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Black and Blue, by Sally Bartos (see page 3)

Weems Art Gallery, Old Town
Ethicspalooza
Friday, May 10 • State Bar Center, Albuquerque
Standard Fee: $32 per credit hour

This series of ethics courses, (one-hour each) taught by members of the Disciplinary Board of the New Mexico Supreme Court, Office of Disciplinary Counsel, will provide concise, informative, practical, and useful information for the ethical practice of law. Plus, for each hour you attend, you will receive 1.0 hour of CLE credit. Each is approved for 1.0 hour of ethics professionalism credit but may also be applied to general credit hours. Take one, two, three, four, five, or all six.

9-10 a.m. Ethically Managing Your Practice 1.0 EP $32
From how to confirm that new representation to how to orderly terminate representation and everything in between, this session will cover the daily challenges faced by lawyers trying to practice law and run a business.

10-11 a.m. Conflicts of Interest 1.0 EP $32
Covering how to recognize them, how to avoid them, and what to do when you wake up in the middle of one; this session will cover the common conflicts that arise in practice.

11-11:15 a.m. Break

11:15 a.m.-12:15 p.m. Charging a Reasonable Fee 1.0 EP $32
This session will cover what is and is not a reasonable attorneys' fee, whether you can charge flat fees, the prohibition against non-refundable fees, fee-splitting, and contingency fee agreements.

12:15-1:30 p.m. Lunch

1:30-2:30 p.m. Proper Trust Accounting 1.0 EP $32
Participants will learn about the proper management of a trust account, including ledger keeping and reconciliation and a discussion on the “dos and don’ts” of trust accounts. This hands-on session will also discuss the proper way to handle clients' non-cash property.

2:30-3:30 p.m. The Ethics of Social Media Use 1.0 EP $32
Facebook, Twitter, and G-Chats, oh my! Learn about the growing need to use social media in your law practice and the ethical issues associated with that use.

3:30-4:15 p.m. Break

3:45-4:45 p.m. Dealing With Disciplinary Complaints 1.0 EP $32
This session will cover the course that a disciplinary complaint takes after it is filed and an attorney's rights and obligations in responding to a complaint.

4:45 p.m. Adjourn

10th Annual Spring Elder Law Seminar
Social Security and Medicare: What You Don’t Know Can Hurt You
Friday, May 17, 2013 • State Bar Center, Albuquerque

Standard Fee $149
Elder Law Section Member, Family Law Section Member, Real Property, Trust and Estate Section Member, Legal Services Attorney, Paralegal $129

Co-Sponsors: Elder Law Section, Family Law Section, and Real Property, Trust and Estate Section

12:45 p.m. Registration

1:10 p.m. Introductory Remarks
Mary Ann R. Burmester, Esq., Atkinson & Kelsey PA
Laurie A. Hedrich, Esq., Hedrich Law PA

1:15 p.m. Social Security Retirement Benefits
Deciding when it’s most beneficial to start collecting benefits, what happens when the first spouse dies, and how to coordinate Social Security payments with other types of retirement investments.
David Zander, UBS Financial

1:30 p.m. Break

3 p.m. Medicare: Recent Changes in Law and Policy
Mike Parks, Esq.

4 p.m. Legislative Update on Topics Relevant to Elder Law
Fletcher Catron, Esq., Catron Catron Pottow Glassman PA
Adjourn/Reception
and the potential interest to readers. Appearance of
on the quality of writing, the timeliness of the article,
the authority to edit letters and materials submitted for

©2013, State Bar of New Mexico. No part of this publica-

May
1
Bankruptcy Law Section BOD,
Noon, U.S. Bankruptcy Court

2
Real Property, Trust and Estate Section BOD,
11 a.m., via teleconference

6
Attorney Support Group,
5:30 p.m., First United Methodist Church

8
Children's Law Section BOD,
Noon, Juvenile Justice Center

8
Criminal Law Section BOD,
Noon, Kelley & Boone

8
Employment and Labor Law Section BOD,
Noon, State Bar Center

9
Business Law Section BOD,
4 p.m., via teleconference

9
Public Law Section BOD,
Noon, Montgomery and Andrews

9
Support Group for Legal Professionals,
5:30 p.m., Unitarian Universalist Church,
Santa Fe

From the New Mexico Supreme Court
2013-NMCA-044, No. 31,128: Williams v. Crutcher ............................................... 23

From the New Mexico Court of Appeals
2013-NMSC-007, No. 33,601: In the Matter of Stephen S. Salazar......................... 17
2013-NMSC-008, No. 33,280: In the Matter of Gene N. Chavez......................... 20

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Cover Artist: Sally Bartos has painted all her life. The traditional tin-roofed adobe casitas of New Mexico and the horses,
the deep blue skies, and endless sagebrush-filled vistas are her current subjects, which she captures with thick acrylics
on canvas. Much of her work is whimsical and all of it is "New Mexico" (bartos.etsy.com).
NOTICES

COURT NEWS
First Judicial District Court
Notification of Closure

The 1st Judicial District Court will be closed June 5–7 to move to the new courthouse at 225 Montezuma Ave., Santa Fe. The court will reopen June 10 with regularly scheduled hours. For further information, contact Stephen Pacheco, 505-455-8200.

Ninth Judicial District Court
Judicial Vacancy

A vacancy on the 9th Judicial District Court will exist in Curry and Roosevelt counties as of July 1 upon the retirement of Judge Teddy L. Hartley. The judicial vacancy is for Division 3, General Jurisdiction, with a heavy criminal docket. Further inquiries regarding the details or assignment of this judicial vacancy should be directed to the chair of the Court. The dean of the UNM School of Law, designated by the New Mexico Constitution to chair the Appellate Court Judicial Nominating Committee, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14, of the New Mexico Constitution. Applications, as well as information related to qualifications for the position, may be obtained from the Judicial Selection website at http://law.unm.edu/judsel/application.php, or via email by calling Raylene Weis, 505-277-4700. The deadline for applications is 5 p.m., May 22. Applications received after that date will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Committee will meet at 9 a.m., May 31, at the Curry County Courthouse, 700 N. Main Street, Clovis, to evaluate the applicants for this position. The meeting is open to the public and those who want to speak will have an opportunity to be heard.

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. Exhibits in Criminal Relations Cases 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/Tapes</th>
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<td>10th Judicial District Court</td>
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<td>Quay County</td>
<td>Exhibits in Criminal Appeal Relations Cases</td>
<td>2003–2005</td>
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<td>Exhibits in Juvenile Relations Cases</td>
<td>1987–2010</td>
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<td>Exhibits in Abuse/Neglect Cases</td>
<td>1996–2004</td>
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<td>Exhibits in Adoption Relations Cases</td>
<td>1983–2007</td>
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<td>Exhibits in Guardianship and Conservatorship Relations Cases</td>
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<td>Exhibits in Incompetency, Mental Health and</td>
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<td>Exhibits in Civil Relations Cases</td>
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<td>June 28</td>
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ADDRESS CHANGES

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

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

State Bar
Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org
Bernalillo County Metropolitan Court Judicial Vacancy

One vacancy on the Bernalillo County Metropolitan Court will exist in Albuquerque as of July 1 upon the retirement of Judge Sandra J. Clinton, effective June 30. The vacancy will be a Criminal Division assignment. Inquiries regarding more specific details or the assignment of this judicial vacancy should be directed to the chief judge or the administrator of the court. The dean of the UNM School of Law, designated by the New Mexico Constitution to chair the Bernalillo County Metropolitan Court Nominating Committee, solicits applications for this position from lawyers who meet the statutory qualifications in Section 34, Article 8A-4b of the New Mexico Statutes Annotated 1978. Applications as well as information related to qualifications for the position may be obtained from the Judicial Selection website at http://lawschool.unm.edu/judsel/application.php or via email by contacting Raylene Weis, 505-277-4700. The deadline for applications is 5 p.m., June 4. Applications received after that date will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Committee will meet June 14 at the Bernalillo County Metropolitan Courthouse, Room 849, to evaluate the applicants for this position. The meeting is open to the public and those who want to speak will have an opportunity to be heard.

U.S. District Court for the District of New Mexico General Administrative Fee for Civil Cases (Effective May 1)

At its Sept. 2012 session, the Judicial Conference of the United States approved several changes to the miscellaneous fee schedules, including a new general administrative fee for civil cases filed in the district courts. It does not apply to persons granted in forma pauperis status under 28 U.S.C. 1915. The general administrative fee becomes effective May 1. On and after May 1, instituting a civil action in the federal district courts will require a $350 filing fee plus a $50 general administrative fee, for a total of $400. The fee for filing a miscellaneous civil case or registering a foreign judgment will not change. Direct questions to the CM/ECF Help Desk, 505-348-2075 (Option 3).

STATE BAR NEWS

Attorney Support Group
- May 6, 5:30 p.m. Afternoon groups meet on the first Monday of the month.
- May 20, 7:30 a.m. Morning groups meet on the third Monday of the month.
Both groups meet at the First United Methodist Church at Fourth and Lead SW, Albuquerque. For more information, contact Bill Stratvert, 505-242-6845.

Support Group for Legal Professionals
May 9, 5:30 p.m. The group meets on the second Thursday of the month at the Unitarian Universalist Church, 107 West Barcelona Rd., Santa Fe. For more information, call Diego Zamora, 505-629-7343.

Board of Bar Commissioners Meeting Summary
The Board of Bar Commissioners met April 12 at the State Bar Center. Action taken at the meeting follows:
- Approved the Feb. 1 meeting minutes as submitted;
- Accepted the 2012 year-end and through February 2013 financials and executive summary;
- Approved resolutions to add the secretary-treasurer as a signer on the bank accounts and to close and merge several bank accounts;
- Received a report from the 401(k) RFP Committee; five proposals were received and the committee narrowed them down to four; additional information was obtained from the four candidates and the committee selected three finalists, which made presentations to the Finance Committee; REDW was selected to administer the State Bar’s 401k Plan;
- Received a report from the Judiciary Committee and approved New Mexico to be a pilot state for the ABA public service project, “The Least Understood Branch”; the committee also discussed the deadline for application and proposed changing it from Jan. 1 to Feb. 1, requiring a bylaw change for which the
was necessary at this time;
- Received a report from the Bylaws and Policies Committee as follows: approved a bylaw change to waive dues for new admits for their first partial year after graduating from law school, requiring a rule change which will be requested from the Supreme Court; the committee discussed inactive status and voluntary withdrawal and that there is no difference to become active again; the committee recommended that a distinction be made between the two and will work with the Board of Bar Examiners on a rule change; the committee also discussed the deadline to submit an inactive status application and proposed changing it from Jan. 1 to Feb. 1.

The Edward Group Disability Insurance

Personal income and retirement plan protection or for overhead expenses or partner buyout. Coverage is offered with over 50 other carriers for disability, life, long-term care insurance and employee benefits.
Contact John Edward, 1-877-880-4041 or jbedward@edwardgroup.net.

The Edward Group Disability Insurance

New Mexico Lawyers and Judges Assistance Program
Help and support are only a phone call away.
24-Hour Helpline
Attorneys/Law Students 505-228-1948 • 800-860-4914
Judges 888-502-1289
www.nmbar.org/JLAP/JLAP.html
30-day notice requirement was provided at this meeting; a vote will be taken at the June meeting:

- Appointed Dennis E. Jontz to the ABA House of Delegates for a two-year term;
- Received a report from the Legal Research Committee which was appointed to make a recommendation as to whether to exercise the two-year opt out on the six-year contract with Fastcase; approved the committee's recommendation to continue with Fastcase through the expiration of the contract;
- Received a report from the Governmental Affairs Committee which reviewed correspondence from a member regarding electronic filing and convenience fees; the committee will obtain more information from the member for clarification; reported that the Legislature approved an additional $300,000 for legal services and approved sending thank-you letters to legislators;
- Approved a resolution for amendment of the State Bar's cafeteria plan in order to comply with Federal Law to cap the plan at $2,500; and
- Reported that due to the timing of board meetings and the annual meeting, the annual awards committee recommendations will be sent to the board and approved by the Executive Committee.

The minutes in their entirety will be available on the State Bar's website following approval at the June 27 meeting.

**Employment and Labor Law Section**

**Board Meetings Open to Section Members**

The Employment and Labor Law Section board of directors welcomes section members to attend its meetings. The next meeting will be held at noon, May 8, at the State Bar Center. Lunch is provided to those who R.S.V.P. to membership@nmbar.org. Contact Chair Justin Poore, jepoore@sandia.gov or 505-284-6336.

**Paralegal Division**

**Luncheon CLE Series**

The Paralegal Division invites members of the legal community to bring a lunch and attend Understanding Media and the First Amendment (1.0 general CLE credit) presented by Laura Schauer Ives. The program will be held from noon–1 p.m., May 8, at the State Bar Center (registration fee for attorneys–$16, members of the Paralegal Division–$10, non-members–$15). Registration begins at the door at 11:45 a.m. For more information, contact Cheryl Paschalqua, 505-247-0411, or Evonne Sanchez, 505-222-9352. Webcast to three locations:

- Santa Fe: Montgomery & Andrews, 325 Paseo de Peralta, Santa Fe. Contact Donna Ormerod, 505-986-2520.
- Roswell: Hinkle, Hensley, Shanor & Martin LLP, 400 N. Pennsylvania, Ste. 700.

**Solo and Small Firm Practice Section**

**Avoiding Disciplinary Pitfalls in Legal Practice**

Briggs Cheney, an Albuquerque attorney well known in the profession for handling bar disciplinary actions, will present “It Could Happen to Any of Us: Tips and Dangers that Every Attorney Should Consider to Avoid Disciplinary Pitfalls.” The talk will be held at noon, May 21, at the State Bar Center. All members of the State Bar are welcome. Lunch is included. R.S.V.P. by May 20 to Evann Kleinschmidt, 505-797-6087. The board of the Solo and Small Firm Practice Section will meet at 11:30 a.m.

**Young Lawyers Division**

**Celebrate Law Day**

**Ask-a-Lawyer Call-in Program**

9 a.m.–1 p.m., May 4

Celebrate Law Day by participating in the annual Ask-a-Lawyer Call-in Program. To volunteer, contact a YLD member near you: in Albuquerque, Spencer Edelman, sle@modrall.com or 505-848-1857; in Farmington, Mary Modrich Alvarado, malvarado@nndoj.org or 928-871-6212; or Ken Stalter, kstalter@da.state.nm.us or 505-599-9810; in Las Cruces, David Lutz, dplutz@qwestoffice.net or 575-526-2449; in Roswell, Jared Kallunki, Jared.kallunkilaw@gmail.com or 575-208-4469. The YLD invites all State Bar members to participate.

**Next Steps Challenge Projects**

Both of YLD’s Next Steps Challenge projects were selected together as one of four national ABA YLD finalists. The Challenge aims to increase diversity and inclusiveness in law schools, public and private law offices, and bar associations. The two winners will be announced at the ABA YLD Spring Conference in Minneapolis on May 18. The New Mexico projects are a leadership pipeline initiative, “What the YLD Can Do for You: Developing Diverse Leaders on a National, State, and Local Level,” and “Project Salute: Young Lawyers Serving Veterans in Indian Country.”

**Workers’ Compensation Association of New Mexico**

**Conference Offers CLE Credits**

The Workers’ Compensation Association of New Mexico will host its annual conference May 15–17 at the Hard Rock Hotel and Casino, 11000 Broadway SE, Albuquerque. A golf tournament will be followed by two days of educational seminars with nationally recognized speakers in the field of workers’ compensation. General and ethics CLE credits are available. For more information and to register, visit www.wcaofnm.com or call Michael Zambrano, 505-724-3201.
Providing resources, savings on products and services to members.

For more information on our Member Benefits Program, go to www.nmbar.org or contact Marcia C. Ulibarri, Account Executive, 505-797-6058 or mulibarri@nmbar.org.
### Legal Education

#### May

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<th>Date</th>
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<th>Type</th>
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<td>2–3</td>
<td>Like-Kind Exchange Planning in Real Estate, Parts 1 and 2</td>
<td>National Teleseminar</td>
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The legal community celebrated the investiture of three Bernalillo County Metropolitan Court judges on April 12: the Hon. Michelle Castillo Dowler (Division 13), the Hon. Peg Holguin (Division 14) and the Hon. Jason Greenlee (Division 15).

On the dais are Judge Peg Holguin, Judge Michelle Castillo Dowler, Judge Jason Greenlee, Chief Justice Petra Jimenez Maes, and Metro Court Chief Judge Julie N. Altwies.
¡A Celebration of Diversity in Albuquerque!

By D.D. Wolohan

Dancing with the Bar: A Celebration of Diversity filled the ballroom at Hotel Andaluz with good conversation, laughter, new friendships, and an all-around spirited good time on April 19. About 150 lawyers and friends mingled and listened to representatives from various bar associations. A diversity committee organized the event with representatives from the Young Lawyers Division (Keya Koul, Ben Sherman, and Greg Gambill); N.M. Hispanic Bar Association (Aimee Gonzalez); N.M. Women’s Bar Association (Heather Jaramillo); N.M. Black Lawyers Association (Shammara Henderson); N.M. Lesbian, Gay, Bisexual and Transgender Bar Association (Paige Duhamel and Derek Garcia); N.M. Indian Bar Association (Robert Medina and Georgene Louis); and Albuquerque Bar Association (Jennifer Anderson).

During the evening, NMHBA President Chris Melendrez, NMWBA President Megan Duffy, NMBLA Vice President Aja Brooks, NMLGBTBA Board Member Garcia, NMIBA President Louis; and YLD Chair-elect Sherman spoke about their respective organizations’ offerings.
Past and present NMHBA board members Robert Sanchez, Aimee Gonzales, Robert Lucero, and Chris Melendrez

Ray Hamilton, Joe Monahan, Hannah Best, and Sam Smith

Shammara Henderson and Aja Brooks

Brenda Broussard, Lynn Perls, Jessica Martin, and Derek Garcia

Ben Sherman with Francine Jaramillo, Jamie Tenorio, and Carmen Rawls

Photos by D.D. Wolohan
Clerk’s Certificates
From the Clerk of the New Mexico Supreme Court
Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Clerk’s Certificate of Withdrawal

Effective March 20, 2013:
G. T. Anagnost
PO Box 1236
Peeoria, AZ
85380-1236

Effective March 26, 2013:
Rachel Morrison
Farrar & Bates LLP
211 Seventh Avenue North,
Suite 500
Nashville, TN
37219

Effective March 21, 2013:
Bryan L. Hunt
115 Circle Drive
Ft. Collins, CO
80524

Effective March 28, 2013:
Hon. Don Maddox (ret.)
PO Box 2588
Hobbs, NM
88241-2588

Effective March 24, 2013:
Kathleen Ann Cushing
1122 Erickson Street
Lake Oswego, OR
97034

Effective March 31, 2013:
Thomas P. Gulley
7900 Elena Drive NE
Albuquerque, NM
87122

Effective February 28, 2013:
Helen Gertrude Hillegass
311 West 31st Street
Baltimore, MD
21211

In Memoriam

As of March 4, 2013:
Constance J. Cohn
PO Box 15550
Rio Rancho, NM 87174-0550

As of March 28, 2013:
Prof. Barbara Hannan Cooke
fka Barbara E. Hannan
University of New Mexico
MSC03 2140
1 University of New Mexico
Albuquerque, NM 87131-0001
505-277-2405
505-277-6362 (fax)
bhannan@unm.edu

Clerk’s Certificate of Name Change

As of March 29, 2013:
Craig T. Nadai
3306 Fair Oaks Drive
Santa Maria, CA
93455

As of March 29, 2013:
Shelby E. Robinson
900 NW Lovejoy Street, #813
Portland, OR
97209

As of March 28, 2013:
Prof. Barbara Hannan Cooke
fka Barbara E. Hannan
University of New Mexico
MSC03 2140
1 University of New Mexico
Albuquerque, NM 87131-0001
505-277-2405
505-277-6362 (fax)
bhannan@unm.edu

Clerk’s Certificate of Withdrawal

Effective April 2, 2013:

Effective December 31, 2012:
Leon J. Thomas
1400 Virginia NE, #42
Albuquerque, NM
87110

Effective March 29, 2013:
Shelby E. Robinson
900 NW Lovejoy Street, #813
Portland, OR
97209

Effective December 12, 2012:
Bruce M. Berlin
2840 Vereda de Pueblo
Santa Fe, NM
87507-5386

Effective December 4, 2012:
Ashley R. Brott
PO Box 127
Chimayo, NM
87522-0127

Effective January 23, 2013:
George R. Miller
G.R. Miller PC
534 Main Avenue
Durango, CO
81301-5439

Effective January 14, 2013:
Joanne Marie Brown
51 Starview Drive
Oakland, CA
94618-2328

Effective January 26, 2013:
Maria E. Owen
PO Box 50055
Albuquerque, NM 87181-0055
and
11765 West Avenue, #137
San Antonio, TX 78216

Clerk’s Certificate of Correction

The clerk’s certificate dated February 13, 2013, has a misspelled surname:
David C. Zimmermann
PNM Resources
414 Silver Avenue
Albuquerque, NM 87102-0805
505-241-4659
505-241-4318 (fax)
dave.zimmermann
@pnmresources.com
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# OPINIONS

**AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS**

Wendy F. Jones, Chief Clerk
New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • (505) 827-4925

**EFFECTIVE APRIL 19, 2013**

## Published Opinions

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Slip Opinions for Published Opinions may be read on the Court’s website:

**RECENT RULE-MAKING ACTIVITY**

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

Joey D. Moya, Chief Clerk New Mexico Supreme Court  
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

**Effective May 1, 2013**

### Pending Proposed Rule Changes Open for Comment:

None

### Recently Approved Rule Changes Since Release of 2013 NMRA:

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To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court’s website at http://nmsupremecourt.nmcourts.gov.  
To view recently approved rule changes, visit the New Mexico Compilation Commission’s website at http://www.nmcompcomm.us.
From the New Mexico Supreme Court

Opinion Number: 2013-NMSC-007

Topic Index:
Judges: Code of Judicial Conduct; and Propriety of Conduct
Judgment: Ex Parte Order
Jurisdiction: Municipal Court

INQUIRY CONCERNING A JUDGE
NO. 2011-035

IN THE MATTER OF STEPHEN S. SALAZAR,
Municipal Court Judge, Española, New Mexico
No. 33,601 (filed March 14, 2013)

RANDALL D. ROYBAL
ROBIN S. HAMMER
PHYLLIS A. DOMINGUEZ
Albuquerque, New Mexico
for Judicial Standards Commission

DAN CRON
DAN CRON LAW FIRM, P.C.
Santa Fe, New Mexico
for Respondent

OPINION

PETRA JIMENEZ MAES,
CHIEF JUSTICE

[1] This matter comes before this Court upon a petition for discipline filed by the Judicial Standards Commission (Commission) concerning the Honorable Stephen S. Salazar (Respondent), a municipal court judge in Española, New Mexico. On July 18, 2012, we heard oral argument in this matter. On August 1, 2012, we issued an order accepting the Commission’s recommendation for discipline suspending Respondent without pay for ninety (90) days, placing Respondent on probation for the remainder of his current term of office, requiring Respondent to pay all costs associated with the disciplinary process, and ordering a public censure of Respondent. The following will serve as Respondent’s public censure to be posted on the New Mexico Compilation Commission web site and in the Bar Bulletin. See Rule 17-206(D) NMRA.

FACTS

[2] Respondent has admitted to the conduct leading to his discipline in this matter, which arose in the context of a towed motorcycle. David Vigil, the son of a member of Respondent’s church and an acquaintance of Respondent, manufactured a custom chopper motorcycle which he allowed Mr. John Martinez to test ride. Mr. Vigil did not produce a title to the vehicle prior to allowing Mr. Martinez to test ride it. Ohkay Owingeh police towed the motorcycle during the course of a criminal case for domestic violence against Mr. Martinez. Mr. Martinez’s case was filed in Rio Arriba County Magistrate Court. The seized motorcycle was towed by George and David Luna d/b/a Aces Towing and Recovery, LLC.

[3] Following the motorcycle seizure, Mr. Vigil phoned Respondent and left messages for him. On October 21, 2010, Mr. Vigil went to the Española Municipal Court and spoke to Respondent in the lobby of the courthouse. Respondent directed Mr. Vigil to have his attorney, Santiago Juarez, draft an ex parte order regarding the motorcycle. Respondent also spoke on the phone ex parte with Mr. Juarez regarding the order.

[4] On October 22, 2010, Mr. Vigil delivered the order to Respondent in the lobby of the courthouse and Respondent signed the order. Respondent did not keep a copy of the order and gave the original signed order to Mr. Vigil.

[5] When Respondent signed the order, he was on probation with the Commission following a trial before the Commission in November 2009 in Inquiry Nos. 2006-075, 2007-033, and 2007-086. As a condition of his probation, Respondent was being mentored and supervised by the Honorable Peggy Nelson, a retired judge from the Eighth Judicial District. Respondent did not notify Judge Nelson prior to or after issuing the order.

[6] On November 17, 2010, George Luna and Aces Towing filed a Petition for Writ of Prohibition and Superintending Control (writ petition) in the district court seeking to quash Respondent’s order. Respondent did not notify Judge Nelson that he was the subject of the writ petition. On June 30, 2011, the First Judicial District Court granted the writ petition and quashed the order. Respondent never rescinded the order, stating that he did not do so on the advice of counsel.

DISCUSSION

[7] Our system of government is only as strong as the integrity of its members. The judiciary, as a co-equal branch of government, must ensure that its members possess integrity and maintain high standards of conduct. Our Constitution has vested this Court and the Commission with the great responsibility of maintaining the integrity of the judiciary. See N.M. Const. art. VI, § 32. When a member of the judiciary commits willful misconduct in office, we must act to restore confidence in the judiciary by imposing strong and appropriate discipline.

[8] Respondent has conceded that his conduct constituted willful misconduct in office. Under Article VI, § 32 of the New Mexico Constitution, “any justice, judge or magistrate of any court may be disci-
plined or removed for willful misconduct in office[.]” Respondent admitted and the Commission concluded that Respondent violated several provisions of the Code of Judicial Conduct. See Rules 21-100 NMRA (1995); 21-200(A) and (B) NMRA (1995); 21-300(A), (B)(2), (B)(5), (B)(7), and (B)(8) NMRA (2009).1 The Commission recommended that Respondent be suspended without pay for ninety days (90), receive a formal public censure, be placed on probation for the remainder of his current term of office, and pay the Commission’s costs and expenses incurred in this matter. Under Rule 27-401(A)(1) NMRA (1996), we may accept, reject, or modify any or all of the recommendations for discipline set forth in the Petition. It was with great reluctance that this Court accepted the recommendation of the Commission in this matter because Respondent came very close to being removed from office by this Court for the reasons we will explain below.

**Ex parte communications**

[9] Respondent admitted that he engaged in ex parte communications with both Mr. Vigil and Mr. Juárez. Respondent spoke with Mr. Vigil and Mr. Juárez outside the presence of the Lunas or their company on October 21, 2010, at the Española Municipal Court, directing Mr. Juárez to draft an order regarding the motorcycle. Respondent subsequently spoke on the phone ex parte with Mr. Juárez regarding the release order. Finally, Respondent spoke with Mr. Vigil outside the presence of the Lunas or their company in the lobby of his courthouse on October 21, 2010, when Mr. Vigil delivered the order to Respondent for his signature on October 22, 2010. Respondent did not give notice to or otherwise attempt to include the Lunas or their company in his communications with Mr. Vigil and his lawyer.

[10] “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” Rule 21-300(B)(7). Therefore, “[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . . .” Id. “[A]ll parties or their lawyers shall be included in communications with a judge.” Id. cmt.

[11] Respondent’s conduct clearly violated Rule 21-300(B)(7). Under Rule 21-300(B)(7), Respondent should not have initiated, permitted or considered any of the foregoing communications. Notwithstanding the illegality of Respondent’s release order, Respondent should have given notice and an opportunity to be heard to the Lunas and their company.

[12] Engaging in ex parte communications “demonstrates a lack of respect for the principles of fairness on which our judicial system is constructed.” See In re Griego, 2008-NMSC-020, ¶ 19, 143 N.M. 698, 181 P.3d 690 (holding that a metropolitan court judge violated the rule against ex parte communications by adjudicating traffic cases for family and friends outside the presence of a representative of the state). Respondent’s conduct was unfair to the Lunas and their company in many ways. The Lunas had no way of knowing that their custody of the motorcycle was being challenged because Mr. Vigil did not file any formal legal proceedings to regain custody of the motorcycle. Respondent could have given notice to the Lunas after he was first approached by Mr. Vigil but failed to do so. In addition, Respondent failed to check if there was a pending legal proceeding before signing the release order. Had Respondent checked the magistrate court docket, he might have discovered that the motorcycle was part of a pending case. From the beginning, Respondent’s conduct was completely unfair to the Lunas.

**Issuance of release order without jurisdiction**

[13] The order signed by Respondent, directed George Luna and Aces Towing to return Mr. Vigil’s motorcycle. Respondent did not have jurisdiction to issue the release order in the first place. A municipal court judge only has jurisdiction over offenses and complaints relating to ordinances of the municipality. NMSA 1978, § 35-14-2 (2011). The towed motorcycle was the subject of a pending domestic violence matter in Rio Arriba Magistrate Court, a different court. In any event, Aces Towing could not release the motorcycle, because the Public Regulation Commission requires that all towing companies release vehicles to persons who can provide proof of lawful ownership. See 18.3.12.24 NMAC (10/31/2011). At no time prior to October 22, 2010, did Mr. Vigil produce legally adequate proof of ownership of the motorcycle to Aces Towing or Respondent.

[14] “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Rule 21-200(A). A judge must also “be faithful to the law and maintain professional competence in it.” Rule 21-300(B)(2). Finally, a judge “shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment.” Rule 21-200(B).

[15] Not only did Respondent violate the foregoing rules, his conduct demonstrated a complete ignorance or indifference to his jurisdictional limitations. Respondent stated that he thought he had jurisdiction because the City of Española Police Department seized the motorcycle, he believed there were no holds on the motorcycle, and the police department had facilitated the release of vehicles in the past. We are not persuaded by Respondent’s excuses. One of the primary responsibilities of a judge in adjudicating any matter is determining whether the judge has jurisdiction over the matter. Cf. Grace v. Oil Conservation Comm’n of N.M., 87 N.M. 205, 208 531 P.2d 939, 942 (“A lack of jurisdiction means an entire lack of power to hear or determine the case . . . .”). Respondent should not have proceeded on the basis of a mere notion of jurisdiction. Part of maintaining a professional competence in the law includes determining jurisdiction. See Rule 21-300(A)(2). Respondent failed to even inquire if any matter relating to Mr. Vigil’s motorcycle was pending in his court or magistrate court. In addition, Respondent had access to an experienced and well-respected district judge as a mentor for guidance at the time. Respondent inexplicably failed to call upon her wisdom and experience to navigate the situation.

[16] Respondent’s failure to perform due diligence harmed not only the Lunas, but the reputation of the judiciary. When a judge does not respect and comply with the law “[p]ublic confidence in the judiciary is eroded.” Id. cmt. If judges who are called upon to interpret and enforce the law do not comply with the law, it would be unreasonable to expect ordinary citizens to do the same. See Rule 21-100 cmt. (“[V]iolation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.”). In addition, Respondent’s conduct created the appearance that he bent the rules to help an acquaintance. “[T]he integrity and independence of judges depends . . . upon their acting without fear or favor.” Rule 21-100 cmt. In a recent public censure, we discussed the recurring ethical problems judges in small communities face. See In Re Rael, S. Ct. No.

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1 We have cited to the previous version of the Code of Judicial Conduct as Respondent’s conduct occurred before the new Code became effective on January 1, 2012. Please consult the table of corresponding rules contained in the NMRA to find which old provision corresponds to a new provision.
33,633 (Public Censure filed Oct. 3, 2012). We strongly suggest that Respondent take to heart the lessons contained in that censure.

**Willful misconduct while on probation**

[17] Another troubling aspect of this case is that Respondent was on probation with the Commission in another matter when he committed willful misconduct in office. Respondent was placed on probation by the Commission for one year beginning in January 2010. This disciplinary matter never reached this Court because the Commission is not required to bring "non-disciplinary" dispositions to the Court. See Commission Rule 30 (requiring “discipline” recommendations to be reported to the Court); Rule 33 (defining non-disciplinary dispositions). Respondent was clearly within his probationary period when he issued the release order on October 22, 2010.

[18] “[R]epetition of the very conduct that had been characterized by the Commission as improper cannot be said to be anything other than willful judicial misconduct.” *Matter of Castellano*, 119 N.M. 140, 149, 889 P.2d 175, 184 (1995). It matters not that the proper discipline imposed by the Commission was informal in nature and not directly imposed by this Court. When imposing discipline on judges, we consider “whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.” *In Re Griego*, 2008-NMSC-020, ¶ 13 (internal quotation marks and citation omitted).

[19] In arguing for lesser punishment, Respondent stated that he had successfully addressed issues from his previous case demonstrating a capacity to learn from his mistakes and implement appropriate procedures suggested to him. Despite Respondent’s stated progress through mentorship, the violation of his probation shows not only disrespect for the Commission’s previous order, but disrespect for our system of judicial discipline. Respondent had a retired district judge at his disposal for guidance. We are concerned that Respondent did not notify his mentor regarding the release order situation, especially after the filing of the subsequent writ petition. If Respondent is indeed making progress through mentorship, his failure to report these matters to his mentor reveals a troublesome blind spot.

[20] Respondent has been a judge for ten years and has had ample time to acquire the skills necessary to perform his duties adequately, professionally and free from impropriety. Unfortunately, his conduct in this matter reveals that he still has much to learn.

**CONCLUSION**

[21] By imposing discipline in this matter, this Court acts to reaffirm and restore public confidence in the administration of justice and to preserve the integrity and independence of the judiciary. The ninety-day suspension without pay, public censure, probation, and required restitution to the injured parties are necessary to deter Respondent from repeating such conduct while also reaffirming and restoring public confidence in the integrity of the judiciary. This public censure should serve as a warning to all judges that the willful misconduct that Respondent engaged in during his probationary period will not be tolerated.

[22] IT IS SO ORDERED.

PETRA JIMENEZ MAES, Chief Justice

WE CONCUR:
RICHARD C. BOSSON, Justice
EDWARD L. CHÁVEZ, Justice
CHARLES W. DANIELS, Justice
BARBARA J. VIGIL, Justice, not participating
From the New Mexico Supreme Court

Opinion Number: 2013-NMSC-008

Topic Index:
Attorneys: Disciplinary Action; Effective Assistance of Counsel; Legal Malpractice; and Professional Responsibility
Civil Procedure: Expert Witnesses; and Summary Judgment
Criminal Procedure: Plea and Plea Bargaining

IN THE MATTER OF
GENE N. CHAVEZ, ESQUIRE

AN ATTORNEY SUSPENDED FROM THE PRACTICE OF LAW BEFORE THE COURTS OF THE STATE OF NEW MEXICO
No. 33,280 (filed March 14, 2013)

Jane Gagne
Assistant Disciplinary Counsel
Albuquerque, New Mexico
for Disciplinary Board

Ray Twohig
for Respondent

OPINION

PETRA JIMENEZ MAES,
CHIEF JUSTICE

[1] This public censure of attorney Gene N. Chavez (Respondent) follows disciplinary proceedings conducted under the Rules Governing Discipline, Rules 17-101 to -316 NMRA, in which the Disciplinary Board found that Respondent violated multiple Rules of Professional Conduct. The disciplinary proceedings arose from Respondent’s representation of clients in two unrelated matters, a legal malpractice case and a criminal case. On March 15, 2012, a hearing committee of the Disciplinary Board entered findings of fact and conclusions of law, which the Court has adopted. Respondent’s misconduct included multiple acts of dishonesty, the failure to represent his clients with competence and diligence, and the placement of an unreasonable limitation on the scope of his legal representation. On September 19, 2012, we concluded that Respondent’s ethical violations warranted suspension, and we ordered that Respondent be suspended from the practice of law, pay the costs of his disciplinary proceedings, and receive this public censure.

LEGAL MALPRACTICE LAWSUIT

A. Background

[2] One of the two charges in this case arose out of Respondent’s representation of two plaintiffs in a legal malpractice lawsuit against the plaintiffs’ former attorney. The case was the first legal malpractice lawsuit that Respondent had undertaken since Respondent began operating his own private practice in about 2004.

[3] In their complaint for legal malpractice, the plaintiffs alleged that their former attorney had breached her duties to them in five separate ways. The plaintiffs needed expert testimony to prove most of the alleged breaches. See, e.g., Rancho del Villacito Condominiums, Inc. v. Weisfeld, 121 N.M. 52, 55-56, 908 P.2d 745, 748-49 (1995) (stating that expert testimony is usually needed to prove legal malpractice). On July 8, 2010, Respondent wrote to the defendant, stating that he had “spoken to many personal injury attorneys that would be willing to serve as an expert witness that your actions were below the standard of care.” The Disciplinary Board found that Respondent’s statement was not credible because Respondent never retained or named any expert witness by the January 11, 2011, court-ordered deadline for disclosing witnesses.

[4] On February 14, 2011, the defendant moved for summary judgment on the ground that Respondent had not named an expert witness to testify in support of his clients’ malpractice claims. Respondent filed a response in which he failed to set forth any argument as to why an expert witness was not required to prove the defendant’s negligence. Instead, Respondent attached his own affidavit to the response, purportedly as a Rule 1-056(F) NMRA affidavit. See Rule 1-056(F) (“Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his position, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”). In his affidavit, Respondent represented that the plaintiffs had “been unable to obtain a statement, affidavit or letter from such expert witnesses that would be necessary to rebut the allegations raised” in the motion for summary judgment.

[5] Additionally, Respondent asserted in his affidavit that there was a pending attorney disciplinary complaint against the defendant and stated that his clients might need to supplement their witness list, depending on the outcome of the complaint. On March 10, 2011, opposing counsel wrote to Respondent, informing him that there was no pending disciplinary complaint against the defendant and asking Respondent to retract his statement. Respondent ignored the letter and failed to retract the statement or inform the court that the statement was incorrect. In a subsequent telephone conversation, opposing counsel again urged Respondent to withdraw the false statement. Rather than agreeing to correct the false statement, Respondent replied that “it would be easy” to file a disciplinary complaint against the defendant.

[6] On April 13, 2011, the district court held a hearing on the motion for summary judgment. Respondent did not attend the hearing but instead gave this task to his newly hired associate, who attended the hearing by telephone. At the hearing, Respondent’s associate neither provided argument regarding why an expert witness would not be necessary in the case nor corrected the false statement that Respondent had submitted to the court regarding a disciplinary complaint. The court granted the defendant’s motion for summary judgment.

[7] On October 27, 2011, Respondent moved the court to set aside the judgment. See Rule 1-060(B)(2) (providing that “the court may relive a party . . . from a final judgment if there is newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 1-059 NMRA”). In the motion, Respondent asserted that the defendant, in the course of representing Respondent’s clients, had failed to release a hospital lien for $9,501.18. Respondent mailed a copy of the motion to opposing counsel before Respondent filed the motion with the court. Opposing counsel responded with information demonstrating that the lien had, in fact, been released. Several weeks later, Respondent filed the motion in the district court without correcting the misrepresentation regarding the hospital lien, even though Respondent knew the lien had been released.

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B. Discussion

[8] Respondent’s representation of his clients in the legal malpractice suit exhibits a pattern of knowing misrepresentations to the court. First, Respondent asserted in his Rule 1-056(F) affidavit that he had been unable to obtain a statement, affidavit, or letter from an expert witness, when in fact it appears that Respondent failed to ever consult with any potential expert witnesses. Second, Respondent stated falsely in his affidavit that there was a pending attorney disciplinary complaint against the defendant. At his disciplinary hearing, Respondent testified that he relied on conversations with an employee and his clients in concluding that a disciplinary complaint had been filed. But, assuming the pendency of a disciplinary complaint had been relevant to the motion for summary judgment, which it was not, Respondent would have had a duty to exercise independent judgment and determine whether there was in fact a pending disciplinary complaint. Cf. In re Estrada, 2006-NMSC-047, ¶ 23, 27, 140 N.M. 492, 143 P.3d 731 (lawyer’s reliance on representations of others without exercise of independent judgment violated Rules of Professional Conduct). Moreover, Respondent knew by March 10, 2011, that his statement in the affidavit was false yet failed to correct the false statement. Finally, Respondent filed his motion to set aside the judgment after learning that the motion contained a false statement regarding the hospital lien.

[9] By filing court documents that contained false statements of fact, Respondent violated Rule 16-301 NMRA, which prohibits a lawyer from asserting an issue in a proceeding when there is no basis in law and fact for doing so, and Rule 16-303(A) NMRA, which prohibits a lawyer from “mak[ing] a false statement of fact to a tribunal or fail[ing] to correct a false statement previously made to a tribunal.”

[10] Respondent’s assertion regarding the nonexistent disciplinary complaint also violated Rule 16-404(A) NMRA, which provides that “[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person[.]” Whether a disciplinary complaint was pending against the defendant was irrelevant to whether Respondent’s clients could prove their claims without expert testimony, and Respondent’s inclusion of this misinformation served no purpose other than to embarrass or burden the defendant.

[11] Additionally, Respondent’s failure to name an expert by the court-ordered witness disclosure deadline fell below the standards of competence and diligence required of attorneys. See Rule 16-101 NMRA (“Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”); Rule 16-103 NMRA (requiring a lawyer to “act with reasonable diligence and promptness in representing a client”). During his disciplinary hearing, Respondent testified that he believed expert testimony would not be necessary to prove legal malpractice in his client’s case. The hearing committee concluded that Respondent’s statement in this regard was not credible, and that in any event, Respondent was wrong to conclude that an expert was unnecessary. Because Respondent lacked experience in the field of legal malpractice, Respondent should have either devoted adequate time and study to the case or associated himself with an experienced, competent legal malpractice attorney. Cf. In re Hannify, 110 N.M. 354, 356, 796 P.2d 247, 249 (1990) (representing clients in bankruptcy matter without being competent in that area of law or associating with competent bankruptcy counsel violated Rule 16-101 and warranted suspension).

CRIMINAL DEFENSE CASE

A. Background Facts

[12] The second disciplinary charge in this case arose out of Respondent’s representation of a criminal defendant who had been accused of sexual misconduct involving his minor niece. The defendant was charged with criminal sexual penetration along with four other charges, and he faced a total possible sentence of almost fifty-two years of incarceration.

[13] On September 2, 2010, the defendant’s wife retained Respondent to represent the defendant and signed a legal services contract with Respondent. In the contract, Respondent agreed to represent the defendant for the limited purpose of negotiating a plea agreement for a flat fee of $2,500. During the course of the criminal case against his client, Respondent conducted no discovery and did no witness interviews. Respondent’s limited interactions with his client included a total of only four or five encounters, including conversations by telephone and in-person meetings at the courthouse.

[14] The court held a plea hearing in the defendant’s case on March 3, 2011. Respondent did not attend the hearing but sent his newly hired associate to represent the defendant. Although the defendant was expected to enter into a plea agreement at the hearing, the defendant ultimately rejected the State’s offer.

[15] On March 15, 2011, six weeks before the defendant’s trial was scheduled to begin, Respondent moved the court for permission to withdraw from the representation, without first discussing his desire to withdraw with his client. In the motion, Respondent cited a breakdown of the attorney-client relationship as the reason for the withdrawal. But in truth, Respondent sought to withdraw because Respondent had accepted a flat fee of only $2,500 for the sole purpose of negotiating a plea agreement.

[16] On March 31, 2011, the court held a hearing on Respondent’s motion to withdraw. Respondent did not attend the hearing but again sent his associate to appear on his behalf. The court denied the motion. After the court denied the motion to withdraw, Respondent informed the prosecutor that he would “do nothing to prepare for trial.” At his disciplinary hearing, Respondent claimed that he wrote this to the prosecutor to “set up a claim for ineffective assistance of counsel.”

B. Discussion

[17] Respondent violated multiple Rules of Professional Conduct during the course of representing the defendant. At the outset of the representation, Respondent violated Rule 16-102(C) by placing an unreasonable limitation on the scope of representation. The Rules of Professional Conduct permit a lawyer to “limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.” Rule 16-102(C). But a lawyer cannot reasonably agree to represent a criminal defendant for the sole purpose of negotiating a plea because a lawyer must always “abide by a client’s decision . . . as to a plea to be entered.” Rule 16-102(A) NMRA; see State v. Jones, 923 P.2d 560, 566 (Mont. 1996) (allowing a lawyer to withdraw from representing a client because the client rejected a plea agreement would run “directly afoul of Rule 1.2(a)” of the Model Rules of Professional Conduct); see also McConnell v. State, 212 P.3d 307, 314 (Nev. 2009) (“Although counsel certainly owes a duty to advise his client whether to plead guilty, counsel does not have the authority to override a defendant’s decision to plead guilty. That decision is reserved to the client.”). Thus, when Respondent entered into a contract for limited legal services for a flat fee with the defendant’s spouse, Respondent should have been cognizant that neither the spouse nor Respondent could decide for the defendant whether to accept the terms of any plea agreement offered by the prosecution. A lawyer should not establish a fee arrangement that may put the client at a disadvantage if circumstances change during the course of the representation. See Rules 16-101 & -102(C).

[18] Additionally, after accepting the defendant’s case, Respondent breached his duty to provide the defendant with competent, diligent representation. See Rules 16-101 & -103. Despite the expectation that the defendant would enter into a plea agreement,
Respondent had the duty to prepare for trial, including conducting reasonable discovery and investigation into the case. See id. And once the defendant rejected the plea offer, Respondent should have diligently continued his trial preparation rather than attempting to abandon his client. See id.

[19] Finally, Respondent violated Rule 16-303(A) when he lied to the court about the reason he sought to withdraw from the representation. Rather than admitting that he had accepted a fee of only $2,500 for the case, Respondent asserted that there had been a breakdown of the attorney-client relationship. As in the malpractice lawsuit, Respondent’s dishonesty in the criminal case demonstrates his willingness to compromise the truth when convenient to do so.

DISCIPLINE

A. Respondent’s Prior Disciplinary Case

[20] Before explaining the discipline that is warranted under the circumstances of this case, we begin by noting that this is the second time Respondent has come before the Court on disciplinary charges. In 2011, Respondent was charged with violating numerous Rules of Professional Conduct, including a charge that he violated Rule 16-101 by failing to timely respond to a motion for summary judgment and a charge that he violated Rule 16-303 by making a false statement in a motion to withdraw. In response to the disciplinary charges, Respondent entered into a consent agreement on August 23, 2011, in which he agreed not to contest that he had violated Rules 16-101 through -105, -107, -115, -116, -300, -302 through -304, -404, -503, and -804 NMRA.

[21] The vast majority of the ethical violations in Respondent’s first disciplinary case arose from Respondent’s mismanagement of his high volume law practice. Based on Respondent’s conduct and the terms of the consent agreement, on November 28, 2011, we suspended Respondent from the practice of law for a period of six months, but we deferred the suspension for one year upon certain terms and conditions. To address Respondent’s mismanagement of his private practice, we placed Respondent on supervised probation under Rule 17-206(B) for a period of one year and appointed an attorney to supervise Respondent. Under the terms of supervised probation, we required Respondent to (1) meet regularly with his supervising attorney; (2) accept instruction from his supervising attorney in the areas of law office management, caseload management, and the development of a system for prompt communication with clients and opposing counsel; (3) comply with the Rules of Professional Conduct and the Rules Governing Discipline; and (4) attend continuing legal education courses on law office practice management. Respondent’s initial term of supervised probation would have expired on November 28, 2012, if the Court had not extended Respondent’s probation as a consequence of the case now before us.

B. Respondent’s Conduct Warrants Suspension

[22] We now turn to the appropriate sanction to impose in this case, guided by the ABA Standards for Imposing Lawyer Sanctions (2005). See In re Conviser, 2010-NMSC-037, ¶ 42, 148 N.M. 732, 242 P.3d 299. The hearing committee recommended that the Court publicly censure Respondent under Rule 17-206(A) of the Rules Governing Discipline and assess the costs of the disciplinary proceedings against Respondent. The hearing committee expressly rejected Disciplinary Counsel’s recommendation of an indefinite suspension for a minimum of six months, but ultimately concluded that a public censure was sufficient to communicate to Respondent the seriousness of his conduct.

In recommending a public censure, the hearing committee found three aggravating factors: (1) Respondent’s prior disciplinary case, discussed above; (2) the fact that this case involves multiple offenses; and (3) Respondent’s “substantial experience in practicing law.” See ABA Standards § 9.22(a), (d) & (i) (listing aggravating circumstances that may justify an increase in the discipline imposed).

The only mitigating factor the hearing committee found was Respondent’s cooperation during the disciplinary proceedings. See id. § 9.32(e). Furthermore, the hearing committee expressly rejected Respondent’s contention that he lacked any selfish or dishonest motive with respect to his conduct. See id. § 9.22(b). A hearing panel of the Disciplinary Board approved the hearing committee’s findings and conclusions, but the hearing panel recommended to this Court the more severe disciplinary sanction of suspension from the practice of law for twelve months, with all but three months deferred.

[23] We agree with the hearing panel that a public censure alone is an insufficient sanction under the circumstances of this case, particularly in light of Respondent’s demonstrated pattern of dishonesty. “Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court[,] . . . takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.” ABA Standards § 6.12. Suspension also is appropriate when a lawyer causes potential injury to a client by “engag[ing] in a pattern of neglect,” id. § 4.42(b), “knowingly fail[ing] to perform services,” id. § 4.42(a), or “engag[ing] in an area of practice in which the lawyer knows he or she is not competent,” id. § 4.52.

[24] In this case, Respondent’s array of professional misconduct, including the submission of false statements to the court, adversely affected both the legal proceedings and his clients’ interests. Respondent’s clients in the legal malpractice suit ultimately lost their case on summary judgment because Respondent failed to retain and disclose an expert witness by the court-ordered witness disclosure deadline. And in the criminal case, Respondent should not have accepted the defendant as a client unless Respondent intended to zealously defend the defendant through the conclusion of the case, regardless of whether the defendant chose to accept a plea offer.

[25] Accordingly, in our order entered September 19, 2012, we suspended Respondent from the practice of law for one year, deferred nine months of the suspension, and ordered that Respondent shall continue on supervised probation for one additional year from November 28, 2012, under the same terms and conditions set forth in this Court’s November 28, 2011, order. We also ordered that Respondent pay the costs of his disciplinary proceedings and receive this public censure.

CONCLUSION

[26] This Court’s primary concern in cases involving attorney discipline is to ensure that the Court fulfills its responsibility to protect the public by ensuring that attorneys licensed to practice law before New Mexico courts comply with our standards of professional conduct. In re Stewart, 104 N.M. 337, 340, 721 P.2d 405, 408 (1986). Attorneys are officers of the court, and our system of justice works only if the courts can rely on attorneys to fulfill their duty of candor to the tribunal.

See Woodson v. Phillips Petroleum Co., 102 N.M. 333, 339, 695 P.2d 483, 489 (1985). Respondent must fulfill his obligation to exhibit the personal honesty and integrity expected of lawyers and to refrain from dishonesty and other conduct prejudicial to the administration of justice. This public censure shall be published in the New Mexico Bar Bulletin and the New Mexico Appellate Reports in accordance with Rule 17-206(D).

[27] IT IS SO ORDERED.

PETRA JIMENEZ MAES, Chief Justice

WE CONCUR:
RICHARD C. BOSSON, Justice
EDWARD L. CHÁVEZ, Justice
CHARLES W. DANIELS, Justice
BARBARA J. VIGIL, Justice
I. BACKGROUND

[2] Julia Mosley Crutcher was a widow residing in Houston, Texas. Her last will and testament directed that after the payment of debts, expenses, taxes, and specific bequests, the remainder of her estate be placed into a trust for the benefit of her grandchildren. To accomplish these ends, she appointed her son, William Carey Crutcher II (Mr. Crutcher) as independent executor of the estate (Estate) and trustee of the trust (Trust). Mrs. Crutcher died on November 23, 1983, and in January 1984, the Probate Court of Harris County, Texas appointed Mr. Crutcher independent executor of the Estate and trustee of the Trust. When she died, Mrs. Crutcher had four grandchildren: Plaintiff (Beth Williams), and the three children of Mr. Crutcher.

[3] In 2004, Plaintiff filed suit in the Harris County District Court of Texas against Defendants, “William Carey Crutcher II, individually and as executor of the Estate of Julia Mosley Crutcher and as trustee of the Julia Mosley Crutcher Testamentary Trust.” In material part, Plaintiff alleged that “as executor of the Estate of Julia Mosley Crutcher,” Mr. Crutcher “failed to distribute to Plaintiff that portion of the Julia Mosley Crutcher Testamentary Trust to which Plaintiff was entitled to by law and by the Will of Julia Mosley Crutcher.” Second, Plaintiff asserted that Mr. Crutcher “has used the position of trustee to benefit himself at the expense of Plaintiff, and placed himself in a position in which [his] self-interest conflicted with [his] obligations to protect the interests of Plaintiff in the Julia Mosley Crutcher Testamentary Trust.” Third, Plaintiff asserted, Mr. Crutcher “has breached his fiduciary duty of disclosure by failing to disclose to Plaintiff material facts concerning the distribution of the proceeds from the Julia Mosley Crutcher Testamentary Trust,” which included failing to provide an accounting or inventory of the assets of the Trust and failing to provide Plaintiff with notice of any distributions from the Trust. Plaintiff asked in part that he be awarded “Judgment against Defendant personally and as Trustee of Julia Mosley Crutcher Testamentary Trust, for the amount due and owing to Plaintiff from the Julia Mosley Crutcher Testamentary Trust according to proof.”

[4] The Texas case was set for a jury trial on February 26, 2008. On the first day of trial, the parties settled and entered into an “Agreed Judgment” (Judgment), which was filed in the Harris County District Court of Texas on March 12, 2008. In pertinent part, Plaintiff was awarded judgment in the amount of $2,040,000 against “William Carey Crutcher II, individually, as executor of the Estate of Julia Mosley Crutcher and as Trustee of the Testamentary Trust created by the will of Julia Mosley Crutcher.” The parties also agreed that “upon payment to Plaintiff by cashier’s check or other banker’s funds on or before March 27, 2008[,] in the sum of $510,000,” Plaintiff would provide “a full satisfaction of the money judgment[,]” but if the money was not paid on or before March 27, 2008, “Plaintiff shall be free to execute on her judgment for $2,040,000.” The Judgment provides:

This judgment is in full satisfaction for any and all claims Plaintiff has against William Carey Crutcher II individually, as Executor of the...
estate of Julia Mosley Crutcher and as Trustee of the Trust created by the will of Julia Mosley Crutcher and exhausts any rights and/or claim Plaintiff has to inherit from [the] Estate of Julia Mosley Crutcher.

[5] The $510,000 payment provided for in the Judgment was not paid as required, and Plaintiff domesticated the Texas Judgment in New Mexico by filing and recording it in the San Juan County District Court pursuant to the Act. Plaintiff thereafter filed a transcript of judgment and obtained a writ of execution to execute on oil and gas and overriding royalty interests owned by the Estate in New Mexico.

[6] Defendants then filed a motion to quash the writ of execution. Defendants asserted that while Mr. Crutcher was personally liable under the $2,040,000 Texas Judgment, the Estate and the Trust were not, and because Plaintiff was exercising upon property owned by the Estate, the writ of execution was improvidently issued and should be quashed. Specifically, Defendants contended that because the Texas suit alleged that Mr. Crutcher breached his fiduciary duties as both executor of the Estate and trustee of the Trust, Texas law made him personally liable to the exclusion of the Estate and Trust. Plaintiff countered that under Texas law, Mr. Crutcher, the Estate, and the Trust were all subject to the Judgment because Mr. Crutcher was named as a defendant individually as well as in his capacity as executor of the Estate and trustee of the Trust. Ultimately, the district court agreed with Defendants, finding that “Plaintiff may not execute upon assets of an estate to collect upon a judgment against that estate’s administrator.” Accordingly, the district court ordered that the writ of execution “directed to royalty interests and real property” owned by the Estate in New Mexico “be and . . . is hereby quashed[].” Further, the district court ordered, “Plaintiff is prohibited from interfering with payment of royalties to the Estate of Julia Mosley Crutcher, Deceased from oil and gas production in the State of New Mexico.” Plaintiff appeals.

II. APPLICABLE PRINCIPLES AND STANDARD OF REVIEW

[7] The Act provides that when an authenticated copy of a judgment of a court of the United States is filed in the clerk’s office of the district court of a county in New Mexico in which the debtor resides or has property that is subject to execution, foreclosure, attachment, or garnishment, “[a] judgment so filed shall have the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing or satisfying as a judgment of the district court of [New Mexico] and may be enforced or satisfied in like manner[,]” Section 39-4A-3(A). This procedure provides a speedy and economic method for New Mexico to accord the judgments of sister states the full faith and credit they are entitled to under the United States Constitution. Conligs v. Radcliffe, 119 N.M. 287, 288, 889 P.2d 1209, 1210 (1995); see U.S. Const. art. IV, § 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”). Once a judgment is filed in the district court as provided in the Act, a prima facie case for its enforcement in New Mexico is made, and the judgment debtor has the burden of proving a defense to its enforcement. Thoma v. Thoma, 1997-NMCA-016, ¶ 8, 123 N.M. 137, 934 P.2d 1066. Such defenses include “lack of personal or subject matter jurisdiction, fraud in procuring the judgment, lack of due process, or other grounds making the judgment invalid or unenforceable.” Id.

[8] When the judgment is domesticated pursuant to the Act, it loses its identity as the judgment of the sister state and becomes a money judgment of the state of New Mexico. Nat’l Bank of Ariz. v. Moore, 2005-NMCA-122, ¶ 12, 138 N.M. 496, 122 P.3d 1265 (citing Huntington Nat’l Bank v. Spraul, 116 N.M. 254, 258, 861 P.2d 935, 939 (1993)). As such, New Mexico law governs its enforcement. Id. Our law in this regard is well settled:

Generally, a judgment which is clear and unambiguous must be enforced, and neither pleadings, findings nor matters outside the record may be considered to change the meaning of the judgment. However, when the meaning of the judgment is doubtful or ambiguous, the judgment, pleadings, and the entire record may be resorted to for the purpose of construing the judgment. Lemon v. Hall, 97 N.M. 429, 431, 640 P.2d 929, 931 (1982) (citations omitted). Moreover, while a stipulated judgment, such as the one before us in this case, is not considered to be a judicial determination, but a contract between the parties, it is still construed in the same way that a judgment is construed. See Owen v. Burn Constr. Co., 90 N.M. 297, 299, 563 P.2d 91, 93 (1977) (“[W]here the language of a contract is clear and unambiguous, the intent of the parties must be ascertained from the language and terms of the agreement.” (internal quotation marks and citations omitted)).

[9] The parties do not dispute that interpretation of the judgment before us in this case presents us with a question of law, subject to our de novo review on appeal. We agree with the parties. Id. at 300, 563 P.2d at 94 (stating that when the interpretation of a judgment is determinable by inspection of the record alone, a question of law is presented); see also Smith & Marrs, Inc. v. Osborn, 2008-NMCA-043, ¶ 10, 143 N.M. 684, 180 P.3d 1183 (“We review a district court’s interpretation of an unambiguous contract de novo.” (internal quotation marks and citation omitted)); Allsup’s Convenience Stores, Inc. v. N. River Ins. Co., 1999-NMSC-006, ¶ 28, 127 N.M. 1, 976 P.2d 1 (stating that whether an ambiguity exists in a contract is a question of law). Moreover, when resolution of the meaning of the judgment turns on the interpretation of documentary evidence, as in this case, we need not defer to the district court because we are in as good a position as the district court to interpret the judgment. See Ca. Cas. Ins. Co. v. Garcia-Price, 2003-NMCA-044, ¶ 6, 133 N.M. 439, 63 P.3d 1159 (referring to interpretation of a contract). Finally, to the extent we are required to interpret Texas law, our review is de novo. See Nellis v. Farmers Ins. Co. of Ariz., 2012-NMCA-020, ¶ 21, 272 P.3d 143 (stating that the interpretation of a statute is a question of law which is reviewed de novo by an appellate court), cert. denied, 2011-NMCERT-011, 290 P.3d 725; Miller v. Morrison, 2008-NMCA-092, ¶¶ 6-8, 144 N.M. 543, 189 P.3d 676 (interpreting Texas law relating to service of process).

III. ANALYSIS

[10] The parties dispute whether the Judgment reaches assets owned by the Estate in New Mexico. Plaintiff argues that it does because the Estate is a named judgment debtor in the judgment. Defendants assert that only Mr. Crutcher is personally liable under the Judgment, even though the Estate is a named judgment debtor. Defendants argue that the “essence” of the Texas lawsuit “was an action for damages against Mr. Crutcher for his personal malfeasance as executor and trustee” and that under Texas law, he is personally liable for his “malfeasance” and not the Estate. Defendants further contend that the fact that the Estate is named as a judgment debtor does not alter this result. For the reasons which follow, we reject Defendants’ argument.

[11] First, the Judgment is clear and unambiguous: it awards judgment in the amount of $2,040,000 in favor of Plaintiff against “William Carey Crutcher II, individually, unconditionally, for his personal malfeasance as executor and trustee of the William Carey Crutcher II, individually, as Trustee of the William Carey Crutcher II, Unconditional, LLC.” Section 39-4A-3(B) provides that: “The judgment, pleadings, and findings nor matters outside the record alone, a question of law is presented.” Section 39-4A-3(A) provides that: “Generally, a judgment which is clear and unambiguous must be enforced, and neither pleadings, findings nor matters outside the record may be considered to change the meaning of the judgment. However, when the meaning of the judgment is doubtful or ambiguous, the judgment, pleadings, and the entire record may be resorted to for the purpose of construing the judgment.” Lemon v. Hall, 97 N.M. 429, 431, 640 P.2d 929, 931 (1982) (citations omitted). Moreover, while a stipulated judgment, such as the one before us in this case, is not considered to be a judicial determination, but a contract between the parties, it is still construed in the same way that a judgment is construed. See Owen v. Burn Constr. Co., 90 N.M. 297, 299, 563 P.2d 91, 93 (1977) (“[W]here the language of a contract is clear and unambiguous, the intent of the parties must be ascertained from the language and terms of the agreement.” (internal quotation marks and citations omitted)).
as executor of the Estate of Julia Mosley Crutcher and as Trustee of the Testamentary Trust created by the will of Julia Mosley Crutcher.” Because the language of the Judgment is clear and unambiguous, we may not consider the pleadings, findings, nor matters outside the record to change its meaning. Lemon, 97 N.M. at 431, 640 P.2d at 931. [12] Second, once the Texas judgment was converted into a New Mexico judgment under the Act, New Mexico law, not Texas law, was applicable to its enforcement. Nat'l Bank of Ariz., 2005-NMCA-122, ¶ 12 (citing Huntington Nat'l Bank, 116 N.M. at 258, 861 P.2d at 939). Defendants have not directed us to any New Mexico authority, and we have found none, which would hold Mr. Crutcher personally liable to the Estate and Trust as judgment debtors. On the contrary, when a judgment clearly and unambiguously states that a person or entity is liable to a plaintiff, that person or entity is liable as stated therein. See Lemon, 97 N.M. at 431, 640 P.2d at 931 (stating that “a judgment which is clear and unambiguous must be enforced”); Luna v. Flores, 64 N.M. 312, 318, 328 P.2d 82, 86 (1958) (stating that where the judgment on the second claim for relief named a defendant against whom no relief was sought on that claim, and no findings supported inclusion of that defendant on the second claim for relief, the case would be remanded to delete that defendant from the judgment as to that claim).

[13] Third, even if we were to go beyond the language of the Judgment itself, we would still come to the same conclusion. As noted above, the Texas suit was not merely a suit for executor “malfeasance.” In the first instance, Plaintiff sued to obtain “that portion of the Julia Mosley Crutcher Testamentary Trust to which Plaintiff was entitled by law and by the Will of Julia Mosley Crutcher.” Plaintiff also asserted that as trustee, Mr. Crutcher acted in a conflict of interest to the detriment of the Trust and breached his fiduciary duties, but these assertions did not negate Plaintiff’s first claim. Nor did these latter claims negate the fact that Plaintiff was seeking: “Judgment against Defendant personally and as Trustee of Julia Mosley Crutcher Testamentary Trust, for the amount due and owing to Plaintiff from the Julia Mosley Crutcher Testamentary Trust according to proof” as well as other relief. The Judgment was negotiated on the first day of trial as a settlement of all claims, with all parties represented by counsel, and no argument is made that Mr. Crutcher had no authority to make the settlement. Further, under Texas law, the Judgment runs against the Estate. Section 147 of the Texas Probate Code provides:

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt.

Tex. Probate Code Ann. § 147 (West 2013). If the parties had intended to exclude the assets of the Estate (or the Trust) they could have expressed that intent, but they did not. To the contrary, consistent with Plaintiff’s first claim for relief, the Judgment specifically provides that it is in “full satisfaction” of all claims Plaintiff has against Mr. Crutcher, the Estate, and Trust, and that it “exhausts any rights and/or claim Plaintiff has to inherit from [the] Estate of Julia Mosley Crutcher.” [14] Finally, we do not agree with Defendants that the Texas authorities they cite to us are applicable. Nowhere does the Judgment recite or suggest that it is being agreed to because Mr. Crutcher committed “malfeasance.” On the contrary, the Judgment recites that the parties “appeared for trial and through their attorneys of record announced to the Court that an agreement of compromise and settlement had been reached.” No judicial determination was made that Mr. Crutcher committed “malfeasance,” and the Judgment makes no reference to any “malfeasance” on his part. We have not been presented with cases that are applicable in these circumstances, and do not further consider Defendants’ arguments. [15] For all the foregoing reasons we conclude that the Judgment lies against the Estate, the Trust, and Mr. Crutcher personally. Accordingly, the district court erred in granting Defendants’ motion to quash the writ of execution.

IV. CONCLUSION [16] The district court “Order Quashing Writ of Execution” is reversed, and the case is remanded to the district court for further proceedings consistent with this opinion.

MICHAEL E. VIGIL, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
CYNTHIA A. FRY, Judge

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1 Defendants cite to Cross v. Old Republic Surety Co., 983 S.W.2d 771 (Tex App. 1998) and Moore v. Key, No. 05-02-00809-CV, 2003 WL 194725 (Tex. App. 2003) (mem.). Cross addressed a surety company’s liability for a default judgment against a dependent executor for willfully defrauding the estate and the court. 983 S.W.2d at 774. Moore, a dependent executor was ordered to repay the estate money she unlawfully converted for her own use. Id. at *1. These cases are clearly distinguishable. Defendants also cite to In re Estate of Van Meter, No. 2-08-289-CV, 2009 WL 885955 (Tex. App. 2009) (mem.); In re Estate of Hawkins, 187 S.W.3d 182 (Tex. App. 2006); Barnett v. Barnett, 985 S.W.2d 520 (Tex. App. 1998), aff’d in part, rev’d in part on other grounds by 67 S.W.3d 107 (Tex. 2001); Lawyers Sur. Corp. v. Larson, 869 S.W.2d 649 (Tex. App. 1994); and Fillion v. Osborne, 585 S.W.2d 842 (Tex. Civ. App. 1979). All of these cases dealt with former Section 245 of the Texas Probate Code (repealed in 2009), which in general provided that when a personal representative was removed for cause or neglected to perform a required duty, the personal representative and sureties were liable for the costs of removal, attorney fees incurred in removing the personal representative or in obtaining compliance with a statutory duty neglected by the personal representative. Defendants acknowledge that the underlying case was not brought pursuant to Section 245 of the Texas Probate Code.
Attorney Bert Parnall is pleased to welcome Grieta Gilchrist and Heather Hansen as Associates with Our Firm.

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