Judicial Performance Evaluation Commission, (505) 325-0258.

Upcoming Meeting

The Judicial Performance Evaluation Commission was created by the New Mexico Supreme Court for the purpose of providing voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers.

The commission's next meeting will be from 8 a.m. to 5 p.m., March 26 at the State Bar Center, 5121 Masthead NE, Albuquerque. For more information on the commission or with regard to the next scheduled meeting, call (505) 827-4960.

First Judicial District Court Family Law Brownbag Meeting

The First Judicial District Court has cancelled the March family law brownbag meeting. The next meeting

will be held in April at the usual time. For more information, contact Sharon L. Pino, sharonpino@pinolawoffice.com, or (505) 982-0199.

Second Judicial District Court

Children's Court Monthly Judges' and Managers' Meeting

The Second Judicial District Children's Court will hold its monthly judges' and managers' meeting at noon, April 6, in the jury room, John E. Brown Juvenile Justice Center, 5100 Second St. NW, in Albuquerque. Children's Court judges and managers of court-related agencies will meet to discuss ongoing concerns and projects. For a copy of the meeting agenda, call (505) 841-7644.

Destruction of Exhibits, Domestic Cases, 1986-91

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the Second Judicial District Court will destroy exhibits filed with the court in the domestic cases for years 1986 to 1991 (excluding cases on appeal). Counsel for parties are advised that exhibits may be retrieved through April 12. Attorneys who may have cases with exhibits may verify exhibit information with the Special Services Division, (505) 841-7596/8767 from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s). 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.

Family Court Open Meetings

The Second Judicial District Family Court judges will hold open meetings to discuss ongoing concerns and projects at noon on the first business Monday of each month in the Conference Center, located on the third floor of the Bernalillo County Courthouse. The next regular meeting will be held on April 5. Contact Mary Lovato,

(505) 841-6778, for more information or to have something placed on the agenda.

U.S. Bankruptcy Court Attorney, Staff Training

The U.S. Bankruptcy Court will offer a training session to learn how to use the newest video and audio equipment for trial proceedings at 1:30 p.m., March 22. Attorneys and their staff are invited to participate. To reserve a spot, call Chris Wilson, (505) 348-2545.

STATE BAR NEWS

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners met on March 5 at the Bar Center in Albuquerque. Action taken at the meeting follows:

- Held an Executive Session to discuss litigation;
- Approved the Jan. 23 meeting minutes as submitted;
- Accepted the Finance Committee report;
- Approved dues fee waivers for those who met the criteria;
- Approved a five-year lease with maintenance on a new mailing address system in the amount of \$31,200;
- Discussed credit card surcharges in the amount of \$30,000 for the payment of bar dues; the Finance Committee requested staff to research with credit card companies whether the bar can collect the surcharges from members paying with credit cards and provide a report at the May meeting
- Approved a transfer to CLE from State Bar in the amount of \$72,812 for the administration of the professionalism program in 2003;
- Discussed casino advertising in the *Bar Bulletin*; staff was requested to research with other State Bars and provide a recommendation at the May meeting;
- Discussed staff bonuses being incorrectly reported since 1999; the Finance Committee will obtain advice from an attorney to determine whether the W-2 forms need to be reissued;
- Reviewed the accounts receivable aging report as well as the executive

DID YOU KNOW?

Discussion groups are available on the State Bar's Web site, www.nmbar.org, and provide members the opportunity to network and share useful information. The groups function similar to listserves, minus the annoying feature of filling members' e-mail inboxes with unwanted replies to the entire group. Members may post questions and answers to the online discussion groups or simply comment on issues. The series of exchanges is viewable by all who subscribe to the group.

Discussion groups currently exist for practice sections and other State Bar entities are encouraged to request this communication tool. Discussion groups may also be created by topic. For example, the most recent groups are designed for the sharing of law office management tips with regard to QuickBooks, Timeslips and other software programs.

Visit www.nmbar.org and click on the link entitled "Discussion Groups" to participate in current topics. To create a new topic, contact Veronica Cordova, vcordova@nmbar.org or (505) 797-6039.



director's travel reimbursements and credit card file;

- Discussed a proposal for assistance with funding of the Client-Attorney Assistance Program;
- Discussed a proposal for the Senior Lawyers Division to audit CLE seminars for a minimal fee with the option of purchasing course materials separately; staff was requested to research further and provide a recommendation at the May meeting;
- Approved State Bar Center room rental increases for outside groups;
- Accepted the pre-audit December 2003 Financials;
- Reported that the Supreme Court approved electronic distribution of the *Bar Bulletin*;
- Denied a request to revise the Children's and Indian Law sections bylaws to not require cosponsorship with the State Bar's CLE Department;
- Approved a new policy entitled "Complaints Involving the Executive Director," which replaces the Grievance Policy;
- Approved a new policy entitled "Paid Time Off," which replaces the Leave Policy;
- Provided 30 days' notice of a new Bylaw, Article IV, Section 4.5d, entitled "Executive Sessions of the Board," which is currently a policy; approval of the bylaw

will be on the May meeting agenda;

- Presented the final State Bar/BBC Policies revised by the Bylaws/Policies Committee;
- Tabled approval of the Casemaker online legal research product to the May meeting;
- Reported that the Communications Committee met and discussed branding and the Membership Survey;
- Reported that the Commission on Professionalism met and decided to hold a facilitation/strategic planning meeting on April 30 to determine its focus, develop short- and long-term goals, and discuss the professionalism requirement;
- Received a report from Legal Services & Programs Committee Chair Sarah Singleton and approved the committee's new pro hac vice rule 15-305 "Practice by Nonadmitted Lawyers Before State Courts" and related amendments to existing rules for the Supreme Court's approval; the proposed rule will require a \$250 fee for out-of state attorneys seeking pro hac vice admission; funds to be used for legal aid programs;
- Reviewed the Membership Survey and received a report from Brian Sanderoff of Research & Polling; the survey will be mailed the week of March 22 and the results will be made available at the May meeting;
- Approved the Client Relations

NOTICES

2004-05 Bench & Bar Directory Deadline Approaches for Address Changes

The State Bar staff is updating information for the *2004-05 Bench & Bar Directory*. Address changes will be accepted through May 1. Information submitted beyond that date is not guaranteed to be included in the new membership directory. To view current member records, visit the State Bar Web site, www.nmbar.org, and search by name. If a change is necessary, submit it in writing to Chris Baum, Systems Manager, PO Box 92860, Albuquerque, NM 87199-2860; faxed to (505) 828-3755; or e-mailed to address@nmbar.org.



For a complete list of award categories, see the Feb. 19 (Vol. 43, No. 7) *Bar Bulletin*.

Solo and Small Firm Practitioners' Section

2004 Luncheon Speaker Schedule

The State Bar Solo and Small Firm Practitioners' Section will host monthly luncheon meetings on the third Tuesday through May at the Petroleum Club, 500 Marquette Ave., in Albuquerque.

For all new, first-time members, the first lunch is free. Contact Helen Stirling at the number below to make a free reservation.

Luncheon meetings will begin at noon with a speaker program. Members, guests and any member of the bar are welcome. The charge is \$14 in advance and \$16 at the door.

Reservations are required. Contact Helen Stirling, Esq., (505) 345-2800. Make the check payable to "State Bar of New Mexico," c/o Helen Stirling, 6125 Fourth St. NW, Ste. A, Albuquerque, NM 87107.

March 16, noon: "Unification of City and County Government – What's Next?," David S. Campbell, Albuquerque attorney, Vogel, Campbell & Blueher, P.C.

Upcoming luncheon dates are: April 20 and May 18.

Trial Practice Section

Upcoming Luncheon Speaker

The State Bar Trial Practice Section will host a luncheon meeting from 11:30 a.m. to 1:30 p.m., June 2 at the State Bar Center. Albuquerque Metropolitan Court Judge Kevin Fitzwater will speak following the luncheon regarding mental health programs in the courts.

All State Bar members are welcome to attend. The cost for the luncheon is \$10 per person and reservations are required. Contact Christine Morganti, (505) 797-6028 or cmorganti@nmbar.org, by May 26 to RSVP. Checks may be made payable to the State Bar of New Mexico, c/o Trial Practice Section, PO Box 92860, Albuquerque, NM 87199-2860.

Committee's recommendation regarding a claim made to the Client Protection Fund;

- Determined not to take any action with regard to the ABA's recommendation to form a new Human Rights Committee; and

- Reported that the Children's Law and Taxation sections complied with proper legislative advocacy procedure, and that the Children's Law Section's tabled its request due to lack of a sponsor.

Note: The minutes in their entirety will be available on the State Bar's Web site following approval by the board at the May 7 meeting.

Commission on Professionalism

Articles Sought for Publication

The State Bar of New Mexico's Commission on Professionalism is accepting submissions of articles to be published in the *Bar Bulletin* and submitted to various newspapers. The commission is requesting articles on good deeds of lawyers or judges and "Be a Pro" articles that demonstrate professionalism in action. The articles will be reviewed and selected for publication by the Communications Subcommittee of the Commission on Professionalism. Contact Kris Becker, (505) 797-6038 or kbecker@nmbar.org, to request editorial

guidelines and/or to submit articles. Articles may also be mailed on disk to the Commission on Professionalism Communications Subcommittee, c/o Kris Becker, SBNM, PO Box 92860, Albuquerque, NM 87199-2860.

Lawyers Assistance Committee

Monthly Meeting

The Lawyers Assistance Committee will meet at 5:30 p.m., April 5, at the First United Methodist Church at Fourth and Lead SW in Albuquerque. The group meets regularly on the first Monday of the month.

For more information, contact Bill Stratvert, (505) 242-6845.

Prosecutors' Section

Annual Awards

The State Bar Prosecutor's Section will be presenting awards to five prosecutors at the District Attorney's spring conference.

Nominations should be submitted by March 19 to Julie Ann Meade, section chair, PO Box 1508, Santa Fe, NM 87504-1508; or jmeade@ago.state.nm.us. The nominees will be presented to a committee for selection.

OTHER BARS

Albuquerque Association of Legal Professionals

Upcoming Monthly Meeting

The Albuquerque Association of Legal Professionals will hold its monthly meeting at noon, March 16 in the large conference room at Nordhaus Law Firm, 405 Dr. Martin Luther King Jr. NE. Mark Russo will address the topic, "Court Hearing Tapes/CDs – The Latest Dilemma." Anyone interested in attending should contact Valerie Begay or Claudette Wellito, (505) 243-4275, for more information.

American Bar Association Tax Section Pro Bono Committee

This year, the Pro Bono Committee of the American Bar Association's Tax Section is raising the level of participation in the IRS's Volunteer Income Tax Assistance ("VITA") program.

The VITA Program is available for taxpayers who are in need of assistance in preparing and filing their returns. The complexities of the tax laws can frustrate many low-income, elderly, disabled and limited English proficient taxpayers' effort to complete their own return.

Because commercial tax preparers may not be a viable option for low-income taxpayers, the VITA Program provides a location where these taxpayers can come for assistance. Members of the community – including professionals, students and other volunteers – donate their time to help taxpayers complete their returns. Local legal and tax professionals are asked to check www.abanet.org/tax/vita for VITA location information, including when and how to volunteer at those locations.

For more information on this and other tax pro bono projects, visit www.abanet.org/tax/groups/probono.

American Inns of Court Tenth Circuit Professionalism Award

The trustees of the American Inns of Court Foundation, on behalf of its more

than 70,000 active and alumni members, established an award to be given each year, on a federal circuit basis, to a lawyer or judge exemplifying the best ideals of professionalism. With the concurrence of the chief judge, the award is presented at each circuit's judicial conference by the chief judge and a representative of the American Inns of Court. Practitioners in the Tenth Circuit are invited to nominate one or more lawyers or judges to be considered for the 2004 American Inns of Court Circuit Professionalism Award in the Tenth Circuit. The honoree will be selected by a national committee of the American Inns of Court, which will include Tenth Circuit representation. The award will be presented at the Tenth Circuit Judicial Conference in Park City, Utah, in July.

Nominations may be by letter, accompanied by information about the nominee sufficient to allow the committee to make a reasoned judgment. Additional letters of recommendation may be included in the package. Nominations must be submitted by April 15 to the attention of Rear Admiral Don Stumbaugh, executive director of the foundation, 1229 King St., second floor, Alexandria, VA 22314. For more information, visit www.innsocourt.org.

Hispanic National Bar Association

Midyear CLE Conference

The Hispanic National Bar Association is hosting a Midyear CLE Conference, along with the Ninth Annual National Moot Court Competition, at the DoubleTree Hotel in Albuquerque March 26 and 27.

The CLE topic is "Race and the Law" and will be conducted by the Anti-Racism Training Center of the Southwest and the University of New Mexico School of Law's Institute of Public Law. The CLE program will provide information in the areas of immigration, criminal, corporate, government, civil and social justice law and is approved for 11.3 general credits.

The National Moot Court Competition – to be held at the Second Judicial District Courthouse – will include teams from 22 law schools from across the

country who will compete for the top prize of HNBA National Champion. State Supreme Court justices will preside over final arguments.

The CLE registration fee of \$35 for students and \$150 for attorneys includes a single ticket to the Thursday and Friday evening mixers and the Saturday keynote dinner at the National Hispanic Cultural Center. To register, or for more information, visit www.hnba.com.

N.M. Defense Lawyers Association

Quarterly Luncheon

New Mexico Defense Lawyers Association members are invited to participate in the quarterly members' lunch at noon, March 25 at the State Bar Center in Albuquerque. Lunch will be available at a cost of \$10 per person. At 12:30 p.m., Richard Minzner, a former state legislator, current lobbyist and shareholder at the Rodey Law Firm will be the featured guest speaker. Minzner will brief the group on the 2004 legislative session. Anyone interested in attending should RSVP to Rhonda Dahl by March 15. (505) 797-6021, or nmdefense@nmdla.org.

OTHER NEWS

Advocacy Inc.

Statewide Training – Children's Court Practice

Advocacy Inc. is sponsoring three statewide trainings on Children's Court Practice. They are scheduled in Grants on April 23, in Farmington on May 7 and in Silver City on May 21. These trainings will be specially directed to the needs of guardians ad litem, but will include information that will assist respondents' lawyers, New Mexico Children Youth and Families Department, Children's Court attorneys, judges, social workers, Court-Appointed Special Advocates and Citizens' Review Board members in their work in Children's Court proceedings. There is no charge to attend, however, attorneys will be required to pay for CLE filing fees. Registration information will be available at the end of March.

HEARSAY

Editor's note: The Bar Bulletin will now periodically publish "Hearsay" and "In Memoriam," formerly printed in the quarterly Bar Journal. Send items to: Diana Sandoval, Editor, PO Box 92860, Albuquerque, NM 87199-2860.

The Albuquerque Bar Association honored **Maureen Sanders** with its outstanding lawyer award for 2003 for her advocacy work with at-risk people, and **U.S. District Judge Bruce Black** with its outstanding judge for the professionalism and integrity he brings to the bench. The awards were presented at a bar ceremony held in December.



Sandra L. Gardner



Brian D. Escobedo

Atkinson & Kelsey, P.A., announced that **Sandra L. Gardner** has been appointed to New Mexico Gov. Bill Richardson's Domestic Violence Advisory Board. She is a certified mediator and practices in divorce and family law. The firm also announced that **Brian D. Escobedo** has joined in the practice of divorce and family law. He has been admitted to try cases before the U.S. Court of Appeals for the Fourth Circuit and in District Courts in the District of New Mexico and Eastern Virginia. Escobedo is also a member of the Virginia, Nebraska and District of Columbia bar associations, the New Mexico Trail Lawyers' Association and National Association of Counsel for Children.

Robert Aurbach, general counsel for the **New Mexico Workers' Compensation Administration**, was invited by the **International Association of Industrial Accident Boards and Commissions** to give a presentation on cross jurisdictional boundaries in the handling of insurance coverage and claims for employers and workers who have temporary operations in places other than the state or province in which they normally operate.

James L. Bruin has taken inactive status after 50 years of law practice. He will continue to keep an office with **Sanders, Bruin, Coll & Worley, P.A.** in Roswell.

Chris Collins, a University of New Mexico School of Law graduate and an aide to U.S. Sen. Pete Domenici (R-N.M.), was sworn into the State Bar of New Mexico by **U.S. Supreme Court Justice Antonin Scalia** at the Supreme Court in Washington, D.C., in November 2003.

Stephen P. Comeau opened **Equity Valuation Consultants, Inc.**, which will operate as an appraisal of business equity interests and intangible assets.

Gilbert Houston Frith, an attorney in private practice with the **Frith Firm** in Santa Fe, has been elected to the Board of Trustees at Southwestern College. A Santa Fe native, Frith earned both his MBA and JD degrees from the University of New Mexico.

Terry R. Guebert of **Guebert, Bruckner & Bootes, P.C.**, was named a fellow of the **American College of Trial Lawyers** at the 2003 annual meeting in Montreal, Canada. Guebert has practiced law in Albuquerque for 21 years and has a law degree from Pepperdine University.

Bruce Hall of **Rodey, Dickason, Sloan, Akin & Robb, P.A.**, was named Outstanding Civil Defense Lawyer for 2003 by the **Defense Lawyers Association**. He was honored for his professionalism and ability during his distinguished career.

Robert Hedrick, an assistant public defender who lives in Socorro, was named Felony Attorney of the Year, Second District, in the New Mexico Public Defender's Office in Albuquerque. He has worked in the Albuquerque office for the past five years, commuting from Socorro, where he has lived on and off for the past 10 years. The award is meant to recognize someone who exemplifies professionalism, displays teamwork in practice and has a positive attitude in the workplace.

Legal FACS (Forms and Courthouse Services) recently received a two-year grant from the U.S. Department of Justice as part of its Rural Domestic Violence and Child Victimization Enforcement Grant Program. The program works to protect the safety of domestic violence victims, with particular emphasis given to those persons living in the rural areas in New Mexico. Legal FACS works cooperatively with criminal justice agencies, victim services providers and community organizations in Bernalillo, Sandoval, Tarrant and Valencia counties to respond to crimes of domestic violence, dating violence and child abuse and to provide services to the victims of such violence.

Jonathan Miller, an Albuquerque attorney and published author, will soon have three books published by Cool Titles, the Los Angeles book publishing company that published his first novel, "Rattlesnake Lawyer" in 2000. "Amarillo in August: An Author's Life on the Road" and "Crater County: a Legal Thriller of New Mexico" will be released simultaneously by Cool Titles.

Montgomery & Andrews, P.A., awarded the first Seth D. Montgomery Fellowship to **Dawn Priestman**, a second-year student at the University of New Mexico School of Law. The firm created the fellowship in honor of the late Seth D. Montgomery, a former partner of the firm and justice of the New Mexico Supreme Court.

Robert J. Nordhaus received the first "Honoring Our Relations Award" from the Laguna Education Foundation, Inc. The award was established to recognize individual accomplishments in making a valuable contribution to the Pueblo of Laguna and its members. Nordhaus was nominated for his handling of important legal issues, addressing community impact issues and involvement in establishing business organizations benefiting the Pueblo of Laguna.

Lynne M. Paretchan has joined the Portland, Ore., office of Perkins, Coie, LLP and will focus her practice on water resources and water quality issues. She earned both a master of water resources degree and a law degree with honors

from the University of New Mexico and has considerable work experience relating to a variety of fields, including real estate development and transportation planning.

Marjorie Rogers of the law firm of **Modrall, Sperling, Roehl, Harris & Sisk, P.A.**, was elected secretary of West Corp.

Thelma Stiffarm has been appointed the new assistant administrator of the U.S. Small Business Administration's Office of Native American Affairs – part of the Office of Entrepreneurial Development. A lawyer with an extensive background in Native American affairs, Stiffarm will direct and coordinate agency-wide programs to promote, expand and enhance small business opportunities and services for Native Americans.

Susan J. Strelitz has become a shareholder of the law firm of **Neill & Strelitz, P.C.**, of El Paso, Texas. Strelitz earned her law degree from the University of New Mexico School of Law in 1992. She practices primarily in the areas of probate law, litigation, guardianship, trust litigation and real estate. She is licensed in New Mexico and Texas.



Ethan M. Epstein



Sylvia R. Johnson



Twila B. Larkin

Sutin, Thayer & Browne, P.C., a law firm with offices in Albuquerque and Santa Fe, has hired five attorneys. **Ethan M. Epstein** earned his law degree from George Mason School of Law in 2001 and will practice primarily in the areas of federal taxation, federal tax litigation and probate litigation. **Sylvia R. Johnson** received her law degree from the University of California, Hastings College of the Law in 1988 and will practice in the areas of public finance, economic development and other financial transactions. **Twila B. Larkin** earned her law degree from the University of New Mexico School of Law in 1996, is certified as a family law specialist and will practice exclusively in family law and domestic relations. **Ethan S. Simon** received his law degree from Vanderbilt University Law School in 2001 and will focus his practice on business law, trusts and estates and commercial transactions. And **Jodi Terwilliger-Stacey** received her law degree from Drake University Law School in 1992 and will practice in commercial litigation, employment litigation, commercial landlord-tenant law and construction law.



Ethan S. Simon



Jodi Terwilliger-Stacey

The **Tinnin Law Firm** has been formed by **Robert P. Tinnin, Jr.**, **Stanley K. Kotovsky, Jr.**, and **Ryan M. Randall**, formerly of the Albuquerque office of Hinkle, Hensley, Shanor and Martin, L.L.P. Working with clients in the private and public sector locally and nationally, the lawyers in the new firm all continue to concentrate their practice in providing legal counsel to employers in human resources, labor law, and employment law. Tinnin has more than 35 years of experience advising and representing employers in NLRB unfair labor practice and representation proceedings, state and federal employment discrimination charges, employment litigation, wage and hour matters, collective bargaining and grievance arbitration. Kotovsky, a former assistant U.S. attorney, represents corporate and public sector clients in the areas of personal injury, property damage, employment and commercial transactions. Randall, a *magna cum laude* graduate from Tulane University School of Law, focuses his practice in labor and employment litigation and administrative proceedings. Tinnin and Randall will continue to serve as editors of *New Mexico Employment Law Letter*, a monthly publication updating employers on developments in labor and employment law published by M. Lee Smith Publishers LLC.



Robert P. Tinnin



Stanley K. Kotovsky, Jr.



Ryan M. Randall

The **University of New Mexico School of Law** made several announcements. Some of its law students earned honors at the recent National Native American Moot Court Competition in Denver. **Anna Martinez** won the prize for "best oralist" and April Winecke won for "best brief," for her brief on the Indian Child Welfare Act. The winning brief is typically published in the *American Indian Law Review Journal*. **Brenna Clani** advanced to the semifinals, while **Mary Carmack**, **Natasha Young** and **Winecke** advanced to the final 16 of the 48 teams competing. **Sudeen Kelly**, law professor currently on leave until the fall 2005, was confirmed to the Federal Energy Regulatory Commission (FERC), the entity responsible for the transmission of electricity and natural gas in interstate commerce, wholesale



Sudeen Kelly



Margaret Montoya

sale of electricity and natural gas and licensing of hydroelectric facilities. Kelly teaches energy law, public utility regulation, legislative process and administrative law and practice. **Margaret Montoya**, UNM law professor, was recently honored with a lifetime achievement award at the National Latino Law Student Conference, held at the

University of California at Los Angeles. The award credits Montoya for passionate support, dedication and contributions to Latino law students. She was the first Hispanic woman accepted at the Harvard Law



Peter A. Winograd

School. **Associate Dean Peter A. Winograd** has been re-elected to a three-year term as a member of the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar. The council is the body recognized by the U.S. Department of Education to accredit law schools. And *Hispanic Outlook in Higher Education* placed UNM on

a list of the top 50 colleges granting law degrees to Hispanics. UNM ranked 23 on the list with 25 Hispanic graduates. The rankings were compiled by the National Center for Education Statistics.

IN MEMORIAM

Former Fifth Judicial District Court **Judge Joe Angel**, 87, died November 8, 2003. He was appointed to the court in 1966, serving San Miguel, Mora and Guadalupe counties until he retired from the bench in 1983. Prior to his service as a judge, Angel served in the U.S. Army during World War II, then practiced law in Albuquerque. He attended Highlands University in Las Vegas, and earned a law degree at the University of Denver. During his tenure as a judge, Angel helped to consolidate the then divided cities of East and West Las Vegas. He was active in Our Lady of Sorrows Catholic Church in Las Vegas for many years and was a member of the local Chamber of Commerce. He is survived by his wife, Tonie Angel; son, Ronald, and wife Jacqueline, of Austin, Texas; grandson, Matthew, of Lexington, Mass.; and brother, Dr. Frank Angel, of Albuquerque.

D. Roy Baca of Los Angeles, formerly of Socorro, N.M., died at Cedars-Sinai Medical Center in Los Angeles on February 10, 2004. He was 52. Baca attended the University of New Mexico and the School of Law. He was employed by the Office of the Comptroller of the Currency, Administrator of National Banks and was serving as fiduciary trust lead expert at the time of his death. Baca is survived by his parents, Eliazim V. and Julia Baca of Socorro; brother, David R. Baca and wife, Diana, of Socorro; nephews: Noel R. Baca and wife, Kimberly, of Seattle, Wash.; and Daniel Baca of Socorro; niece, Erlinda Baca, of Socorro; grandnephews: Michael R. Baca of Socorro and Ryan C. Baca of Seattle; grandniece, Katrina Baca of Socorro; and a friend and companion of many years, Mario Hernandez.

Robert Alan Bitterlich, 43, a resident of Albuquerque, died on January 26, 2004. Bitterlich was a graduate of Highland High School, class of 1977. He also graduated from the University of New Mexico with a bachelor of arts degree in business and the Cal Western School of Law, San Diego, Calif. Bitterlich was a member of the State Bar of New Mexico as well as the bar association in California. At the time of his death, he was employed by Walz and Associates Law Firm and was an instructor at Metropolitan College in Albuquerque. Bitterlich loved to play his jazz guitar and take

photographs. He is survived by his mother, Carolyn Bitterlich of Pueblo, Colo.; biological father, Robert Roth and Martha Cortez-Roth; half sister, Lisa Roth-Larsen, all of Albuquerque; brother, Terry Bitterlich and wife, Kristine, of Pueblo, Colo.; and several other relatives.

Robert Howard Brandenburg, 89, died on November 23, 2003, at Holy Cross Hospital in Taos, N.M., surrounded by loving family members. He was born in Wasiota, Ky. on November 10, 1914. Brandenburg first started visiting Taos in the 1920s with his father and fell in love with Taos. He moved to Taos in 1940 and began a law practice. Shortly after moving to Taos, he met Helen Emily Zimmerman who would become his wife in October 1940. He practiced law in Taos for 50 years and was active in 52 service organizations, including the Taos Fire Department and the Lion's Club. Brandenburg is survived by his wife of 63 years, Helen Emily Z. Brandenburg; a sister in Florida, Frances B. Hume; his children: James Michael Brandenburg and wife, Claire, of Taos; Sharon B. Adkison and husband, H. William, of Santa Fe; and Elizabeth B. Johnson and husband, Clifford, of Taos. He is also survived by grandchildren: Catherine and Howard Brandenburg, both of Albuquerque; Elizabeth Adkison of Phoenix; Brittany Adkison of Durango, Colo.; Brian Adkison of Albuquerque; Meredith Johnson; Greg Johnson and wife, Clare, of Albuquerque; and great-grandson, Tyler Jacob Maehtlen.

Graham Browne, 68, died August 22, 2003, of complications during heart surgery. An attorney for 40 years, Browne was considered one of the most highly respected commercial lawyers in New Mexico. He was a partner in the firm, Sutin, Thayer & Browne since 1969. He earned his law degree from the University of New Mexico School of Law in 1963, after having served in the U.S. Army. Browne began working as a courier, and then as an associate at the firm, which was then known as Sutin and Jones. He was a primary author of the New Mexico Children's Code. He was a founding board member of a number of charitable organizations, such as the Albuquerque Community Foundation. Browne is survived by his wife, Sandra; and daughters, Anne Browne and Rebecca Browne, all of Albuquerque.



Paul W. Eaton, Jr

Paul W. Eaton, Jr., 78, who practiced law for nearly 30 years in Roswell, died on February 2, 2004. Eaton received his law degree in 1950 from the University of Michigan Law School, after serving in the U.S. Navy at the end of World War II and graduating from the University of Michigan with a degree in business administration. He practiced law in Roswell from 1951 to 1979, before

moving to Amarillo, Texas, to open a branch of the Roswell law firm of Hinkle, Cox, Eaton, Coffield & Hensley to serve as general counsel to its principal client, Southwestern Public Service Company. Eaton retired in 1995 and continued to serve as "of counsel" to the Hinkle firm. At the time of his death, he was counsel to the Amarillo firm of Courtney, Countiss, Brien & Bailey, LLP. Eaton focused on oil and gas, water law and public utility law. During his career with the Hinkle firm, the firm grew from one office in Roswell to six offices in Texas and New Mexico including the office in Roswell and branches in Santa Fe and Albuquerque. Eaton was elected to the Chaves County Commission in the mid-1960s. Eaton is survived by his wife of 53 years, Hope, of Amarillo, Texas; his mother, Hazel Eaton, 103, of Tucson, Ariz.; a sister, Betty Thum of Asheville, N.C.; three children, Scott Eaton and Bob Eaton of Albuquerque, and Elizabeth Eaton Doyle of Rice Lake, Wis.; and six grandchildren.

Lawrence M. Heon, 58, of Santa Fe, died February 6, 2004, after a lengthy illness. He graduated from the University of Oklahoma and the University of Tulsa College of Law. During the Vietnam War, Heon served in Southeast Asia as a captain in the U.S. Army, Air Defense Artillery. Heon spent a career in banking, including 17 years with the Bank of Oklahoma, where he became senior vice president of the commercial real estate division. He also worked in the banking industry in Massachusetts, Kansas and Missouri. As a lawyer, he represented the Inn at Loretto in Santa Fe. He was a member of the State Bar of New Mexico, as well as the bar associations of Oklahoma and Massachusetts. Heon is survived by his wife, Sarah Jane Heon; daughter, Holly and husband, Ash Jacobsen; son, Mark Davis and wife, Twila; and four grandchildren.

Vernon Jones died suddenly in his Albuquerque home on August 18, 2003. He was 66. Jones was a retired attorney and medical school professor. He earned a bachelor's degree in chemistry and biology at the University of North Alabama in 1958, then attended Vanderbilt University School of Medicine and completed doctoral studies at Cornell University in New York City. He came to New Mexico to teach the first graduating class at the new University of New Mexico School of Medicine. While a medical professor, he conducted medical research and authored or co-authored a number of publications. Jones then attended the University of New Mexico School of Law and earned a juris doctorate degree in 1974. He practiced in Albuquerque, combining law with his expertise in medicine. Jones is survived by his son, Jeffrey Jones, and wife, Heidi, of Corrales; grandchildren, Quentin Mitchell Jones, Nicolette Quintana Jones, and Peter Douglas

Jones; sister, Celestine McKee of Florence, Ala.; three brothers, Travis Jones, of Lawrenceburg, Tenn.; Hermas Jones, of Athens, Ala., and L.C. Jones of Anderson, Ala.

Russell Moore, 72, died December 19, 2003, of an undetermined neurological condition at his winter home in Puerto Vallarta, Mexico. He practiced law for 45 years at the Albuquerque firm of Keleher & McLeod, PA. Moore attended the University of Oklahoma and was a member of the Oklahoma National Guard. He served in the Korean War. Moore graduated from the University of New Mexico law school in 1957 and joined the Keleher & McLeod firm, where he focused on complex commercial litigation. Moore was involved in an antitrust litigation against Southern Union Gas during the 1980s. Because of that case settlement, Public Service Company of New Mexico acquired Southern Union's New Mexico assets and entered the gas distribution business. Moore was also involved in a four-state audit of Palo Verde Nuclear Generating Station. He served on the board of Hogares, Inc. Moore is survived by his companion, Susan Miller of Albuquerque; and daughters, Libby Hisel and husband, Larry, of Amarillo, Texas; Malissa Herbert, and husband, Jeffrey; and Ann Ung and husband, Rex, all of Albuquerque.

Myra Mouldenhauer died November 24, 2003, at her Albuquerque home. She was 58. Mouldenhauer was a registered nurse and an attorney, practicing both professions in Albuquerque. She is survived by her father, Arden K. Mouldenhauer; sisters, Myrna F. Mouldenhauer and Bernice F. Freng; and by brother Anthony Mouldenhauer; half sister, Ardene Copper; half brothers, Kenneth, Vernon and Harold Mouldenhauer.

Claude S. Sena, 83, died in his sleep on September 25, 2003. A native New Mexican, Sena moved to Durango, Colo., as a young boy with his family. He returned to New Mexico to attend the University of New Mexico, then graduated from Georgetown Law School in 1947. Sena returned again to New Mexico to work at the District Attorney's office in Santa Fe. Sena later opened a private practice and was known as "the lawyer of the valle," named for the work he did for the people of the Pojoaque and Nambe valleys. He was preceded in death by his wife, Juanita Sanchez, and is survived by his children, Monica Sena and Jose Sena, of Whittier, Calif., and Carlos Sena and Amalia Sena of Santa Fe.

Robert E. Schlusser, 61, of Unionville, Pa., and Truth or Consequences, N.M., died November 15, 2003, after a long struggle with lung cancer. He practiced tax law as a litigator for 30 years, the last 20 in partnership with his wife, Joanna Reiver, in the firm of Schlusser & Reiver, P.A., in Wilmington, Del. Schlusser was a member of the State Bar of New Mexico. He graduated from Dickinson College and Dickinson School of Law and received his LL.M. in taxation from George Washington University. He is survived by his wife, Joanna, Reiver; five children; Adam, of Show Low, Ariz.; Jason, of Hoboken, N.J.; Hannah, of Clifton, N.J.; Amelia, a student at Pennsylvania State University; and Daniel, of the family home; and one grandchild, Nicholas.

NO. 04-8300

**IN THE MATTER OF THE AMENDMENTS
OF RULE 23-106 NMRA OF THE SUPREME
COURT GENERAL RULES**

ORDER

WHEREAS, this matter came on for consideration by the Court upon the Court's own motion to amend Rule 23-106 of the Supreme Court General Rules in light of the dissolution of the Legal Advertising Committee effective December 12, 2003, and the Court being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rule 23-106 of the Supreme Court General Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rule 23-106 of the Supreme Court General Rules shall be **effective immediately**;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of Rule 23-106 by publishing the same in the *Bar Bulletin* and NMRA.

DONE at Santa Fe, New Mexico, this 23rd day of February, 2004.

**Chief Justice Petra Jimenez Maes
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Richard C. Bosson
Justice Edward L. Chávez**

23-106. Supreme Court committees.

* * *

(Paragraph A has not been amended)

B. Composition of committees. Most standing committees will be comprised of nine members who will be appointed by the Court to reflect geographical balance and to represent the various factions of the bar, *i.e.*, prosecutors, defense attorneys, private attorneys and government attorneys. The following committees will be comprised of more than nine members: Code of Professional Conduct Committee will be comprised of fifteen members, Appellate Rules Committee will be comprised of ten members; Board of Bar Examiners will be comprised of twelve members; and Disciplinary Board shall be comprised of eleven members. Special or temporary committees will be comprised of as many members as the Court deems necessary with the same considerations of balance as for standing committees.

* * *

(Paragraphs C through I have not been amended)

J. Standing committees. The following is a list of Supreme Court standing committees:

(1) Courts of Limited Jurisdiction Committee which is

responsible for Rules of Civil Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Procedure for the Metropolitan Courts, Rules of Civil Procedure for the Municipal Courts, and civil and criminal forms for the courts of limited jurisdiction;

(2) Rules of Civil Procedure for the District Courts Committee which is responsible for Rules of Civil Procedure for the District Courts, and Civil Forms for the District Courts;

(3) Appellate Rules Committee which is responsible for Rules of Appellate Procedure;

(4) Rules of Evidence Committee;

(5) Uniform Jury Instructions-Civil Committee;

(6) Uniform Jury Instruction-Criminal Committee;

(7) Rules of Criminal Procedure for the District Courts Committee which is responsible for Rules of Criminal Procedure for the District Courts, and the criminal forms for the district courts;

(8) Children's Court Rules Committee;

(9) Minimum Continuing Legal Education Committee which is responsible for administering the Minimum Continuing Legal Education program pursuant to Supreme Court rules;

(10) Specialization Board which is responsible for implementing and administering the Supreme Court specialization program;

(11) Board Governing Reporting of Judicial Proceedings;

(12) Board of Bar Examiners;

(13) Disciplinary Board;

(14) Code of Professional Conduct Committee; and

(15) Code of Judicial Conduct Committee.

NO. 04-8300

**IN THE MATTER OF THE AMENDMENTS OF RULES
20-101, 20-102, 20-103, 20-104, 20-105, 20-106, 20-107,
20-108, 20-109, 20-110, 20-111, 20-112, 20-113, 20-114
GOVERNING PARALEGAL SERVICES, AND BOARD OF
BAR COMMISSIONERS RULE 24-101 AND ADOPTION
OF NEW RULES 20-115 GOVERNING PARALEGAL
SERVICES AND BOARD OF BAR COMMISSIONERS
RULE 24-101A**

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Board of Bar Commissioners to approve amendments of Rules 20-101, 20-102, 20-103, 20-104, 20-105, 20-106, 20-107, 20-108, 20-109, 20-110, 20-111, 20-112, 20-113, 20-114 Governing Paralegal Services, and Board of Bar Commissioners Rule 24-101 and adoption of new Rules 20-115 and 24-101A, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 20-101, 20-102, 20-103, 20-104, 20-105, 20-106, 20-107, 20-108, 20-109, 20-110, 20-111, 20-112, 20-113, 20-114 Governing Paralegal Services, and Board of Bar Commissioners

Rule 24-101 hereby are APPROVED;

IT IS FURTHER ORDERED that new Rules 20-115 and 24-101A hereby are ADOPTED; and

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and adoption of new Rules 20-115 and 24-101A shall be **effective immediately**;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and adoption of new rules 20-115 and 24-101A by publishing the same in the *Bar Bulletin* and NMRA.

DONE at Santa Fe, New Mexico, this 30th day of January, 2004.

Chief Justice Petra Jimenez Maes
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Richard C. Bosson
Justice Edward L. Chávez

20-101. Purpose.

Increasing the availability of legal services to the public at a cost the public can afford is a goal of the legal profession and one which finds its support in Article 5 of the Rules of Professional Conduct. The employment of paralegals is a particularly significant means by which lawyers can render legal services more economically, in greater volume and with maximum efficiency while maintaining the quality of legal services. Rapid growth in the employment of legal assistants and paralegals and the trend in the legal community toward the use of the designation "paralegal" to identify highly-trained, highly-skilled legal support staff who engage in substantive legal work increases the necessity of providing guidelines for the qualifications and use of paralegals.

While the responsibility for compliance with the standards of professional conduct rests with members of the bar, paralegals should know and understand those standards. A lawyer using the services of a paralegal is obligated to inform the paralegal of the restraints and responsibilities incident to the employment and to supervise the performance of the paralegal. These guidelines are intended to promote the proper development and expansion of paralegal services, and to provide guidance to both the lawyer and the paralegal so that increased use of paralegal services will be in accordance with the Rules of Professional Conduct, statutes, court rules and decisions and rules and regulations of administrative agencies.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

20-102. Definitions.

As used in these rules:

A. a "paralegal" is a person who:

(1) contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity;

(2) performs substantive legal work under the supervision of a licensed attorney who assumes professional responsibility for the final work product; and

(3) meets one or more of the education, training or work experience qualifications set forth in Rule 20-115 NMRA of these rules; and

B. "substantive legal work" is work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. Examples of substantive legal work performed by a

paralegal include: case planning, development and management; legal research and analysis; interviewing clients; fact gathering and retrieving information; drafting legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is authorized by law. Substantive legal work performed by a paralegal for a licensed attorney shall not constitute the unauthorized practice of law.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

The definition of paralegal is intended to cover those persons usually designated as "legal assistants", "paralegals" and "lawyers' assistants". The definition exemplifies the broad range of tasks which may be performed by a paralegal. Other persons such as legal secretaries, law clerks and law graduates not admitted to practice in the State of New Mexico are also encompassed to the extent they perform the tasks contemplated by the definition. For a discussion of what constitutes "practice of law", see *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 85 N.M. 521, 514 P.2d 40 (1973).

Persons not meeting the definition of a paralegal or attorneys who have been disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction are discouraged from using the designation "paralegal". Attorneys are also discouraged from using the designation "paralegal" to identify non-lawyer support staff unless such staff qualifies as a paralegal pursuant to these rules.

20-103. Conduct prohibited.

A paralegal shall not:

A. provide legal advice;

B. represent a client in court except to the extent authorized by law;

C. select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who supervises the paralegal, unless the supervising attorney or judge, in the case of paralegals employed by the courts, so directs;

D. engage in conduct that constitutes the unauthorized practice of law;

E. contract with, or be employed by, a natural person other than an attorney to perform paralegal services except to the extent authorized by law;

F. in connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service or enter a transaction from which income or profit, or both, purportedly may be derived;

G. establish the fees to charge a client for the services the paralegal or the attorney performs. Such fees shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency or other entity; or

H. perform any services for a consumer except as performed under the supervision of the attorney, law firm, corporation, governmental agency, or other entity that employs or contracts with the paralegal. Nothing in this paragraph shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are expressly allowed by

statute, case law, court rule or federal or state administrative rule or regulation. As used in this paragraph, “consumer” means a natural person, firm, association, organization, partnership, business trust, corporation or public entity.
[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Rule 16-505 NMRA of the Rules of Professional Conduct provides that “[a] lawyer shall not . . . assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law”.

The rule is cited to emphasize that a paralegal cannot practice law, any more than any other unlicensed person or entity can practice law. Furthermore, a lawyer who uses the services of a paralegal has a professional responsibility to ensure that the paralegal does not practice law and thereby involve the lawyer in any violation of the Rules of Professional Conduct.

Some activities which would involve the unauthorized practice of law if undertaken by the paralegal include: (a) independently recommending a course of conduct or a particular action to a client; (b) evaluating for or speculating with a client on the probable outcome of litigation, negotiations or other proposed action; (c) independently outlining rights or obligations to a client; and (d) independently interpreting statutes, decisions or legal documents to a client.

A lawyer should ensure that paralegals for whose work the lawyer is responsible are aware of Section 36-2-28 NMSA 1978, which imposes criminal penalties upon persons who are not licensed to practice law and who “practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer. . .”

20-104. Disclosure required.

A lawyer will require the paralegal for whose work the lawyer is responsible to disclose to all persons with whom the paralegal communicates that the paralegal is not a lawyer.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

A lawyer will instruct paralegals for whose work the lawyer is responsible to disclose at the beginning of any dealings with other persons that the paralegal is not a lawyer. Even when acting in capacities in which nonlawyers are normally permitted to function, such as fact investigation, disclosure should always be made to all persons or agencies involved, since use of the employer’s name in connection with the paralegal’s duties may lead third parties to believe that the paralegal is a lawyer. Disclosure of nonlawyer status is equally applicable to oral communications, and common sense would indicate that a routine disclosure be made at the beginning of any conversation.

The term “associate” is generally construed to mean a lawyer and should be avoided in referring to a paralegal. A paralegal, as an employee of a lawyer or law firm, is not an associate and the relationship of the paralegal to the lawyer should be made clear in any oral or written communication. If at any time, in written or in oral communications, a misunderstanding of the paralegal’s nonlawyer status is suspected, the paralegal will reiterate that the paralegal is not a lawyer. This communication may be made in any way that avoids confusion.

Rule 16-402 of the Rules of Professional Conduct prohibits a

lawyer from communicating with a party the lawyer knows to be represented by a lawyer, unless the lawyer representing such third party consents. This rule also prohibits lawyers from causing other persons to make such communications, and thus applies equally to communications by paralegals with third parties. The lawyer’s obligation is to ensure that paralegals do not communicate directly with parties known to be represented by an attorney, without that attorney’s consent, on the subject of such representation.

20-105. Confidentiality.

A lawyer has an affirmative obligation to ensure that the paralegal for whose work the lawyer is responsible preserves the confidences and secrets of a client.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Rule 16-503 NMRA of the Rules of Professional Conduct provides in part:

a lawyer having direct supervisory authority over the nonlawyer [assistant] shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer. . . .

The lawyer’s responsibility is to instruct the paralegal that all information concerning representation of a client (indeed, even the fact of representation, if not a matter of public record) must be kept strictly confidential.

20-106. Client communications.

A lawyer will maintain active personal communication with the client.

[Approved, effective September 1, 1981; as amended effective January 30, 2004.]

COMMITTEE COMMENTARY

Maintaining active personal communication with the client does not preclude a paralegal from meeting with or talking to the client, nor does it mandate regular and frequent meetings between the lawyer and client.

20-107. Advocacy.

A paralegal may not act as an advocate on behalf of the client and cannot appear in court or any other tribunal, either in person or on record, as a representative of or advocate for the client, except to the extent authorized by law.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Only a lawyer may act as a representative of or advocate for a client. A paralegal cannot appear, plead, try cases or argue in court on behalf of anyone other than the paralegal pro se, or do anything in a representative capacity for a client unless specifically authorized by the Rules of Professional Conduct, statutes, court rules or decisions. Even when a paralegal is permitted to appear and represent a client, if the paralegal’s employer is named as attorney of record, the paralegal should disclose the paralegal’s nonlawyer status. See Rule 20-104 NMRA.

20-108. Duty to client.

A lawyer is responsible to ensure that no personal, social or

business interest or relationship of the paralegal impinges upon, or appears to impinge upon, the services rendered to the client. [Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

If a lawyer accepts a matter in which the paralegal may have a conflict of interest, the lawyer will exclude that paralegal from participation in any services performed in connection with that matter. Furthermore, the lawyer must specifically inform the client that a nonlawyer employee has a conflict of interest which, was it the lawyer's conflict, would prevent further representation of the client in connection with the matter. The nature of the conflict should be disclosed. The lawyer will caution the paralegal to inform the lawyer of any interest or association which might constitute or cause such a conflict, or which might give the appearance of constituting or causing such a conflict. In addition, no interest or loyalty of the paralegal may be permitted to interfere with the lawyer's independent exercise of professional judgment.

20-109. Referrals.

The lawyer will not permit, encourage or influence the paralegal for whose work the lawyer is responsible to recommend that the lawyer or the lawyer's firm be retained by any person or entity, nor shall the lawyer condone such activity on the part of a paralegal.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Rule 16-702 NMRA of the Rules of Professional Conduct prohibits a lawyer from recommending to a nonlawyer who has not sought advice employment of the lawyer or his or her partners or associates, from giving anything of value for having recommended employment of the lawyer or from requesting others to promote the lawyer's services. These prohibitions apply with equal force to a paralegal who attempts to influence others to select the paralegal's employer.

20-110. Competency.

A lawyer is responsible to ensure that a paralegal is competent to perform the work which the lawyer delegates to the paralegal.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Rule 16-101 NMRA of the Rules of Professional Conduct requires a lawyer to represent a client competently. In order to fulfill this obligation, a lawyer must ensure that a paralegal employed by the lawyer, and for whose work the lawyer is ultimately responsible, is able to competently perform the work assigned by the lawyer. This requires that the lawyer be aware of the abilities of a paralegal and delegate to the assistant only those assignments which are within the assistant's capacity to perform competently.

A lawyer who hires a paralegal is responsible for carefully evaluating the paralegal's education and experience to determine if the assistant can competently perform the tasks which it is contemplated will be assigned. Once a paralegal is in the employ of a lawyer, the lawyer has a continuing obligation to

closely supervise the work of the paralegal. A lawyer may train a paralegal to perform increasingly complex assignments under the supervision of the lawyer, and a process of gradually escalating the level of difficulty of the type or types of work assigned to the assistant may be used to raise the skill level of a paralegal. Specialized instruction provided to a paralegal, whether through the personal efforts of the lawyer who supervises the assistant or through other means such as seminars or classes, may be helpful in maintaining and raising the assistant's level of competence, but it remains the responsibility of the individual lawyer to determine the extent of the assistant's skills and to delegate to the assistant accordingly. In addition, a lawyer should explain to the paralegal that the paralegal has a duty to inform the lawyer of any assignment which the assistant regards as being beyond his capability.

20-111. Business associations prohibited.

A lawyer will not form a partnership or other entity with a paralegal for the purpose of practicing law.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

The lawyer may not enter into any ownership arrangement with a paralegal involving the practice of law.

A lawyer will not share fees with a paralegal. The compensation of a paralegal may not include a percentage of profits, fees received generally or fees received specifically from a client who came to the lawyer or the firm by reason of acquaintance or other association with the paralegal.

However, Rule 16-504 NMRA of the Rules of Professional Conduct provides authorization for a lawyer or law firm to include paralegals in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, since such inclusion does not aid or encourage laymen to practice law.

20-112. Accountability.

The paralegal is directly accountable to the lawyer. The lawyer maintains ultimate responsibility for and has an ongoing duty to actively supervise the paralegal's work performance, conduct and product.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

A paralegal's duty is to inform the responsible lawyer of all significant actions and services performed in the course of the paralegal's employment. Only the lawyer can perform professional legal services; only to the extent that the lawyer is fully informed of the actions of his or her paralegals can the lawyer maintain ultimate responsibility for those actions. Finally, only by thorough supervision of the paralegal can the lawyer ensure that the paralegal is neither engaging in the unauthorized practice of law nor involving the lawyer in any violation of the lawyer's professional responsibilities.

Rule 16-503 NMRA of the Rules of Professional Conduct states that "a lawyer having direct supervisory authority over the nonlawyer [assistant] shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer".

20-113. Business stationery and cards.

The letterhead of a lawyer or law firm may not include the

name of a paralegal. However, a lawyer or law firm may permit its name to appear on the business card of a paralegal, provided the paralegal's capacity is clearly indicated. [Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

Rule 16-705 NMRA of the Rules of Professional Conduct specifies what information may be given on a lawyer's letterhead.

A lawyer may permit a paralegal to sign correspondence on his letterhead or on the letterhead of a law firm, as long as the nonlawyer status of the paralegal is clearly disclosed by a title accompanying the signature, such as "paralegal". Moreover, the business card of a paralegal may contain the name, address and telephone number of the paralegal's employer, whether a firm or an individual lawyer. However, the card must on its face be clearly intended to identify the paralegal and not the lawyer or law firm.

The distinction between business cards and letterheads was drawn in ABA [Comm. on Professional Ethics, Opinions, Nos.] 909 (1966) and 1000 (1967). The opinions distinguish business cards and letterheads on the basis that the card is the employee's, basically designed to identify the employee and to state by whom the person is employed, as a reinforcement of what one would expect an employee to convey in an oral statement, not the professional card of the lawyer or law firm. A lawyer who permits the lawyer's name or the name of a law firm to appear on the business card of a paralegal is charged with the responsibility of ensuring that the card meets the same standards of dignity and accuracy as would be required for the lawyer's own card.

20-114. Rules of Professional Conduct; compliance.

A lawyer has an affirmative obligation to ensure that a legal assistant, paralegal or other non-lawyer support staff for whose work the lawyer is responsible does not engage in any activities which, if engaged in by the lawyer, would constitute a violation of the Rules of Professional Conduct.

[Approved, effective September 1, 1981; as amended, effective January 30, 2004.]

COMMITTEE COMMENTARY

In order to avoid misconduct by the paralegal, acting as the agent of an attorney, a lawyer must ensure that paralegals for whose work the lawyer is responsible are familiar with the Rules of Professional Conduct. Without attempting an exhaustive listing of the activities encompassed by this guideline, the following are examples. A paralegal may not issue statements which, if made by a lawyer, would violate Rule 16-701 NMRA or 16-702 NMRA of the Rules of Professional Conduct concerning communications and advertising. A lawyer will not permit or condone activities of a paralegal for whose work the lawyer is responsible in communicating with jurors, contacting witnesses or communicating with a judge, when such activities, if engaged in by the lawyer, would violate Rule 16-304 NMRA (contact with witnesses) or Rule 16-305 NMRA (communicating with judges, jurors or other officials).

20-115. Paralegal qualifications.

A paralegal shall meet one or more of the following educational, training or work experience qualifications:

A. graduation from a paralegal program that is:

(1) approved by the American Bar Association;
(2) an associate degree program;
(3) a post-baccalaureate certificate program in paralegal studies; or

(4) a bachelor's degree program;

B. graduation from a post-secondary legal assistant program which consists of a minimum of sixty (60) semester hours or equivalent, as defined by the American Bar Association *Guidelines for the Approval of Paralegal Education Programs*, of which at least eighteen (18) semester hours or equivalent are general education courses and eighteen (18) semester hours or equivalent are legal specialty courses;

C. a bachelor's degree in any field plus two years of substantive law-related experience under the supervision of a licensed attorney. Successful completion of at least fifteen (15) semester hours of substantive paralegal courses may be substituted for one year of law-related experience;

D. graduation from an accredited law school and not disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction;

E. certification by the National Association of Legal Assistants, Incorporated, the National Federation of Paralegal Associations, Incorporated or other equivalent national or state competency examination plus at least one (1) year of substantive law-related experience under the supervision of a licensed attorney; or

F. A high school diploma or equivalent plus seven (7) years of substantive law-related experience under the supervision of a licensed attorney.

[Approved, effective January 30, 2004.]

COMMITTEE COMMENTARY

Paralegals are encouraged to meet the minimum continuing legal education requirements established for attorneys in Rule 18-201 NMRA.

24-101. Board of Bar Commissioners.

(Paragraph A has not been amended)

B. **Divisions created.** The Supreme Court of New Mexico does hereby create the following divisions of the state bar:

(1) a young lawyers division. Membership in the Young Lawyers Division shall consist of all members of the State Bar of New Mexico in good standing under thirty-six (36) years of age and those members who have been admitted to the practice of law in any state less than three (3) years. Membership shall terminate automatically at the adjournment of the annual convention of the state bar next after a member attains thirty-six (36) years of age or three (3) years after admission to the practice of law in any state, whichever occurs last. The Young Lawyers Division shall adopt bylaws applicable to its division which shall be approved by the Board of Bar Commissioners. Such bylaws shall not be inconsistent with these rules. The bylaws of the young lawyers division shall establish the process for the election of its officers and directors;

(2) a senior lawyers division. Membership in the Senior Lawyers Division shall consist of all members of the State Bar of New Mexico in good standing who are fifty-five (55) years of age or older and who have practiced law for twenty-five (25) years or more. The senior lawyers division shall adopt bylaws applicable to its division which shall be approved by the Board of Bar Commissioners. Such bylaws shall not be inconsistent with these rules. The bylaws of the senior lawyers division shall establish the process for the election of its officers and directors; and

(3) a paralegal division. A person may become a member of the paralegal division if the person meets the requirements of Rule 24-101A NMRA of these rules.

The paralegal division shall adopt bylaws applicable to its division which shall have been approved by the Board of Bar Commissioners. Such bylaws shall not be inconsistent with these rules. The bylaws of the paralegal division shall establish the process for the election of its officers and directors.

(Paragraphs C through J have not been amended)

[As amended, effective January 1, 1987; July 1, 1987; June 1, 1992; October 1, 1992; December 1, 1993; June 15, 1994; February 7, 1995; June 8, 1998; April 17, 2000; August 14, 2000; January 30, 2004.]

NEW RULE:

24-101A. Paralegal division.

A. **Membership.** A person is eligible to become a member of the paralegal division of the state bar if the person meets the qualifications set forth in this rule and bylaws approved by the Board of Bar Commissioners.

B. **Employment qualifications.** A person may become a member of the paralegal division if the person:

- (1) contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity;
- (2) performs substantive legal work as defined in Rule 20-102 NMRA; and
- (3) meets one or more of the qualifications described in

Paragraph B of this rule.

C. **Educational and experience qualifications.** In addition to the employment qualifications set forth in Paragraph B of this rule, an applicant for membership to the paralegal division, shall meet one or more of the following educational or experience qualifications:

- (1) graduation from a paralegal program that is:
 - (a) approved by the American Bar Association;
 - (b) an associate degree program;
 - (c) a post-baccalaureate certificate program in paralegal studies; or
 - (d) a bachelor's degree program;
- (2) graduation from a post-secondary legal assistant program which consists of a minimum of sixty (60) semester hours or equivalent, as defined by the American Bar Association *Guidelines for the Approval of Paralegal Education Programs*, of which at least eighteen (18) semester hours or equivalent are general education courses and eighteen (18) semester hours or equivalent are legal specialty courses;
- (3) a bachelor's degree in any field plus two years of substantive law-related experience under the supervision of a licensed attorney. Successful completion of at least fifteen (15) semester hours of substantive paralegal courses may be substituted for one year of law-related experience;
- (4) graduation from an accredited law school and not disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction; or