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Little Mohawk by Melissa Moulton (see page 5)

Weems Art Gallery, Albuquerque

Special Insert:

CLE-At-A-Glance

www.nmbar.org
60 for 60: Educating Leaders

In May 1950, the University of New Mexico’s School of Law graduated its first class. To commemorate the 60th anniversary of this event, Dean Kevin Washburn is proud to announce a celebration to honor this legacy. The 60 for 60 project will honor the School of Law’s role in New Mexico and the nation by commemorating the 60 most influential people, events, legislative breakthroughs, transformational changes and/or accomplishments that have shaped the state’s legal community.

The Book

Nominations are now being accepted for a 60 for 60 book, which will celebrate the final 60 selected people and accomplishments that have paved the way in shaping the law school and the state since 1950.

How to Submit Your Nomination(s)

Nominations may be sent via the law school’s website: http://lawschool.unm.edu/60for60/ or they can be mailed to: David Myers, UNM School of Law Archivist, UNM School of Law, MSC11-6070, 1 University of New Mexico, Albuquerque, NM 87131-0001. They should be at least 250 words and no more than 600 words. More than one nomination per person is welcome. Nominations must be received by April 1, 2010.

Photo submissions also are welcome. Check the website: http://lawschool.unm.edu/60for60/ for instructions on how to submit them electronically.

The Event

This fall, the School of Law will honor and recognize the final 60 at a festive celebration.

Questions: Contact David Myers at 505.277.6796.
Firm Finder
2010–2011
Bench & Bar Directory

Firm Listings are now available in the upcoming Directory.

• Firms will be listed geographically in alphabetical order.
• Firm logos can be used.
• Firm Listings will be accepted through March 23, 2010.

Cost $115 per listing

To purchase a Firm Listing, contact Marcia Ulibarri, Account Executive
Direct: (505) 797-6058 • Cell: (505) 400-5469
E-mail: mulibarri@nmbar.org
NEEDED

LAWYERS FOR THE HOMELESS LEGAL CLINIC
Mesilla Valley Community of Hope Shelter
999 W. Amador Avenue, Las Cruces
Wednesdays, 12:30 p.m. to 2:30 p.m.

VOLUNTEER ATTORNEYS ARE NEEDED TO:

- **Staff the Homeless Legal Clinic.** Attorneys meet with homeless persons in one- to two-hour sessions and provide on-the-spot legal information and advice as well as referrals to low income/pro bono legal service programs. In many instances, the problems of the interviewees can be resolved at the clinic. The HLC is fully equipped with a telephone, computer with Internet access, printer, standard office supplies, New Mexico statutes, and resource materials and manuals that address specific issues that the homeless face. A trained attorney will assist you until you feel comfortable staffing the clinic by yourself. Even if you are a new lawyer, you will be surprised at how much you have to offer these clients and how your help can make such a major difference in their lives. Volunteer hours count toward fulfilling the obligation of 50 hours of pro bono work under Supreme Court Rule 16-601 NMRA. The HLC is covered by a malpractice insurance policy through the State Bar of New Mexico.

  - I am available to staff the HLC at the times and place noted above. Call me to schedule a date.

- **Serve as an “information referral resource.”** Assist clinic attorneys in answering questions in specialized areas of the law such as domestic relations, criminal law, landlord/tenant law, government benefits, and consumer law.

  - I am available as an information resource, which means that volunteers staffing the HLC can call me with questions.

- **Join the pro bono referral list.** Volunteer to take cases that cannot be resolved during the limited time period the HLC provides.

  - I would like to be placed on the pro bono referral list.

Check the areas of law that you would be able to assist with:

- Domestic Relations
- Criminal Law
- Government Benefits
- Consumer Law
- Landlord/Tenant
- Immigration
- Civil Rights
- Tort
- Other____________________________

Name: __________________________________________________________________________
Address: _______________________________________________________________________
Street
City ____________________________________________________________________________ ZIP _______________________________________________________________________
Telephone ______________________ Fax: ______________________
E-mail: _________________________________________________________________________

Please return completed form to:
Stacey Leaman, NM Center on Law and Poverty
720 Vassar Drive NE, Albuquerque, NM 87106
Phone: (505) 255-2840 Fax: (505) 255-2778 E-mail: stacey@nmpovertylaw.org
Bar Bulletin

As part of their annual dues, the State Bar members receive the Bulletin, which is available online at www.nmbar.org. It is available at the subscription rate of $125 per year and at PO Box 92860, Albuquerque, NM 87199-2860.

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Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:
I will be mindful of time schedules of lawyers, parties and witnesses.

Meetings

March

1
Attorney Support Group, 5:30 p.m., First United Methodist Church

3
Real Property, Trust and Estate Section, 11:30 a.m., via teleconference

3
Bankruptcy Law Section, noon, U.S. Bankruptcy Court

3
Employment and Labor Law Section Board of Directors, noon, State Bar Center

8
Taxation Section Board of Directors, noon, via teleconference

9
Appellate Practice Section, Noon, TBD

State Bar Workshops

March

23
Lawyer Referral for the Elderly Workshop 9:45–11 a.m., Presentation 1–4 p.m., Clinics Munson Senior Center, Las Cruces

24
Lawyer Referral for the Elderly Workshop 9:45–11 a.m., Presentation 1:30–4 p.m., Clinics Alamo Senior Center, Alamogordo

Cover Artist: Melissa Moulton has a degree in advertising design and has worked in the industry as an illustrator and art director for many years. Using the building blocks and formulas to create art for the media, she taught herself to bridge the gap into the fine arts. Color is her passion and nature her biggest inspiration. To see the cover art in its original color, visit www.nmbar.org and click on Attorneys/Members/Bar Bulletin.
Mass Reassignment of Cases
Effective April 1, a mass reassignment of all Division VII cases will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. All Division VII cases will transfer to the Honorable Raymond Z. Ortiz. All cases in Division III currently assigned to the Honorable Raymond Z. Ortiz will be assigned to Division VII. Parties who have not previously exercised their right to challenge or excuse will have 10 days from April 1 to challenge or excuse the newly appointed judge pursuant to Rule 1-088.1.

Second Judicial District Court Judicial Vacancy
A vacancy on the 2nd Judicial District Court will exist in Albuquerque as of March 1 upon the retirement of the Honorable Geraldine E. Rivera. Chief Judge Ted Baca has indicated he intends to assign the vacancy to the Civil Division. Kevin K. Washburn, chair of the Nominating Commission, solicits applications for this position 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., March 8. Applications received after that date will not be considered. The District Judicial Nominating Commission will meet at 9 a.m., March 26, at the County Courthouse, 400 Lomas NW, Albuquerque, to evaluate the applicants for this position. The meeting is open to the public.

Thirteenth Judicial District Court
E-Filing Training
The 13th Judicial District Court will require mandatory e-filing in all civil cases beginning July 1. Until then, as e-filing goes live in each of the three counties comprising the district (Cibola began e-filing Nov. 17, 2009; Sandoval began e-filing Jan. 25; and Valencia begins e-filing March 2010), e-filing will be voluntary and free but requires registering with the service provider. E-filing

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>1st Judicial District Court</td>
<td>Exhibits in criminal, civil, domestic relations, probate, and children's court cases</td>
<td>1974–1994</td>
<td>April 30</td>
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<td>(505) 455-8275</td>
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<tr>
<td>1st Judicial District Court</td>
<td>Exhibits in criminal, civil, domestic relations, and adoptions</td>
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<td>1st Judicial District Court</td>
<td>Exhibits in criminal, civil, domestic relations, and adoptions</td>
<td>1978–1993</td>
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<td>(505) 827-4687</td>
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training will be held at noon, March 18, at the Valencia County Courthouse. Anyone wishing to utilize e-filing must sign up with the service provider, WIZNET, and become a registered user. As a registered user, the person or firm signs a subscriber agreement and receives a user ID and password to access the e-filing system. Beginning July 1, WIZNET will charge e-filing fees to each registered user when utilizing the system. The fees shall be determined by statute. To access the e-filing system, go to www.13districtcourt.com and select “E-FILE.” You can read the user guide, participate in an Internet training session and register with WIZNET to set up an account. Contact Gregory T. Ireland, (505) 865-4291, ext. 2104 for further information.

U. S. District Court for the District of New Mexico Las Cruces Courthouse Move to New Courthouse

The U. S. District Court currently located in the Harold L. Runnels Federal Building in Las Cruces is moving to the new courthouse located at 100 N. Church Street, Las Cruces, NM 88001. The Court will close March 15 to facilitate the move and will reopen for regular business hours at the new courthouse on March 16.

STATE BAR NEWS

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

Both groups meet at the First United Methodist Church at Fourth and Lead SW, Albuquerque. For more information, contact Bill Stratvert, (505) 242-6845.

Bankruptcy Law Section Annual Meeting and CLE

The Bankruptcy Law Section will hold its annual meeting during the lunch break, March 5, at the 25th Annual Bankruptcy Year in Review at the State Bar Center. Register online at www.nmbarce.org or fax to (505) 797-6071. See the CLE-At-a-Glance insert in this issue of the Bar Bulletin for more information. Send agenda items to Chair Michelle Ostrye, mko@suntinfirm.com.

Elder Law Section Annual Meeting and CLE

The Elder Law Section’s annual meeting is at 12:10 p.m., April 30, in conjunction with the Seventh Annual Elder Law Seminar Getting Old in These Changing Times. Send agenda items to Chair Laurie Hedrich, laurie@hedrichlaw.com or (505) 880-1115. Details on the CLE are forthcoming.

Employment and Labor Law Section Board Meeting

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

Paralegal Division Luncheon CLE Series

The Paralegal Division invites members of the legal community to bring a lunch and attend Recap of the 2010 Legislative Session (1.0 general CLE credit) presented by Lawrence Horan of Sheehan, Sheenan & Stelzner. The program will be held from noon to 1 p.m., March 10, at the State Bar. The registration fee is $16 for attorneys, $10 for members of the Paralegal Division, and $15 for non-members. Registration begins at the door at 11:45 a.m. For more information, contact Cheryl Passalaqua, (505) 247-0411, or Evonne Sanchez, (505) 222-9356.

Public Law Section Annual Public Lawyer Award

The Public Law Section is currently accepting nominations for the Public Lawyer of the Year Award, which will be presented April 30. Visit www.nmbar.org/About Us/Sections/PublicLaw/Lawyer Awards to view previous recipients and award criteria. Send nominations by 5 p.m., March 5, to Doug Meiklejohn, dmeiklejohn@nmelc.org, or by mail to New Mexico Environmental Law Center, 1405 Luisa St. #5, Santa Fe, NM 87505-4074. The selection committee will consider all nominated candidates and may nominate candidates on its own.

Young Lawyers Division 2010 Summer Fellowships

The Young Lawyers Division is currently accepting applications for its 2010 Summer Fellowships. For the summer of 2010, YLD will award two fellowships to law students who are interested in working in unpaid legal positions with public interest entities or in governmental agencies. The fellowship awards are intended to provide law students the opportunity to work in positions that might not otherwise be possible because the positions are unpaid. The fellowship awards, depending on the circumstances of the position, may be up to $3,000 for the summer. In order to be considered for the fellowships, applicants must submit the following materials: (1) a letter of interest that details the student’s interest in public interest law or the government sector; (2) a resume; and (3) a written offer of employment for an unpaid legal position with a public interest entity or governmental entity for the summer of 2010. Applications should be submitted to: J. Brent Moore, YLD Summer Fellowship Coordinator N.M. Public Regulation Commission PO Box 1269 Santa Fe, NM 87504-1269

Applications must be postmarked by March 31. Direct questions to Moore at (505) 827-4645.
UNM School of Law
Student Bar Association
4th Annual Barristers Ball

Student Bar Association President Othiamba Umi, UNM Regent President Raymond Sanchez, and the Barrister’s Ball Host Committee cordially invite the legal community to the UNM School of Law 4th Annual Barristers Ball, 7 p.m. to midnight, March 6, at Hotel Albuquerque in Old Town. This year proceeds will support the Association of Public Interest Law Summer Grant Program which provides grants to law students who obtain unpaid summer clerking positions for public interest law organizations. These grants allow students to learn about career opportunities in public interest law and to help under-served communities in New Mexico. There will be cocktails from 7 to 9 p.m. with a DJ and dancing to follow. Student tickets are $20 until March 2, $25 starting on March 3, and $30 at the door. Tickets for non-students are $30. Tickets will be sold from 10 a.m. to 2 p.m. in the forum at UNMSOL and are also available online ($1 service fee) at http://unmbarristersball.blogspot.com.

EPA Lead Renovator, Repair and Painting Rule

Beginning April 22, all renovators, remodelers, painters, maintenance personnel and any other workers removing or modifying painted surfaces in pre-1978 child/pregnant woman-occupied facilities or federally-assisted target housing must obtain EPA certification as a certified renovator (www.epa.gov/lead). Firms that conduct lead-based paint activities and/or renovations must be certified by the EPA through submission of application and payment of fees by this deadline [40 CFR 745.89(a)]. The application is located at: http://www.epa.gov/lead/pubs/firmapp.pdf. The deadline for training and certification is rapidly approaching. Santa Fe Community College received EPA certification to provide accredited certified renovator and certified lead dust sampling technician courses. For information regarding these courses, contact Jeanne-Marie Crockett, (505) 428-1414 or JeanneMarie.Crockett@ sfcc.edu; or CHMM Lead Pb Trainer Janet Kerley, (505) 856-8543 or janet@lrinnm.com.

Legal Services Corporation
Civil Legal Services Grants

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2011. A request for proposals, filing dates, submission requirements and other information will be available April 8 at www.grants.lsc.gov. The listing of eligible service areas for each state and the estimated grant amounts for each service area will be included in the RFP. Applicants must file a notice of intent to compete, available from the RFP, in order to participate in the competitive process. Direct inquiries to competition@lsc.gov.

Spring Library Hours to May 15

Building and Circulation

<table>
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<tr>
<th>Monday–Thursday</th>
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<tr>
<td>Sunday</td>
<td>Noon–4 p.m.</td>
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Abbreviated Hours: March 15–19:

| Spring Break     | 8 a.m.–6 p.m. |

Other News

Domestic Violence Resource Center
Fulfill Pro Bono Hours

To help victims of domestic violence in New Mexico and to fulfill those pro bono hours without leaving your office, join the staff of Domestic Violence Resource Center (formerly Resources, Inc.) for an informational brown-bag lunch from noon–1 p.m., March 3, at 625 Silver SW, Silver Square Building, Albuquerque, first floor conference room. DVRC, a nonprofit agency, is in need of attorney volunteers for its state-wide, toll-free legal helpline. The helpline can be forwarded to any phone number, training takes less than one hour, and you do not need to be a family law practitioner. Beverages and light dessert will be provided. There is no charge and no obligation. Contact Leisa Richards, DVRC legal director, (505) 242-2089 or lrichards@resourcesinc.org, to reserve a space.

NOW accepting ad space reservations for the 2010-2011 BENCH & BAR DIRECTORY

Contact
Marcia C. Ulibarri
505.797.6058
mulibarri@nmbar.org
Citizens United v. Federal Election Commission

The Decision and Its Effect on Federal and State Campaign Finance Laws

By Marco Brown

On January 21, the United States Supreme Court decided Citizens United v. FEC, 558 U.S. ____ (2010) (slip opinion available at http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf), a long-anticipated campaign finance case. The decision, no matter what it had been, was bound to stoke controversy, and controversy it stoked. By a 5–4 vote, the Court found unconstitutional decades-old campaign finance law as well as certain provisions of the more recent Bipartisan Campaign Reform Act of 2002 (BCRA). Reaction was swift from both sides of the political spectrum. For example, during his State of the Union speech, President Obama openly chided the Supreme Court for “revers[ing] a century of law that [he] believe[s] will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections.”

Not surprisingly, others had a different opinion. Former Solicitor General Ted Olson, who argued the case for Citizens United, opined that the Court’s decision rested on firm ground because the statutes in question were “impossible to reconcile with the First Amendment.”

So what exactly did the Court decide that elicited such diametrically opposed assessments? Let us examine the 183-page opinion to find out.

Citizens United is a non-profit corporation that garners most of its $12 million annual budget from private donations. In 2008, Citizens United released Hillary: The Movie, a scathing documentary-style film about then-presidential candidate Senator Hillary Clinton. A cable company paid $1.2 million for the right to market Hillary on a video-on-demand channel. To promote the film, Citizens United produced ten- and thirty-second ads intended for cable and broadcast television. However, it feared that airing the ads would violate long-standing federal laws prohibiting corporations and labor unions from using general treasury funds for independent expenditures that “expressly advocate the election or defeat of a candidate” in select federal elections. (Independent expenditures are political expenditures not donated to a sitting politician or political candidate but spent independently by a corporation or union.) It also feared airing Hillary within thirty days of the democratic primaries would violate provisions of the BCRA (a.k.a., McCain–Feingold) which limits “electioneering communications” within 30 days of a primary and 60 days of a general election.

To assuage these fears, Citizens United sought declaratory and injunctive judgment against the Federal Election Commission. After the lower courts determined the bans on corporate-union independent expenditures and electioneering communications were constitutional under existing precedent, the Supreme Court granted certiorari.

The meat of the Court’s opinion began with a recitation of the First Amendment: “Congress shall make no law . . . abridging the freedom of speech.” It continued, noting that First Amendment protections, including those regarding political speech, extended to corporations. It then traced the history of bans on corporate independent expenditures, all the while noting the Supreme Court’s unwillingness to allow government to limit these expenditures simply because a corporation is the speaker. This unwillingness, however, changed with Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), which allowed restrictions on indirect political expenditures by corporations to prevent “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.” Id. at 660.

Thus, the Court confronted two opposed lines of precedent regarding independent expenditures. After noting the government all but abandoned Austin’s “antidistortion rationale” during oral arguments, the Court noted the rationale could be used to suppress political speech of media corporations; e.g., newspapers, cable news stations, internet news organizations, book publishers, etc. Such suppression would, according to the Court, contrast the original understanding of the First Amendment as a “response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the colonies.” Ultimately, the Court rejected the antidistortion rationale and expressly overruled Austin.

The Court also examined and rejected two new government justifications for independent expenditure limitations: (1) to prevent corruption and the appearance of corruption, and (2) protecting dissenting shareholders from funding corporate speech with which they disagree. Concerning the corruption justification, the Court noted that because independent expenditures are not payments made to political candidates, the fear of quid pro quo

continued
arrangements (or the appearance of such arrangements) between the corporation and the candidate is substantially diminished and cannot justify government suppression of corporate—union political speech. In then end, the Court found limitations on corporate—union independent expenditures contained in 2 U.S.C. § 441b unconstitutional, including the BCRA’s thirty- and sixty-day prohibitions on electioneering communications. The Court did, however, uphold challenged disclaimer and disclosure provisions as they related to political speech.

In sum, here is what the Court decided:

1. Because this matter was decided as a matter of First Amendment law, neither states nor the federal government may limit a corporation or union’s use of general treasury funds for independent political expenditures.

2. Corporations or unions may use general treasury funds for electioneering communications within thirty or sixty days of elections.

3. The BCRA’s disclaimer and disclosure provisions are constitutional under the facts presented in Citizens United.

Here are items the Court did not address:

1. Whether bans on political expenditures by foreign corporations are constitutional.

2. Whether existing limits on direct political expenditures made by corporations or unions are constitutional.

So, what does this mean for states? Essentially, it means states cannot deny a corporation or union the opportunity to use general funds to speak about political matters at any time. By one estimate, the campaign finance laws in as many as 24 states are called into question by Citizens United. These questionable laws will almost certainly be amended and some may be abandoned entirely. Approximately 19 of the 24 states with questionable campaign finance laws have a race for governor in 2010, which creates the unenviable burden of rewriting laws on the fly or risk numerous costly lawsuits, an especially unattractive option given current budget conditions. In some states (e.g., Colorado, Kentucky, Montana), state constitutions may need to be rewritten to comply with the Court’s decision.

How does Citizens United affect New Mexico specifically? Well, it appears none of the current state campaign finance laws are called into question. However, future campaign finance proposals in the New Mexico Legislature targeted at indirect corporate—union expenditures or limitations on corporate—union political speech will almost certainly be more difficult to pass simply because their constitutionality will be highly suspect. Ultimately, New Mexico and every other state will now have to creatively rethink and retool campaign finance laws if they wish to curtail or control corporate—union political speech.

About the Author
Marco Brown, a recent member of the State Bar, practices criminal law, insurance defense, and civil rights law in Farmington.

Endnotes

2  Citizens United v. FEC, 558 U.S. ____ , ____ (2010) (slip op., at 2). All subsequently noted case facts are contained on slip opinion pages two through five.

3  Id. (slip op., at 20). All subsequently noted arguments and holdings are contained on slip opinion pages twenty-five through fifty-six.


5  This assessment includes the campaign contribution limit bill, which limits direct contributions to political candidates, passed last year by the New Mexico legislature. An article regarding bill available at http://newmexicoinddependent.com/22983/legislature-passes-campaign-contribution-limit-bill.


**LEGAL EDUCATION**

**MARCH**

2  
2009 Bridge the Gap  
VR, State Bar Center  
Center for Legal Education of NMSBF  
6.0 G, 1.0 E, 1.0 P  
(505) 797-6020  
www.nmbarcle.org

5  
25th Annual Bankruptcy Year in Review  
State Bar Center  
Center for Legal Education of NMSBF  
6.0 G, 1.0 P  
(505) 797-6020  
www.nmbarcle.org

10  
Recap of the 2010 Legislative Session  
Albuquerque Paralegal Division  
1.0 G  
(505) 247-0411 or (505) 222-9356

2  
Attorney’s Guide to Good Lawyering for People With Disabilities  
VR, State Bar Center  
Center for Legal Education of NMSBF  
1.0 P  
(505) 797-6020  
www.nmbarcle.org

8  
The Write Way With Stuart Teicher  
VR, Las Cruces  
Center for Legal Education of NMSBF  
3.0 G  
(505) 797-6020  
www.nmbarcle.org

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Disciplinary Administrative Adjudications in New Mexico  
State Bar Center  
Center for Legal Education of NMSBF  
4.7 G, 2.2 E  
(505) 797-6020  
www.nmbarcle.org

2  
Challenges of New Form 990 for Nonprofits  
Teleseminar  
Center for Legal Education of NMSBF  
1.0 G  
(505) 797-6020  
www.nmbarcle.org

8  
The Zealous Advocate With Stuart Teicher  
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2  
Employment Law: The Basics and New Developments  
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Center for Legal Education of NMSBF  
6.1 G  
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www.nmbarcle.org

9  
Attorney’s Guide to Good Lawyering for People With Disabilities  
VR, Las Cruces  
Center for Legal Education of NMSBF  
1.0 P  
(505) 797-6020  
www.nmbarcle.org

16  
Attorney’s Guide to Good Lawyering for People With Disabilities  
VR, State Bar Center  
Center for Legal Education of NMSBF  
1.0 P  
(505) 797-6020  
www.nmbarcle.org

2  
Ethics Risks Practicing Law  
VR, State Bar Center  
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9  
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### WRITS OF CERTIORARI

**As Updated by the Clerk of the New Mexico Supreme Court**  
Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court  
PO Box 848 · Santa Fe, NM 87504-0848 · (505) 827-4860  
**Effective March 1, 2010**

**Petitions for Writ of Certiorari Filed and Pending:**

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**Response due 2/25/10 by exnm**

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**Submission Date**

- (Submission = date of oral argument or briefs-only submission)
- NO. 30,787  Cable v. Wells Fargo Bank  
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- NO. 31,329  Kirby v. Guardian Life  
  (COA 27,624) 2/9/09
- NO. 30,956  Davis v. Devon  
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## PUBLISHED OPINIONS

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<td><strong>Michael J. Cadigan</strong>&lt;br&gt;Cadigan &amp; Park, P.C.&lt;br&gt;3840 Masthead Street, NE&lt;br&gt;Albuquerque, NM 87109&lt;br&gt;505-830-2076&lt;br&gt;505-830-2385 (telecopier)&lt;br&gt;<a href="mailto:cadigan@cadiganlaw.com">cadigan@cadiganlaw.com</a></td>
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<td><strong>Douglas H.M. Carver</strong>&lt;br&gt;Judicial Standards Commission&lt;br&gt;PO Box 27248&lt;br&gt;Albuquerque, NM 87125-7248&lt;br&gt;505-222-9353</td>
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brad.sonnenberg@mac.com
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Roswell, NM 88203-5329

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Albuquerque, NM 87122-1371

Effective December 31, 2009:
Jay Kroshus
21 Camino de Las Huertas
Placitas, NM 87043-8601

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Law Office of Stacy Brent Leffler
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Tijeras, NM 87059-1840

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Law Office of Thomas L. Lesly
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Amarillo, TX 79105-1873

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Miller Stratvert, P.A.
PO Box 25687
Albuquerque, NM 87125-0687

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Albuquerque, NM 87104-3048

Effective January 22, 2010:
Marian Matthews
5901J Wyoming Blvd., NE, Ste. 280
Albuquerque, NM 87109-3838

Effective January 13, 2010:
Hon. Mark B. McFeeley (ret.)
c/o 911 Old Pecos Trail
Santa Fe, NM 87505-0366

Effective January 12, 2010:
John Eddy Morrison
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Albuquerque, NM 87106-2911

Effective January 25, 2010:
David Karl Ottman
2520 Delwood Avenue
Durango, CO 81301-4543

Effective January 26, 2010:
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Prescott, AZ 86305-2880

Effective January 11, 2010:
George Harrison Pigg
Mettauers Shires & Adams
112 Cora Street
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Effective January 11, 2010:
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Effective January 11, 2010:
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PO Box 440044
Somerville, MA 02144--0001

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Jill Janine Smith
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Seattle, WA 98127-1300

Effective December 29, 2009:
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131 Fairhill Drive
Wilmington, DE 19808-4310

Effective January 4, 2010:
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Gregory A. Wittmore
Law Office
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Dallas, TX 75206-5142

Effective December 4, 2009:
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PO Box 7775
Albuquerque, NM 87194-7777

Bar Bulletin - March 1, 2010 - Volume 49, No. 9 - 19
## 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 February 15, 2010**

To view pending proposed rule changes visit the New Mexico Supreme Court’s Web site: http://nmsupremecourt.nmcourts.gov/
To view recently approved rule changes, visit the New Mexico Compilation Commission’s Web site: http://www.nmcompcomm.us/

### Pending Proposed Rule Changes:

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<thead>
<tr>
<th>Rule Number</th>
<th>Rule Description</th>
<th>Effective Date</th>
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</thead>
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<tr>
<td>12-213</td>
<td>Briefs (Rules of Appellate Procedure)</td>
<td>02/01/10</td>
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<td>12-214</td>
<td>Oral argument (Rules of Appellate Procedure)</td>
<td>02/01/10</td>
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<td>12-305</td>
<td>Form of papers prepared by parties (Rules of Appellate Procedure)</td>
<td>02/01/10</td>
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<td>15-103</td>
<td>Qualifications (Rules Governing Admission to the Bar)</td>
<td>01/25/10</td>
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<tr>
<td>28-201</td>
<td>Commission created; members; staff; meetings (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-202</td>
<td>Judicial proceedings; excusals; recusals and withdrawals (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-203</td>
<td>Powers and duties of the Commission (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-204</td>
<td>Sources of information to be used for evaluations (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-205</td>
<td>Confidentiality of information (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-301</td>
<td>Judicial evaluations (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<td>28-302</td>
<td>Narrative profile requirements (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<tr>
<td>28-303</td>
<td>Powers and duties of the Commission (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<td>28-401</td>
<td>Criteria for evaluation of judicial performance (Rules Governing the Judicial Evaluation Commission)</td>
<td>01/25/10</td>
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<td>1-079</td>
<td>Public inspection and sealing of court records (Rules of Civil Procedure for the District Courts)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>2-112</td>
<td>Public inspection and sealing of court records (Rules of Civil Procedure for the Magistrate Courts)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>3-112</td>
<td>Public inspection and sealing of court records (Rules of Civil Procedure for the Metropolitan Courts)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>5-123</td>
<td>Public inspection and sealing of court records (Rules of Criminal Procedure for the District Courts)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>6-114</td>
<td>Public inspection and sealing of court records (Rules of Criminal Procedure for the Magistrate Courts)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>7-113</td>
<td>Public inspection and sealing of court records (Rules of Criminal Procedure for the Metropolitan Courts)</td>
<td>12/07/09</td>
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<tr>
<td>8-112</td>
<td>Public inspection and sealing of court records (Rules of Procedure for the Municipal Courts)</td>
<td>12/07/09</td>
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<tr>
<td>10-166</td>
<td>Public inspection and sealing of court records (Children’s Court Rules and Forms)</td>
<td>12/07/09</td>
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<tr>
<td>12-314</td>
<td>Public inspection and sealing of court records (Rules of Appellate Procedure)</td>
<td>12/07/09</td>
</tr>
<tr>
<td>7-504</td>
<td>Discovery; cases within metropolitan court trial jurisdiction (Rules of Criminal Procedure for the Metropolitan Courts)</td>
<td>11/23/09</td>
</tr>
<tr>
<td>5-302A</td>
<td>Grand jury proceedings (Rules of Criminal Procedure for the District Courts)</td>
<td>11/02/09</td>
</tr>
<tr>
<td>9-218</td>
<td>Target notice (Criminal forms)</td>
<td>11/02/09</td>
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<tr>
<td>9-219</td>
<td>Grand jury evidence alert letter (Criminal forms)</td>
<td>11/02/09</td>
</tr>
<tr>
<td>4-102</td>
<td>Certificate of excusal or recusal (Civil forms)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>4-103</td>
<td>Notice of excusal (Civil forms)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>4-104</td>
<td>Notice of recusal (Civil forms)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>4-102A</td>
<td>Certificate of excusal or recusal (Civil forms)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>4-103A</td>
<td>Notice of excusal (Civil forms)</td>
<td>07/27/09</td>
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<tr>
<td>4-104A</td>
<td>Notice of recusal (Civil forms)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>6-701</td>
<td>Judgment (Rules of Criminal Procedure for the Magistrate Courts)</td>
<td>07/27/09</td>
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<tr>
<td>6-703</td>
<td>Appeal (Rules of Criminal Procedure for the Magistrate Courts)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>8-703</td>
<td>Appeal (Rules of Procedure for the Municipal Courts)</td>
<td>07/27/09</td>
</tr>
<tr>
<td>2-105</td>
<td>Assignment and designation of judges (Rules of Civil Procedure for the Magistrate Courts)</td>
<td>07/27/09</td>
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<td>07/27/09</td>
</tr>
<tr>
<td>10-313.1</td>
<td>Representation of multiple siblings (Children’s Court)</td>
<td>07/20/09</td>
</tr>
<tr>
<td>10-343</td>
<td>Adjudicatory hearing; time limits; continuances (Children’s Court Rules)</td>
<td>04/17/09</td>
</tr>
</tbody>
</table>

### Recently Approved Rule Changes Since Release of 2010 NMRA:

**Rules of Criminal Procedure for the District Courts**

<table>
<thead>
<tr>
<th>Rule Number</th>
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</tr>
</thead>
<tbody>
<tr>
<td>5-605</td>
<td>Jury trial.</td>
<td>11/30/09</td>
</tr>
<tr>
<td>5-704</td>
<td>Death penalty; sentencing</td>
<td>11/30/09</td>
</tr>
</tbody>
</table>

**UJI Criminal**

<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Rule Description</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-121</td>
<td>Individual voir dire; death penalty cases; single jury used.</td>
<td>11/30/09</td>
</tr>
<tr>
<td>14-121A</td>
<td>Individual voir dire; death penalty cases; two juries used.</td>
<td>11/30/09</td>
</tr>
</tbody>
</table>
THE 25TH ANNUAL BANKRUPTCY YEAR IN REVIEW

Friday, March 5, 2010 • State Bar Center, Albuquerque

6.0 General & 1.0 Professionalism CLE Credits

Standard Fee $219  Bankruptcy Section Member, Government, Legal Services Attorney, Paralegal $189

Co-Sponsor: Bankruptcy Law Section

The seminar will focus on developments in case law on bankruptcy issues in 2009, both nationally and locally, with special emphasis on decisions by the U.S. Supreme Court, 10th Circuit Court of Appeals, 10th Circuit Bankruptcy Appellate Panel and United States Bankruptcy Court for the District of New Mexico. The seminar will also include a presentation by the Bankruptcy Judges for the District of New Mexico, the United States Trustee for Region 20 (which includes New Mexico) and the Clerk of Court.

8:00 a.m.  Registration
8:30 a.m.  Annual Bankruptcy Case Review
Paul M. Fish, Esq., Modrall Sperling Roehl Harris & Sisk, P.A.
Nathalie Martin, Esq., Professor, University of New Mexico School of Law
David T. Thuma, Esq., Thuma & Walker, P.C.
James A. Askew, Esq., Rodey Dickason Sloan Akin & Robb P.A.

10:00 a.m.  Break
10:15 a.m.  Annual Bankruptcy Case Review (continued)
11:10 a.m.  Chapter 13 Case Review
Gerald R. Velarde, Esq., Law Office of Gerald R. Velarde, P.C.
Kelley L. Skehen, Esq., Chapter 13 Standing Trustee

12:00 p.m.  Lunch (provided at the State Bar Center)
1:00 p.m.  Annual Bankruptcy Section Meeting
Hon. James S. Starzynski, Chief Judge, U.S. Bankruptcy Court, D.N.M.
Hon. Robert H. Jacobvitz, Bankruptcy Judge, D.N.M.

1:45 p.m.  Presentation by the United States Trustee
Richard A. Wieland, Esq., United States Trustee for Kansas, New Mexico and Oklahoma

2:15 p.m.  National Developments
Jeffrey H. Davidson, Esq., Stutman, Treister & Glatt P.C., Los Angeles, CA

3:15 p.m.  Break
3:30 p.m.  Presentation by Clerk of the Bankruptcy Court
Norman H. Meyer Jr., Clerk U.S. Bankruptcy Court, District of N.M.

4:00 p.m.  Professionalism: Unbundling Legal Services in Bankruptcy (1.0 P)
Michael K. Daniels, Esq., Michael Daniels Law Offices

5:00 p.m.  Adjourn and Reception (State Bar Lobby)

Limited rooms available. Call Pat at (505) 296-6255 for details
FORECLOSURE CLES - SPRING 2010
See Dates Below for Details
Location for All: State Bar Center, Albuquerque

ABC’s of FORECLOSURE LAW
Wednesday, March 10, 2010 • 3.7 General CLE Credits

Presenters: Angelica Anaya Allen, Director, Fair Lending Center, United South Broadway Corporation
Brian A Thomas, Esq., Law Offices of Brian A. Thomas, PC

12:30 p.m. Registration
1:00 p.m. The Process of Foreclosure
2:15 p.m. Alternatives to Foreclosure: Loan Modifications and More
3:30 p.m. Break
3:45 p.m. Foreclosure Defenses and Counterclaims
5:00 p.m. Adjourn and Reception (State Bar Center Lobby)

TWO MORE FORECLOSURE CLE’s ARE COMING!!!
Thursday, April 8, 2010 • FREE CLE’ (See below for details)
2.0 General CLE Credits

10:00 a.m. Bankruptcy in New Mexico
11:00 a.m. Alternative Resolutions to Foreclosure (including mediation, and loan modification)
Noon Adjourn and Lunch (provided at the State Bar Center)

Thursday, May 6, 2010 • FREE CLE’ (See below for details)
2.0 General CLE Credits

10:00 a.m. Legal Issues in Loan Origination
11:00 a.m. Holders
Noon Adjourn and Lunch (provided at the State Bar Center)

* The April 8 and May 6 CLE’s will be FREE and ONLY available to attorneys who have either (a) already taken a pro bono case in 2010 from the Foreclosure Initiative Group OR (b) are willing to take a pro bono case upon the completion of the free CLE. Contact Marilyn Kelley at the State Bar of New Mexico for more information about how to take a pro bono case (mkelley@nmbar.org or 505.797.6048).

LIMITED to the first 50 attorneys who respond.

DISCIPLINARY ADMINISTRATIVE ADJUDICATIONS IN NEW MEXICO
Friday, March 12, 2010 • State Bar Center, Albuquerque
4.7 General & 2.2 Ethics CLE Credits

Presenters: Willard (Bill) H. Davis, Jr., Administrative Law Judge (retired)

8:00 a.m. Registration
8:30 a.m. Introductory Remarks
8:40 a.m. Administrative Agency Formal Hearings
9:00 a.m. Procedural Due Process
10:00 a.m. Break
10:15 a.m. The Impartial Decision Maker (1.7 E)
Noon Lunch (provided at the State Bar Center)
1:00 p.m. The Hearing Process
2:00 p.m. Hearing Officer Duties and Powers, Role, and Immunity
2:30 p.m. Proof Issues
2:45 p.m. Ex Parte Communications and Pro Se Parties
3:00 p.m. Break
3:15 p.m. Popular Defenses Debunked
4:00 p.m. Telephonic Hearings and Review on Appeal
4:20 p.m. A Model Code of Ethics (0.5 E)
4:50 p.m. Q & A
5:00 p.m. Adjourn
TAX CONSIDERATIONS IN ESTATE PLANNING

Thursday-Friday, March 18-19, 2010 • State Bar Center, Albuquerque
13.0 General & 1.0 Ethics CLE Credits

☐ Standard Fee $359  ☐ Government, Legal Services Attorney, Paralegal $329

DAY ONE
7:30 a.m. Registration
7:55 a.m. Introductory Remarks
Eric Burton, Esq., LLM, JD, MBA
Hurley, Toevs, Styles, Hamblin, & Panter, P.A.
8:00 a.m. Estate Tax
James H. Bozarth, Esq., Hinkle Hensley Shanor & Martin LLP
Ruth Ann Castellano-Piatt, CPA, REDW
Susan Shank
Introduction & Overview (General Concepts)
Form 706, United States Estate (and Generation-Skipping
Transfer) Tax Return (Part 2, Line 1)
Schedule A - Real Estate ($2031, §2033)
Schedule B - Stocks and Bonds ($2031, §2033)
Schedule C - Mortgages, Notes, and Cash ($2031, §2033)
Schedule D - Insurance on the Decedent’s Life ($2042)
Schedule E - Jointly Owned Property ($2040)
Schedule F - Other Miscellaneous Property ($2043, §2044)
Schedule G - Transfers During Decedent’s Life
($§2035, 2036, 2037, 2038)
Schedule H - Powers of Appointment ($2041)
Schedule I - Annuities ($2039)
Valuation - §2031, §2032, §2032A
Valuation – Chapter 14
10:30 a.m. Break
10:45 a.m. Estate Tax (continued)
Susan Shank
Form 706, United States Estate (and Generation-Skipping
Transfer) Tax Return (Part 2)
12:15 p.m. Lunch (provided at the State Bar Center)
1:15 p.m. Estate Tax (continued)
Ruth Castellano-Piatt, CPA, REDW
Disclaimers ($2518)
Estate Tax Payment Provisions (§6161, §6163, §6166, §303)
2:15 p.m. Gift Tax
Vickie Wilcox, Vickie R. Wilcox PC
3:15 p.m. Break
3:30 p.m. Generation Skipping Transfer Tax
Evan S. Hobbs, Esq., Law Office of Evan S. Hobbs PC
4:30 p.m. Adjourn

DAY TWO
8:30 a.m. Inter Vivos Gifting
John Lieuwen, Esq., John N. Lieuwen & Associates PA
Personal Residence Planning
Grantor Retained Trusts
Charitable Remainder and Charitable Lead Trusts
Family Limited Partnerships
Sale Transactions (SCIIs & Installment Sales to IDGTs)
Net Gifts
10:30 a.m. Break
10:45 a.m. Irrevocable Life Insurance Trusts
Ed Hymson, PhD, LLM, JD, Research Fellow,
State Bar of New Mexico
11:30 a.m. Income Tax Considerations in Estate Planning
Sara R. Traub, JD, CPA, Pregenzer Baysinger Wideman & Sale, PC
12:15 p.m. Lunch (provided at the State Bar Center)
1:00 p.m. Income Tax Considerations in Estate Planning (continued)
Sara R. Traub, JD, CPA
1:30 p.m. Asset Protection Planning
Eric Burton, Esq., LLM, JD, MBA
2:30 p.m. 2010 Planning Considerations and Opportunities
Eric Burton, Ed Hymson, and John Lieuwen
3:30 p.m. Break
3:45 p.m. Ethics of Estate Planning
James F. Beckley, Esq., James F. Beckley PA
4:45 p.m. Adjourn

LAS CRUCES VIDEO REPLAYS
3rd Judicial District Courthouse, 201 W. Picacho, Las Cruces, NM, Jury Assembly Room #1 (go left at the security desk)

MARCH 8
The Write Way with Stuart Teicher
8:30 – 11:30 a.m.
3 General CLE Credits ☐ $129

The Zealous Advocate with Stuart Teicher
1:00 – 4:00 p.m.
3 General CLE Credits ☐ $129

MARCH 9
Attorney’s Guide to Good Lawyering for People With Disabilities
8:00 – 9:00
1 Professionalism CLE Credit ☐ $49

Ethics Risks Practicing Law (from Surviving to Thriving)(2009)
9:15 – 10:15 a.m.
1 Ethics CLE Credit ☐ $49

Digital Media in the Courtroom
10:30 – 11:30
1 General CLE Credit ☐ $49
SKEPTICALLY DETERMINING THE LIMITS OF EXPERT TESTIMONY AND EVIDENCE:
AN INVESTIGATION OF SCOPE, EXPERTISE AND PROCESS

Friday, March 26, 2010 • State Bar Center, Albuquerque
4.7 General, 1.0 Ethics, & 1.0 Professionalism CLE Credits

☐ Standard Fee $219    ☐ Government, Legal Services Attorney, Paralegal $189

“I became a prospective lawyer the day I learned I would have to use the numbers in the periodic table rather than just look at the pretty colors.”

– Larry Pozner, Attorney

Fair use of quality expert testimony is a great concern to our profession. In 2009, the National Academies of Science issued a report pointing out that forensic science now significantly touches “criminal investigation and prosecution, civil litigation, legal reform, the investigation of insurance claims, national disaster planning and preparedness, homeland security, and the advancement of technology.” That same report pointed out that little has been done by the legal side of science in courts to look at the limits and measures of performance of various scientific disciplines and areas of expertise.

This seminar will use some of the nation’s leading authorities on the background, limits, and biases of scientific and expert testimony to present a multidisciplinary approach to expert testimony on scientific and technical matters. Singular skeptics of expert and scientific testimony will talk about how attorneys, as both proponents and opponents of expert testimony should view the prospect of using such evidence in their cases. They will also show that taking limitations into account when using experts at trial can promote better case preparation, fact-finding and the higher ends of the legal system to do justice.

This program may prove to be one of the most thought-provoking events on one of the leading hot topics of the year!

8:30 a.m.  Registration
9:00 a.m.  Introductory Remarks
Hon. Roderick T. Kennedy, New Mexico Court of Appeals
9:15 a.m.  The NAS Report as a Model for Examining All Expert Testimony
Michael J. Saks, Regents’ Professor, Sandra Day O’Connor College of Law, Arizona
10:15 a.m.  Break
10:30 a.m.  Limits of Methodology: Calibrations, Confidence Limits, and Measuring Accuracy
Theodore Vosk, Law Offices of Vosk & Velasquez, Bellevue, Washington
Noon  Lunch (provided at the State Bar Center)

12:45 p.m.  Skeptical Evaluation of Expertise and Its Bases
Fred Chris Smith, Trial Attorney, Special Prosecutor, Computer Security Consultant
1:45 p.m.  Forensic Screw-Ups from the Witness, the Lawyer, the Bench: A Survey of Confusing Case Law in New Mexico
Hon. Roderick T. Kennedy, New Mexico Court of Appeals
2:45 p.m.  Break
3:00 p.m.  An Expert’s View of Ethically Dealing with Experts (1.0 E)
Harrell Gill-King, PhD, Director, Institute of Forensic Anthropology University of North Texas
4:00 p.m.  Preparing for Expert Testimony at Trial: A Professionalism Discussion (1.0 P)
Hon. Roderick T. Kennedy, Moderator
Panelists TBA
5:00 p.m.  Adjourn

PUTTING YOUR BEST FACE ON A CASE

Thursday, April 8, 2010 • State Bar Center, Albuquerque
4.7 General, 1.0 Ethics, & 1.0 Professionalism CLE Credits

☐ Standard Fee $209    ☐ Government, Legal Services Attorney, Paralegal $179
Co-Sponsor: SBNM Paralegal Division

8:00 a.m.  Registration
8:30 a.m.  How To Pick A Jury
Erika Anderson, Esq., Robles Rael & Anaya PC
9:30 a.m.  No Second Chances for a Compelling Opening and Closing Statement
Maureen A. Sanders, Esq., Sanders & Westbrook PC
10:45 a.m.  Break
11:00 a.m.  Courtroom Ethics (1.0 E)
Hon. Nan Nash, 2nd Judicial District Court
Hon. Gerard Lavelle, 2nd Judicial District Court
Noon  Lunch

1:00 p.m.  How and When Is Your Demonstrative Evidence Admissible
Paul Kennedy, Esq., Kennedy & Han PC
2:15 p.m.  Break
2:30 p.m.  Cross Examination
James C. Ellis, Esq., Attorney at Law, P.C.
3:45 p.m.  Professionalism in the Courtroom (1.0 P)
Daymon Ely, Esq., Law Office of Daymon Ely
4:45 p.m.  Adjourn

FORECLOSURE INITIATIVES CLE

Thursday, April 8, 2010 • State Bar Center, Albuquerque
2.0 General CLE Credits
(See page 2 for details)
**credsRors, cOlections, and BahKruPtCy**

Friday, April 9, 2010 • State Bar Center, Albuquerque

4.0 General and 1.0 Ethics CLE Credits

- Standard Fee $179
- Government, Legal Services Attorney, Paralegal $149

8:30 a.m. Registration

9:00 a.m. Ethical Considerations before Collecting A Debt
   (0.5 Ethics)
   Michelle K. Ostrye, Esq., Sutin Thayer & Browne PC
   Chair, Bankruptcy Law Section
   Andrew J. Simons, Esq., Sutin Thayer & Browne PC

9:30 a.m. Non-Judicial Remedies
   Find them, talk to them
   Take collateral
   Filing Suit and Legal Theories
   Nuts and Bolts of Suit
   Contract, Non-Contract Legal Theories
   Post-Judgment Remedies
   Execution, garnishment
   Transcripts of judgment
   Michelle K. Ostrye, Esq. and Andrew J. Simons, Esq.

10:15 a.m. Break

10:30 a.m. Personal Property Security Interests and Liens
   Voluntary
   Statutory
   Enforcement
   Real Property Mortgages
   Formation
   Enforcement
   Deeds of trust
   Michelle K. Ostrye, Esq. and Andrew J. Simons, Esq.

11:15 a.m. Collector, Lender Liability
   FDCEPA
   UPA
   Invasion of privacy
   Malicious abuse of process
   Lender liability
   Michelle K. Ostrye, Esq. and Andrew J. Simons, Esq.

11:45 a.m. Ethical issues in Debt Collection (0.5 Ethics)
   Michelle K. Ostrye, Esq. and Andrew J. Simons, Esq.

12:15 p.m. Lunch (provided at the State Bar Center)

1:00 p.m. Your Claim Before Bankruptcy
   Preferences
   Fraudulent Transfers
   Avoiding Powers
   Look-Back Periods
   When Bankruptcy is Filed: The Automatic Stay
   Charles R. Hughson, Esq.,
   Rodey Dickason Sloan Akin & Robb PA

2:00 p.m. Break

2:15 p.m. Your Claim In and After Bankruptcy
   Review of the Debtor’s Filings
   341 Meetings and 2004 Exams
   Proofs of Claim
   Priority of Payment, Pro Rata Distribution, Plans
   Adversary Proceedings and NondischARGEability
   Discharge Injunction
   Charles R. Hughson, Esq.

3:15 p.m. Adjourn

**AnimaL Law: LegisLation, LitigaTion, Ethics, and Professionalism**

Thursday, April 22, 2010 • State Bar Center, Albuquerque

4.0 General, 1.0 Ethics, & 1.0 Professionalism CLE Credits

- Standard Fee $199
- Government, Legal Services Attorney, Paralegal $169

8:30 a.m. Registration

9:00 a.m. Using Scientific Advances and Economics in Lobbying for Animals
   Ledy Vankavage, Esq., Senior Legislative Attorney,
   Best Friends Animal Society
   Vice-Chair, ABA TIPS Animal Law Committee

10:00 a.m. Break

10:15 a.m. Community Cats - A Complex Legal Conundrum
   Ledy Vankavage, Esq.

11:00 a.m. Legal Ethics and Animal Law
   Yolanda Eisenstein, Esq., Eisenstein Law Office
   Professor, SMU Dedman School of Law

Noon Lunch (provided at the State Bar Center)

1:00 p.m. Dog Bites in Four-Dimensional Legal Space: Civil, Criminal, Regulatory, and Temporal
   Adam, Karp, Esq., Animal Law Offices of Adam P. Karp
   Professor, University of Washington School of Law and
   Seattle University School of Law

2:15 p.m. On the Wrong Side of the Tracks: Locomotive Liability in Collisions with Animals
   Adam Karp, Esq.

3:00 p.m. Break

3:15 p.m. Legal Professionalism
   Yolanda Eisenstein, Esq.

4:15 p.m. Panel Q & A

4:30 p.m. Adjourn

**2010 New Mexico Collaborative Law Symposium**

Friday and Saturday, April 23-24, 2010 • State Bar Center, Albuquerque

11.2 General and 1.5 Ethics CLE Credits

- CEUs pending for psychologists, counselors, and social workers
- Day One – Basic Track $195
- Both Days – Basic And Advanced Tracks $295

Co-Sponsor: New Mexico Collaborative Law Practice Group, Inc.

See insert in the March 8 Bar Bulletin or go to www.nmbarcle.org
**MULTITASKING GONE MAD:**
**LEARNING TO COPE IN A WIRED, DEMANDING WORLD**

Thursday, April 29, 2010 • State Bar Center, Albuquerque

**AM SESSION** — 2.2 General & 0.5 Ethics CLE Credits

**PM SESSION** — 2.0 General & 0.7 Ethics CLE Credits

- **AM Session:** Standard Fee $119
- **PM Session:** Standard Fee $119
- **BOTH Sessions:** Standard Fee $199

**Presenter:** Irwin Karp, Esq., Productivity Consultant, Productive Time, Sacramento, California

Heavy caseload? Completing work at the last minute? Plagued by constant interruptions, inundated with information, drowning in paper, overloaded by e-mail, handling too much of the workload by yourself, or spending too many hours at the office with too little to show for your effort? Welcome to the ‘new and improved’ world of multitasking gone mad! and two fast-paced, entertaining seminars designed to help you work more productively. In the a.m. session, we will focus on planning and scheduling workload, while the p.m. session will help you to stay focused and better achieve competing priorities.

### AM SESSION

- **9:00 a.m.** Ethical Implications of Organizational and Time Management Skills (0.5 E)
- **9:30 a.m.** Application of the Project Management Process to Legal Work
- **10:15 a.m.** Break
- **10:30 a.m.** Workflow Management – Prioritizing, Planning and Scheduling
- **11:00 a.m.** Finding Time to Focus on Priorities
- **11:15 a.m.** Communications Skills and Delegation Skills
- **Noon** Lunch (provided at the State Bar Center)

### PM SESSION

- **1:00 p.m.** The Ethical Consequences of Multitasking on Effective Law Practice (0.7 E)
- **1:45 p.m.** How to Manage Multitasking and Stay Focused on Priorities
- **2:15 p.m.** Break
- **2:30 p.m.** Impact of Multitasking on Lawyers Tendency to Procrastinate and How to Overcome Procrastination
- **3:10 p.m.** How to Overcome E-mail Overload, Manage Your Inbox, and Manage Your Smart Phones (Blackberry, I-Phone, …)
- **3:45 p.m.** Development of a Personal Action Plan to Get Organized and Get Things Done
- **4:00 p.m.** Adjourn

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**2010 PROFESSIONALISM AND ETHICS:**
**RESPONDING TO CRISIS THROUGH LIMITED REPRESENTATION**

Friday, April 30, 2010 • State Bar Center, Albuquerque

**1.0 Professionalism and 1.0 Ethics CLE Credits**

- **Standard Fee $79**

Our courts are facing a challenge brought on by the economic crisis. This is not news. There is now a national call by judges for attorneys to provide limited representation and other methods of alternative dispute resolution to help resolve the issues currently straining the legal system. This seminar will address the advantages and drawbacks of using limited representation in one’s law practice as a means to help our judicial system more effectively respond to these challenges.

- **9:45 a.m.** Registration
- **10:00 a.m.** Using Limited Representation and ADR to Close the Justice Gap Worsened by the Economic Crisis (1.0 P)
  - **Moderator:** Kasey Daniel, Esq., Director, Public and Legal Services Department, State Bar of New Mexico
  - **Panelists:** Hon. Petra Jimenez Maes, New Mexico Supreme Court
    - Rosalie Fragoso, Esq., Project Administrator, Second Judicial District Volunteer Attorney Pool, Law Access NM
    - Dorene Kuffer, Esq., Litigation Director, New Mexico Legal Aid
    - David P. Levin, Esq., Court Alternatives Director, Second Judicial District Court
    - Sandra Nemeth, Esq., Law Office of Sandra E. Nemeth, Grants

- **11:00 a.m.** Break
- **11:10 a.m.** Limited Representation: The Ethical Issues and How to Avoid Problems (1.0 E)
  - Dorene Kuffer, Esq., Litigation Director, New Mexico Legal Aid
- **12:10 p.m.** Adjourn and Lunch (provided at the State Bar Center)

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**Also available via LIVE WEBCAST**
### NATIONAL TELESEMINARS • 11 a.m. MDT

#### MARCH

2  **Challenges of New Form 990 for Nonprofits**  
The IRS recently issued a major revision of Form 990 used by nonprofits, the first major revision in 30 years. This program will provide a real-world guide to how the new form and its questions alter prior practice, with an emphasis on the governance issues. Among other topics, the program will cover compliance with new governance questions, issues related to donations, and areas of regulator concentration, among other topics.  
1.0 General CLE Credit  
**$67**

9  **Workouts of Office Leases, Part 1**  
Part 1 of this two-part program will focus on issues particular to workouts of office leases that tenants no longer need or can no longer afford. Among other topics, the program will discuss approaching the landlord with a workout plan, negotiation strategies, subletting unneeded space and areas of concern for landlords, including property tax issues involving “shadow tenants.”  
1.0 General CLE Credit  
**$67**

10  **Workouts of Retail Leases, Part 2**  
Part 2 of this two-part program will focus on special issues related to the workout of retail leases. Among other topics, the program will focus on the impact of spreading retail bankruptcies on leasing, make-ups and give-backs, tactics for negotiating with tenants, assuming or rejecting a lease and bankruptcy and rules of thumb for landlords determining whether litigation against the tenant is economically viable.  
1.0 General CLE Credit  
**$67**

16  **Generation Skipping Transfer Tax (GSTT) Planning**  
This program will provide you with a planning framework for the Generation Skipping Transfer Tax, including a discussion of terminology and events triggering the tax. The program will also cover generation assignment issues, taxable transfers, GST exemption planning and application of the tax to Dynasty Trusts.  
1.0 General CLE Credit  
**$67**

23-24  **Bankruptcy Restructuring for Middle Market Businesses, Parts 1 & 2**  
This program will provide an practical guide to restructuring middle-market businesses in the context of Chapter 11 reorganizations. Among other topics, the program will cover pre-bankruptcy considerations and workouts, venue selection, debtor-in-possession financing, plan strategies, discharge of indebtedness, and tax issues, among many others.  
2.0 General CLE Credit  
**$129**

30  **Retaliation Claims in Employment Law**  
This program will cover statutory sources of retaliation claims and major case law developments changing existing law. Among other topics, the program will cover standards for determining whether retaliation occurred, including materially adverse actions, defending against retaliation claims and best practices for avoiding them.  
1.0 General CLE Credit  
**$67**

#### APRIL

1  **Advanced Gift Tax Planning Strategies**  
Gifting strategies lie at the heart of many medium-size estates. It is an efficient mechanism for transferring cash or other property without consuming a client’s exemption amount. This program will go beyond basic forms of gifting strategies to more sophisticated techniques, including for retirement benefits, using insurance policies, and other financial products.  
1.0 General CLE Credit  
**$67**

### 6-7  **Reading Financial Statements for Lawyers, Parts 1 & 2**  
This program will provide you a real world guide to reading financial statements. Designed for the non-financial specialist and non-accountant, this program will highlight and explain the key elements of understanding balance sheets, income/loss statements, and cash flow statements. The program will discuss the fundamentals of financial reporting and how common business transactions are reported and impact these statements.  
2.0 General CLE Credit  
**$129**

13  **Transfer Taxes in M&A/Business Transactions**  
Transfer taxes – such as sales and use taxes – are the most often overlooked component of many business transactions, including mergers, acquisitions, and asset sales. Transfer taxes apply in these and other common business transactions and can substantially alter the economics of a transaction if an exemption does not exist. This program will provide a practical guide to how transfer taxes apply to business transactions and tax planning to avoid liability.  
1.0 General CLE Credit  
**$67**

20  **Restructuring Trusts**  
Trusts may need to be restructured for many reasons, including to alter their governance structures, modify the form and timing of distributions, or to reflect changes in the underlying investment portfolio, family business or composition of beneficiaries. This program will provide a practical guide to restructuring trusts and the tax and non-tax challenges and implications of doing so.  
1.0 General CLE Credit  
**$67**

22  **Fundamentals of Exempt Taxation**  
The tax compliance and liability of exempt organizations is distinct from the taxation of profit-making organizations. Exempt taxation involves particular restrictions on operations, forms of compliance, and traps that are unfamiliar to business taxation. Designed for the non-specialist this program will provide attorneys advising exempt organizations a framework for understanding exempt taxation liability and compliance obligations.  
1.0 General CLE Credit  
**$67**

27  **Art of the Equity Deal for Startup and Growth Companies**  
Middle market companies have been squeezed as any others as they seek operating and growth capital. Conventional bank lending and from investment funds largely disappeared in the credit crisis, leaving these companies struggling to find forms of equity investment to operate and grow. This two-part program will provide you with a real world guide to the emerging sources of equity capital, trends in deal terms, and structuring a deal when debt funding is not available.  
1.0 General CLE Credit  
**$67**

28  **Art of the Equity Deal for Middle Market Companies**  
Middle market companies have been squeezed as any others as they seek operating and growth capital. Conventional bank lending and from investment funds largely disappeared in the credit crisis, leaving these companies struggling to find forms of equity investment to operate and grow. This two-part program will provide you with a real world guide to the emerging sources of equity capital, trends in deal terms, and structuring a deal when debt funding is not available.  
1.0 General CLE Credit  
**$67**

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**NATIONAL SERIES**  
**Must register for teleseminars online at [www.nmbaricle.org](http://www.nmbaricle.org)**  

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**MARCH**  
**$67**  

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**APRIL**  
**$67**
CLE REGISTRATION FORM

For more information about our programs visit www.nmbarcle.org

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REGISTER EARLY! Advance registration is recommended as it guarantees admittance and course materials. If space and materials are available, paid registrations will be accepted at the door. CANCELLATIONS & REFUNDS: If you find that you must cancel your registration, send a written notice of cancellation via fax by 5 p.m., one week prior to the program of interest. A refund, less a $50 processing charge will be issued. Registrants who fail to notify CLE of the date and time indicated will receive a set of course materials via mail following the program. MCLE CREDIT INFORMATION: Courses have been approved by the New Mexico MCLE Board. CLE of SBNM will provide attorneys with necessary forms to file for MCLE credit in other states. A separate MCLE filing fee may be required. ATTENTION PERSONS WITH DISABILITIES: Our meetings are held at facilities which are fully accessible to persons with mobility disabilities. If you plan to attend our program and will need an auxiliary aid or service, please contact the CLE of SBNM office one week prior to the program. PROGRAM CANCELLATION: Pre-registration is recommended. Program will be cancelled one week prior to scheduled date if attendance is insufficient. Pre-registrants will be notified by phone and full refunds given. TAPE RECORDING OF PROGRAMS IS NOT PERMITTED. CLE AUDIT POLICY: Members of the State Bar of New Mexico (to include attorneys and paralegals) and other legal staff (legal staff being defined as legal assistants and staff of members of the State Bar of New Mexico) may audit State Bar CLE courses at a cost of $10, space permitting. Course materials, breaks and/or lunch, if applicable, may be purchased at an additional cost of $29. Auditors should contact the CLE office in advance and notify staff of their intent to audit. “Walk-in” auditors will also be permitted on a space available basis. Auditors will not receive CLE credits for the audit fee. If an auditor chooses to receive CLE credit for attending the course, the request and payment must be made to CLE staff on the day of the program. Attendees who request CLE credit prior to the program will not be allowed to change to audit. No exceptions will apply. This policy applies to live seminars only and excludes special events. SCHOLARSHIPS: Please note, scholarships are available on an ‘as needed’ basis for up to 10% of any given seminar. The amount of the scholarship is equivalent to a 50% reduction of the standard fee for each seminar. To qualify, recipients are required to sign a financial assistance form available from the CLE department. For further information, please call (505) 797-6020.

NOTE: Programs subject to change without notice.
OPINION

PATRICIO M. SERNA, JUSTICE

This case permits us to reconsider a long-standing procedural requirement that has lost its usefulness in the twenty-first century. We hold that municipal ordinances are properly considered law, and thus need no longer be proven as facts necessary for a prima facie case, and we apply this rule in the twenty-first century. We hold that municipal ordinances have lost their usefulness in the twenty-first century. We hold that municipal ordinances have lost their usefulness in the twenty-first century. We hold that municipal ordinances have lost their usefulness in the twenty-first century.

Procedural History

[2] Defendant was found guilty of aggravated DWI in the City of Aztec Municipal Court. He appealed to the Eleventh Judicial District Court, and again was found guilty after a trial de novo. At the close of evidence in the trial de novo, Defendant objected that the city had not met its evidentiary burden, as it failed to introduce the relevant ordinance into evidence. The City of Aztec (“City”) admitted that it had not introduced the ordinance, but argued that the ordinance was presented by reference to which the judge had ready access. The City acknowledged that it could not rely on the record for an element of proof. The City did not rely on the record for an element of proof. The City did not rely on the record for an element of proof. The City did not rely on the record for an element of proof.

II. Discussion

[3] The Court of Appeals upheld the conviction in a Memorandum Opinion by concluding that the district court took judicial notice of the city ordinance under which Defendant was convicted, thereby finding the City proved the prima facie elements of its case. City of Aztec v. Gurule, No. 28,705, slip op. at 4 (N.M. Ct. App. Dec. 2, 2008).

[4] Judicial notice is familiar to the legal community as a tool of evidence. We often neglect to recognize, however, that courts take notice of law on a daily basis; indeed, we could not succeed in our work if we were not free to consult the great body of local, state, national, and international law that exists and, thanks to modern research techniques, is accessible to legal researchers in any locale. We take this opportunity first to review judicial notice of adjudicative facts, then to discuss judicial notice of law and why municipal ordinances henceforth will be treated as law.

A. Standard of Review


B. Judicial Notice of Facts

[6] Our rules of evidence permit trial courts to take judicial notice of “adjudicative facts,” Rule 11-201(A) NMRA, which are “simply the facts of the particular case.” Fed. R. Evid. 201 (1972 Advisory Committee note to subdivision (a)). Judicial notice of fact alleviates the evidentiary burden on a party and is taken pursuant to the rules of evidence. See Personnel Dep’t, Inc. v. Prof’l Staff Leasing Corp., 297 Fed. Appx. 773, 785 n.10 (10th Cir. 2008). Our rules of evidence permit courts to take judicial notice of facts “not subject to reasonable dispute,” including facts that are “capable

1 We note that the record in this case indicates Defendant was charged under Section 12-1/66-8-102 of the Aztec City Code. However, we located the municipal ordinance under the citation stated in the text.
of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 11-201(B) (2). A court has discretion to take judicial notice sua sponte, Rule 11-201(C), but must take judicial notice if requested by a party and that party has furnished the court with the information necessary. Rule 11-201(D). Judicial notice may be taken at any time during the proceeding. Rule 11-201(F).

7 When a court takes judicial notice of a fact, it must be done on the record. There are two main reasons trial courts should make a clear record when taking judicial notice of a fact: (1) to facilitate appellate review, see Frost v. Markham, 86 N.M. 261, 263, 522 P.2d 808, 810 (1974), and (2) to provide notice, as required by due process, to the opposing party. See Garner v. Louisiana, 368 U.S. 157, 173 (1961). Our trial courts should be explicit when taking judicial notice, for the benefit of the parties and the reviewing courts.

8 At the time of Defendant’s trial de novo, our law treated a municipal ordinance that was the applicable law as a fact which had to be pled and proven as part of a party’s prima facie case. Muller v. City of Albuquerque, 92 N.M. 264, 265, 587 P.2d 42, 43 (1978). The reason for the rule requiring proof of municipal ordinances dates to a time when the content of an ordinance was difficult, if not impossible, for any court not located in that municipality. See Getty Petroleum Mktg., Inc. v. Capital Terminal Co., 391 F.3d 312, 323-24 (1st Cir. 2004) (Lipez, J., concurring) (providing a thorough discussion of the historical reasons for not permitting judicial notice of local laws, and why these reasons are no longer valid). Municipal judicial notice of local laws, and why these historical reasons for not permitting taking judicial notice of state statutes: it is presumed magistrate courts have ready access to a current copy of the local ordinances. See Town of Forks v. Fletcher, 652 P.2d 16, 17 (Wash. Ct. App. 1982) (“The rationale for this rule is that the ordinances are the particular law of the forum and, therefore, known to the local court.”). 9 A magistrate judge may take judicial notice of an ordinance from the same municipality in which the magistrate sits. See 9A Eugene McQuillan, McQuillan: The Law of Municipal Corporations § 27:51 (3d ed. 2007). This is for the same reason that our state courts may take judicial notice of state statutes: it is presumed magistrate courts have ready access to a current copy of the local ordinances. See Town of Forks v. Fletcher, 652 P.2d 16, 17 (Wash. Ct. App. 1982) (“The rationale for this rule is that the ordinances are the particular law of the forum and, therefore, known to the local court.”).

10 Likewise, we permit a district court conducting a trial de novo to take judicial notice of a municipal ordinance that controls the case. City of Albuquerque v. Leatherman, 74 N.M. 780, 781, 399 P.2d 108, 109 (1965). This rule, known as the Leatherman exception, exists because the district court hearing a case de novo may “take notice of whatever facts the [municipal court] could have noticed judicially[.]” Id. at 782, 399 P.2d at 110 (internal quotation marks and citation omitted). While we agree with the Court of Appeals that the district court was permitted to take judicial notice of the municipal ordinance under the Leatherman exception, because of our holding today, we need not rule whether judicial notice was properly taken by the district court in this case. 2

11 Our appellate courts do not take judicial notice of municipal ordinances. See Muller, 92 N.M. at 265, 587 P.2d at 43 (“An appellate court will not take judicial notice of municipal ordinances.”); Coe v. City of Albuquerque, 81 N.M. 361, 364, 467 P.2d 27, 30 (1970); Gen. Servs. Corp. v. Bd. of Comm’rs of Bernalillo County, 75 N.M. 550, 552, 408 P.2d 51, 52 (1965). This is because we have treated municipal ordinances as facts, and we do not consider new facts when conducting appellate review. See Gen. Servs. Corp., 75 N.M. at 552, 408 P.2d at 53, (“[O]ur scope of appeal review is limited to a consideration of those facts disclosed by the record.”). C. Judicial Notice of Law 12 “Judicial notice of fact is distinct from judicial notice of law.” Personnel Dep’t, 297 Fed. Appx. at 785 n.10. Judicial notice of fact is simply an “evidentiary shortcut,” while judicial notice of law is “the commonsense doctrine that the rules of evidence governing admissibility and proof of documents generally do not make sense to apply to statutes or judicial opinions — which are technically documents — because they are presented to the court as law, not to the jury as evidence.” Getty Petroleum, 391 F.3d at 321-22. Although we do not do so explicitly, “courts take judicial notice of law every time they cite a statute or judicial decision.” Id. at 324. It is permissible, indeed required, therefore, for our trial and appellate courts to take judicial notice of the law necessary for the resolution of all cases in front of the courts.

D. Municipal Ordinances are Law 13 The rule requiring proof of municipal ordinances as fact is not consistent with the role of courts with respect to law and fact. “[D]etermination of the applicable law is an issue of law, not of fact.” City of Cedar Rapids v. Cach, 299 N.W.2d 656, 660 (Iowa 1980). We agree that [a]s all law has become increasingly accessible and judges have tended to assume the duty to rule on the tenor of all law, the notion that [the process of treating law as fact and] part of judicial notice has become increasingly an anachronism. Evidence, after all, involves the proof of facts. How the law is fed into the judicial machine is more appropriately an aspect of the law pertaining to procedure.

14 The reasons for distinguishing municipal ordinances as adjudicative facts, not law, are no longer compelling. See, e.g., id. (“[A]s these [ordinances] become more accessible, the tendency is toward permitting the judges to do what perhaps they should have done in the beginning, that is, to rely on the diligence of counsel to provide the necessary materials, and accordingly to take notice of all law.”); Fishman, supra, § 2.72. (stating that not judicially noticing municipal ordinances “was understandable when trustworthy copies of such laws were hard to come by, but is difficult to justify today”). The Hawaii Supreme Court succinctly stated

2 A district court may take judicial notice, sua sponte, of its own records in the case, see In re Bruno R., 2003-NMCA-057, ¶ 22, 133 N.M. 566, 66 P.3d 339, which, in this case, included the criminal complaint setting forth the ordinance number under which Defendant was charged. See Gurule, No. 28,705, slip op. at 4. However, the district court below should have made a clear record that judicial notice was being taken of the complaint.
the two main reasons for the trend towards permitting judicial notice of foreign law, including municipal ordinances: accessibility and verifiability. *State v. West*, 18 P.3d 884, 888 n.10 (Haw. 2001). The reasons for the trend in treating municipal ordinances as law are interconnected: “the increased accessibility of foreign law makes it more easily verifiable; in turn, like the [i]nternet, the usefulness of this ready availability is predicated on its trustworthiness. Factors affecting these dual justifications include: (1) publication, (2) codification, and (3) compilation.” *Id.* (internal citations omitted).

[15] These exact reasons have eroded the justification in our precedent for treating municipal ordinances as adjudicative facts which may not be judicially noticed by our courts on appeal. Municipal ordinances are no longer impossible to find outside of the municipality. It is true that they are not gathered in one uniform compilation, as are our state statutes. However, learning the contents of an ordinance no longer requires a trip to the government offices of a far-off town. The City of Aztec, for example, publishes its City Code online. Municipalities that do not publish their ordinances online still have easy means of complying with a request by court or counsel for a copy of an ordinance, and can send the same by fax or email in a reasonably brief time. *See Getty Petroleum*, 391 F.3d at 324 (“If there is no doubt that a document accurately states the law, there is no reason to eschew judicial notice of that law.” (footnote omitted)).

[16] We hold that municipal ordinances are law and may be judicially noticed as such, and thus lay to rest the practice of treating municipal ordinances as facts. Municipal ordinances should be treated as law, and “be placed into a case via the mechanism of judicial notice of law, not proof to the jury.” *Id.* at 330. We agree with the Court of Appeals in *Apodaca v. AAA Gas Co.*, 2003-NMCA-085, ¶ 46 n.3, 134 N.M. 77, 73 P.3d 215, that there is “no sound reason to deny an appellate court access to the law when it is reviewing a case de novo,” and, as discussed above, conclude that there is no sound reason to deny our appellate courts the right to consult municipal ordinances, the laws that govern the myriad municipalities of New Mexico. Our rule of evidence governing judicial notice, therefore, is no longer applicable to the introduction of municipal ordinances into a case, as our holding means that municipal ordinances are no longer considered adjudicative facts.

[17] This conclusion requires us to overrule certain cases to the extent that they hold a municipal ordinance must be pled and proven as any other fact, including *Mulser*, 92 N.M. at 265, 587 P.2d at 43; *Coe*, 81 N.M. at 364, 467 P.2d at 30; and *Gen. Servs. Corp.*, 75 N.M. at 552, 408 P.2d at 53. The factors we consider before overruling a prior decision are:

1) whether the precedent is so unworkable as to be intolerable; 2) whether parties justifiably relied on the precedent so that reversing it would create an undue hardship; 3) whether the principles of law have developed to such an extent as to leave the old rule no more than a remnant of abandoned doctrine; and 4) whether the facts have changed in the interval from the old rule to reconsideration so as to have robbed the old rule of justification.

*Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMISC-011, ¶ 7, 133 N.M. 661, 68 P.3d 901 (internal quotation marks and citations omitted). In this instance, the first three factors are not determinant. However, the ease of legal research and the resources available to our courts, as well as to our litigants, have greatly increased, and thus “[t]he rationale for requiring [municipal ordinances] to be offered into evidence and proven — the practical difficulty of obtaining the necessary materials — has been undermined by developments in technology and open government practices that often make it easier to find the relevant law.” *Getty Petroleum*, 391 F.3d at 329. Our principle of stare decisis therefore is not offended by overruling the above-cited cases.

[18] The important reasons why we require judicial notice on the record are not harmed by this change. Appellate review will be enhanced, not hindered, by treating municipal ordinances as laws which may be judicially noticed. In this case, the due process rights of Defendant are not implicated because Defendant had notice of the ordinance under which he was being tried, as this was a trial de novo. *See United States v. Garcia*, 672 F.2d 1349, 1356 n.9 (11th Cir. 1982). Furthermore, the municipal ordinance under which Defendant was convicted is not in dispute. *See Simes v. Simes*, 895 A.2d 852, 861 (Conn. App. Ct. 2006). For these reasons, Defendant is not prejudiced by this change in the City’s burden to prosecute under municipal ordinances.

[19] Although we are holding that the parties no longer must plead and prove a municipal ordinance as a fact, if counsel knows the particulars of the case at issue, the availability of the ordinance to all courts in other states, and the ease of access to the ordinance on the internet, counsel should take reasonable steps to ensure the court has a copy of the correct law. *See Novak v. Craven*, 195 P.3d 1115, 1119 (Colo. Ct. App. 2008) (noting that “a trial court is not expected to be omniscient: the party must provide the trial court with at least some notice of the existence of the municipal provision”). When the existence of a municipal ordinance is at issue, and therefore must be proven to the court, the methods of proof set forth in NMSA 1978, Section 3-17-5(D) (1965), remain the proper way to prove the ordinance. We find no evidence that the Legislature passed this statute with the intention of statutorily enacting the rule treating municipal ordinances as facts that must be pled and proven.

[20] We affirm the decision of the Court of Appeals by applying the rule announced today, and Defendant’s conviction for DWI contrary to the Aztec City Code is affirmed. This new rule applies to pending and future cases only. *See State v. Frawley*, 2007-NMSC-057, ¶ 41, 143 N.M. 7, 172 P.3d 144.

III. CONCLUSION

[21] We hold that municipal ordinances are properly categorized as law which may be judicially noticed by all courts in New Mexico. Defendant’s conviction is affirmed.

[22] IT IS SO ORDERED.

PATRICIO M. Serna Justice

WE CONCUR:

EDWARD L. CHÁVEZ, Chief Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Justice

CHARLES W. DANIELS, Justice
Opinion

LINDA M. VANZI, JUDGE

{1} Appellant Michael Ross (Plaintiff), as Personal Representative of the Estate of Alvin Moore (Moore), filed a complaint for wrongful death against Appellees Mesilla Valley Hospital (MVH), Psychiatric Solutions, Inc. (PSI), and Georgina C. Herrera, M.D., (collectively Defendants) after Moore was killed in an auto accident caused by Carlos Preciado (Preciado). Preciado had recently been discharged from Defendants’ care.

{2} Defendants moved for summary judgment, asserting that they did not owe a duty of care to Moore. The district court granted Defendants’ motion, stating that: (1) the likelihood of injury to Moore from Defendants’ actions was too remote to warrant a finding that Defendants had a duty of care to Moore; (2) public policy considerations, legislative limitations, and the reasoning of this and other jurisdictions argue against extending such a duty; and (3) the injuries suffered by Moore were not foreseeable consequences of the breach of any duty Defendants may have had. Plaintiff appeals that decision. We affirm the district court.

BACKGROUND

{3} The following facts are undisputed. On July 25, 2005, Moore was struck and killed by an automobile driven by Preciado as Moore was attempting to cross a street in downtown Las Cruces. Preciado was driving a vehicle he had recently stolen and was engaged in a high-speed chase with Las Cruces police officers.

{4} At the time of the accident, Preciado was twenty-four years old and had an extensive history of psychiatric illness. In 2001, Preciado attacked his sister with a whiskey bottle, after which the court referred him to Memorial Medical Center for a thirty-day psychiatric evaluation. Memorial Medical Center doctors found Preciado incompetent to stand trial for the assault because of his psychotic symptoms, and he was transferred to Las Vegas Medical Center (LVMC) for treatment. Preciado responded well to a combination of anti-psychotic medications at LVMC and was discharged home. Following his discharge, Preciado was seen on an outpatient basis by Southwest Counseling Center in Las Cruces. When he returned from LVMC, Preciado was compliant with his medications and was doing well.

{5} However, in 2003, Preciado decided he was cured and became non-compliant with his medications. Preciado had been repeatedly charged with crimes and had numerous encounters with mental health care providers and the police. In January 2005, he was charged in El Paso County, Texas, with obstruction or retaliation under the Texas Penal Code. Tex. Penal Code Ann. § 36.06 (2003). Preciado initially pled guilty to the charge but subsequently withdrew his plea and was returned to New Mexico.

{6} Approximately three months after the El Paso incident, on April 22, 2005, Preciado was charged in Las Cruces Municipal Court with misdemeanor assault on a family member. On that date, Preciado was at his parents’ store, talking to himself, stating that he was the Lone Ranger, and stating that no one could touch him. Preciado suddenly started swinging his fists at his mother and, when she attempted to run away from him, Preciado tackled her, knocking her to the ground and shattering her front teeth. At a competency hearing in Las Cruces District Court on July 8, 2005, the City of Las Cruces stipulated to the dismissal of charges against Preciado based on his incompetency to stand trial. On that basis, the district court entered an order to remand the case back to municipal court for dismissal of the charges. At the hearing, the State intervened to seek an evaluation of Preciado regarding whether he should be civilly committed and informed the court that it had “secured a bed for . . . Preciado” at MVH. An order to transport was entered, directing the Doña Ana County Detention Center Transport officers to transport Preciado to MVH.
That afternoon, Preciado checked into MVH with an admitting diagnosis of psychotic disorder. The evaluation at MVH was performed by Dr. Herrera who understood that Preciado “was referred to [MVH] for evaluation and treatment.” Preciado was in MVH’s care for five days and, on July 13, 2005, he was discharged. The discharge summary states that he was medication-compliant and “[n]eat, clean, alert, and oriented in all spheres.” Dr. Herrera scheduled an outpatient follow-up appointment for Preciado with Southwest Counseling Center for the day following his release from MVH. Twelve days after his discharge, the accident occurred.

Plaintiff argues on appeal that the district court erred in granting Defendants’ motion for summary judgment because Defendants owed Moore a duty of care as a matter of law, and the risk of harm to persons like him was foreseeable as a matter of law. More specifically, Plaintiff argues that Defendants owed Moore a statutory duty of reasonable care in evaluating and discharging Preciado and that Defendants owed Moore a common law duty of care to control Preciado because there was a “special relationship” between Defendants and Preciado.

**DISCUSSION**

**Standard of Review**

“Summary judgment is properly granted where there is no genuine issue of material fact and where the moving party is entitled to judgment as a matter of law.” *Johnstone v. City of Albuquerque*, 2006-NMCA-119, ¶ 5, 140 N.M. 596, 145 P.3d 76. “An appeal from the grant of a motion for summary judgment presents a question of law and is reviewed de novo.” *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971 (filed 2006). “When the moving party makes a prima facie showing that summary judgment is proper, the party opposing summary judgment has the burden to show specific evidentiary facts in the form of admissible evidence that require a trial on the merits.” *Estate of Eric S. Haar v. Ulwelling*, 2007-NMCA-032, ¶ 10, 141 N.M. 252, 154 P.3d 67. “Mere argument or bare contention by the opposing party that a material issue of fact exists cannot override the moving party’s prima facie showing.” Id.

**Duty**

“The elements of a negligence claim are (1) the existence of a duty running from the defendant to the plaintiff; (2) a breach of that duty based on a reasonable care standard; and (3) the breach of duty is both the proximate and in fact cause of the plaintiff’s damages. *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 6, 134 N.M. 43, 73 P.3d 181. Whether the defendant owes a duty to the plaintiff is a question of law to be determined by the court. Id. A duty of care can be based on either a statutory or common law duty. *Spencer v. Health Force, Inc.*, 2005-NMSC-002, ¶ 11, 137 N.M. 64, 107 P.3d 504. Using these principles as the foundation for our analysis, we address each of Plaintiff’s arguments in turn. **Statutory Duty of Medical Professionals to Third Persons**

Plaintiff first argues that Defendants had a statutory duty of care to Moore under NMSA 1978, Section 43-1-1 (1999), of the Mental Health and Developmental Disabilities Act. Plaintiff argues that this statute was the authority under which the court ordered Preciado to be transported to MVH for evaluation and that under this statute, Defendant had a duty to return Preciado to the facilities of the court after the evaluation. We disagree. As a preliminary matter, we observe that the order of transport does not state the statutory authority under which it was issued. Nevertheless, we turn to the language of the statute to evaluate Plaintiff’s argument.

Section 43-1-1(A) states that “[w]henever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional” and the court shall enter “an appropriate transport order which also provides for the return of the defendant to the local facilities of the court.”

The plain language of this statute places the burden on the court to request that a defendant in a criminal case be returned to the facilities of the court. The transport order in this case did not contain such a request. Additionally, Section 43-1-1 addresses the procedure a court should follow to obtain an evaluation of the mental condition of a defendant in a criminal case; however, Preciado was not transported to MVH in connection with a criminal matter.

The district court issued the transport order at a hearing to address Preciado’s competency to stand trial on a charge of misdemeanor assault. As we have noted above, the parties stipulated that Preciado was not competent to stand trial, and the misdemeanor assault matter was remanded back to the municipal court for dismissal of the charges. There is no indication in the record that there were any unresolved criminal charges outstanding against Preciado at the close of the competency hearing. Further, contrary to Plaintiff’s representations, there was no finding by the district court that Preciado was “a danger to himself or to others.”

During the competency hearing, the attorney for the State informed the court that the State had decided to pursue an involuntary civil commitment of Preciado. To that end, the State secured a bed for Preciado at MVH and arranged for an evaluation by Dr. Herrera to determine whether Preciado met the criteria for civil commitment. The State told the court that if Preciado was found to meet the commitment criteria, the treating physician, Dr. Herrera, would prepare a physician’s affidavit for commitment, and the State would institute commitment proceedings.

The State had prepared an order for transport ordering the Doña Ana County Detention Center to transport Preciado to MVH. The district court judge signed the transport order at the close of the hearing. Based on these facts, it is clear that the transport order was issued in connection with an evaluation for civil commitment, not criminal proceedings; therefore, the transport order was not issued pursuant to Section 43-1-1(A).

In compliance with the transport order, Dr. Herrera completed the evaluation of Preciado prior to his release. There is no indication in the record that Dr. Herrera found that Preciado met the criteria for continued commitment, and the State did not pursue a civil commitment of Preciado. Because there was no further order from the court and the transport order did not specify that Preciado should be returned to the local facilities of the court, MVH did not have a statutory duty to Moore either to detain Preciado beyond the time required for the evaluation or to return Preciado to the local court facilities.

Plaintiff also argues that under the Full Faith and Credit Clause, MVH was required to hold Preciado “pursuant to an order of the 243rd Judicial District Court, El Paso County, Texas.” We decline to address this issue because Plaintiff fails to point to any evidence in the record that such an order exists. Plaintiff also fails to indicate where this issue was argued and ruled upon by the court below. “We will not search the record for facts, arguments, and rulings in order to support generalized arguments.” *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (filed 2008). Where a party fails to cite any portion of

Common Law Duty of Medical Professionals to Third Persons

{20} Plaintiff next argues that Defendants owed a common-law duty to Moore to control Preciado because Defendants had a “special relationship” with Preciado. Again, we disagree.

{21} More specific to the duty owed by health care providers to third parties, our Supreme Court has stated that the general rule in New Mexico is that “a physician owes a duty to his or her patient, and not to third party non-patients.” Lester ex rel. Mavrogenis v. Hall, 1998-NMSC-047, ¶ 25, 126 N.M. 404, 970 P.2d 590.

{22} The determination as to whether a duty exists requires an analysis of both foreseeability and policy. See id. ¶ 9. “Foreseeability is what one might objectively and reasonably expect, not merely what might conceivably occur.” Johnstone, 2006-NMCA-119, ¶ 8 (internal quotation marks and citation omitted). Even if a plaintiff is a foreseeable party to the defendant’s actions, this does not end the inquiry for the imposition of duty. Lester, 1998-NMSC-047, ¶ 9. The court must still determine whether the public policy of New Mexico supports an imposition of that duty. Id.

{23} In the following discussion, we analyze Defendants’ common law duty to Moore in terms of both foreseeability and public policy.

Foreseeability

{24} Our Supreme Court has interpreted the issue of foreseeability and a health care provider’s duty to non-patient third parties in two New Mexico cases. The Court addressed this as an issue of first impression in Wilschinsky v. Medina, 108 N.M. 511, 513, 775 P.2d 713, 715 (1989). The specific issue in that case was whether a practicing physician in New Mexico owed a duty to third parties who foreseeably may be harmed by the physician’s negligent treatment of a patient. Id.

{25} In Wilschinsky, a doctor injected his patient with a strong narcotic while the patient was in the doctor’s office. Id. at 512, 775 P.2d at 714. The narcotic was known to have side effects that would impact the patient’s ability to operate an automobile. Id. at 513, 775 P.2d at 715. The doctor permitted the patient to leave the office a short time after receiving the injection. Id. at 512, 775 P.2d at 714. While driving an automobile, approximately seventy minutes after receiving the injection, the patient was involved in a serious automobile accident that resulted in injury to a third party. Id. To facilitate its analysis, the Court articulated a general framework that may be used by courts to determine the existence of a duty in cases involving defendant physicians and third party non-patients. Lester, 1998-NMSC-047, ¶ 5. Under the Wilschinsky framework, the determination of a duty requires careful balancing of the “likelihood of injury, the magnitude of the burden of guarding against it[,] and the consequences of placing that burden upon the defendant.” Wilschinsky, 108 N.M. at 513, 775 P.2d at 715 (internal quotation marks and citation omitted).

{26} Applying this framework to the facts in Wilschinsky, the Court found that the likelihood of an automobile accident immediately following the injection of a narcotic was high. Id. at 515, 775 P.2d at 717. The burden of guarding against that foreseeable danger was not unreasonable based on the standards of normal medical procedures with which the doctor was already required to comply. Id. Finally, the Court found that the consequences of the additional burden on the doctor’s treatment decisions would not be significant if the scope of the doctor’s duty is limited to conducting himself within the professional standards of acceptable medical practice. Id.

{27} Based on its analysis, the Court created a very narrow exception to the general rule that a physician does not owe a duty to third party non-patients. The Court found that physicians owe a duty to the limited group of third parties who are “persons injured by patients driving automobiles from a doctor’s office when the patient has just been injected with drugs known to affect the judgment and driving ability.” Id. The Court specifically stated that the holding should not be construed to “create a general duty to the public” and the duty “is not to the entire public for any injuries suffered for which an argument of causation can be made.” Id.

{28} The Supreme Court next considered this issue in Lester, 1998-NMSC-047, where the Court declined to expand the narrow exception defined in Wilschinsky. In Lester, a third party was injured by a driver whose ability to drive was impaired because he had improperly taken a medication prescribed by his doctor. 1998-NMSC-047, ¶ 2. The accident occurred five days after the patient had last seen the doctor. Id.

{29} Applying the Wilschinsky balancing test, the Lester Court determined that the likelihood of injury in this case was “not foreseeable to the degree required in order to warrant a duty.” Lester, 1998-NMSC-047, ¶ 6. The Court stated that the likelihood was considerably more remote in this case than in Wilschinsky due to the significantly longer time since the patient last had contact with the doctor (seventy minutes in Wilschinsky as compared with five days in the Lester case). Lester, 1998-NMSC-047, ¶ 6; Wilschinsky; 108 N.M. at 512, 775 P.2d at 714. The Court also determined that the magnitude of the burden was too high. Lester, 1998-NMSC-047 ¶ 7. The Court found that where medication is taken outside of the doctor’s control, a duty running from the doctor to a third party non-patient is unreasonably burdensome because preventative measures are more difficult to impose and reliance on professional judgment is more remote. Id. Finally, the Court found that requiring a doctor to guard against injury to third parties from patients taking prescription medications had the potential consequence of creating a “serious chilling effect on the use of prescription medication in medical care.” Id. ¶ 8. The Court found that this potential consequence mitigated against the imposition of such a duty. Id. Quoting Wilschinsky, the Court stated that “doctors should not be asked to weigh notions of liability in their already complex universe of patient care.” Lester, 1998-NMSC-047, ¶ 8 (internal quotation marks and citation omitted).

{30} In reaching its holding, the Court
noted that the Wilschinsky Court had narrowly drawn its holding in order to “emphasize that courts should consider with great caution whether the facts of particular cases are appropriate for recognizing physicians’ duties to third parties.” Lester, 1998-NMSC-047, ¶ 3.

{31} More recently, the Tenth Circuit Court of Appeals in Weitz v. Lovelace Health System, Inc., 214 F.3d 1175 (10th Cir. 2000), applied New Mexico law to address the specific issue of “whether a health care provider can owe a duty to third parties arising from control where the individual is being treated on an outpatient basis.” Id. at 1182.

{32} In Weitz, a man who had been receiving outpatient counseling services from a health care provider shot and killed his wife and daughter, and then took his own life. Id. at 1176. The murder-suicide happened approximately three weeks after the patient’s last encounter with the health care provider. Id. at 1177. The court concluded that “[t]he strong weight of authority suggests that New Mexico would not find such a duty exists under these circumstances.” Id. at 1182. The court noted that the relationship between a psychiatric outpatient and their health care provider is less involved than that of an inpatient because the outpatient status “affords the health care provider only limited opportunity to supervise the patient.” Id. As a result of the limited interaction between provider and patient, the court held that “imposing a duty to control in the outpatient context would require providers to exercise a degree of care and oversight that would be practically unworkable.” Id.

{33} Applying the Wilschinsky balancing test to the facts in the current case, we find that, under the first prong of the test, the likelihood of injury to Moore based on Defendants’ actions was not foreseeable to the extent necessary to create a duty on the part of Defendants. Unlike Wilschinsky, where the accident occurred within approximately an hour of the patient’s interaction with the doctor, it had been twelve days since Preciado had been in contact with Defendants. Additionally, it does not appear from the record that Preciado had an ongoing patient-provider relationship with Defendants at the time of the accident. Preciado had been discharged from Defendants’ care, and an outpatient follow-up appointment had been scheduled with a separate agency, Southwest Counseling Center. The record does not indicate that any further contact between Preciado and Defendants was scheduled or planned. Given these circumstances, the foreseeability of Moore’s injuries as a result of Defendants’ actions was considerably more remote than even the circumstances in Lester, which our Supreme Court found to be insufficient to sustain a finding of duty.

{34} Under the second prong of the test, we determine that the magnitude of the burden that would be created by imposing a duty on Defendants under these circumstances would be too high. Patients who have been discharged from care are even farther beyond the scope of a health care providers’ control than are patients seen on an outpatient basis. As the Court in Lester noted, patients operating outside of a health care provider’s control make it more difficult for a health care provider to impose preventative measures, and reliance on the professional judgment of the health care provider is more remote. Lester, 1998-NMSC-047, ¶ 7. For these reasons, we agree with the court in Weitz that imposing a duty to control in this context is unworkable. 214 F.3d at 1182.

{35} Finally, under the third prong of the test, we find that under these circumstances, the potential consequences of imposing a duty to third parties on health care providers is significant. Extending a duty from Defendants to Moore may cause doctors to be more inclined to commit patients more frequently and for longer periods than are necessary in order to avoid possible liability for the patient’s future actions. This potential consequence mitigates against the extension of such a duty.

{36} In summary, we find that the injury to Moore was not foreseeable to the degree required to warrant a finding that Defendants owed a duty to Moore regarding the treatment and discharge of Preciado. Additionally, based on the facts in this case, we find that Defendants did not have a “special relationship” with Preciado or the right or ability to control his conduct at the time of the accident. For these reasons, Defendants did not have a duty to Moore to control Preciado.

{37} As we noted above, foreseeability is the first prong of the inquiry into whether a duty exists. Public policy considerations must also be weighed. We next turn to that discussion.

Public Policy

{38} Our Supreme Court has stated that it is the domain of the Legislature to make public policy. Lester, 1998-NMSC-047, ¶ 10. Courts should make policy in order to determine duty only when the Legislature has not spoken. Id. Therefore, whether the public policy of New Mexico supports a duty that runs from Defendants to Moore is determined by “reference to existing statutes, rules of court, judicial precedent, and other principles comprising the law.” Id. ¶ 9 (internal quotation marks and citation omitted).

{39} In Lester, the Court noted that the Legislature has spoken with regard to limiting health care providers’ liability. Id. ¶ 11. The Legislature has determined that health care provider liability must be limited in order to assure New Mexicans’ access to medical care. Id. This determination is evidenced by the limits the Legislature placed on health care providers’ liability through enactment of the Medical Malpractice Act (the Act) embodied in NMSA 1978, Sections 41-5-1 to -29 (1976, as amended through 2008). Lester, 1998-NMSC-047, ¶ 11. The Legislature’s intention to limit health care providers’ liability is demonstrated by provisions of the Act that impose damage caps, a shorter statute of limitations, and required evaluation and decision by the medical review commission. Id.

{40} In Lester, the Court stated that although courts have the authority to recognize a duty, this authority must be exercised sparingly, especially where “the Legislature has spoken in a manner inconsistent with the expansion of tort liability for health care providers.” Id. The Court concluded that because the Legislature had chosen to limit the liability of health care providers in the Act, expansion of health care provider liability to third parties should be left to the Legislature. Id.

{41} In light of New Mexico’s public policy as stated by the Legislature and our Supreme Court, we do not find the facts of the present case to warrant an expansion of health care provider duties to third parties.

CONCLUSION

{42} For the reasons set forth above, we affirm the district court’s order granting summary judgment in favor of the Defendants.

{43} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge
CELIA FOY CASTILLO, Judge
OPINION

LINDA M. VANZI, JUDGE

[1] Defendant appeals from an order enjoining him from subdividing his property and building a single-family residence on the resulting lot. The district court’s order was based on the terms of a restrictive covenant governing the use of the lots in Defendant’s subdivision. Defendant raised two equitable defenses to the enforcement of the covenants, but the district court concluded that the evidence did not warrant nonenforcement. As we conclude that the district court erred in refusing to consider relevant evidence in evaluating Defendant’s equitable defenses, we reverse and remand for a new trial on the issue of whether those defenses should prevent enforcement of the covenants against Defendant in this case.

BACKGROUND

[2] Plaintiff, Harriet Heltman, and Defendant, Albert Catanach, are the owners of separate residential lots in the Lovato Subdivision No. 1 in Santa Fe, New Mexico (the City). In January 2004, Defendant applied to the City for approval to split his lot. Defendant’s home was already positioned on part of the lot, and he hoped to build a residential structure on the resulting lot. Soon after Defendant filed his application with the City, Plaintiff initiated this lawsuit seeking a declaratory judgment that Defendant’s proposed use of the property would violate the restrictive covenants governing the subdivision and seeking an injunction to prevent Defendant from subdividing his lot and building a residence on the resulting lot. In the district court, the parties disputed which of several sets of restrictive covenants actually governed the subdivision, whether the restrictive covenants barred Defendant’s proposed use of his property, and whether Defendant’s affirmative defenses prevented enforcement of the covenants against him. After a bench trial, the district court entered a judgment declaring that Defendant’s proposed use of his property, and whether Defendant’s affirmative defenses prevented enforcement of the covenants against him.

DISCUSSION

[3] Defendant appeals, arguing: (1) that the district court erred in applying the wrong set of covenants; (2) that even if the district court relied on the correct covenants, those covenants do not expressly prohibit subdivision of Defendant’s lot; (3) that the district court erred in limiting the scope of evidence it would consider as relevant to Defendant’s affirmative defenses; and (4) that the district court erred in concluding that Defendant’s affirmative defenses did not prevent the enforcement of the covenants against him in this case.

The 1940 Covenants Are Controlling

[4] The Lovato Subdivision was originally controlled by a set of restrictive covenants that was recorded in 1936. A second set of covenants purporting to supercede the 1936 covenants was recorded in 1940. In 2005, after this litigation had commenced, Defendant recorded an agreement among a majority of property owners in the subdivision to modify the covenants. Subsequent to Defendant’s recorded amendment, Plaintiff recorded her own amendment. The district court determined that the 1940 covenants were applicable to the subdivision and that, to the degree either Defendant’s or Plaintiff’s amendments were effective, they would not actually take effect until the year 2015. Defendant asserts that the district court erred in applying the 1940 covenants and claims that either the 1936 covenants or his 2005 amendments should control.

[5] A determination of which set of covenants is applicable required the district court to interpret the covenants themselves—a legal determination that this Court reviews de novo. See Baker v. Bennie J. Aday & Dixie J. Aday Revocable Trust, 999-NMCA-123, ¶ 9, 128 N.M. 250, 991 P.2d 994 (applying de novo review to the district court’s interpretation of the terms of a covenant). The 1936 covenants provided that they were to “remain in force until July 1, 1960, and thereafter until such time as the same may be modified or abrogated by a vote of two thirds of the owners of lots within said subdivision.” Defendant argues that since the 1940 covenants were recorded prior to July 1, 1960, they were ineffective because they violated the plain meaning of the 1936 covenants’ requirement that no amendment take place prior to that date. Plaintiff points out that there was evidence that the 1940 covenants were recorded by unanimous agreement of all the then-owners of the Lovato Subdivision and argues that because it was unanimous, the amendment was effective.

[6] We agree that the unanimous agreement in 1940 of all the then-owners of the property in the subdivision was effective to amend the 1936 covenants. Generally, the
“obligation of the burdened party under a covenant can be extinguished by action by the person entitled to enforce the covenant.”

Gerald Korngold, Private Land Use Arrangements: Easements, Real Covenants, and Equitable Servitudes § 11.03, at 386 (1990). “Termination by release or agreement is based on fundamental principles of contract law, as one entitled to enforce a promise may relieve the promisor of his or her obligation.” Id. at 386-87. “As a corollary to the rule that a covenant can be terminated by the agreement of the parties, a covenant may be amended upon agreement of the parties. Under the general rule, all of the parties entitled to enforce the covenant must agree to the amendment.” Id. § 11.13, at 419 (footnote omitted).

[7] Where a provision such as the one in the 1936 covenant provides that a covenant shall remain in effect for an initial period, after which it may be modified by less than unanimous consent, courts have interpreted these provisions to simply provide an exception, after a certain number of years, to the general rule that unanimity is required in order to amend a restrictive covenant. See, e.g., Johnson v. Howells, 682 P.2d 504, 505 (Colo. Ct. App. 1984) (holding that the district court erred in concluding that the covenant could be amended by sixty percent of the property owners prior to the expiration of the initial twenty-year period and stating that amendment during this period could only be effected by unanimous consent); Kaufman v. Roling, 851 S.W.2d 789, 794 (Mo. Ct. App. 1993) (interpreting such a provision to mean that the covenant could be amended during the initial period only by unanimous consent, but could be subsequently amended by the two-thirds majority provided for in the covenant).

[8] Defendant has cited no authority to support his claim that the then-owners of the properties in the Lovato Subdivision could not unanimously agree to enact the 1940 covenants, thereby amending the 1936 covenants. Accordingly, we assume that there is none. See In re Adoption of Doe, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984). And while we have no quarrel with the case cited by Defendant for the proposition that under a similar provision a covenant cannot be modified by less than unanimous consent during the initial period, see White v. Lewis, 487 S.W.2d 615, 616 (Ark. 1972), that is not what occurred here. We hold that the unanimous agreement of the then-owners of the properties in the subdivision amended the 1936 covenants and replaced them with the 1940 covenants.

[9] Defendant asserts that even if the 1940 covenants were valid, the amendments he recorded in May 2005 with the signatures of a majority of the owners were effective to amend the 1940 covenants. With regard to amendments, the 1940 covenants provide:

These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until January 1, 1965, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then[-]owners of the lots it is agreed to change the said covenants in whole or in part.

The district court determined that under this provision, Defendant’s amendments would not go into effect until January 1, 2015. We conclude that the district court was correct that Defendant’s amendments—to the degree they were validly enacted and not superseded by Plaintiff’s subsequently recorded amendments—would not go into effect until January 1, 2015. We base this conclusion on the duration clause specifying that extensions of the covenant are to last for ten-year periods.

[10] Restrictive covenants “are to be read reasonably but strictly and, to the extent language is unclear or ambiguous, the issue of enforcement of a restriction will be resolved in favor of the free enjoyment of the property and against limitations.” Mason Family Trust v. DeVane, 2009-NMCA-048, ¶ 9, 146 N.M. 199, 207 P.3d 1176. Defendant contends that the covenant is unambiguous and that the language providing that after January 1, 1965, the covenant “shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then[-]owners of the lots it is agreed to change the said covenants in whole or in part,” means that after January 1, 1965, a majority of owners could agree to modify the covenants at any time. We disagree. While we recognize that Defendant’s proposed interpretation has some logical force, since the covenant provides that the ten-year extensions will remain in place unless the majority chooses to modify them, to interpret the language as Defendant proposes would render meaningless the portion clearly providing that extensions of the covenant would be for ten-year periods. Defendant effectively asks this Court to interpret the language as if it simply reads that the covenants “shall be automatically extended unless by a vote of the majority of the then[-]owners of the lots it is agreed to change the said covenants in whole or in part.” He does not explain what purpose the specific ten-year duration clause would serve under such an interpretation, and we can think of none. Therefore, we do not find this provision to be as clear as Defendant asserts. Nevertheless, we conclude that this is not a case in which the rule of construction favoring the unencumbered use of property should apply. This Court “will not construe a deed restriction so as to create an illogical, unnatural, or strained construction,” and “[w]e will give words in a deed restriction their ordinary and intended meaning.” Id. Applying these rules of construction, we decline to adopt a reading of this provision that eliminates the ten-year period for extensions that is plainly specified in the covenant.

[11] A number of other courts have interpreted similar language, and it appears that all but one have determined that modifications by less than unanimous agreement can only take place at the start of the next of the “successive periods of [ten] years.” See Swenson v. Erickson, 998 P.2d 807, 815 (Utah 2000) (internal quotation marks omitted) (holding that an agreement that attempted to terminate a subdivision’s restrictive covenants was ineffective, where the covenants specifically provided that they would be terminated by a majority vote of subdivision property owners only at specific ten-year intervals); see also Scholten v. Blackhawk Partners, 909 P.2d 393, 396-97 (Ariz. Ct. App. 1995) (holding that an otherwise valid amendment was ineffective until the beginning of the next ten-year period); Mauldin v. Panella, 17 P.3d 837, 839 (Colo. Ct. App. 2000) (holding that the district court erred in concluding that an amendment could be passed at any time, rather than at the beginning of the successive ten-year period); In re Wallace’s Fourth Southmoor Addition to the City of Enid, 874 P.2d 818, 820-21 (Okla. Civ. App. 1994) (same). But see Hill v. Rice, 505 So. 2d 382, 385 (Ala. 1987) (holding that an amendment could be passed at any time after the initial period by the agreement of the specified majority, without addressing the purpose of the clause regarding the ten-year periods).

[12] We agree with those courts that have concluded that “in order to give meaning to all of its provisions, we [must] hold that the duration clause requires that an amendment approved [by the specified majority, rather than unanimously] during the
running of an extension period become[s] effective only at the start of the next successive period." Scholten, 909 P.2d at 396. Here, Defendant’s May 2005 amendments came too late to meet the January 1, 2005 deadline, and therefore, if valid, would not take effect until January 1, 2015. Accordingly, the district court correctly concluded that the 1940 covenants governed the subdivision property for purposes of this litigation.

The 1940 Covenants Prohibit Defendant’s Proposed Subdivision of His Property

{13} Defendant contends that the 1940 covenants “do not prevent subdivision [of his lot] and construction of an additional building on the subdivided lot.” We cannot agree. Defendant’s lot is .511 acres, and the proposed split would result in a .215-acre lot and a .294-acre lot, each with a single-family home on it. Section 2(D) of the 1940 covenants provides that “[n]o residential structure shall be erected or placed on any building plot, which plot has an area of less than one half acre . . . .” That provision clearly prohibits Defendant from dividing his lot into two lots that are less than one-half acre and maintaining a residential structure on each lot.

{14} Defendant relies on two Illinois cases in support of his argument that the 1940 covenants do not prohibit the proposed use of his property in this case. However, the cases are not persuasive because the language of the covenants in each is meaningfully different from the language in the 1940 covenants. In Sadler v. Creekmur, the covenant stated that “[n]o building shall be erected . . . or permitted to remain on any lot other than one single family dwelling . . . .” 821 N.E.2d 340, 343 (Ill. App. Ct. 2004) (internal quotation marks omitted). The Illinois Appellate Court held that this language did not prohibit an owner from subdividing his lot and building a second residence on the resulting half of the subdivided property. Id. at 348. Sadler is clearly distinguishable, since there, the covenant did not define the term “lot” or place any acreage requirements on land used for placement of a residential structure. Id. at 343.

{15} In Paquette v. Cable, the restrictive covenant provided that “[n]o more than one single family residence or dwelling house shall be built or erected upon any piece or parcel of the above premises, having an area of less than two and one-quarter acres.” 653 N.E.2d 1262, 1264 (Ill. App. Ct. 1995) (internal quotation marks omitted). The plaintiffs sought to subdivide a lot that was approximately 2.07 acres. Id. The Illinois Appellate Court held that, since there was nothing in the covenant providing for a minimum residential lot size, the covenant did not prohibit subdivision of the lot, and instead only limited the number and type of structure that could be built on the resulting new parcel if it was less than two and a quarter acres. Id. at 1265-66. Therefore, subdivision of the lot was permitted, so long as only no more than one single-family dwelling was built on the resulting lot. Id.

{16} Here, in contrast to Sadler and Paquette, the 1940 covenants do provide for a minimum residential lot size, since they prohibit the construction of a residential structure on any lot smaller than one-half acre. As Defendant’s proposed subdivision would result in two lots smaller than one-half acre, each with a single-family residence, the 1940 covenants prohibit Defendant’s proposed use of his property.

Evidence of Other Covenant Violations Is Relevant to Defendant’s Defense of Changed Conditions

{17} Even though we hold that the 1940 covenants expressly prohibit Defendant’s proposed use of his property, New Mexico law recognizes that there are certain circumstances under which it is inequitable to enforce a restrictive covenant. In the district court, Defendant asserted that it would be inequitable to enforce the covenants against him because of changed conditions of the neighborhood. Restrictive covenants “have historically been used to assure uniformity of development and use of a residential area to give the owners of lots within such an area some degree of environmental stability.” Jones v. Schellkopf, 2005-NMCA-124, ¶ 9, 138 N.M. 477, 122 P.3d 844 (internal quotation marks and citation omitted). In some cases, when that uniformity has been destroyed by other violations of a covenant or when other changes in the neighborhood have undermined the original purpose of the covenant, the covenant may be set aside. See id. ¶ 13. In order to warrant setting aside the covenant, “the degree of change must be so significant and so radical as to frustrate the original purpose of the grantor[s] such that the original intent can no longer be carried out.” Id.

{18} The 1940 covenants are generally directed at ensuring that the subdivision contains only single-family residences on lots that are at least one-half acre. The relevant sections of the 1940 covenants provide:

{2(A)} All lots in the tract shall be known and described as residential lots. No structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single-family dwelling not to exceed two stories in height and a private garage for not more than three cars and other outbuildings, incidental to residential use of such tract.

{2(D)} No residential structure shall be erected or placed on any building plot, which plot has an area of less than one half acre. . . .

{2(G)} No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

{2(L)} Invalidation of any one of these covenants by judgment or court order shall in no [way] affect any of the other provisions which shall remain in full force and effect.

{19} On the first day of the bench trial when the parties were offering their exhibits, Defendant indicated that most of his evidence related to the fact that a significant number of lots in the subdivision contained either (1) multifamily residences, (2) primary single-family residences with guest houses on the lots that were being used as additional single-family residences, rather than as temporary places for guests of the primary residences, or (3) non-residential structures, such as churches, all in violation of the covenants. The district court indicated that because Defendant wanted to split his lot into two parcels smaller than a half acre and with a residence on each in violation of Section 2(D), the only relevant evidence of changed conditions was whether there were other lot splits that resulted in lots smaller than one-half acre in violation of Section 2(D); evidence of multifamily dwellings and guest houses used as residences would only be evidence of violations of Section 2(A) or 2(G), which the district court did not consider to be relevant. Defendant explained that he believed that evidence of the multifamily dwellings and the guest houses was relevant to his defenses because
this evidence demonstrated that many of the lots in the subdivision contained more than one residence per half-acre lot. Defendant argued that reading the 1940 covenants as a whole, it is clear that the purpose is to ensure that there is only one single-family residence per half-acre lot, and that this intent had not been followed in much of the subdivision, such that the covenant should not be used to bar him from subdividing his lot and placing a second single-family residence on it. The district court stated that it did not see a connection between the provision governing the number of single-family residences on a lot and the provision governing the size of each lot. As a result, the district court indicated that Defendant should not spend much time introducing evidence relating to the guest houses and multifamily dwellings.

After trial, in the district court’s findings and conclusions, it found that there were “[s]everal guest houses, duplexes or other multifamily residences,” as well as nonresidential buildings such as churches that had been built on lots in the subdivision, but that there had been only one lot split that resulted in two lots smaller than one-half acre. The district court found that the single lot split did not significantly alter the character of the neighborhood so as to render the covenant unenforceable. It also found that while

the construction of numerous guest houses and other multifamily units on existing one-half (½) acre lots . . . would raise issues regarding the validity and enforceability of Section 2(G) of the 1940 Restrictive Covenants, . . . the severability provisions set forth in Section 2(L) . . . would prevent such violations from affecting the validity of the remaining covenants, specifically the one-half (½) acre minimum residential lot size requirement in Section 2(D) . . . .

We hold that the district court erred in so narrowly limiting the scope of the evidence it would consider in evaluating Defendant’s argument regarding changed conditions.

Generally, when a court determines whether changed conditions will prevent a covenant from being enforced, it looks to all conditions relevant to the use of the property that is sought to be enjoined—not just to other violations of the same provision of the covenants. See, e.g., Mason v. Farmer, 80 N.M. 354, 355-57, 360, 456 P.2d 187, 188-90, 193 (1969) (holding that changed conditions rendered it inequitable to enforce a restrictive covenant limiting a property to residential uses and relying in part on conditions other than the violation of the same provision of the covenant); Mershon v. Neff, 67 N.M. 311, 318, 355 P.2d 128, 132-33 (1960) (remanding to the district court to consider changes that included both violations of the relevant covenant and a factor not governed by the covenants—increased traffic); Jones, 2005-NMCA-124, ¶¶15-16 (considering evidence of factors not governed by the covenants—crime rates and neighborhood safety—in determining whether a wall height restriction should be enforced and concluding that there was insufficient evidence of a significant change in those conditions to warrant the district court’s refusal to enforce the covenant). Although the district court concluded that the severability clause in the 1940 covenants controlled what evidence would be relevant to the issue of changed conditions, we find nothing in that clause to support such an interpretation, and neither of the parties has cited any authority that would suggest that a severability clause should be so interpreted.

In this case, where the covenants seek to ensure that all properties contain only a single-family residence on a lot of at least one-half acre, evidence that other properties had either multifamily residential structures, multiple residential structures on lots not large enough to provide at least one-half acre per residence, or nonresidential structures would be relevant to the question of whether it is equitable to enforce the covenants against Defendant in this case. Defendant’s proposed use of his property would apparently result in a use that is consistent with the use of a significant number of other lots in the subdivision—more than one residence in an area of less than one-half acre per residence. Although Defendant’s proposed use of the property is different from some of the other violating residential lots—since he intends to actually split his lot and place another residence on the resulting new lot, rather than simply placing an additional residence on the existing lot—in light of New Mexico case law indicating that the scope of evidence relevant to changed conditions is relatively broad, we cannot conclude that this difference warranted the district court’s refusal to consider evidence of other violations that did not involve lot splits. The evidence of the use of the other lots possessing multifamily residences, multiple residential structures per lot, or nonresidential structures was relevant to Defendant’s claim of a changed condition, and the district court erred in declining to consider it for that purpose.

Evidence of Plaintiff’s Acquiescence in Other Covenant Violations Is Relevant to Defendant’s Claim that Plaintiff Waived Her Right to Enforce the Covenant

New Mexico courts have also recognized that a covenant should not be enforced by one who has acquiesced in prior violations of the covenant. See Neff v. Hendricks, 57 N.M. 440, 442-43, 259 P.2d 1025, 1026-27 (1953) (concluding that defendants had not waived by acquiescence their right to enforce the relevant covenants since prior violations had been minor and defendants had actively sought to enforce other violations of the restrictions). Waiver by acquiescence requires “a showing that the party[y] presently trying to enforce the covenant had previously acquiesced in a violation of the same or a different covenant on another restricted lot.” Jay M. Zitter, Annotation, Waiver of Right to Enforce Restrictive Covenant by Failure to Object to Other Violations, 25 A.L.R. 5th 123, §2[a] at 144 (1994). Relevant considerations, among others, include whether the party seeking to enforce the covenant had actual or constructive knowledge of the prior violations, the magnitude of the current violation as compared to prior violations, and whether the prior violations were temporary, occasional, or permanent. Id.

In the district court’s findings and conclusions, it stated that Plaintiff’s failure to prevent the single lot split that had occurred in the subdivision did not constitute acquiescence in the split sufficient to waive Plaintiff’s ability to enforce the covenant against Defendant’s proposed lot split in this case. The district court apparently did not consider Plaintiff’s failure to enforce the covenants against the other violations of those provisions intended to ensure that each lot possesses only a single-family residence on a lot of a minimum of one-half acre. For the same reasons we have concluded that the evidence of the multifamily residences, multiple residences on a single lot, and nonresidential structures was relevant to the question of whether changed conditions prevented enforcement of the covenants against Defendant, we conclude that this evidence was relevant to the issue of whether Plaintiff had acquiesced in other relevant violations of the 1940 covenants, such that she should not be permitted to enforce the covenants against Defendant.
See Mason, 80 N.M. at 359, 456 P.2d at 192 (“[W]e have recognized the importance of changed conditions and circumstances in deciding whether restrictive covenants have been waived, or should be enforced.”); Korngold, supra, § 11.05, at 392-93 (noting that the question of waiver often involves a factual inquiry similar to that involved in the question of changed conditions).

Although often a party’s acquiescence in the violation of one provision of a covenant will not constitute acquiescence in the violation of another provision, see generally, Zitter, supra (citing cases in which acquiescence to a violation of one provision in a covenant is held to not constitute acquiescence to another provision), here the provisions relating to lot size and to the number of dwellings per lot are all intended to achieve the same purpose: a residential community in which all properties contain a single-family dwelling on a lot with a minimum size of one-half acre. Therefore, evidence of Plaintiff’s acquiescence in the properties containing multifamily residences, multiple residences, and nonresidential structures is relevant to whether it is inequitable to permit her to enforce the covenant in this case. See Restatement (Third) of Property: Servitudes § 8.3 cmt. f at 501 (2000) (“Waiver usually involves a failure to object to other violations of the same or similar servitudes such that it would be unfair to allow the claimant to enforce the servitude against the current violation.”) (Emphasis added)). Therefore, the district court erred in failing to consider this evidence in determining whether Plaintiff acquiesced in these prior violations and, if so, whether such acquiescence should bar her from enforcing the covenants against Defendant in this case.

CONCLUSION

Because we conclude that the district court erred in failing to consider certain evidence of other violations of the 1940 covenants as relevant to Defendant’s equitable defenses of changed conditions and waiver by acquiescence, we reverse and remand for a new trial on those defenses.

IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
RODERICK T. KENNEDY, Judge
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Miller Stratvert PA is seeking an associate attorney for a general civil practice in the Farmington office. Three to five years experience is required. Firm offers competitive salary, excellent benefits, and a positive work environment. Send resumes to Managing Partner, 300 W. Arrington, Suite 300, Farmington, NM 87401.

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SE Albuquerque immigration law firm seeks entry-level immigration attorney. Full-time, full benefits. Position available immediately. Must be licensed in a state. Must be fluent in Spanish. No immigration experience necessary. Salary DOE. E-mail cover letter, resume, and writing sample to Rebecca at rkiton@jslawit.com.

Associated Attorney
A respected, busy and collegial medium-sized firm seeks an associate attorney with at least five years experience in litigation and an interest in health law. The firm is located in the Uptown area and is staffed with AV rated lawyers and members of Best Lawyers in America and Southwest Super Lawyers. Excellent benefits and salary commensurate with experience. Inquiries will be kept confidential. If interested, please send resume and writing sample to Bannerman & Johnson, P.A., 2201 San Pedro NE, Building 2, Suite 207, Albuquerque, NM 87110 or FAX to 837-1800.

Legal Assistant
Sole practitioner law firm is looking for an legal/admin. assistant with a min. of 1 year exp. to work in the area of collections and replevins. Must be willing to do other duties around the office as needed. Good benefits. Salary D.O.E. Please fax resume with references to Office Manager at 842-8200, or mail to Office Manager, 116 14th Street, SW, Albuquerque, NM 87102.

Legal/ Admin Position
Degree preferred. Needed: good oral/written communication and math skills; ability to work independently and with a team; ability to multi-task and work at fast pace. Mail resume, business writing sample and cover letter to Chapter 13 Bankruptcy Trustee, PO Box 1788, Albuquerque, NM 87103

Executive Secretary
Executive Secretary needed, PT, 30 hours per week, M-F. Must be: a whiz at Microsoft Office 2007, extremely organized, energetic, and interested in employee benefits law, a fascinating federal law in every workplace. Office experience required, ProLaw experience a plus. Please send your resume and a short cover letter with your salary requirements to paneti@hurleyfirm.com.

Legal Secretaries / Paralegals
High Desert Staffing seeks candidates with 2+ years experience for both permanent and temporary positions. Call for interview: (505) 881-3449

Full Time Paralegal Position
Immediate opening for full time paralegal position for a busy general practice in Albuquerque, 2+ years experience preferred. Experience in domestic relations, business transactions and litigations a plus. Salary negotiable based on experience. Great benefits and working environment. Please email resume to jeres@wolfandfoxpc.com
Receptionist/Legal Assistant
Small busy law firm seeking full-time Receptionist/Legal Assistant, knowledge of Microsoft Word necessary. Salary negotiable. Send resume to Margo Danoff, Office Manager, 604 Chama NE, Albuquerque, NM 87108, Fax to (505) 266-4330 or email to michaeldanoff@qwestoffice.net.

Legal Assistant/Paralegal
Extensive prior experience in civil litigation and document control/management required. Seeking professional, organized, and highly skilled individual with attention to detail. Excellent computer skills required. All inquiries confidential. Competitive benefits. Resumes, Atkinson, Thal & Baker, PC, 201 Third Street NW, Suite 1850, Albuquerque NM 87102.

Legal Secretary
Staff counsel for Farmers Insurance Exchange and Affiliates in Las Cruces is seeking a Legal Secretary with at least 2 years experience in civil law for our growing office. Proficiency in Word, multi-tasking and typing required. We offer excellent benefits and a competitive salary. Please mail or fax your resume to Bill Anderson, Orraj, Anderson & Obrey-Espinosa, 3800 E. Lohman Avenue, Suite B, Las Cruces, NM 88011, Fax (575) 521-1331.

Experienced Legal Assistant
Experienced Legal Assistant needed for a fast-paced plaintiffs’ firm. Must be organized, self-motivated, and able to work independently. Previous legal experience required, specifically in the preparation of pleadings and correspondence, state and federal court filings, and calendaring. Must be computer literate and have experience with MS Word and Outlook Email. Fax or email resume with salary requirements to Mia Toucher at Gaddy ◊ Jaramillo, (505) 254-9366; mia@gaddyfirm.com

Freelance Paralegal
Freelance paralegal with 20+ years experience available for all phases of civil litigation. Excellent references. (505) 934-5880, civilpara@yahoo.com.

Writing, Research, Appeals
Experience: federal appellate clerk and Modrall Sperling attorney. 505-550-8573, adam.h.greenwood@gmail.com

Office Space

Santa Fe Executive Offices
Santa Fe Executive offices in a friendly, professional environment on Botulph Road near hospital. Share space with established lawyers; referrals likely. Rent an office from $500.00. Phone and internet available, including wireless. Secretarial, paralegal services available. Email to info@santafeoffices.com or call 505-982-5566.

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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.

620 Roma Building
620 Roma, N.W. Located within two blocks of the three downtown courts. Rent of $550.00 per month includes five conference rooms, receptionist, all utilities (except phones). Call 243-3751 for appointment to inspect.

Attorney Office Space
Prime Uptown Location
Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, two-story atrium, extensive landscaping, ample parking, full-service lease. Single attorney office space (office plus secretary-paralegal and reception area) available within well-improved and appointed 2695 square foot office. Best mountain views. Includes shared reception area, secretarial area, conference room, coffee bar, and lounge with three other small attorney firms. Rent of $1175.00 includes reception coverage. One (1) year lease required. Call Ron Nelson or John Whisenant 883-9662, Uptown Square

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908 Lomas N.W., Albuquerque. Just a few blocks from courthouses, 1,400 sq.ft., 3-4 Professional Offices, Sec./Receptionist Area, Private Parking, Terms Negotiable. (505) 842-0012

Professional Office Downtown
Office with Separate Secretarial Area if Needed, Office Furnishings Optional, Free Client Parking, Library/Conference Room, Kitchen, Telephone, High-Speed Internet, Copier, Fax, Security System, Within Walking Distance from Courthouses. 715 Tijeras Ave. NW. Call Holly at 842-5924.

Office For Lease Abq Uptown Area
7301 Indian School Rd NE, Suite A. Monument & building signage available. Highly functional floor plan with lots of natural light. Covered parking available. 4,356 sf at $11.40/ sf Modified Gross. Call Martha or Shelly @ 998-1567

BAR BULLETIN

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

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With Dolph at counsel table for oral argument were firm attorneys Karl Johnson, Kelli Keegan and Samuel Hough.

Many thanks to all those who gave Dolph such a hard time during his moot court practice sessions!