

BAR BULLETIN

October 12, 2022 • Volume 61, No. 19



The Wild Ones, by Kat Livengood (see page 4)

www.katlivengood.com

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New Mexico State Bar Foundation
Center for Legal Education

FALL PROGRAMMING

from the Center for Legal Education



OCTOBER 13

Webinar

How to Be a NATZ Ninja: An Overview of Naturalization and Citizenship

1.0 G
Noon–1 p.m.

OCTOBER 14

Webinar

2022 Elder Law Institute: The Court Keeps the Score: Assess, File, Success!

3.0 G
9 a.m.–Noon

OCTOBER 18

Webinar

Updates with the New Mexico Water Policy and Infrastructure Task Force

1.0 G
Noon–1 p.m.

OCTOBER 19

Webinar

Essential Law Firm Technology: The Best of What's Out There

1.0 G
2–3 p.m.

OCTOBER 20

In-Person or Webcast

2022 Solo & Small Firm Institute

2.0 G, 4.0 EP4
9 a.m.–4:30 p.m.

OCTOBER 24

Webinar

Social Media as Investigative Research and Evidence

1.0 EP
11 a.m.–Noon

OCTOBER 25

Webinar

Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV

1.0 EP
11 a.m.–Noon

OCTOBER 26

Webinar

Ethics of Social Media Research

1.5 EP
11 a.m.–12:30 p.m.

OCTOBER 27

Webinar

Law Practice Management for New Lawyers

1.0 G
2–3 p.m.

NOVEMBER 2

In-Person or Webcast

2022 Business Law Institute

5.0 G, 1.0 EP
9 a.m.–4:30 p.m.

NOVEMBER 9

In-Person or Webcast

Wait, My Parents Were Wrong? It's Not All About Me? (Stuart Teicher)

3.0 EP
9 a.m.–12:15 p.m.

In-Person or Webcast

Learn by Doing: An Afternoon of Legal Writing Exercises (Stuart Teicher)

3.0 G
1–4:15 p.m.

NOVEMBER 10

Webinar

The Paperless Law Firm: A Digital Dream

1.0 EP
11 a.m.–Noon

NOVEMBER 17

In-Person or Webcast

2022 Probate Institute

6.25 G, 1.0 EP
8:30 a.m.–5:15 p.m.

NOVEMBER 18

In-Person or Webinar

2022 Animal Law Institute: Animals, Agriculture, and the Planet

3.0 G, 1.0 EP
9 a.m.–1:15 p.m.

NOVEMBER 21

Webinar

**Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals
The Paperless Law Firm: A Digital Dream**

1.0 G
11 a.m.–Noon

DECEMBER 5

Webinar

Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204

1.0 EP
Noon–1 p.m.

Teleseminar

Professionalism for the Ethical Lawyer

1.0 EP
11 a.m.–Noon

DECEMBER 6

Webinar

"Let Me Ask You a Question. Suppose I Was Considering ...": A Mock Meeting of the Ethics Advisory Board

2.0 EP
10 a.m.–Noon

Webinar

Well That Seemed Like a Good Idea: Practical Best Practice Tips

1.0 EP
1–2 p.m.

DECEMBER 14

In-Person or Webcast

2022 Tax Law Institute

6.5 G, 1.0 EP
In-Person and Webcast
8 a.m.–4:45 p.m.

Teleseminar

2022 Ethics Update, Part 1

1.0 EP
11 a.m.–Noon

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The *Bar Bulletin* (ISSN 1062-6611) is published twice a month by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227
Fax: 505-828-3765 • address@sbnm.org

October 12, 2022 • Volume 61, No. 19

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October

- 13
Children's Law Section
noon, virtual
- 13
ADR Steering Committee Section
noon, virtual
- 14
Prosecutors Section
noon, virtual
- 18
Solo and Small Firm Section
noon, virtual/State Bar Center
- 21
Family Law Section
noon, virtual

November

- 1
Health Law Section
9am, virtual
- 2
Employment and Labor Law Section
noon, virtual
- 4
Prosecutors Section
noon, virtual
- 9
Animal Law Section
noon, virtual

Workshops and Legal Clinics

October

- 26
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

November

- 2
Divorce Options Workshop
6-8 p.m., virtual

December

- 7
Divorce Options Workshop
6-8 p.m., virtual
- 14
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

About Cover Image and Artist: Kat Livengood lives in the high desert of Santa Fe where she has made a living as a fine art photographer. She adores horses and seeks out the wild herds of the American West. Until 2020, she had a studio on Canyon Road in Santa Fe. Now she sells exclusively online at www.katlivengood.com. She has a passion for animals and a percentage of proceeds from every equine photograph sale is donated to one of several mustang sanctuaries and a percentage of proceeds from wolf images sold is donated to a wolf sanctuary.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Bernalillo County Metropolitan Court Judicial Nominating Commission Announcement of Applicants

Seven applications were received in the Judicial Selection Office as of 5 p.m. on Sept. 22 for the vacancy on the Bernalillo County Metropolitan Court, existing as of Oct. 1 due to the retirement of the Honorable Judge Sandra Engel. The applicants include **Steven Diamond, Shonnetta Estrada, Ignacio V. Gallegos, Edmund Perea, Daniel Roberson, Carlos Scarborough and George Yu.**

Appointment to the Thirteenth Judicial District Court Bench

On July 7, Gov. Michelle Lujan Grisham has appointed Karl W. Reifsteck to the Thirteenth Judicial District Bench. Judge Karl W. Reifsteck was appointed to fill the newly created Division IX judgeship created when Gov. Lujan Grisham recently signed into law House Bill 68. Judge Reifsteck will be assigned Civil, Probate and Mental Health Cases.

Mass Reassignment of Cases

On July 7, Gov. Michelle Lujan Grisham appointed Karl W. Reifsteck to Division IX of the Thirteenth Judicial District Court. Effective Aug. 15, all pending cases civil cases not on scheduling orders assigned to Judge Christopher Perez and Chief Judge George P.

Professionalism Tip

With respect to the courts and other tribunals:

I will voluntarily withdraw claims or defenses when they are superfluous or do not have merit.\

Eichwald have been reassigned to the Honorable Karl W. Reifsteck. In addition, effective Aug. 15, all pending PQ cases assigned to Judge Cheryl H. Johnston were reassigned to the Honorable Karl W. Reifsteck. Pursuant to 1.088.1(C), parties who have not yet exercised a preemptory excusal will have 10 days from Oct. 12 to file their preemptory excusals of those newly assigned Judges.

STATE BAR NEWS Committee on Women in the Legal Profession Membership Retreat Announcement

All interested New Mexico lawyers and law students are invited to participate in this strategic planning retreat. After 30 years, the committee is looking to realign its goals and activities to meet current and future needs for all women in the law. Join the Committee on Women on Saturday, Nov. 5 from 9:30 a.m. – noon MST at the Albuquerque Country Club. To learn more and RSVP, please visit www.sbnm.org/cwlp.

Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the *Bar Bulletin*. Visit www.sbnm.org/eij, click on the Ask Amanda link and submit your question. No question is too big or too small.

Board of Bar Commissioners Notification of Governmental Advocacy

The Governmental Affairs Committee (GAC) of the Board of Bar Commissioners approved supporting H.R. 4436, the Daniel Aderl Judicial Security and Privacy Act of 2021, to improve the safety and security of the Federal Judiciary. The bill includes senior, recalled or retired Federal judges, and their immediate family and is intended to ensure Federal judges are able

to administer justice fairly without fear of personal reprisal from individuals affected by the decisions they make in the course of carrying out their public duties. The bill is important as it prohibits agencies and private businesses from publicly posting personally identifiable information of member of the judiciary covered by the bill. It requires information to be removed upon written request from the judge concerned and prohibits data brokers from purchasing or selling this information. It further establishes programs to protect this information at the state and local levels and enhances security for our federal judges. The GAC approved supporting this bill through a letter from the BBC President to New Mexico's Congressional Delegation.

New Mexico Lawyer Assistance Program NMJLAP Transitions to NM LAP

NM LAP has changed its name (formerly Judges and Lawyers Assistance Program, JLAP) to distinguish itself from the new Judicial Wellness Program. The NM LAP will continue its focus on confidential, professional and peer assistance to help individuals identify and address problems with alcohol and other drugs, depression and other mental health/emotional disorders. NM LAP endeavors to improve the well-being of lawyers, law students, paralegals, law clerks and all other legal staff through support, education and early intervention with the goal of ensuring every legal professional is healthy and fit to practice. You can find more information about NM LAP at www.sbnm.org/NMLAP. The New Mexico Judicial Wellness Program (NMJWP) promotes and optimizes health and wellness among New Mexico Judges by creating and facilitating educational programs and offering resources and services that provide a supportive environment for our judiciary to restore and maintain ones overall mental, physical and spiritual health. You can find more information about NMJWP at www.sbnm.org/nmjwp.

The Suicide and Crisis Lifeline

Started July 16, the 988 Suicide and Crisis Lifeline is now available nationwide. The Lifeline provides 24/7 all year round,

Statement of Ownership, Management, and Circulation as of Sept. 22, 2022.

Bar Bulletin, Publication No. 1062-6611. 24 issues annually (bi-monthly). \$125 annual subscription price. —
 Featured— Publisher: State Bar of New Mexico, PO Box 92860 (87199-2860), 5121 Masthead NE, Albuquerque, NM
 87109. Owner: State Bar of New Mexico, PO Box 92860 (87199-2860), 5121 Masthead NE, Albuquerque, NM 87109.
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Printed Circulation	Average	Actual (Vol. 61, No. 18)
Total Number of Copies	6899	6901
Paid Subscriptions Outside-County	1029	1049
Paid Subscriptions In-County	5333	5593
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Total Paid Distribution	6362	6642
Free Distribution by Mail		
Outside-County	0	0
In-County	0	0
Other Classes Mailed Through the USPS	0	0
Free Distribution by Mail	50	50
Total Free Distribution	50	50
Total Distribution	6412	6692
Copies not Distributed	211	221
Total	6623	6913
Electronic Circulation	Average	Actual
Requested Electronic Copies	9292	9094
Total Printed and Electronic Circulation	15704	15786
Percent Paid	99.68%	99.68%

I Certify that the statements made above are true and complete.

Celeste Valencia, *Bar Bulletin* Marketing Communications Manager

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NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. on Oct. 16 and Jan. 12, 2023. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

Free Well-Being Webinars

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff and their families. Contact the Solutions Group for resources, education and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. Sign up for “Echopsychology: How Nature Heals” to learn about a growing body of research that points to the beneficial effects that exposure to the natural world has on health. The next

webinar, “Pain and Our Brain” addresses why the brain links pain with emotions. Find out the answers to this and other questions related to the connection between pain and our brains. The final webinar, “Understanding Anxiety and Depression” explores the differentiation between clinical and “normal” depression, while discussing anxiety and the aftereffects of COVID-19 related to depression and anxiety. View all webinars at www.solutionsbiz.com or call 505-254-3555.

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pmoore@sbnm.org or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

The New Mexico Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico’s Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different

— *Featured* —

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This service is available through www.nmbar.org. Fastcase also offers free live training webinars. Visit www.fastcase.com/webinars to view current offerings. Reference attorneys will provide assistance from 8 a.m. to 8 p.m. ET, Monday–Friday.

Customer service can be reached at 866-773-2782 or support@fastcase.com. For more information, contact Christopher Lopez, clopez@nmbar.org or 505-797-6018.

areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee’s goal to examine and create initiatives centered on wellness.

UNM SCHOOL OF LAW Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m. - 8 p.m. Monday through Thursday and 8 a.m. - 6 p.m. on Fridays. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see lawlibrary.unm.edu.

OTHER BARS

**The Center for Civic Values
Judges Needed for Middle School
Mock Trial Program at Bernalillo
County Metropolitan Court**

The upcoming New Mexico Middle

School Mock Trial Program is an innovative, hands-on experience in the law for seventh and eighth grade middle school students, and it needs judges. This inaugural year, 20 teams from New Mexico will head to Albuquerque to try a case and learn about the judicial system. The trials will be held Nov. 11-12 at the Bernalillo County Metropolitan Court in Albuquerque. Those interested in attending may sign up at <https://civicvalues.org/mock-trial/registration/middle-school-judge-volunteer-registration/> by Nov. 1. If you have any questions, please contact Kristen Leeds at the Center for Civic Values at 505-764-9417 or Kristen@civicvalues.org.

Judges Needed for Gene Franchini New Mexico High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition, open to any and all high school students, needs judges for its next event. The qualifier competitions will be held Feb. 17-18, 2023 at the Bernalillo County Metropolitan Court in Albuquerque and the Third Judicial District Court in Las Cruces. Those interested in attending the event may sign up at <https://civicvalues.org/mock-trial/registration/judge-volunteer-registration/> by Feb. 4, 2023. Please email

any questions to Kristen Leeds at Kristen@civicvalues.org or by phone at 505-764-9417.

New Mexico Workers' Compensation Administration Notice of Public Hearing

The New Mexico Workers' Compensation Administration will conduct an in-person public hearing on the adoption of new WCA Rules on Oct. 21 at 1:30 p.m. at the Workers' Compensation Administration at 2410 Centre Ave. S.E., Albuquerque, NM, 87106. The proposed rule amendments are available at <https://www.workerscomp.nm.gov/>. Written comments on the changes can be sent to gc.clerk@state.nm.us and will be accepted until 5 p.m. on Oct. 28. The WCA proposes to repeal and replace Parts 4 and 7 and other changes to Parts 1, 5, 6, 12 and 13.

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Employee Assistance Program

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State Bar of New Mexico
Lawyer Assistance
Program



The
Solutions
Group

Services include up to four **FREE** counseling sessions/issue/year for ANY mental health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other **FREE** services include management consultation, stress management education, critical incident stress debriefing, video counseling, and 24X7 call center. Providers are located throughout the state.

To access this service call 855-231-7737 and identify with NMLAP. All calls are **CONFIDENTIAL**.
Brought to you by the New Mexico Lawyer Assistance Program
www.sbnm.org/JLAP

Legal Education

October

- | | | | | | |
|----|--|----------------|---|----|---|
| 12 | Mandatory Succession Planning: It Has To Happen, But It Doesn't Have To Be That Difficult
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 20 | 2022 Solo & Small Firm institute
2.0 G, 4.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org | 26 | Ethics of Social Media Research
1.5 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org |
| 13 | How to be a NATZ Ninja: An Overview of Naturalization and Citizenship
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 21 | State Bar of New Mexico Membership Appreciation Event: The Tech Never Stops
2.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org | 26 | Walk Away and Come Back: Strategies for Getting Unstuck
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org |
| 14 | 2022 Elder Law Institute: The Court Keeps the Score: Assess, File, Success!
3.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 21-23
28-30 | Taking and Defending Depositions
20.0 G, 2.0 EP
In-Person
UNM School of Law
lawschool.unm.edu | 27 | Law Practice Management For New Lawyers
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org |
| 18 | Updates with the New Mexico Water Policy and Infrastructure Task Force
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 24 | Social Media as Investigative Research and Evidence
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 28 | 8th Annual Symposium on Diversity and Inclusion
4.0 G, 1.5 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org |
| 19 | Essential Law Firm Technology: The Best Of What's Out There
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 25 | Divorce and Custody in DV-Related DMs
1.0 G
Web Cast
New Mexico Legal Aid
www.newmexicolegalaid.org | 30 | Fall Basic Mediation
30.0 G, 4.5 EP
In-Person
UNM School of Law
lawschool.unm.edu |
| | | 25 | Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org | 31 | Responding to Demand Letters: Tone and Substance
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org |

November

- | | | | | | |
|---|--|---|---|---|---|
| 2 | 2022 Business Law Institute
5.0 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org | 8 | Child Sexual Assault
1.0 G
Web Cast
New Mexico Legal Aid
www.newmexicolegalaid.org | 9 | Wait, My Parents Were Wrong? It's Not All About Me?
3.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org |
|---|--|---|---|---|---|

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions.

November (cont.)

- | | | |
|---|--|---|
| <p>9 Learn by Doing: An Afternoon of Legal Writing Exercises
3.0 G
In-Person or Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>17 Diversity, Equity & Inclusion in Law Practice
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 2022 Animal Law Institute: Animals, Agriculture, and the Planet
3.0 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>10 The Paperless Law Firm: A Digital Dream
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>17 2022 Probate Institute
6.25 G, 1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| | | <p>23 Ethics of Identifying Your Client: It's Not Always Easy
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

December

- | | | |
|---|--|---|
| <p>1 Spanish for Lawyers I
20.0 G
In-Person
UNM School of Law
lawschool.unm.edu</p> | <p>13 Gain the Edge! Negotiation Strategies for Lawyers
5.0 G, 1.5 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22 Ethics in Negotiations - Boasts, Shading, and Impropriety
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>5 Professionalism for the Ethical Lawyer
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>14 2022 Tax Law Institute
6.5 G, 1.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 Ethics and Virtual Law Offices
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>5 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>14 2022 Ethics Update, Part 1
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Lawyer Ethics of Email
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>6 "Let Me Ask You a Question. Suppose I was Considering ...": A Mock Meeting of the Ethics Advisory Board
2.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>15 2022 Ethics Update, Part 2
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Ethics and Conflicts with Clients, Part 1
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>6 Well That Seemed Like a Good Idea: Practical Best Practice Tips
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>19 Equity & Diversity in Law Practice: Best Practices for Law Firms
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>30 Ethics and Conflicts with Clients, Part 2
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
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A Message from State Bar President Carolyn Wolf

Dear Colleagues:

Now that we are about to enter fall, and with some important accomplishments both behind and ahead of us, it's a good time to reflect on both ends. First, the 2022 Annual Meeting was held from August 11-13 at the Hyatt Regency Tamaya Resort and Spa in Bernalillo, New Mexico. The event was a resounding success, with nearly 400 attendees at the event. During the Annual Meeting, nationally recognized speakers, including Desmond Meade, discussed restoration of rights, diversity, equity and inclusion, cannabis law and other topics of importance to us. We are grateful for the hospitality that the Hyatt Regency Tamaya Resort and Spa showed Annual Meeting attendees.

This year is not over yet. The State Bar of New Mexico will sponsor Member Appreciation Week, October 17-21, which will celebrate and recognize the thousands of attorneys, judges, and paralegals who comprise the State Bar of New Mexico's collective membership.

From October 17-20, members will be sent electronic newsletters with helpful and inspiring articles from the Professional Development Program, Lawyers Assistance Program, and the Equity in Justice Program, with each day having a different theme. One of the newsletters will also recognize the State Bar of New Mexico's 25 and 50-year practicing attorneys, and there will be exciting prizes offered throughout the week. Finally, the celebration week will conclude on October 21 from 2-4 p.m. with a free online or in-person CLE presentation followed by a reception. For more information, visit www.sbnm.org/22memberappreciation. We look forward to connecting with you by celebrating your membership and service within the state of New Mexico's legal community!

Sincerely,

A handwritten signature in black ink that reads "Carolyn Wolf". The signature is written in a cursive, flowing style.

Carolyn Wolf
President, State Bar of New Mexico

Mandatory Succession Planning Rule - effective October 1, 2022

- On the 2023 Annual Registration Statement, New Mexico Attorneys will be required to certify their compliance with Rule 16-119 NMRA.
- Rule 16-119 requires every attorney practicing law in New Mexico to have a written succession plan.
- Find out more regarding the Rule and its requirements by:
 - Listening to a succession planning podcast on *SBNM is Hear*
 - Attending a CLE webinar on Succession Planning on October 12, 2022

Contact the State Bar Professional Development Program at 505-797-6079 or the State Bar Regulatory Programs at 505-797-6059. Visit www.sbnm.org/successionplanning for sample plans and resources.



ASK AMANDA!

Do you have specific questions about equity and inclusion in your workplace or in general?

Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to www.sbnm.org/eij, click on the Ask Amanda link and submit your question.

No question is too big or small!

A Message from Chief Justice C. Shannon Bacon



Dear Colleagues:

The Supreme Court of New Mexico is currently seeking applications to fill vacancies on committees, boards, and commissions. Our committees, boards, and commissions are integral to ensuring equity and justice for those who participate in our judicial system—

members of the public and the broader legal community—by assisting the Court with the regulation of the practice and procedures within our courts. These panels have a wide range of responsibilities and functions. They regulate the practice of law, expand resources for civil legal assistance to New Mexicans living in poverty, oversee continuing legal education for lawyers, foster improved communication between tribal, federal, and state courts to improve legal services to tribal communities, administer funds to assist individuals unable to pay for legal services, and advise on long-range planning, just to name a few. Anyone who has ever served on one of the Court's committees, boards, or commissions can attest to how challenging and rewarding this work can be.

In filling these vacancies, the Court strives to appoint non-attorneys, attorneys and judges who are able to regularly attend

committee meetings and who are committed to generously volunteering their time, talent, and energy to this important work. The Court also endeavors to bring diversity, geographical and practice area balance to these committees, boards, and commissions by soliciting volunteers from throughout the state and from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of this great state, and are requesting that applicants voluntarily disclose demographic information to ensure the committees, boards and commissions reflect our diverse community.

If you would like to be considered to serve on a committee, board, or commission, please send your application and resume by **October 14, 2022**, to Elizabeth A. Garcia, Chief Clerk of Court at supeag@nmcourts.gov. The application and a complete list of vacancies on committees, boards, and commissions can be found on the Supreme Court's website at <https://supremecourt.nmcourts.gov/current-vacancies.aspx>.

On behalf of the Supreme Court, I extend our sincere appreciation to all of you who volunteer and serve in this important function within our legal system.



New Mexico Supreme Court Committees, Boards, and Commissions NOTICE OF 2022 YEAR-END VACANCIES

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

Appellate Rules Committee (1 general member position)

Board Governing the Recording of Judicial Proceedings
(1 reporter member position)

Children's Court Rules Committee
(3 general member positions)

Client Protection Fund Commission
(1 general member position)

Code of Judicial Conduct Committee
(1 district judge position)

Code of Professional Conduct Committee
(3 general member positions)

Disciplinary Board (1 attorney position)

Domestic Relations Rules Committee
(1 general member position)

Judicial Standards Commission
(1 municipal judge position, 1 magistrate judge position)

Judicial Technology Council (1 magistrate judge position)

NM Children's Court Improvement Commission

(1 position for a public defender in Children's Court, 1 position for a district attorney in Children's Court, 1 position for an attorney representing youth, 1 position for a guardian ad litem)

NM Commission on Access to Justice

(2 general member positions)

NM Supreme Court Commission on Equity and Justice

(1 position for a judge from medium-sized district or metropolitan court)

Rules of Civil Procedure for State Courts Committee

(1 general member position)

Rules of Criminal Procedure for State Courts Committee

(2 general member positions)

Rules of Evidence Committee (1 general member position)

Statewide Alternative Dispute Resolution Commission

(1 general member position, 2 district judge positions, 1 magistrate judge position, 1 metropolitan court ADR representative position, 1 position for a member of the business community)

Tribal-State Judicial Consortium (1 state judge position)

Uniform Jury Instructions-Civil Committee

(2 general member positions)

Uniform Jury Instructions-Criminal Committee

(2 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by submitting an application, along with a resume, to Elizabeth A. Garcia, Chief Clerk, by email to nmsupremecourtclerk@nmcourts.gov, or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The application can be found on the Supreme Court's website (supremecourt.nmcourts.gov) – Committees, Board and Commissions – Current Vacancies.

The deadline for applications is Friday, October 14, 2022.



New Mexico Commission on Access to Justice Expanding and improving civil legal assistance for New Mexicans

@accesstojustice.nmcourts.gov

The New Mexico Access to Justice Commission, as a commission of the New Mexico Supreme Court, sets priorities for civil legal providers around the state, makes recommendations to the Supreme Court to improve court services and troubleshoots legal service issues statewide as they arise. The ATJ Commission regularly provides information about issues important to civil legal needs in Bar Bulletin to keep members of the bar up-to-date. <https://accesstojustice.nmcourts.gov/>

New Mexico's Eviction Prevention and Diversion Program

At the beginning of the COVID-19 pandemic, the New Mexico Supreme Court issued an order imposing a moratorium on evictions. See *In re Stay of Writs of Restitution Issued Under the Uniform Owner-Resident Relations Act During the COVID-19 Public Health Emergency*, Order No. 20-8500-007, (N.M. Sup. Ct. Mar. 24, 2020) and *In re Stay of Writs of Restitution Issued Under the Mobile Home Park Act During the COVID-19 Public Health Emergency*, Order No. 20-8500-008, (N.M. Sup. Ct. Mar. 26, 2020). These orders were born out of the concern for having people without any housing during a global pandemic when public health and infectious disease experts were advising for everyone to stay home. However, by 2021, there was a greater understanding of the disease and recognition of the need to begin to plan for the lifting of the stay on evictions for nonpayment of rent.

Accordingly, stakeholders from this Bar and the community came together to discuss how to address the expected and significant expansion of eviction proceedings that would take place once the moratorium was lifted and evictions could proceed once again. That group effort resulted in the creation of the New Mexico Eviction Prevention and Diversion Program (NM Eviction Program), which was put into place by order of the New Mexico Supreme Court on March 16, 2022. See *In re Lifting the Stay of Writs of Restitution Issued Under the Uniform Owner-Resident Relations Act*, Order No. 22-8500-012 (N.M. Sup. Ct. Mar. 16, 2022). The NM Eviction Program sought to balance addressing the financial hardships that many New Mexicans faced and were continuing to face as a result of the COVID-19 pandemic and the desire to keep New Mexicans housed, with the need to ensure landlords and property owners were receiving compensation. In utilizing funds made specifically available for rental assistance as a result of the COVID-19 pandemic, the NM Eviction Program seeks to connect renters in need to the available funding as a way to keep New Mexicans housed while ensuring property owners are compensated.

The NM Eviction Program applies to cases *for nonpayment of rent* brought under both the Uniform Owner-Resident Relations Act, NMSA 1978, §§ 47-8-1 to -52 (1975, as amended through 2007), as well as for Mobile Home Parks Act, NMSA 1978, §§ 47-10-1 to -23 (1983, as amended through 1993). Accordingly, if an eviction proceeding is taking place as a result of a type of breach other than for *nonpayment*, the NM Eviction Program does not apply. Yet, the NM Eviction Program does apply to eviction proceedings that were stayed pursuant to the March 24 and 26, 2020 New Mexico Supreme Court Orders and applies to all new proceedings regarding *nonpayment* of rent.

Under the NM Eviction Program, the following procedural requirements apply to landlord tenant disputes regarding nonpayment of rent:

- When a landlord/property owner gives a tenant legal notice concerning a breach of the rental agreement for failure to pay rent, the landlord/property owner must include a copy of the designated Resource Information Sheet provided by the New Mexico Supreme Court and information regarding emergency rental assistance.
- If eviction proceedings are implemented against the tenant, when serving the summons and notice of hearing on the tenant, the landlord/property owner must again include the copy of the designated Resource Information Sheet provided by the New Mexico Supreme Court and information regarding emergency rental assistance.
- At the start of a hearing or trial in an eviction case, judges must advise the landlord and tenant about the NM Eviction Program and the availability of assistance.
- If both parties agree to go through the NM Eviction Program, the case is continued for 30 days while a settlement facilitator is appointed by the reviewing court and an agreement can be reached between the parties and rental assistance can be accessed. If necessary, the reviewing court can extend the stay on the case for an additional 30 days to allow for continued settlement discussions between the parties. If a settlement is reached, the reviewing court will dismiss the eviction proceeding.
- The NM Eviction Program provides for impartial third-party settlement facilitators to help identify the primary cause of the disputes and work creatively to find ways to resolve those issues.
- The NM Eviction Program has staff who stay in contact with both Parties throughout the process. The NM Eviction Program's staff contact the Parties to remind them about hearings and facilitations in advance. For example, in Bernalillo County and the City of Albuquerque, there will also be staff available to attend all eviction hearings and provide the presiding judge with any additional information for the case. Also, dependent upon the court's preferences, staff may also provide the judge with written updates regarding the status of applications for rental assistance.
- If no agreement is reached or if the parties do not agree to pursue the NM Eviction Program, the case will proceed and a judge can issue an eviction order or writ of restitution.

The underlying principle behind this program is the facilitation of the parties to the eviction proceedings with available federal resources for payment assistance. The NM Eviction Program has

staff who receive lists of the new eviction cases filed from the day before. The NM Eviction Program works to contact the parties in each case via phone, text and email to immediately provide information about available rental assistance and the facilitation procedures under the NM Eviction Program. The contact, when possible, seeks to reiterate the information from the Resource Information Sheet that was supposed to be served at the initiation of the proceedings.

Also, an important aspect of the NM Eviction Program is the settlement facilitation process that it built into the program. At settlement facilitation, the parties work with an impartial third party to identify options that lead to a lasting resolution for the parties. This process allows the parties to work collaboratively to identify and target the big hurdles and, hopefully, to work towards creative and lasting solutions for both the tenant and landlord.

Assistance under the NM Eviction Program includes:

- Financial assistance with rent and utilities, including back rent;
- Three months of future rent (with the possibility of additional future rent but not to exceed 18 months);
- Moving costs, should an eviction occur;
- Assistance with getting the right documents filed with the reviewing court.

Prior to implementing the NM Eviction Program statewide, a pilot program was launched in the Ninth Judicial District on Feb. 1, 2022. Thereafter, the New Mexico Supreme Court ordered the implementation of the NM Eviction Program across the State of New Mexico and for the lifting of the stay on eviction proceedings in the following staggered schedule:

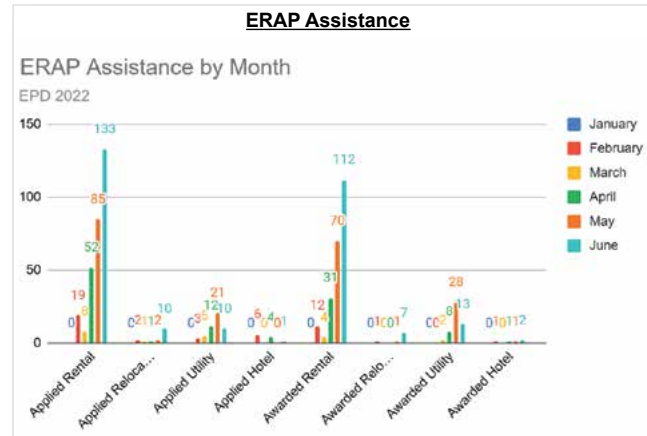
- April 1, 2022 – Second, Fifth, Tenth and Twelfth Judicial Districts
- May 1, 2022 – Third, Sixth and Seventh Judicial Districts
- June 1, 2022 – First, Fourth, and Eighth Judicial Districts
- July 1, 2022 – Eleventh and Thirteenth Judicial Districts

With the implementation of this program, the Administrative Office of the Courts (AOC) has been tracking the data regarding cases, contacts, facilitations and other factors in order to help evaluate its efficacy. Just in the first three months of the NM Eviction Program and the lifting of the moratorium on evictions, there was a significant amount of eviction cases. The preliminary data collected by the AOC, however, identifies that despite the large number of cases and parties involved, the program was able to make almost two contacts per case, on average. Most of these contacts were made through either phone calls, text messages, or emails to the parties.

For the first three months of this program, there were about 83 settlement facilitations for these eviction cases. Remarkably, the preliminary data identifies that **over 50% of the facilitations resulted in a settlement agreement and resolution** of the eviction proceeding. More recent data from late July and early August demonstrates that out of a total of 14 scheduled facilitations, nine of those resulted in a settlement agreement, while only one did not reach an agreement. The other four either did not occur or were rescheduled.

In addition, the AOC also tracked the assistance through the Emergency Rental Assistance Program that was applied for and

awarded throughout this time period. After the implementation of the NM Eviction Program, the number of applications for rental assistance, relocation assistance, utility assistance and hotel assistance increased dramatically. The preliminary data identifies that, in March 2022, the number of applications for rental assistance was only eight. However, by June, 2022 the number of applications increased to 133, and resulted in approximately 112 awards of rental assistance from those applications.



Based on the preliminary data for the NM Eviction Program's first three months, it is apparent that the program is effective in making contacts with the parties, settlement facilitations are an effective tool to resolve some of these difficult cases, and assistance through the Emergency Rental Assistance Program is being accessed. As the program continues, the hope is for the number of contacts, settlement facilitations and assistance accessed to continue increasing.

In order to implement the NM Eviction Program, the New Mexico Supreme Court approved substantial changes to several civil forms relating to eviction cases for nonpayment. The following forms were approved by the New Mexico Supreme Court for this program:

- 4-904A Post-judgment application for writ of restitution and request for hearing
- 4-904B Petition by owner for restitution
- 4-905A Summons and notice of trial on post-judgment application for writ of restitution
- 4-905B Summons and notice of hearing on petition for restitution or petition for termination of tenancy and judgment of possession
- 4-908A Order of referral to facilitation
- 4-908B Stipulation of dismissal with prejudice after facilitated settlement agreement
- 4-908C Notice of payment (new)
- 4-908D Order of dismissal with prejudice (new)
- 4-923A Petition by landlord for termination of tenancy and judgment of possession

For resources regarding New Mexico's Eviction Prevention and Diversion Program:

www.nmevictionprevention.com
www.nmcourts.gov/covid-19/
www.renthelpnm.org

**New Mexico Legal Aid –
1-833-LGL-HELP (1-833-545-4357)**



Celebrate Pro Bono in New Mexico

The American Bar Association designates a week at the end of October as National “Celebrate Pro Bono” week. In New Mexico, the local Judicial District Pro Bono Committees have extended this celebration to span the entire month. The Volunteer Attorney Program, partners with these Committees to offer a number of pro bono events during the month of October, including free legal fairs, clinics, recognition events, Continuing Legal Education classes, and more.

This year, Pro Bono Week is October 23-29, 2022.

Below is a schedule of VAP co-sponsored events occurring throughout New Mexico, in celebration of pro bono:

- | | |
|---------------------|--|
| September 9 | Eleventh Judicial District Telephonic Legal Fair |
| September 29 | Eighth Judicial District Hybrid Legal Fair |
| October 7 | Third Judicial District Hybrid Legal Fair |
| October 8 | Twelfth Judicial District Legal Fair |
| October 11 | Trauma-Informed Lawyering in Domestic Abuse Cases CLE |
| October 20 | Statewide Legal Teleclinic |
| October 25 | Divorce and Custody in DV-Related DMs CLE |
| October 26 | Gratitude Grab & Go Breakfast for Volunteer Attorneys
Second Judicial District Court, Grand Jury Room 132
8:00 am-10:00 am |
| November 4 | Fourth Judicial District Telephonic Legal Fair |
| November 5 | Twelfth Judicial District Legal Fair |
| November 8 | Child Sexual Assault CLE |
| November 16 | Ninth/Tenth Judicial Districts Hybrid Legal Fair |

To learn more about pro bono month or to get involved with your local Pro Bono Committee, please contact Becky O. O’Gawa

Director, Volunteer Attorney Program

 rebecca@nmlegalaid.org  (505) 551-0432





Felecia N. Cantwell joins Sutin's litigation group where she practices in civil litigation, regulatory and administrative law, employment and contested probate matters. Before joining Sutin, Felecia served as a Trial Attorney for the Office of the Second Judicial District Attorney. She also worked for NMSU, Carlsbad campus, as Department Chair and instructor.



John F. S. Stiff, Jr. has joined Sutin as an associate lawyer. He focuses on commercial litigation related to renewable energy, regulatory and administrative law, cannabis and civil litigation. Before joining Sutin, he served as an associate attorney for a prominent civil defense firm in Albuquerque. John provides his clients written and spoken communications in both Spanish and English.



Marcella Alvarez Morgan joins Sutin with a practice in commercial litigation centering on real estate and land use, cannabis, insurance defense and healthcare. Her trial experience includes class action and multidistrict litigation and alternative dispute resolution. She previously interned for American Tower Corp., Massachusetts Department of Revenue, and BNY Mellon and is fluent in Russian.



Lisa Y. W. Cospser has joined Sutin as a member of the firm's commercial group. Her practice focuses on estate planning, trusts and probate. Prior to receiving her license to practice law, she worked as a paralegal in estate planning and estate administration for a specialty law firm with offices throughout Arizona and New Mexico. She frequently presents on planned giving and estate planning.

The New Mexico Judicial Performance Evaluation Commission recommended that voters retain one Supreme Court Justice and seven Bernalillo County Metropolitan Court Judges standing for retention on the 2022 general election ballot. Under state law, tTl to remain on the bench. This year, JPEC's recommendations to voters statewide are retaining Hon. **Michael E. Vigil** on the Supreme Court of New Mexico and retaining **Rosie Lazcano Allred, Vidalia Chavez, Maria I. Dominguez, Jason Jaramillo, Brittany Maldonado Malott, Jill M. Martinez** and **Christine Rodriguez** on the Bernalillo County Metropolitan Court. JPEC has posted evaluations of judges at www.nmjpec.org. Individuals may download voter's guides for their judicial district or call 1-800-687-3417 to request information by mail. JPEC will also inform voters about its evaluations through advertising and social media.



Judge Sandra Engel retired after serving 16 years on the Metropolitan Court bench, where she served as the court's Chief Judge, Presiding Criminal Judge and was instrumental in the creation and success of the Community Veterans Court and Courts to School Program. Judge Engel will serve as an Executive/Leadership Coach, coaching judges, lawyers and other community leaders and will also serve as the Judicial Wellness Program Manager at the State Bar.

Pegasus Legal Services announced it received a \$20,000 grant from Blue Cross and Blue Shield of New Mexico's Healthy Kids, Healthy Families® initiative. The grant will support Pegasus' array of free, bilingual legal services to low-income households, including education law, systemic advocacy, youth law project, young parents, kinship guardianship and child abuse and neglect. BCBSNM's Healthy Kids, Healthy Families grant initiative is part of an ongoing commitment, aligned with Pegasus Legal Services, to invest in and partner with nonprofit organizations that offer sustainable, measurable programs in nutrition, physical activity, disease prevention and management and supporting safe environments.

Gallagher & Kennedy is pleased to welcome **Yusra B. Bokhari** to its real estate and litigation department, and **Bruce B. May** to its real estate department. Yusra Bokhari, Of Counsel, practices civil and commercial litigation, administrative disputes, real estate transactions and disputes, immigration advocacy and alternative dispute resolution. Bruce May, Senior Counsel, has extensive experience in handling complex real estate, finance, commercial leasing and business transactions, as well as experience with office, retail, condominium and mixed-use projects, industrial and solar development, master-planned communities and public and private partnerships.

Texas-based law firm **Gray Reed** and New Mexico-based **Sanders Law Firm** announce a cy pres donation of \$228,772 to **New Mexico Legal Aid**, a nonprofit organization providing free legal services to low-income New Mexico residents. The donation resulted from a class action settlement in a case styled *The First Baptist Church of Roswell, The Historical Society for Southeast New Mexico, Inc., and The Roswell Woman's Club, Inc. v. Yates Petroleum Corp.*, in which Jim Ormiston of Gray Reed and Kelly Mack Cassels of the Sanders Law Firm served as Class Counsel.

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Elizabeth A. Garcia, Chief Clerk of the New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On September 6, 2022:
Jordan Hale
New Mexico Legal Aid, Inc.
51 Jemez Canyon Dam Road,
Suite 102
Santa Ana Pueblo, NM 87004
505-867-3391
505-551-0330 (fax)
jordanh@nmlegalaid.org

Sara L. Schlack
Office of the First Judicial
District Attorney
P.O. Box 1209
1122 Industrial Park Road
Española, NM 87432
575-753-7131
575-753-7133 (fax)
sschlack@da.state.nm.us

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective August 18, 2022:
Jacobett Eugenia Rivera Luján
Lovett Law Firm
619 Arizona Avenue
El Paso, TX 79902
915-757-9999
915-595-4166 (fax)
jacobett_95@yahoo.com

Effective August 22, 2022:
Kathryn Choi Farquhar
P.O. Box 29213
Santa Fe, NM 87592
619-977-3947
kcfarq@gmail.com

William Kirschner
Office of the Third Judicial
District Attorney
825 N. Motel Blvd., 2nd Floor,
Suite D
Las Cruces, NM 88007
575-524-6370
wkirschner@da.state.nm.us

R. Korte
Prince, Schmidt Korte &
Baca, LLP
630 Paseo de Peralta
Santa Fe, NM 87505
505-982-5380
505-986-9176
kevin@lawforpersonalinjury.com

Effective August 26, 2022:
L. Michael Messina
P.O. Box 156
Buena Vista, NM 87712
908-500-0643
lmessina99@yahoo.com

Effective September 9, 2022:
Elizabeth deLone Paranhos
deLone Law Inc.
1555 Jennine Place
Boulder, CO 80304
303-442-0610
elizabethparanhos@delon-
elaw.com

Effective September 15, 2022:
Cody Ty Lyon
Cotton, Bledsoe, Tighe &
Dawson, PC
500 W. Illinois Avenue
Midland, TX 79701
903-870-8320
tylyon111@gmail.com

Effective September 19, 2022:
Christopher Elias Solis
Keith and Lorling
265 S. Leggett Drive
Abilene, TX 79605
325-480-8100
325-480-8117 (fax)
chris@lorlinglaw.com

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective August 2, 2022:
Dawn E. Mastalir
149 Treetop Knoll Drive
11321 Big Canoe
Jasper, GA 30143

Effective September 16, 2022:
Robert M. Fiser
320 Gold Avenue, S.W., Suite
1000
Albuquerque, NM 87102

Effective September 19, 2022:
John P. Mobbs
6350 Escondido Drive,
Suite A-14
El Paso, TX 79912

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective February 14, 2022:
Phyllis L. MacCutcheon
Cordell & Cordell LLC
100 Pearl Street, 11th Fl.
Hartford, CT 06103

Effective July 31, 2022:
John Raymond Polk
4801 Lang Avenue, N.E.,
Suite 110
Albuquerque, NM 87109

Effective August 25, 2022:
Glenn R. Smith
P.O. Box 65070
Albuquerque, NM 87193

CLERK'S CERTIFICATE OF NAME CHANGE

As of August 10, 2022:
**Hannah Rae Jiacoletti f/k/a
Hannah Rae Neal**
Civerolo, Gralow & Hill, P.A.
P.O. Box 93940
5981 Jefferson Street, N.E.,
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505-764-6008
nealh@civerolo.com

As of August 12, 2022:
**Barbara Anne Johnson f/k/a
Barbara Anne Breedon**
100 Spectrum Center Drive,
Suite 900
Irvine, CA 92618
949-414-4696
barb@planandprotectlawfirm.
com

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-021

No: A-1-CA-38131 (filed January 19, 2022)

CENTRAL MARKET, LTD., INC.,

Plaintiff-Appellant,

v.

MULTI-CONCEPT HOSPITALITY, LLC; PETER GIANOPOLOUS a/k/a PETER GIANOPOULOS; and SHAM NAIK,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Victor S. Lopez, District Judge

Released for Publication May 10, 2022.

Cadigan Law Firm, P.C.

Michael J. Cadigan

Albuquerque, NM

for Appellant

Askew & White LLC

Daniel A. White

Albuquerque, NM

for Appellees Multi-Concept

Hospitality, LLC and

Peter Gianopolous

Lakins Law Firm, P.C.

Charles N. Lakins

Albuquerque, NM

for Appellee Sham Naik

OPINION

YOHALEM, Judge.

{1} This case was brought by landlord Central Market Ltd., Inc. (Central Market) to recover rent and maintenance fees it claimed were owed to it under the terms of a commercial lease agreement, “Building Standard Marketplace Lease” (the Lease), with tenant Multi-Concept Hospitality, LLC (MCH). Central Market sued MCH for breach of the Lease, and sued Sham Naik and Peter Gianopoulos (Guarantors), the owners of MCH, for breach of their personal guaranty of MCH’s obligations under the Lease. Following a bench trial, the district court concluded that the amounts Central Market failed to pay MCH for work performed under the terms

of the Lease exceeded the amount MCH owed in rent and maintenance fees. The district court entered judgment for MCH, awarding MCH the amount of its overpayment and awarding Guarantors attorney fees and costs as the prevailing parties.

{2} Central Market raises fifteen issues on appeal. Approximately half of Central Market’s claims on appeal are contentions that one of more of the district court’s findings of fact were not supported by substantial evidence in the record. Central Market also raises the following issues of law: (1) the district court erred in offsetting amounts Central Market owed to MCH in the absence of a counterclaim for breach of the Lease by MCH; (2) the district court erred in concluding that the guaranty’s waiver of defenses and offsets was unenforceable as a matter of law and

public policy; (3) the district court erred in awarding MCH damages in the absence of a notice of default and an opportunity to cure; (4) the district court misconstrued the terms of the Lease when it found that the rent had been reduced based solely on course of performance; (5) the district court misconstrued the Lease when it found that Central Market had overcharged MCH for maintenance of the community areas, even though MCH had not requested an audit of Central Market’s expenses; (6) the district court abused its discretion in concluding that MCH and Guarantors were the prevailing parties, in awarding attorney fees without detailed records, in awarding Guarantors attorney fees for work not directly related to the guaranty agreement, and in awarding Naik attorney fees for mediation. {3} We affirm the district court with a single exception: we agree with Central Market that the district court misconstrued the terms of the Lease when it concluded that the amount of rent due could be modified solely by Central Market’s acceptance of a lower amount for several months. We remand to allow the district court to reduce the amount of overpayment to MCH by the additional rent due and affirm the district court’s judgment in all other respects.

BACKGROUND

{4} Naik and Gianopoulos started a restaurant business, forming MCH, a limited liability company. In November 2010, MCH entered into a seven-year commercial lease agreement with Central Market¹ to rent a commercial space in downtown Albuquerque, New Mexico. The Lease included, as an addendum, a personal guaranty (Guaranty Agreement) under which Gianopoulos and Naik guaranteed MCH’s payment under the Lease. The Guaranty Agreement provided that Guarantors’ personal liability “shall not be in any way affected by . . . any claim, defense, counterclaim or setoff which the Tenant [MCH] may have or assert.”

{5} During the term of the Lease, a number of disputes about payment of the landlord’s and the tenant’s obligations under the Lease arose between the parties. After the restaurant closed and the Lease term expired, Central Market filed this lawsuit against MCH and against Gianopoulos and Naik, personally as Guarantors, alleging breach of the Lease and breach of the Guaranty Agreement. Central Market sought payment of rent and other fees it claimed MCH owed under the terms of the Lease and had not paid.

¹ Roy Gottlieb, LLC, and Chiproy, LLC also co-owned the premises and were landlords on the lease, but were not named plaintiffs in this case. The district court found that Central Market represented all owners.

NEW MEXICO Lawyer

October 2022 Volume 17, No. 3

www.sbnm.org

Business Law



2022
ROSTER



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The following attorneys are recognized for
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John Hughes
Red River



Andrew Lehrman
Santa Fe



Hon. William Lynch
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The Business of Cannabis Law

By Carlos N. Martinez

New Mexico's Cannabis Regulation Act has brought to the forefront what has long been considered an illicit industry, having evolved from "Reefer Madness" into an acceptance and recognition of its numerous medicinal benefits. As a consequence of this rapidly evolving industry, it is necessary for business law attorneys who are looking to enter the cannabis law space to be a jack of all trades and a master of most. It is difficult to gauge what the anticipated demand will be, and whether or not New Mexico's cannabis industry will be able to meet it. However, the medicinal and adult-use markets have huge potential to provide an immensely positive impact for the state of New Mexico and its residents.



As a business law attorney transitioning into cannabis law work, one must wear a number of familiar hats while being open to trying on or creating new hats along the way. It is essential that budding cannabis law attorneys are willing and able to put in the work to truly understand not only the State laws, rules and regulations but the cannabis industry as a whole. The genesis of New Mexico's cannabis laws and their present-day form, along with an ability to anticipate legal issues and develop solutions for your clients will ultimately determine one's level of success as a cannabis law attorney.

New Mexico was the first state in the nation to enact a medical cannabis law via legislature in 1978; the Controlled Substances Therapeutic Research Act¹, later renamed in 2007 in honor of Lynn Pierson and Erin Armstrong; the Lynn and Erin Compassionate Use Act (LECUA).² Under New Mexico's medical cannabis program, a qualified patient³ had to be diagnosed by a practitioner as having a debilitating medical condition in order to obtain a medical cannabis card, and patients were limited to approximately eight ounces of cannabis flower in a three-month time-period.⁴ Under the statutory and regulatory language, there

are 29 debilitating medical conditions for which a person may qualify to be a participant in the medical program.⁵

As the medical cannabis program began to expand, efforts were made to bring a recreational adult-use cannabis program to New Mexico. In 2021, with the assistance of a special session, New Mexico was able to pass the Cannabis Regulation Act.⁶ The Cannabis Regulation

Act allows adults 21 years or older, or medicinal cannabis patients with a valid medical cannabis card, to purchase "two ounces of cannabis, 16 grams of cannabis extract and 800 milligrams of edible cannabis at one time."⁷ The Cannabis Regulation Act further allows New Mexican residents to grow six mature-female cannabis plants per person and up to 12 mature cannabis plants per household.⁸

Under the Cannabis Regulation Act, a potential cannabis establishment licensee has the option to apply for a number of license types: 1. Cannabis Producer License; 2. Cannabis Producer Microbusiness License; 3. Manufacturing License; 4. Vertically Integrated Cannabis Establishment License; 5. Retailer License; 6. Cannabis Consumption Area License; 7. Courier's License; 8. Cannabis Testing Laboratory License; ⁹ Cannabis Research License; and ¹⁰. Integrated Cannabis Microbusiness License.⁹ Additionally, there are intangible considerations in the cannabis industry that business law practitioners should address and understand with their clients prior to applying for a cannabis license. Although cannabis law seems to change daily (or when the Cannabis Control Division decides), there are general considerations and business issues you can address and discuss during your consultation with a potential client. Although a generally-accepted approach to starting a business for any entrepreneur is to create a business plan, potential licensees usually fall in one of three categories when asked if they have a business plan: 1. I do not have a business plan; 2. I have the business plan in my head but I'm not done writing it down; or 3. I have a business

plan. Dealing with any of the three types of entrepreneurs brings their own unique challenges which must be overcome by quality legal representation. Additionally, discussions regarding initial startup capital needed for real estate and infrastructure could be an insurmountable task for some entrepreneurs, which is an unfortunate reality that discourages applicants from entering the industry. Nonetheless, once you have accepted a cannabis client, the conversation generally turns towards the licensing process.

Transitioning from business law attorney to cannabis law attorney is a lesson in being able to adapt and think outside of proverbial box.

The Cannabis Control Division mandates that all applicants applying to obtain a cannabis license must submit their applications online through the Regulation and Licensing Department's portal. The Cannabis Control Division requires that each applicant submit a wholly completed application to the division, and once received, the Division has a 90-day window to provide a response. Clients should be made aware of the benefits of incorporating, and practitioners should help the client choose the legal entity that best suits their respective situation. Under the LECUA, companies were forced to incorporate as non-profit entities and be subject to arbitrary board compositions.¹⁰ In contrast, the Cannabis Regulation Act does not mandate a specific type of legal entity to be utilized in order to own and operate a recreational cannabis license. It is important for cannabis law practitioners to recognize the potential tax consequences associated with the various entity choices, and tax consequences associated with the cannabis industry in general. It is becoming more common for business owners to choose a combination of corporations, limited liability companies and wholly owned subsidiaries to navigate around the Internal Revenue Service's prohibitions against cannabis companies found in code section 280(e). Not every attorney is comfortable with tax law, and therefore, it is crucially important for a practitioner to have the ability to recognize their weaknesses, and to competently refer clients to knowledgeable cannabis tax attorneys, CPAs or other financial professionals.

Other common pitfalls entrepreneurs face outside of proper legal entity choice oftentimes include water and zoning issues. Once the client has provided an address of the proposed licensed premises, the cannabis law practitioner must investigate whether or not a proposed location is properly zoned for the function that their cannabis license would allow. Within the Cannabis Regulation Act, there are explicit provisions providing that local jurisdictions throughout the state have the ability to regulate time, place, manner and density of license restrictions.¹¹ Oftentimes, business owners are wholly ignorant of the fact that they must deal with local zoning boards and commissions, and that they must abide by their local cannabis ordinances and permitting processes. Mistakes will lead to delays in getting requisite zoning approvals as well as holding up much needed inspections, permissions and other necessary approvals required to operate a cannabis business.

The Cannabis Control Division mandates that all applicants applying to obtain a cannabis license must submit their applications online through the Regulation and Licensing Department's portal.

The Cannabis Control

Outside of zoning issues, the Division's application also requires the licensee to demonstrate they have a legal right to use the water for their respective farms or manufacturing operations. However, caution should be advised as not all water rights are created equal. The requisite water documentation can be proven in one of two ways: 1. Provide documentation from the respective water provider indicating that the applicant has the right to use the water from the provider and that the use is compliant with the water provider's rules; or 2. Provide documentation from the office of the state engineer's office "showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment."¹² Should your client's business have a hook-up to the local water supplier, a simple letter affirming the existence of an account that is in good-standing will suffice for your cannabis application. However, if your client's water supply is dependent on a well, irrigation rights or some other water right, it may be in the practitioner and/or client's best interest to consult with a water law attorney to ensure the client's "right" is a legitimate water right.

Transitioning from business law attorney to cannabis law attorney is a lesson in being able to adapt and think outside of proverbial box. It is being able to issue spot, recognize deficiencies and having the courage to reach out to those who may know more than you on any given subject for help. Ultimately, it's an exciting industry to get involved with and gives practitioners opportunities to expand their knowledge base. Here's to the future. Cheers. ■

Carlos N. Martinez is a cannabis law attorney and trial litigator at Legal Solutions of New Mexico, LLC. Holding degrees in accounting, finance, an MBA in international business and a juris doctorate, Martinez founded the New Mexico State Bar Cannabis Law Section and serves on the board of directors. Martinez has represented a variety of medical and recreational cannabis companies, including producers and retail dispensary owners.

Endnotes

- ¹ NMSA 1978, § 26-2A-1 to 26-2A-7
- ² NMSA 1978, § 26-2B-1 to 26-2B-10
- ³ NMSA 1978, § 26-2B-3(N)
- ⁴ NMAC 7.34.3.9, et seq.; However, see Case No. D-202-CV-2021-04058
- ⁵ NMSA 1978, § 26-2C-1, et seq.;
- ⁶ NMSA 1978, § 26-2C-1 to 26-2C-42
- ⁷ NMSA 1978, § 26-2C-3(B)(4)(a); a person who is twenty-one years old or older
- ⁸ NMSA 1978, § 26-2C-25(A)(9)
- ⁹ NMSA 1978, § 26-2C-6(B)
- ¹⁰ NMAC 7.34.4.8(J)
- ¹¹ NMSA 1978, § 26-2C-12 et seq.
- ¹² NMAC 16.8.2.22(A)(5)

So, You Want a Business Divorce?

Advising Clients During Internal Business Disputes

By Ryan M. Walters

The term “business divorce” is a useful description for the wide variety of internal disputes within a business that can arise, whether they involve business owners or other affiliated stakeholders like corporate officers. For small and family-owned businesses especially, a business divorce can create incredible financial and emotional demands for everyone involved.

Much like a marital divorce between individuals, personal resentments that have festered over the years between business stakeholders can manifest in unusual ways once the situation matures to a formal legal dispute. It is not uncommon for clients to discover that their close friends or family have taken retaliatory actions against the business or other owners, sometimes hiding such misconduct for years. For a medium to large business, a major internal dispute can hobble even a well-established company. Those involved in such a dispute often underestimate how significant of a drag the dispute can be on the company’s operations. The lawyer may also face various forms of resistance from those within the business who feel they may have something to lose from a thorough investigation.

Clients whose interests are implicated by a business divorce encounter a variety of challenging but often predictable problems during representation. At the matter intake phase, the attorney grapples with the sometimes-complex adversities and allegiances between the parties. Those adversity dynamics can change significantly during the course of the representation once the parties uncover more facts, a challenge which complicates joint-representation efforts. The business may require separate counsel to protect its own interests, which can differ dramatically from those of the individual owners. In a closely held business especially, the business owners may owe fiduciary or comparable duties to one another—a dynamic that can surprise many clients.¹ Attorneys advising clients on how to navigate such disputes must be aware of the numerous different types of obligations that constituents within an organization may owe to one another, with corporate officers and other high-level employees generally owing the highest degrees of loyalty to the organization.

If the dispute involves owners and officer-level employees of a company, counsel must often gather and investigate a wide variety of corporate records. It is common to encounter highly disparate levels of recordkeeping and observance of corporate formalities between different businesses. Clients often fail to appreciate that lack of attention to seemingly mundane details—like maintenance of corporate meeting minutes, ownership records and other core organizational material—can present major obstacles to speedy resolution of a given situation. In particular, if the company did not have counsel involved in initial preparation or ongoing maintenance of the company’s organizational documents, these case dynamics can severely limit available strategies or perhaps open new ones for clever counsel.

If a business divorce has been brewing for some time, counsel may find that the company in the midst of the dispute is in a significantly compromised operational and/or financial state. It is not uncommon



for such disputes to arise during a time of financial distress for the company or for a particular individual associated with the company. Some personal challenge on the part of a given individual like significant debt obligations or personal grievances towards perceived mistreatment by the company may end up as the precipitating event for the dispute. Whether driven by economic conditions or other factors like the necessity of a key individual for the

company’s ongoing success, the organization may not be in a viable position to succeed even if the business divorce is successfully resolved. Alternatively, the fallout from the business divorce may spill over into the company’s operations, which can further complicate resolution of the dispute.

If there are potential irregularities with the company’s accounting records, it may be necessary for individual business owners (or the business itself) to engage a skilled accountant to conduct a forensic audit. It can be easy for both clients and counsel to underestimate how lengthy and complex such an investigation can be. For example, during the investigation significant new information on potentially dubious conduct may be discovered that warrants factual investigation into previously unrelated topics. In the case of misappropriation of funds from a company or comparable financial misconduct, the true scope of such activities is often not apparent until the investigation has progressed significantly. Lawyers assisting clients who are looking into potential misconduct of business stakeholders often must delve deeply into available records to unwind a complex puzzle that may involve surreptitious misconduct.

There are often a variety of non-litigation solutions for clients who find themselves in a business divorce. Even a partial owner of a business has relatively limited options to challenge their duly authorized removal from an employment position within the company, a demotion, or other remedial action. One or more of the business owners may be interested in a buyout of their ownership interest or comparable exit from the business. While sometimes a client has no feasible option besides litigation, friends and family members associated with a business often underestimate how damaging litigation can be to their relationships with one another. Opposing counsel communicating with one another about mutually beneficial resolution options may be the only ones who can keep the dispute from turning into a loss for everyone involved. Ideally, what was once an existential threat to the business becomes a temporary setback once the business divorce is in the rearview mirror. ■

Ryan Walters is a litigation partner in the Albuquerque office of the law firm Jennings Haug Keleher McLeod LLP. The author was formerly a litigation associate in the Albuquerque offices of an Am Law 100 firm and an Am Law 200 firm, and also previously clerked for the Honorable James O. Browning of the U.S. District Court for the District of New Mexico.

Endnotes

¹ See *Clark v. Sims*, 2009-NMCA-118, ¶ 12, 147 N.M. 252.

PROTECTING THE INTANGIBLE:

Practical Guidance on Intellectual Property

By Breanna Contreras

Setting up a business is complicated—and when an entrepreneur approaches you for help, you're likely adept at advising them about what entity type to choose, the tax implications of that choice, how to set up an operating agreement, registering to do business with the appropriate governmental entities and choosing the right insurance policy¹ to cover their business needs.

But do you know how to advise them about matters involving developing and protecting their intellectual property? Some studies have shown that well over 50% of a typical business's value may not be in the business's "hard" assets, but instead in its intellectual property and other intangible assets like goodwill. Nonetheless, intellectual property law is often the area business-focused attorneys know least about and an area that a cost-conscious entrepreneur may want to avoid investing in right away. But it could be an expensive mistake to put off addressing your client's intellectual property needs.

This article offers a targeted list of typical trademark and copyright problems facing start-ups with practical examples of and solutions for issues clients face.



Brand Identity/Trademark

Considerations: What's in a Name?

Your client Dax asks you to advise him on setting up a film studio that he intends to call "MARVEL." He wants to get in on all the film action happening in New Mexico. Most people know that your client should refrain from using MARVEL—Marvel Entertainment, LLC probably would not take kindly to Dax's use of its famous trademark. You tell Dax he has to come up with another name. So now Dax tells you he plans to name the business "Marbell Entertainment, LLC" ("MARBELL" for short). You know Dax is trying to riff off Marvel—he admits as much. Is "Marbell" okay to use? Probably not, even under a parody

theory to the extent this defense might apply.² Under federal trademark law, the key question is whether use of a particular trademark is likely to cause confusion among consumers in the marketplace.³ The US Patent and Trademark Office ("USPTO") and federal courts consider multiple factors in this likelihood of confusion analysis, including most importantly:

- The similarity of the marks in their entirety as to appearance, sound, connotation and commercial impression (here, they sound and are written very similar- MARVEL vs. MARBELL); and

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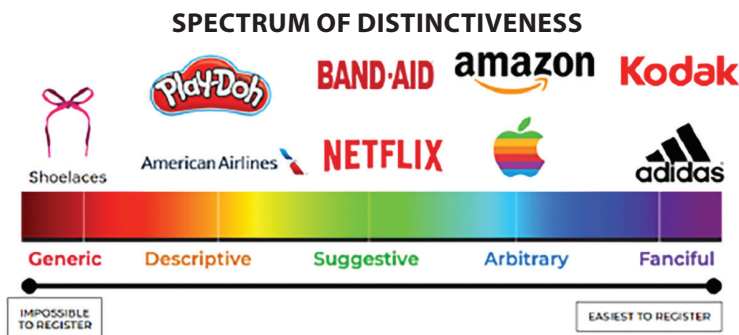
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- The relatedness of the goods or services offered in connection with the trademark (here they're identical since both offer film studio and related services)

You tell Dax to choose a different name for his business, to which he responds by asking for advice on how to make sure he'll be in the clear this time. The best thing Dax can do is come up with a highly distinct name not used by anyone for the same or similar goods or services that he plans to offer. The strength of a trademark is considered along a continuum of distinctiveness and descriptiveness:



At one extreme are marks that, when used in relation to the goods or services, are completely arbitrary or fanciful (think: XEROX for a photocopy machine). The more descriptive the trademark (think: Dax's Film Studio), the less likely it is that Dax will be able to register his trademark with the USPTO and the more difficulty Dax will have distinguishing his services in the marketplace.⁴

If Dax finds a name he's satisfied with, it is worth spending time searching on the USPTO database and on Google to make sure there are no businesses using the same trademark for the same or similar services.⁵ It's also best practice to put the public on notice that Dax claims trademark rights in the brand name he chooses—he can do this by including a ™ on the upper right hand corner of the trademark.

(Dax should not use the ® symbol until he applies for and registers his trademark with the USPTO— something I recommend qualified IP counsel assist with.)

Copyright Considerations-When to Use Work for Hire and Assignment Provisions in Agreements

For your clients who regularly engage in work in the intellectual property arena (e.g., new technology start-ups, architectural services, freelance photographers, interior designers or other creative entrepreneurs), it is important to ensure appropriate agreements are in place when engaging vendors and contractors who produce creative output on your client's behalf. For example, if your client Bernadette hires a contractor to create a logo design, marketing materials, photography or other creative output intended to be an integral part of Bernadette's business, she should have an appropriate agreement in place that ensures the work created by the contractor will be wholly owned by her—either through an assignment provision or "work for hire" language added to the parties' agreement. It's common to see a belt and suspenders approach, with both assignment and work for hire language along the lines of the following:

The *Work* produced by *Contractor* is being specially ordered by *Client* for use in connection with *Client's* brand. All results and proceeds of the *Work* provided by *Contractor* to *Client* constitute,

within the meaning of the copyright laws of the United States, a "work made for hire" for *Client* and, as between *Client* and *Contractor*, *Client* owns all right, title and interest in and to the results and proceeds of the *Work* exclusively, in perpetuity, in all media, throughout the universe for all purposes. *Contractor* agrees that if for any reason any of the results and proceeds of the *Work* are considered not to be a work for hire, *Contractor* irrevocably assigns in *Client* in perpetuity all right, title and interest in and to such results and proceeds and all intellectual and proprietary rights therein, including all copyrights, moral rights, contract, and licensing rights, pertaining to the *Work*.

Use of assignment and work for hire language when contractors provide creative works is critical—it allows your client to use the creative output in any way that may be necessary to the business, whether or not such consideration was contemplated when the contractor was first engaged.

Engage Co-Counsel Before There's a Problem

You may feel like you know enough about intellectual property law to set your client on the right path, but if you feel you need support to ensure your client receives a more targeted approach to their intellectual property needs, consider pairing up with competent IP counsel to assist you. There's a strong business case to be made to protect your client's brand and other intangible assets as a comprehensive start up strategy that will pay dividends for your client in the future. ■

Breanna Contreras is a graduate of Notre Dame Law School and serves as Vice President of Legal at Meow Wolf, Inc. Prior to her work at Meow Wolf, Breanna was a partner at Bardacke Allison LLP where she represented a variety of clients in brand strategy, trademark and copyright registration and licensing, and intellectual property enforcement.

¹ Typical commercial insurance programs do not cover intellectual property claims. Consider discussing with your client whether they have media liability coverage for their business, which covers claims of intellectual property infringement that are otherwise expensive to defend.

² The individual nuances of a given dispute involving a claimed parody can be quite complex, and many parody defenses are not successful. There are, however, interesting exceptions. See, e.g., *Louis Vuitton Malletier, S.A. v. Haute Diggity Dog, LLC* ("Haute Diggity"), 507 F.3d 252 (4th Cir. 2007) (ruling that CHEWY VUITON dog toy that mimicked the shape, design, and color of a Louis Vuitton handbag was not infringing). Haute Diggity sold other parody dog toys, including Chewnel No. 5, Jimmy Chew, Dog Perignon, Sniffany & Co., and Dogior.

³ See 15 U.S.C. § 1052(d). See also Trademark Manual of Examining Procedure ("TMEP") § 1207.01 ("The issue is not whether the respective marks themselves, or the goods or services offered under the marks, are likely to be confused but, rather, whether there is a likelihood of confusion as to the source or sponsorship of the goods or services because of the marks used thereon."). The TMEP, published by the USPTO provides extensive practical guidance about procedural and substantive nuances of the trademark application process.

⁴ See TMEP § 1209.01(c)(iii) (setting forth examples of marks that have been held generic).

⁵ A simple search of the prospective business name can be run on the USPTO database by visiting tmsearch.uspto.gov.

EMERGING TECHNOLOGIES— 2022 Amendments to the Uniform Commercial Code

By Edwin S. Smith, Juliet M. Moringiello, Benjamin Orzeske and Jack Burton

Initially adopted by many state legislatures in the 1950's, the Uniform Commercial Code (“UCC”) is a set of rules to governing many forms of commercial transactions. The UCC has proven to be an effective system to facilitate commerce throughout the United States because it offers a nearly identical system implemented by virtually every state. As a result, it does not matter if the parties to a transaction are in different states – the law governing the transaction is substantially the same.

The UCC has been so widely accepted because its provisions are sensible and consistent with most people's expectations. For example, if a merchant agreed to sell the same television to two different buyers, obviously only one of them could take delivery of the television and use it. Under the UCC, the merchant would be required to either provide an equally good television to the second buyer or to refund the purchase price. This is a simple but illustrative example. The UCC contains many such rules to provide ready answers when something goes wrong with a transaction.

Most UCC rules are default rules. The parties to any particular transaction can agree to different terms in a contract and their agreement will be enforceable. But if they have not agreed otherwise the UCC default rules will apply. In this way, the UCC provides legal certainty, which in turn gives many millions of Americans the confidence to conduct business with strangers. Because this uniform set of rules is in place, strong commercial markets have developed and thrived.

The UCC is updated periodically to keep pace with legal and technological developments. The 2022 amendments proposed by the Uniform Law Commission but not yet adopted by the New Mexico Legislature are intended to modernize the UCC as it continues to facilitate commercial activity well into the future by implementing the following updates:

- **Digital Assets.** A new Article 12 provides default rules for transactions involving certain new types of digital assets, including cryptocurrency such as Bitcoin and non-fungible tokens (NFTs). Under the UCC, these intangible assets are called “controllable electronic records,” or “CERs.” To ensure that the UCC remains relevant, CERs are defined to include not only assets created using today's distributed ledger or



“blockchain” technology, but also any assets that may function similarly using future technologies.

- **Control of Digital Assets.** Section 12-105 introduces the concept of “control” as it applies to intangible property such as cryptocurrency. Control of an electronic record is roughly analogous to possession of a tangible asset – the person with control has the power to “spend” the intangible asset by transferring it to another person in exchange for goods or services. The person with control can also prevent any one else from using the property. The person with control can be anonymous but must be positively identifiable in some manner, such as through the use of a cryptographic key.
- **Security Interests in Digital Assets.** Amendments to Article 9 will facilitate the use of digital assets as collateral for loans. Under the prior version of Article 9, there was no effective way for a lender to perfect a security interest in digital assets except by filing a financing statement, and no way to ensure priority of the security interest without obtaining a lease or subordination from all other secured parties, if they are even disclosed. The amended Article 9 will provide that a lender with control of digital assets has a perfected security interest with priority over the interests of any other lenders who do not have control.
- **Tethered Assets.** Some digital assets may not have intrinsic value, but rather represent a right to payment. A simple example would be an electronic promissory note with terms stating the borrower agrees to pay the lender a fixed monthly payment for a period of time. When the promissory note was executed on paper, the paper itself could be sold by the original lender to another party who bought not just the paper itself, but the right to receive future payments from the borrower. The right to payment was “tethered” to the paper. The 2022 amendments will provide similar rules for “controllable accounts” and “controllable payment intangibles,” which are simply

digital versions of a tethered asset, e.g. a promissory note in electronic form rather than in writing.

- **Take-Free Rules.** The UCC includes rules to protect innocent parties who receive digital assets subject to competing property claims. For example, imagine a bank robber who uses stolen cash to purchase goods at a store. If the store accepted the cash in exchange for valuable goods without knowing it was stolen, the store is not liable for the bank's loss even if the cash received is later traced to the robbery. The robber remains liable for the amount stolen. Similarly, new UCC provisions will protect innocent parties who accept in good faith digital assets in exchange for value without knowledge of any other property claim to the assets.
- **Governing Law.** Because digital assets have no physical location, conflict of laws questions may arise. The UCC amendments will allow the parties to a transaction involving digital assets to choose the law that applies to their transaction for commercial law purposes and incorporate the choice into their CER. If the parties do not choose a governing law in the CER, the law governing for the system on which the CER is recorded will apply. Otherwise, the law of the District of Columbia will apply. Such default choice-of-law rules are useful, among other reasons, because transactions for items like cryptocurrency frequently occur across state and international lines.
- **Transition rules.** The UCC amendments will be effective on the effective date in the enacting legislation. However, to protect any lenders who hold a security interest in digital assets that were perfected under the prior rules, there will be a transition period during which the lender's priority will be maintained. This provides a grace period during which the parties to a pre-existing loan agreement can renegotiate terms as necessary and comply with provisions of the new law to ensure their respective interests remain protected.
- **Tangible and Electronic Money.** "Money" is defined under the UCC as a medium of exchange authorized by a domestic or foreign government and was presumed under many UCC rules to exist only in tangible form. Recently, some countries' central banks have proposed creating virtual currencies to supplement or replace traditional forms of money, and at least two countries have adopted the virtual currency Bitcoin as an alternate form of legal tender. An amendment to the Article 1 definition of money clarifies that governmentally created forms of money may be tangible or electronic and that pre-existing virtual currencies, like Bitcoin, while they maybe CERs, are not "money" for purposes of the UCC. New amendments in Article 9 provide that a security interest in "electronic money," i.e. virtual currency created by a government's central bank, like a security interest in a CER can only be perfected through control.
- **Chattel Paper.** "Chattel paper" is defined under the UCC as a record containing both a monetary obligation and a security interest in goods, e.g. the documents governing an automobile loan. The 2022 amendments modify this definition to refer to the right to payment evidenced by the record, rather than to the document itself. This makes the rules for chattel paper more consistent with the new rules for CERs. Similarly, the rule governing control of electronic chattel paper is amended for consistency with the rule governing control of CERs.
- **Hybrid Transactions.** Articles 2 and 2A of the UCC apply to the sale and lease of goods, respectively, and not to contracts for services. The line between these categories has blurred with the emergence of transactions involving both the sale or lease of goods and the provision of other property or services. As a result, a new rule is needed for these hybrid transactions. The UCC amendments provide that, absent the parties' agreement otherwise, the UCC rules will apply to a hybrid transaction if the sale/lease of goods is the predominant purpose of the transaction. If the sale of services predominates, the UCC rules will apply only to aspects of the transaction that involve the sale or lease of goods.
- **Negotiable Instruments.** Changes to Article 3 clarify that a choice-of-law or choice-of-forum clause included in an instrument does not affect the negotiability of the instrument, and that an image of a negotiable instrument (i.e., photos of the front and back of a check) may be substituted for the actual instrument in accordance with federal banking regulations.
- **Terminology.** Various UCC provisions are amended to replace obsolete terms that applied only to transactions on paper. For example, the term "sign" is redefined to include electronic signatures, the term "record" is substituted for "writing" to encompass electronic documents and the term "conspicuous" is redefined to apply more broadly to the terms of both paper and electronic agreements.
- **Enactment.** The UCC is a product of the American Law Institute and the Uniform Law Commission. The 2022 amendments were drafted over a multi-year period by a drafting committee appointed by both organizations. More than 300 observers from user groups participated in the drafting process. The amendments were approved by the ALI in May 2022. The ULC approved them in July 2022. There is a demand for these amendments to deal with new technology. They will be submitted to the states for enactment in 2023. All of the states are expected to enact them by the end of 2024. ■

Edwin Smith was Chair of the Drafting Committee for the 2022 Amendments to the UCC. Professor Juliet Moringiello was Vice Chair of the committee. Benjamin Orzeske is Chief Counsel of the Uniform Law Commission. Jack Burton was an observer to the drafting committee, representing the other New Mexico Uniform Law Commissioners.

Business Without Borders

Business Restructuring for Immigrant Entrepreneurs

By Joaquín Sánchez-Leal

Immigrants play a vital role in New Mexico's economy as nearly one in ten residents and one in eight workers is an immigrant. Immigrant entrepreneurs in New Mexico generate hundreds of millions of dollars in business revenue per year. In 2018, 18,935 immigrant business owners accounted for 17% of all self-employed NM residents and generated \$319.5 million in business income.¹

The COVID pandemic forced businesses across the state to close their doors, leaving thousands of workers unemployed until businesses could recover. For undocumented immigrants, their options for employment and economic recovery are limited due to an immigration system riddled with obstacles, delays and border politics. Where lawful employment is not an option under the US immigration system, entrepreneurship is a lawful alternative for undocumented immigrants under the federal tax system and the New Mexico Secretary of State.

In 1996, the Internal Revenue Service (IRS) created the Individual Tax Identification Number (ITIN),² a tax-processing number, to allow income-earning foreign nationals in the US without a Social Security Number to report their incomes to the IRS. The IRS is required to protect taxpayer privacy and information, which is a fundamental cornerstone of the US tax system to encourage tax-reporting. See Confidentiality of return information, 26 U.S.C. § 6103(a). Since the IRS protects taxpayer privacy, the ITIN is not an immigration enforcement tool within the purview of the Department of Homeland Security. For many immigrant individuals and head of households, who do not have a Social Security Number or are "out of status," the ITIN is invaluable. In addition to reporting income, the ITIN can be used to apply for an Employer Identification Number (EIN) with the IRS, after incorporating a business in the state, thereby creating a pathway for the lawful formation of a business by the immigrant entrepreneur regardless of their immigration status.

Entrepreneurship plays a fundamental role in establishing roots and stability in the US and this dynamic is particularly true for the immigrant entrepreneur. Those who are undocumented or



otherwise lack legal immigration status may have no other financial option. While an undocumented immigrant cannot legally work for an employer in the US as a traditional W-2 employee, an undocumented immigrant is free, independent of her or his immigration status, to create and conduct business and pay taxes in the US. For many immigrant entrepreneurs, this option is their only lifeline. For New Mexico businesses, this alternative creates an opportunity to form new businesses in the state to bridge the gap between businesses that need a service and the immigrant entrepreneurs who can deliver it. The key IRS restriction on such an arrangement is that both parties must be able to demonstrate a business-to-business relationship as determined by the IRS in a twenty-factor test³ that aims to distinguish between employees and independent contractors. For businesses with grandfathered undocumented workers that are looking to restructure their business, the IRS currently provides these employers with an opportunity under Section 6103 to make the mutual transition necessary to conduct more business without borders. ■

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Endnotes

¹ Immigrants in New Mexico: Facts Sheet, American Immigration Council, (August 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-mexico>

² The Facts About the Individual Taxpayer Identification Number (ITIN), American Immigration Council, (March 14, 2022), <https://www.americanimmigrationcouncil.org/research/facts-about-individual-taxpayer-identification-number-itin>

³ Independent Contractor (Self-Employed) or Employee?, Internal Revenue Service, (August 26, 2022), <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

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MCH and the Guarantors challenged the amount of damages claimed by Central Market, and also claimed that Central Market owed MCH money under the Lease terms, which should be credited by the district court against Central Market's damages.

{6} The district court entered extensive findings of fact and conclusions of law following a bench trial. The facts relevant to each party's claims and defenses under the Lease are detailed in the discussion below to the extent necessary to our decision. The district court resolved each of the conflicts between the parties and concluded that "[Central Market] is not entitled to recover against [MCH and Guarantors] because the amount [Central Market] owes to [MCH] for setoff exceeds the amount [MCH and Guarantors] owe to [Central Market] for damages." The district court made findings calculating the amount by which MCH had overpaid and awarded MCH a money judgment against Central Market in the total amount of \$15,631.16. The district court declared MCH and Guarantors the prevailing parties for purposes of the award of attorney fees under the terms of the Lease and subsequently awarded attorney fees and costs to Guarantors.

{7} Central Market appealed from the judgment against it on the merits and separately from the award of attorney fees and costs. Central Market's appeals have been consolidated by this Court for decision.

DISCUSSION

I. Central Market's Substantial Evidence Argument Lacks Merit

{8} We begin by addressing Central Market's challenges to the district court's findings of fact as unsupported by substantial evidence in the record. We reject all of Central Market's challenges and accept the district court's findings.

{9} We note first that Central Market failed to include in its statement of proceedings a single citation to the trial transcript. More importantly, both in its statement of proceedings and in its argument, Central Market describes only the evidence that supports its claims, while failing to bring to our attention and provide citation to the evidence supporting the district court's findings. Several times in its brief, for example, Central Market alleges that "[t]here was no substantial evidence" adduced at trial, when, in fact, our review shows direct support in the record for the district court's finding. The testimony of a single witness, if found

credible by the district court, is sufficient to support a finding, and, under the rules of this Court governing briefing, such supporting testimony must be brought to our attention. See Rule 12-318(A)(3) NMRA; *State v. Hamilton*, 2000-NMCA-063, ¶ 20, 129 N.M. 321, 6 P.3d 1043.

{10} Defendant Naik argues that these omissions from the brief in chief merit refusal by this Court to disturb the district court's findings of fact on appeal. We agree. See Rule 12-318(A)(3) (providing that a contention that a finding of fact is not supported by the substantial evidence "shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing on the proposition"); see also *Mountain States Tel. & Tel. Co. v. Suburban Tel. Co.* 1963-NMSC-120, ¶ 7, 72 N.M. 411, 384 P.2d 684 (holding that we do not disturb the trial court's findings when the appellant's brief points to contrary evidence but neglects to point out supporting evidence). We therefore accept the district court's findings of fact and proceed to consider Central Market's remaining arguments.

II. The District Court Did Not Err in Crediting Unpaid Amounts Owed by Central Market to MCH Under the Lease

{11} Central Market argues that the district court erred in offsetting amounts owed to MCH under the Lease for tenant improvements against the amount Central Market proved remained unpaid in rent. Central Market argues that "setoff" is either an affirmative defense or a counterclaim, which must be specifically pleaded in the answer to the complaint or in the pretrial order. We understand Central Market to claim that the pretrial order was not sufficiently "specific" to put it on notice of MCH's claim for setoff for uncompensated improvements made to the premises by the tenants. Central Market claims that it was prejudiced in the preparation of its case by MCH's failure to specifically plead setoff.

{12} This issue arose in the district court when Central Market, near the end of the second (and last) day of trial, objected for the first time to testimony introduced earlier in the trial supporting MCH's claim that it had never been paid the full amount of a promised \$30,000 reimbursement by Central Market for "tenant improvements" required by the Lease. The shortfall claimed by MCH was \$22,500.

{13} Central Market objected to testimony on this issue on the basis that MCH was seeking a setoff for tenant improvements; setoff was an affirmative defense; and affirmative defenses not pleaded with specificity in the answer to the complaint or in the pretrial order are barred. The district court rejected Central Market's claim that the word "setoff" must specifically be used, or the label "affirmative defense" or "counterclaim" specifically affixed, and found that the contentions in the pretrial order adequately put Central Market on notice of MCH's claim for credits or setoff based on tenant improvements.

{14} We assume, without deciding, that a claim for a setoff under the circumstances of this case is an affirmative defense or a counterclaim, as Central Market contends.² We note that because Rule 1-008(C) NMRA allows the district court to treat an affirmative defense as a counterclaim, or a counterclaim as an affirmative defense, we need not distinguish between the two kinds of claims.

{15} Even where a claim is an affirmative defense or a counterclaim, the district court's rules of civil procedure are not rigidly applied to bar a claim based on a technical error in the pleadings. See Rule 1-008(E)(1) ("No technical forms of pleading . . . are required."). "The theory of pleadings is to give the parties fair notice of the claims and defenses against them, and the grounds on which they are based." *Schmitz v. Smentowski*, 1990-NMSC-002, ¶ 9, 109 N.M. 386, 785 P.2d 726. Contrary to Central Market's contention that an affirmative defense or counterclaim must be specifically labeled as such, "notice pleading does not require that every theory be denominated in the pleadings—general allegations of conduct are sufficient, as long as they show that the party is entitled to relief and . . . [are sufficient so that] the parties and the court will have a fair idea of the action about which the party is complaining." *Id.*

{16} Consistent with this approach to pleading, which focuses on whether the objecting party was prejudiced by a failure to receive earlier notice of a claim, *id.* ¶ 14, our rules of procedure allow omissions in the pleadings to be cured by inclusion of a new contention, affirmative defense, or counterclaim in the pretrial order, see Rule 1-016 NMRA, or by amendment of the pleadings to conform to the evidence at trial, Rule 1-015(B) NMRA.

² In *Washington v. Atchison, Topeka & Santa Fe Ry. Co.*, 1992-NMCA-066, ¶¶ 12-13, 114 N.M. 56, 834 P.2d 433, this Court held that a claim for setoff based on amounts paid to the plaintiff during the pendency of a lawsuit was not an affirmative defense and was not required to be pleaded in the original action. Because we conclude that setoff was adequately pleaded in the pretrial order, assuming it was an affirmative defense or counterclaim, we do not decide whether the setoff in this case was an affirmative defense or counterclaim.

So long as the inclusion of a contention in the pretrial order or the litigation of the issue at trial is with the consent or implied consent of the opposing party, *Fahrbach v. Diamond Shamrock, Inc.*, 1996-NMSC-063, ¶ 24, 122 N.M. 543, 928 P.2d 269, the pleadings will be deemed amended, Rule 1-015(B). Finally, “[e]ven if the [opposing] party has not consented to amendment, a trial court is required to allow it freely if the objecting party fails to show he will be prejudiced thereby.” *Schmitz*, 1990-NMSC-002, ¶ 14.

{17} The pretrial order entered by the district court in this case, without objection by Central Market, and without any subsequent request for modification of the order, includes the following claim in MCH’s list of contentions: “There are unpaid tenant improvements, which should be credited to [MCH and Guarantors].” In its list of contested issues of fact, the pretrial order includes the following issue: “Whether Plaintiff [Central Market] compensated Defendants [MCH and Guarantors] for the improvements that were completed.” The contested issues of law include “those implicit in the foregoing issues of fact.” Central Market did not object to the pretrial order and never sought its amendment. As our Supreme Court noted in *Fahrbach*, “[t]he principle is well established that a pretrial order, made and entered without objection, and to which no motion to modify has been made, controls the subsequent course of action.” 1996-NMSC-063, ¶ 24 (internal quotation marks and citation omitted).

{18} The district court found, and we agree, that the pretrial order, under the circumstances of this case, was adequate to put Central Market on notice of MCH’s affirmative defense or counterclaim of setoff of money owed MCH under the Lease for tenant improvements. Although Central Market claims both undue surprise and undue prejudice from the failure of MCH to plead setoff as an affirmative defense or counterclaim in its answer, asserting that it “was denied the opportunity to prepare to defend,” Central Market offers no explanation of how the preparation of its defense was impacted and describes no additional evidence it could have offered if it had earlier notice of the setoff claim. See *Schmitz*, 1990-NMSC-002, ¶ 17 (“The test of prejudice is whether the party had a fair opportunity to defend and whether it could offer additional evidence on the new theory.”).

{19} We see no evidence of prejudice in our review of the record. Although setoff was not pleaded in MCH’s answer to the complaint, it was specifically pleaded in Naik’s answer, thereby putting Central Market on notice of the claim from the outset of the proceedings. In its opening

remarks at trial, Central Market acknowledged that the dispute about payment for improvements made by MCH had been ongoing throughout the term of the Lease. Central Market also acknowledged at trial that the parties had met before trial in an attempt to resolve MCH’s claim that it was owed money for tenant improvements. The trial record thus establishes that Central Market was aware of MCH’s claim for setoff and was prepared to defend against MCH’s allegation that Central Market had underpaid them for tenant improvements. See *Charley v. Rico Motor Co.*, 1971-NMCA-004, ¶¶ 18-19, 82 N.M. 290, 480 P.2d 404 (holding that even though the defendant’s claim of setoff was not pleaded as a counterclaim, the district court did not error in crediting the amount of a repair bill, where there was a debt, the plaintiff was aware there was an issue about payment of the bill, and the matter was fully litigated).

{20} For these reasons, we agree with the district court that MCH’s answer was amended by the pretrial order to include the affirmative defense or counterclaim of setoff.

III. The District Court Did Not Err in Refusing to Enforce the Guaranty Agreement’s Waiver of the Defense of Satisfaction of the Debt as Contrary to Public Policy

{21} Central Market next claims that the district court erred as a matter of law in concluding that the Guaranty Agreement’s waiver “of any . . . defense . . . or setoff which the Tenant may have or assert” violates public policy. Central Market sought to apply the waiver provision to preclude Guarantors from relying on the defense that the principal had satisfied, in whole or in part, its debt under the Lease. We agree with the district court that a waiver provision that makes a guarantor liable despite proof of full or partial payment by the principal is contrary to New Mexico law and against public policy.

{22} “New Mexico . . . has a strong public policy of freedom to contract that requires enforcement of contracts unless they clearly contravene some law [or some principle of justice] or rule of public morals.” *United Wholesale Liquor Co. v. Brown-Forman Distillers Corp.*, 1989-NMSC-030, ¶ 14, 108 N.M. 467, 775 P.2d 233. A contractual provision may be deemed void as contrary to New Mexico law and public policy only when the offending contractual provision is “clearly contrary to what the [L]egislature or judicial decision has declared to be the public policy[.]” *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2015-NMSC-004, ¶ 12, 345 P.3d 310 (internal quotation marks and citation omitted). We review public policy determinations de novo. *Montaño v. Frezza*, 2017-NMSC-015, ¶ 15, 393 P.3d 700.

{23} MCH argues that the Guaranty Agreement’s waiver provision, as applied by Central Market, contravenes the “fundamental tenet of the law of contract remedies that, regardless of the character of the breach, an injured party should not be put in a better position than had the contract been performed.” *Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 59, 400 P.3d 290 (internal quotation marks and citation omitted). We agree that requiring Guarantors to compensate Central Market a second time when the district court found Central Market had been fully compensated under the terms of the Lease would violate New Mexico’s public policy against windfall damages in breach of contract actions. See *Eker Bros. Inc. v. Rehders*, 2011-NMCA-092, ¶ 18, 150 N.M. 542, 263 P.3d 319.

{24} Allowing Central Market to collect from Guarantors on a debt that the district court found had been satisfied would also run afoul of New Mexico policy treating a guarantor as “a favorite of the law,” entitled to have his or her obligations narrowly construed to protect the guarantor’s interests. See *Levenson v. Haynes*, 1997-NMCA-020, ¶ 19, 123 N.M. 106, 934 P.2d 300 (noting that “a guarantor . . . is a favorite of the law, . . . entitled to a strict construction of his [or her] agreement, and his [or her] liability is not to be extended by implication beyond the express limits or terms of the instrument, or its plain intent” (internal quotation marks and citation omitted)). A “guarantor” is by definition a “secondary obligor,” who is liable to the obligee “for the underlying obligation in the event of a default by the principal obligor (or principal debtor).” *Randles v. Hanson*, 2011-NMCA-059, ¶ 15, 150 N.M. 362, 258 P.3d 1154. A guarantor is entitled to defend by showing that the primary debt has been satisfied. Requiring the guarantor to pay an already-satisfied debt would be inconsistent with the protection the law affords a guarantor. See *Sunwest Bank of Clovis, N.A. v. Garrett*, 1992-NMSC-002, ¶ 11, 113 N.M. 112, 823 P.2d 912 (recognizing that a guarantor is not liable if the existence of the underlying corporate debt is refuted).

{25} We therefore agree with the district court that the Guaranty Agreement’s waiver provision as sought to be applied by Central Market was unenforceable as a matter of New Mexico law and policy.

IV. MCH Was Not Required by the Lease Terms to Provide Written Notice of Default

{26} We next address Central Market’s contention that MCH’s failure to give written notice of default to Central Market and an opportunity to cure barred it from recovery of damages.

This presents a question of contract interpretation, which we review de novo. *Rivera v. Am. Gen. Fin. Servs., Inc.*, 2011-NMSC-033, ¶ 27, 150 N.M. 398, 259 P.3d 803.

{27} The Lease provides, in relevant part, that prior to bringing any “action for damages” against the Landlord, “Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty days in which to cure any such default.” Central Market argues that because MCH provided no written notice of default to Central Market, MCH should be barred from recovery of any amounts owed by Central Market. We do not agree.

{28} The intent of the notice provision, by its plain terms, is to require notice in advance of the filing of “an action for damages” by a tenant, thereby giving the landlord thirty days to cure the default and avoid legal action. See *Martinez v. Martinez*, 1984-NMSC-028, ¶ 14, 101 N.M. 88, 678 P.2d 1163 (construing similar language to require the giving of notice and a reasonable time before legal action is taken, and finding ineffective any notice given by the plaintiff after the action is filed). This provision is simply not relevant to this action, which Central Market, the landlord rather than the tenant, initiated at a time of its choosing.

V. The District Court Erred in Finding That MCH’s Rent Was Reduced Based on the Course of Performance

{29} We next address Central Market’s contention that the district court erred in finding that Central Market had consented through the course of performance to a reduction of base rent payable under the Lease from \$4,177.23 to \$4,000 per month. The facts underlying this issue are not in dispute. Central Market challenges the district court’s application of the law to these undisputed facts. Our review, therefore, is de novo. See *Crutchfield v. N.M. Dep’t of Tax’n & Revenue*, 2005-NMCA-022, ¶ 28, 137 N.M. 26, 106 P.3d 1273 (providing that “[w]hen a party is challenging a legal conclusion, the standard for review is whether the law correctly was applied to the facts” (internal quotation marks and citation omitted)).

{30} The uncontroverted evidence establishes that beginning February 2016, the base rent set by the Lease was \$4,177.23 per month. MCH paid only \$4,000 each month. During the relevant time, Central Market consistently sent MCH monthly invoices for \$4,177.23, which noted “past due” charges. Gianopoulos testified that in spite of those invoices, he believed that \$4,000 per month was appropriate because of an “ongoing negotiation.”

{31} The Lease provides that modification of any term requires an agreement “in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.” Gianopoulos admitted that no such signed writing existed. Although the district court, in its findings of fact, states that Central Market “assented in writing to the rent reduction” based on a demand by Central Market to replace a \$4,000 check that did not clear with another \$4,000 check, neither the court, in its conclusions of law, nor the parties on appeal, claim that this writing satisfied the lease term. The district court concluded that “Landlords’ damages are limited by the course of performance from receiving more than \$4,000[] per month in rent” from February 2016 forward (until January 2018, when rent was cut off by the district court for failure to mitigate damages). We do not agree.

{32} Where the express terms of the contract require a signed writing to modify a contract term, the acceptance of a lower amount, when that acceptance comes with notice that a higher amount remains due, is not sufficient to modify the contract. Although a written contract providing that it must be modified in writing can be modified orally under New Mexico law, such modification must be proved by clear and convincing evidence. *Powers v. Miller*, 1999-NMCA-080, ¶ 11, 127 N.M. 496, 984 P.2d 177. The evidence in the record here does not include either a clear statement, oral or written, or clear conduct, indicating an intent by Central Market to modify the rent.

{33} MCH argues, in the alternative, that this Court should find waiver by estoppel based on Central Market’s acceptance of the lower rent. As support, they point to (1) Central Market’s consistent acceptance of the \$4,000 payments without mention of the possibility of default until 2017; and (2) Central Market’s request for a replacement check in the amount of \$4,000 (as opposed to \$4,177.23) when, in February 2017, one of MCH’s \$4,000 checks was rejected by the bank for insufficient funds.

{34} MCH’s argument fails because, to establish waiver by estoppel, the nonwaiving party must show that it was misled to its prejudice by the conduct of the waiving party. See *J.R. Hale Contracting Co. v. United N.M. Bank*, 1990-NMSC-089, ¶ 12, 110 N.M. 712, 799 P.2d 581. Even assuming MCH reasonably believed that a waiver of rent was intended by Central Market, MCH introduced no evidence of any change of position to its detriment based on its belief that Central Market had lowered the rent to \$4,000. See *id.* ¶ 13 (requiring a showing of reliance on the conduct and a change in the position to the party’s detriment to establish waiver by estoppel).

In fact, MCH benefitted by being allowed to pay less in monthly rent than the Lease provided, without being evicted from the premises.

{35} The district court accordingly erred in concluding that the rent had been reduced to \$4,000 per month from February 2016 through December 2017.

VI. The District Court Did Not Err in Placing the Burden on Central Market to Prove the Amount Owed by MCH for Common Area Maintenance

{36} Central Market next argues that the district court erred in failing to award it damages relating to what it claims were unpaid Common Area Maintenance (CAM) charges. The Lease provides that, during the lease term, MCH would pay a monthly CAM charge, in addition to rent. The Lease caps the charge at 5 percent of the minimum base rent set by the Lease. Charges for water and sewage were to be included in the CAM charge, according to the Lease. Central Market, however, imposed additional water and sewage charges on top of and separate from the CAM charge. Under the Lease, Central Market was permitted to charge for insurance and real estate taxes separately from the CAM charge, but did not do so, and instead commingled these charges with the CAM charges. The CAM amount charged far exceeded the 5 percent maximum.

{37} Central Market contends on appeal that the Lease required MCH to request an audit of operating costs as a precondition to claiming in the district court that the CAM charges sought by Central Market exceeded the 5 percent maximum set by the Lease. Central Market argues that by not requesting an audit during the term of the Lease, MCH waived its right to object to the CAM charges at trial.

{38} We see no basis in the Lease to require a tenant to request an audit when the tenant defends an action for breach of lease by claiming that the amount sought, on its face, exceeds the 5 percent maximum set by the terms of the Lease. The district court properly placed the burden on Central Market to establish with evidence that the amounts charged conformed with the Lease terms and that legitimate charges remained unpaid. A plaintiff claiming breach of contract has the burden of proving the existence of the contract, breach of the contract, causation, and damages. *Camino Real Mobile Home Park P’ship v. Wolfe*, 1995-NMSC-013, ¶ 18, 119 N.M. 436, 891 P.2d 1190, *overruled on other grounds by Sunnyland Farms, Inc. v. Cent. N.M. Elec. Coop., Inc.*, 2013-NMSC-017, ¶ 16, 301 P.3d 387. Because Central Market failed to carry its burden of establishing its entitlement to charges far exceeding the CAM maximum set by the Lease, or its burden of establishing the amount of its damages, the district court applied the 5 percent maxi-

mum set by the Lease.

{39} The district court's calculation of damages was consistent with the unambiguous term of the Lease and with the law placing the burden of proof at trial on the party claiming breach. *See id.* The district court's conclusion that Central Market failed to carry its burden of proof to justify a charge higher than 5 percent of the base rent was not error.

VII. The District Court Acted Within Its Discretion Both in Determining That Gianopoulos and Naik Were Prevailing Parties and in Its Award of Attorney Fees

{40} We next address Central Market's claims of error relating to the award of attorney fees and costs. Central Market raises the following arguments: (1) the parties prevailed in equal measure, and, therefore, the district court abused its discretion in designating MCH and Guarantors "prevailing parties"; (2) Gianopoulos's admission that he breached his pretrial settlement agreement made Central Market per se the prevailing party on that issue; (3) the district court erred in awarding attorney fees based on motions that were unsupported by detailed time records; (4) the district court erred by awarding Guarantors attorney fees that were not substantially related to Guaranty Agreement; and (5) Naik was not entitled to recover costs relating to mediation, because mediation is not listed by Rule 1-054(D) NMRA as a specifically recoverable cost and the district court did not find that Central Market acted in bad faith in the mediation. We review a trial court's award of attorney fees and costs for abuse of discretion. *NM. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M. 654, 986 P.2d 450; *Mascarenas v. Jaramillo*, 1991-NMSC-014, ¶ 24, 111 N.M. 410, 806 P.2d 59. We address each of Central Market's arguments in turn.

{41} First, we address Central Market's challenge to the district court's conclusion that MCH is the prevailing party. Our case law provides that a party in whose favor final judgment is rendered is the prevailing party. *In re Adoption of Stailey*, 1994-NMCA-015, ¶ 12, 117 N.M. 199, 870 P.2d 161. In this case, final judgment was rendered in favor of MCH and Guarantors. Although Central Market prevailed on some issues, those issues were substantially outweighed by the issues on which MCH and Guarantors prevailed, in terms of the

number and importance of the issues, and in terms of the amount awarded.³ Indeed, Central Market would have been better off if it had not filed this lawsuit. We, therefore, see no basis for holding that neither side prevailed, or that both sides prevailed in equal measure. *See Hedicke v. Gunville*, 2003-NMCA-032, ¶¶ 28-30, 133 N.M. 335, 62 P.3d 1217 (holding that a district court has an obligation to determine attorney fees "according to, the facts and circumstances of the case and the extent to which the parties, in fact, prevailed[,] and abuses its discretion in concluding neither party prevailed unless there was a one-for-one balance). Accordingly, the district court acted within its discretion in assigning "prevailing party" status to MCH and Guarantors.

{42} Second, Central Market argues that Gianopoulos admitted to breaching the settlement agreement he entered into with Central Market during the pendency of this case and that this admission entitles Central Market to "prevailing party" status. We do not agree. The district court correctly concluded that Central Market had breached the settlement agreement first, and, on this basis, relieved Gianopoulos of the obligation to pay an additional \$10,000 owed to Central Market. Given this result, the district court acted within its discretion in concluding that Gianopoulos was the prevailing party on this issue.

{43} Third, we address Central Market's argument that the district court erred by granting attorney fees based on motions for fees filed without detailed billing records. While the record shows that the attorney fees motions were initially unaccompanied by billing records, Central Market admits that detailed billing records were ultimately submitted for review to both Central Market and the district court. Central Market was given, and took advantage of, the opportunity to file a supplemental response to the billing records after this review. We find no abuse of discretion in the district court's consideration of the subsequently filed billing statements and Central Market's supplemental responses to determine the fees amount.

{44} Fourth, we address Central Market's contention that the district court awarded fees to Guarantors that did not substantially relate to the Guaranty Agreement. The district court found that, under the circumstances of this case, the defense of MCH was necessary to

disprove the liability of Guarantors. We agree. Satisfaction of the debt by the principal is a defense to an attempt to collect on a guaranty. *See Sunwest Bank of Clovis, N.A.*, 1992-NMSC-002, ¶ 11 (recognizing that a guarantor is not liable if the existence of the underlying corporate debt is refuted).

{45} Fifth and finally, we address the argument that the district court erred in awarding Naik his mediation fee. Mediation fees are not among the list of "generally recoverable costs" provided in Rule 1-054(D), nor are they among the list of costs generally *not* recoverable under that rule. They, therefore, fall within the "necessary and reasonable costs incident to [a party's] prosecution or defense of an action" that the district court can award in the exercise of its discretion. *Dunleavy v. Miller*, 1993-NMSC-059, ¶ 39, 116 N.M. 353, 862 P.2d 1212. Our district courts are directed to "exercise their discretion sparingly," and to "explain the circumstances justifying the award." *Bernier v. Bernier ex rel. Bernier*, 2013-NMCA-074, ¶ 41, 305 P.3d 978 (internal quotation marks and citation omitted).

{46} In this case, contrary to Central Market's claim, the district court found that Central Market had failed to act in good faith and had not dealt fairly with MCH and Naik in connection with the request to release Naik's guaranty and had breached the mediation agreement it entered with Gianopoulos by failing to promptly dismiss the claims against him. We find this sufficient explanation for the award of Naik's mediation fee.

CONCLUSION

{47} As described above, we affirm with respect to all but one of Central Market's assignments of error. We reverse, solely with respect to the district court's failure to credit Central Market with the full amount of base rent due under the Lease from February 2016 through December 2017 (Central Market rented the premises to another tenant beginning in January 2018). We remand to the district court to amend the final judgment to account for the additional \$177.23 per month due during the stated time period, consistent with this opinion.

**{48} IT IS SO ORDERED.
JANE B. YOHALEM, Judge
WE CONCUR:
ZACHARY A. IVES, Judge
GERALD E. BACA, Judge**

³ Our ruling that MCH owes the difference between the \$4,000 paid in rent and the \$4,177.23 owed from February 2016 through December 2017, does not reduce MCH's award of damages enough to affect MCH and the Guarantors' status as the prevailing parties.



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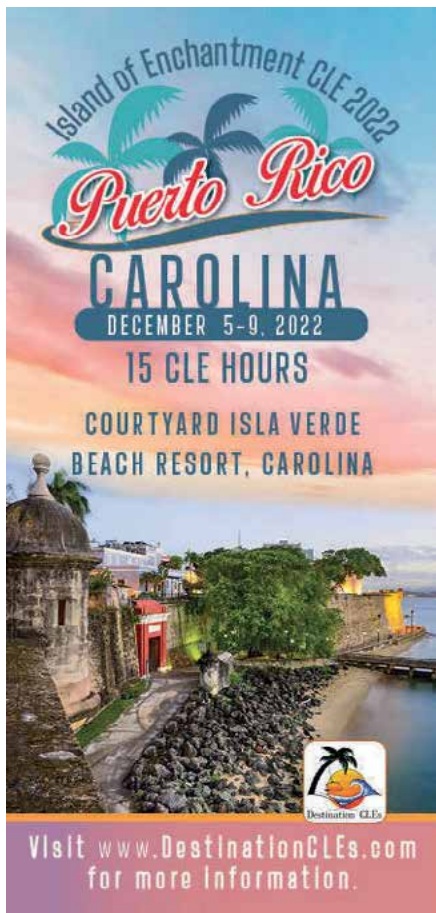
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Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced litigation attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The firm offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

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The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney – Employment/Labor; Assistant City Attorney – Municipal Affairs; Assistant City Attorney – EHD – Air Quality. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

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The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). These positions are located in the Carlsbad and Roswell offices. Please send resume to Dianna Luce, District Attorney, 100 N Love Street, Suite 2, Lovington, NM 88260 or email to 5thDA@da.state.nm.us

Associate Attorney

Quinones Law Firm LLC, a well-established defense firm in search of a full-time associate attorney with 0-5 years' experience, preferably with current or past judicial clerkship experience. Primary practice in general defense litigation (employment law, civil rights, tort law). Please send resume to quinoneslaw@cybermesa.com

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Managing Attorney

DNA-People's Legal Services is a non-profit law firm providing high quality legal services to persons living in poverty on the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of Northern Arizona, Northwest New Mexico, and Southern Utah. DNA is seeking to hire a Managing Attorney (State Licensed) for our Farmington, New Mexico office. The Farmington office Managing Attorney must be a graduate of an accredited law school, and must also be a member of the New Mexico Bar or able to gain admission to the New Mexico bar within one year by motion or reciprocity. Preference will be given to a state licensed attorney who is also licensed to practice law in Navajo, Hopi, or Jicarilla Apache Tribal Court. Preference is given to qualified Navajo and other Native American applicants. For a full position description and Employment Application go to: <https://dnalegalservices.org/career-opportunities-2/>. Submit an Employment Application, Resume, Cover Letter, Transcripts (if applicant graduated within the last two years) and Writing Sample (Attorney applicants only) to Email: HResources@dnalegalservices.org | Direct: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted)

Request For Proposal – Guardian Ad Litem Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual practicing attorney to provide Guardian ad litem services in cases involving child or adult neglect or abuse. Reply by October 14, 2022. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office is seeking applicants for an Assistant Trial Attorney, Trial Attorney and Senior Trial Prosecutor. Senior Trial Attorney position and Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; computer skills; audio visual and office systems; ability to work effectively with other criminal justice agencies; ability to communicate effectively; ability to re-search/analyze information and situations. Assistant Trial Attorney position is an entry level position and requires basic knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations, ability to draft legal documents; ability to work effectively with other criminal justice agencies. These positions are open to all persons who have knowledge in criminal law and who are in good standing with the New Mexico Bar or any other State bar. The McKinley County District Attorney's Office provides regular court-room practice and a supportive and collegial work environment. Salaries are negotiable based on experience. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to Bmartin@da.state.nm.us. Position to commence immediately and will remain opened until filled.

Personnel Hearing Officer

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at: <https://cabq.bonfirehub.com/portal/?tab=openOpportunities> Proposals are due no later than January 4, 2023 @ 4:00pm Local Time.

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Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. The candidate must have at least 3 years of experience relevant to civil litigation, and must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to sor@sutinfirm.com.

Request For Proposal – Defense Legal Services

Pueblo of Laguna seeks proposal from any law firm or individual practicing attorney to provide legal services for adult criminal defense or representation of juveniles in delinquency proceedings when there is conflict of interest or unavailability of regular defender. Reply by October 14, 2022. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

The Office of the Second Judicial District Attorney

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for Assistant Trial Attorney, Trial Attorney, Senior Trial Attorney and Deputy District Attorney positions. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. Attorneys must be licensed to practice law in the State of NM or be able to obtain a limited law license. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a disability. Please submit resumes to: <https://berncoda.com/careers/>

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Plaintiffs' Civil Litigation Firm seeks Associate Attorney for Las Vegas and Mora, New Mexico Offices. Contact Brian Hardee at 832-214-4920 or via email at bhardee@robinscloud.com.

Attorney with 2-5 Years' Experience

Harrison, Hart & Davis, LLC, an Albuquerque-based law firm focusing on trials and appeals in wrongful death, class action, civil rights, and criminal defense cases, seeks an associate attorney with 2-5 years experience. Familiarity with federal court preferred. Judicial clerkship favored. We will also consider applications from more experienced attorneys looking to join our growing practice. We offer a competitive salary and benefits, including employer-paid health insurance, 401(k), and profit sharing. Applications should be submitted to nick@harrisonhartlaw.com, and must include a resume and at least one writing sample.

Assistant Computer Systems Administrator – Albuquerque 2022-08

THE FEDERAL PUBLIC DEFENDER for the District of New Mexico is accepting applications for the position of Assistant Computer Systems Administrator. This position will be located in the Albuquerque office. The Federal Defender organization operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, to provide defense services in federal criminal cases and related matters by appointment from the court. Requirements: Must be a high school graduate or equivalent. A bachelor's degree from an accredited college or university with concentration in computer or management information systems is desired, but not required. The ideal candidate will have experience in a law firm or with litigation support and software programs. Experience with Microsoft Server environments is highly preferred. Must have strong communication and organizational skills. Three years of technical experience with an emphasis in user support and training is required, along with experience with Microsoft Office and Windows 10-11. Experience installing and repairing automation hardware, software, and basic network administration experience is required. Experience with system and security log management is preferred. Extensive experience with word processing applications such as Microsoft Word. Experience supporting telephone and voice-mail systems is desired but not required. Candidate must be highly motivated, extremely detail oriented, and work well with a team. Duties include but are not limited to: Providing assistance to and receiving technical guidance from the Computer Systems Administrator (CSA); providing specialized and routine user support services including training, resolving hardware, software, peripheral equipment, and data communications systems problems; assisting with the installation, testing and user training on new and updated computer equipment and software; tracing and identifying sources of system failures and errors; security monitoring; perform systems maintenance

activities; conducting audits and evaluation of automated systems and existing software applications; assisting staff attorneys and investigators with the preparation of matters for trial using PC-based automation applications, and other types of litigation support. May also be responsible for keeping inventory of computer equipment or other office property, tracking cyclical replacement information, and discovery processing. Other duties as assigned. The ACSA reports directly to the CSA in Las Cruces and the Administrative Officer in Albuquerque. Periodic reports of work activities and regular meetings with supervisors to establish priorities for the office will be required. Regular travel may be required for training, to provide backup support, and to provide assistance with automation-related case preparation work. At least one week per year of travel is required to attend an annual CSA/ACSA training conference. Conditions of Employment: This is a high-sensitive position and requires a full-blown background check. Appointment to the position is contingent upon the successful completion of this background check and/or investigation, including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will" and do not carry the tenure rights of the competitive Civil Service. You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. The starting salary for the position falls within a range of \$61,226 (IT-JSP-9, Step 1) to \$80,005 (JSP-12, Step 1). The salary of the successful applicant will be commensurate with the person's qualifications and experience. Salary is payable only by Electronic Funds Transfer (direct deposit). How to Apply: In one PDF document, please e-mail your resumé with cover letter and 3 references to: Michelle Dworak, Administrative Officer; FDNM-HR@fd.org. Reference 2022-08 in the subject. No phone calls please. Applications must be received by October 17, 2022. The Federal Public Defender is an equal-opportunity employer. Position is subject to the availability of funding.

Attorney Associate (FT-At Will)

#10102478

Center For Self Help and Dispute Resolution Foreclosure Settlement Program

The Second Judicial District Court is accepting applications for a Full Time At Will Attorney Associate. This position will be assigned to the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, Managing Attorney, and upper level Court management. The Attorney Associate will facilitate settlement facilitation conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting of statistical data to Court management. The majority of communication will take place via telephone and email, with occasional in-person or virtual settlement facilitations. The Attorney Associate is independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associate will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law, or as a law clerk. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$45,442 hourly, plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at www.nmcourts.gov. Prospectively, the New Mexico Judicial Branch is requiring full vaccination status as a condition of employment. CLOSSES: November 9, 2022 at 5:00 p.m.

Legal Assistant – Albuquerque 2022-07

The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Legal Assistant in the Albuquerque office. The federal defender organization operates under the Criminal Justice Act, 18 U.S.C. §3006A, to provide criminal defense and related help in federal courts. More than one position may be filled from this posting.

Job Description: The Legal Assistant performs tasks such as the following: Performs the functions of a Legal Assistant to Assistant Defenders utilizing advanced knowledge of legal terminology, Word and information processing software. Understands district and circuit court rules and protocols. Edits and proofreads initial drafts, transcribes dictation, performs cite checking and assembles copies with attachments for filing and mailing. Responsible for electronic filing of pleadings; At times may receive, screen, and refer telephone and in-person callers. Answers general inquiries from knowledge of the defender organization's activities and program operations and obtains information from others as requested by the Assistant Defender(s); Screens incoming mail and handles some routine matters as authorized. Routes mail to appropriate destinations. Reviews outgoing mail for accuracy. Maintains correspondence control records; Prepares correspondence by either drafting from general instructions or typing in prescribed format. Prepares memoranda for signature by the Assistant Defender(s); Maintains calendars for the Assistant Defender(s), setting appointments as authorized. Arranges meetings and conferences, informing participants of date, time and location of meeting. Reminds the Assistant Defender(s) of appointments and commitments; Organizes case files for Assistant Defender(s) and is responsible for other case management functions as assigned, which may include: opening and closing files, recording future court appearances on the office master calendar and the personal calendars of Assistant Defender(s), and notifying clients of the dates and times of court appearances and appointments with the Assistant Defender(s) and defense experts.

Experience Requirements: The ideal candidate will have a general understanding of the following: Office confidentiality issues, such as attorney/client privilege; The ability to analyze and apply relevant policies and procedures to office operations; Exercise good judgment; Have a general knowledge of office protocols and secretarial processes; Analyze and recommend practical solutions; Be proficient in Microsoft Word and Adobe Acrobat; Have the ability to communicate effectively with assigned attorneys, other staff, clients, court agency personnel, and the public; Have an interest in indigent criminal defense; Must possess excellent communication and interpersonal skills; Be self-motivated while also

excelling in a fast-paced team environment; Spanish fluency is a plus. Minimum qualifications are high school graduate or equivalent and at least three years legal secretary experience, federal criminal experience preferred. Starting salary ranges from a JSP-6 to JSP-8, currently yielding \$40,588 to \$49,950 annually depending on experience. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters.

Application Information: In one PDF document, please submit a statement of interest, resume and three references to: Michelle Dworak, Administrative Officer; FDNM-HR@fd.org; Reference 2022-07 in the subject. Applications must be received by October 17, 2022. Position(s) will remain open until filled and is subject to the availability of funding. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Associate Attorney

The firm of MYNATT MARTÍNEZ SPRINGER P.C. is looking for associates. Our practice focuses primarily on the defense of public entities and their employees but runs the gamut on all civil matters. The pay and benefits are competitive, and the billable hours are manageable. We are located in the City of Las Cruces, sometimes known as the Paris of the Rio Grande. Here, for the price of a small hovel in Santa Fe, you can purchase a moderate-sized mansion. The weather is beautiful, the food is spicy (we are right next to Hatch after all), the crime is low (looking at you Albuquerque), and the sunsets are stunning. If you are interested in making a change, email us at rd@mmslawpc.com.

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney – Employment/Labor; Assistant City Attorney – Municipal Affairs; Assistant City Attorney – EHD – Air Quality; Assistant City Attorney – Property & Finance. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

Office of the State Engineer Attorney III (Advanced) Positions

The Office of the State Engineer Litigation and Adjudication Program seeks to fill multiple Attorney III (Advanced) positions. The New Mexico State Engineer supervises the appropriation, measurement, and distribution of New Mexico's surface water and groundwater. Experience with New Mexico water law is preferred but not required. The duties of each position vary but may include prosecution of water rights adjudication suits to determine the validity and elements of water rights in a particular stream system; administrative and district court litigation arising out of applications to appropriate water or change water rights; or negotiation or litigation to resolve the water rights claims of Indian Tribes, Pueblos, and Nations. These tasks involve providing legal advice, litigation (at all stages, from discovery to appeal), negotiation, mediation, and drafting of settlement agreements and State Engineer orders, guidelines, or regulations. OSE attorneys must work closely with experts such as engineers, hydrologists, historians, and hydrographic survey specialists. Please apply at <https://careers.share.state.nm.us> and search for Job Opening ID 118186. Please submit cover letter, resume and writing sample with your application.

Assistant Federal Public Defender – Las Cruces 2022-10

The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Assistant Federal Public Defender in the Las Cruces office. The federal defender organization operates under the Criminal Justice Act, 18 U.S.C. §3006A, to provide criminal defense and related help in federal courts. Job Description/Qualifications: This position is for a licensed attorney with three years minimum criminal trial experience preferred. Other equally relevant experience will be considered. Successful applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Responsibilities include, but are not limited to: managing an extensive caseload, developing litigation strategies, preparing pleadings, appearing in court at all stages of litigation, and meeting with clients, experts, witnesses, family members and others. Applicants must possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court and other agency personnel. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Requirements: Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, by the time of entrance on duty. The selected candidate will be required to obtain admission to the New Mexico State Bar and the Supreme Court within the first year of employment. Applicants must be eligible to work for the United States. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is dependent upon qualifications and experience, and is equivalent to salaries of Assistant U.S. Attorneys with similar qualifications and experience. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such

prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Application Information: In one PDF document, please submit a statement of interest and resume describing your trial and appellate work, with three references to: Margaret A. Katze, Federal Public Defender; FDNM-HR@fd.org; Reference 2022-10 in the subject. Applications must be received by November 14, 2022. Writing samples will be required only from those selected for interview. Position(s) will remain open until filled and is subject to the availability of funding. More than one position may be filled with this advertisement. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Civil Litigation Defense Firm Seeking Associate and Senior Associate Attorneys

Ray | Pena | McChristian, PC seeks both new attorneys and attorneys with 3+ years of experience to join its Albuquerque office either as Associates or Senior Associates on a Shareholder track. RPM is an AV rated, regional civil defense firm with offices in Texas and New Mexico handling predominantly defense matters for businesses, insurers and government agencies. If you're a seasoned NM lawyer and have clients to bring, we have the infrastructure to grow your practice the right way. And if you're a new or young lawyer we also have plenty of work to take your skills to the next level. RPM offers a highly competitive compensation package along with a great office environment in Uptown ABQ and a team of excellent legal support professionals. Email your resume and a letter of interest to cray@raylaw.com.

Attorney (7+ years)

Well established (17+ years) civil defense firm is seeking an experienced attorney with 7+ years litigation with prospects of becoming a shareholder. We are flexible, team oriented and committed to doing excellent work for our clients. We have long standing clients and handle interesting matters, including in the areas of labor/employment, construction, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense, and insurance coverage. We are looking for a team player with a solid work record and a strong work ethic. Excellent pay and benefits and opportunities for bonuses. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to Conklin, Woodcock & Ziegler, P.C. at: jobs@conklinfirm.com.

New Mexico Medical Board Executive Director Position

DESCRIPTION: The New Mexico Medical Board (Board) is the state agency responsible for the regulation and licensing of medical doctors (physicians), physician assistants, anesthesiologist assistants, genetic counselors, polysomnographic technologists, naprapaths and naturopaths. The Executive Director's primary responsibilities are to manage the Board's operations that includes a total of nineteen (19) staff and an annual budget of over \$2,500,000. The Director oversees licensing, compliance and investigations of Medical Professionals licensed in the State of New Mexico and provides direction to the agency staff. This position is responsible for recommending and drafting rules, policy and legislation as it relates to the Medical Board. The incumbent serves as the representative of the Medical Board to all local, state and national organizations. The incumbent shall have a strong knowledge of regulatory processes, to include the licensing, disciplining and ensuring compliance of medical professional rules and regulations; is familiar with legislative and educational processes related to the medical profession; and has a strong knowledge of the state and federal laws/regulations applicable to the medical profession. Has the ability to provide strong and ethical leadership and governance for the Board; possess strong communication, interpersonal and management skills; exercise sound judgment; and appropriately advise the Board on matters related to the regulation of the medical profession in New Mexico. QUALIFICATIONS: Educational requirements: Master's Degree in Public Administration, Public Health, Hospital Administration, Healthcare Administration or Management, and/or a Juris Doctorate. Experience Requirements: Ten (10) years executive level management experience in a medical or legal field which must include the oversight of credentialing of professionals, experience must also include working in the legislative process (recommending, drafting and reviewing legislation). APPLICATION PROCESS: In order to be considered for this position, qualified candidates should send a resume, CV and cover letter to: Gayle Mascarenas, New Mexico Medical Board, 2055 S. Pacheco Street, Building 400, Santa Fe, NM 87505; Phone (505) 476-7244; Email: Gayle.Mascarenas1@state.nm.us

Office Manager with Paralegal Experience

Small law firm looking to hire an office manager with paralegal experience. The ideal candidate will be responsible for full cycle bookkeeping duties, preparation of bank reconciliations, payroll, accounts payable, accounts receivable, tax filings (GRT, installments), and general office assistance as required. This role is key support to the entire office functions and is the secondary point of customer contact; providing ongoing customer service through problem solving, analyzing challenges, providing solutions, and completing jobs in a timely manner. If interested, email your resume to info@vozhlaw.com

Legal Assistant Supervisor – 13th Judicial District Attorney

The Sandoval County Office of the 13th Judicial District Attorney in Bernalillo, New Mexico has an opening for a Supervising Legal Assistant. This position requires extensive knowledge of the criminal justice system and office organization and tasks such as trial preparation, maintenance of calendars, customer service and general office administrative functions. The position requires the supervision and training of a staff of 10-13 legal assistants. Preferred qualifications include at least 3 years working in a District Attorney's Office or related Criminal Justice organization. Advanced knowledge of the Case Management System (CMS) and supervisory experience. Salary commensurate with experience within the FY2023 New Mexico District Attorney Classification Salary Schedule. Please apply @ <https://www.13th.nmdas.com/> where you will have access to our application. Email applications to kfajardo@da.state.nm.us

Assistant Santa Fe County Attorney I and II

Santa Fe County is soliciting applicants for an Assistant County Attorney (ACA) I and II. The successful candidate will focus their practice in areas assigned based upon experience, need, and interest. The ideal candidates are those with strong analytical, research, communication, and interpersonal skills, who enjoy working hard in a collaborative, fast-paced environment on diverse and topical issues that directly impact the community. The salary ranges for the positions are \$28,8461-\$38,4134 and \$38,4615- \$45,6730/hr. respectively, depending upon qualifications and budget availability. Applicants must be licensed to practice law in the State of New Mexico or obtain a limited license prior to the start of employment. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

Attorney for Litigation and Adjudication Program

The Office of the State Engineer seeks to hire an Attorney for its Litigation and Adjudication Program, where the incumbent will represent the State of New Mexico in the Lower Rio Grande water rights adjudication and work on other legal matters for the agency as needed. Water rights adjudications are civil lawsuits to determine by court decree existing water rights, and the position serves the important role of helping with the management of the public's water resources affected by climate change. The position is in Santa Fe. Water or natural resources law experience is desired. Civil litigation or trial experience is a plus. Must have a willingness to learn. The position requires a Juris Doctorate from an accredited law school, a license to practice law in New Mexico or otherwise qualified to practice, and 2 years of legal practice. For more information on limited practice licenses, please visit <http://nmexam.org/limited-license/>. Must apply online at <http://www.spo.state.nm.us/>. The OSE/ISC is an Equal Opportunity Employer.

Experienced Legal Secretary

Peifer, Hanson, Mullins & Baker, P.A. is hiring a full time experienced legal secretary. The successful candidate must be a detail-oriented team player with strong organization and motivational skills. Salary DOE. Profit-sharing, health insurance, three weeks leave first year, and overtime available. Please send resume, references and salary requirements via email to Shannon Hidalgo at shidalgo@peiferlaw.com. No phone calls please.

Experienced Litigation Paralegal

The Law Offices of Erika E. Anderson is looking for an experienced litigation paralegal for a very busy and fast-paced firm of four (4) attorneys. The candidate must be highly motivated and well organized, pay close attention to detail, be willing to take on multiple responsibilities, and be highly skilled when it comes to both computer software and written communication. This is a wonderful opportunity to join an incredible team that works hard and is rewarded for hard work! The position offers a great working environment, competitive salary, and a generous benefits package including medical coverage, 401K, paid holidays, and over 2 weeks of paid time off. If interested, please send a resume to erika@eandersonlaw.com.

Paralegal

Peifer, Hanson, Mullins & Baker, P.A., is seeking an experienced commercial litigation paralegal. The successful candidate must be a detail-oriented, team player with strong organizational and writing skills. Experience in database and document management preferred. Please send resume, references and salary requirements via email to Shannon Hidalgo at shidalgo@peiferlaw.com.

Legal Secretary

Downtown firm looking for legal secretary who is a team player with a great attitude. Top dollar wages to start with a sign-up bonus of \$1,000 after 30 days. Duties include calendaring, scheduling, preparation of pleadings and client interaction. Benefits include health, dental, disability, 401K, and parking. Contact NMLegalOffice15@gmail.com with resume and to set up interview.

Paralegal

Personal Injury/Civil litigation firm in the Journal Center area is seeking a Paralegal with minimum of 5+ years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, and online research, is technologically adept and familiar with use of electronic databases and legal-use software. Qualified candidates must be organized and detail-oriented, with excellent computer and word processing skills and the ability to multi-task and work independently. Experience in summarizing medical records is a plus. Salary commensurate with experience. Please send resume with references and a writing sample to paralegal3.bleuslaw@gmail.com

Paralegal/Legal Assistant

Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be friendly, honest, highly motivated, well organized, detail oriented, proficient with computers and possess excellent verbal and written skills. Duties include requesting & reviewing medical records, send out Letter of Protection & Letter of Representation, opening claims with insurance companies and preparing demand packages as well as meeting with clients. We are searching for an exceptional individual with top level skills. We offer a retirement plan funded by the firm, health insurance, paid vacation, and sick leave. Salary and bonuses are commensurate with experience. Please submit your cover letter and resume to santafelawoffice2@gmail.com

Legal Secretary

AV rated insurance defense firm seeks full-time legal assistant with five plus years' experience in insurance defense and civil litigation. Position requires a team player with strong word processing and organizational skills. Proficiency with Word, knowledge of court systems and superior clerical skills are required. Should be skilled, attentive to detail and accurate with a Minimum typing speed of 75 wpm. Excellent work environment, salary, private pension, and full benefits. Please submit resume to mvelasquez@rileynmlaw.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

Paralegal

AV Rated insurance defense firm needs full-time paralegal. Seeking individual with minimum of five years' experience as a paralegal in insurance defense. Excellent work environment, salary private pension, and full benefits. Please submit resume and references to Office Manager, 3880 Osuna Rd., NE, Albuquerque, NM 87109 or email to mvelasquez@rileynmlaw.com.

Paralegal

Plaintiffs' Civil Litigation Firm seeks Paralegal for Las Vegas and Mora, New Mexico Offices. Contact Brian Hardee at 832-214-4920 or via email at bhardee@robinscloud.com.

Office Space**Sun Valley Suites – All Inclusive North Valley Office Suites**

Locally owned and operated. Move-in ready suite ideal for a solo attorney. Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Visit our web-site www.sunvalleyabq.com for more details or call Jaclyn Armijo at 505-343-2016.

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Virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead and appear more professional. 505-796-9600/ officealternatives.com.

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Single Office Space available in downtown Santa Fe. Starting at \$750.00/month. Walking distance to State-Supreme Courts, Federal Court, City, County and State Offices. Contact C.I.R. Properties, LLC at 505-920-5804.

Santa Fe Office Space

Single office in professional suite with conference rooms. Share with three other attorneys. Quiet setting in converted residential structure. Walking distance to the Plaza. \$380/month + utilities. Available November 1st. info@tierralaw.com

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Private office suite in law building for rent. Includes separate clerical common area, access to conference room, and kitchenette. Only a few blocks from all court houses on Lomas. Contact Kim @ 505-331-3044 or email baiamonte4301@gmail.com

Services**Engineering Forensics and Investigation Services**

Expert Witness, Engineering Forensics and Investigation Services: I can get to the bottom of your engineering investigation and explain it, so everyone can understand. Call/v-mail/text/email today, Prof. Anthony Menicucci PhD-Engr., forensics engineer with experience testifying in Federal & State court. anthony@armatech.us, 505-249-2075 for more info.

Miscellaneous**Want to Purchase**

Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201

2022 Bar Bulletin Publishing and Submission Schedule

The Bar Bulletin publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by 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 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, three weeks prior to publication.**

**For more advertising information, contact:
Marcia C. Ulibarri at 505-797-6058 or
email marcia.ulibarri@sbnm.org**

The publication schedule can be found at
www.sbnm.org

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To take advantage of this unique market, get some uniquely qualified help.

The New Mexico real estate market has never been like this. Ever. So more than ever, you need someone who can help you take full advantage: a member of New Mexico Select. Their recent achievements qualified them for membership, and proves their ability to help you achieve your real estate goals.

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 Greg Lobbereg 505-269-4734	 Jan & James DeMay 505-450-7635/306-1710	 Janie G. Rowe 505-301-9431	 J Gilmore Daniels & K Gilmore Mosley 505-259-0502 / 505-483-0680	 Jeanne Kuriyan 505-249-7666	 Jennifer Wilson 505-440-1256	 Jennise Phillips 505-331-2288	 Jeremy Navarro 505-377-4070	 Jill Levin 505-385-7714
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2022 State Bar of New Mexico

MEMBER *appreciation* WEEK

October 17–21

Mark your calendars for our first Member Appreciation Week! We are excited to bring you a week of free resources, prizes and CLE credits! Visit www.sbnm.org/22memberappreciation to learn more!

MEMBERSHIP MONDAY

Monday, Oct. 17

Electronic newsletter that will include articles from the Professional Development Program, SBNM is Hear Podcast and professional development raffle prizes!

TECHNOLOGY TUESDAY

Tuesday, Oct. 18

Electronic newsletter that will include articles from the Professional Development Program and highlights from the Member Benefits program!

WELLNESS WEDNESDAY

Wednesday, Oct. 19

Electronic newsletter that will include an article from the Lawyers Assistance Program, #fit2practice event and well-being raffle prizes!

THROWBACK THURSDAY

Thursday, Oct. 20

Electronic newsletter that will include an article from the Equity in Justice Program, Senior Lawyers Oral History highlights, and recognition of our 25 and 50 year attorneys!

FIESTA FRIDAY

Friday, Oct. 21

FREE CLE: 2 – 4 p.m.

Networking/Reception: 4 – 6 p.m.

Join us for a **FREE** CLE presentation and reception! The CLE presentation will be available in person and via webcast. The State Bar Center will host up to 150 in-person attendees. All are welcome to attend the post-presentation networking/reception!



STUART TEICHER

The Tech Never Stops • 2.0 EP

Why does Tik Tok matter to lawyers? Can deep fakes sink our clients? The legal issues with the latest trends in technology impact the world of legal ethics in ways that you might not have considered. In this program national speaker Stuart Teicher (“the CLE Performer”) talks about all of the latest dangers, including:

- Confidentiality and Rule 1.6
- Deception and Rule 8.4
- Supervision, Rules 5.1 and 5.3, and more