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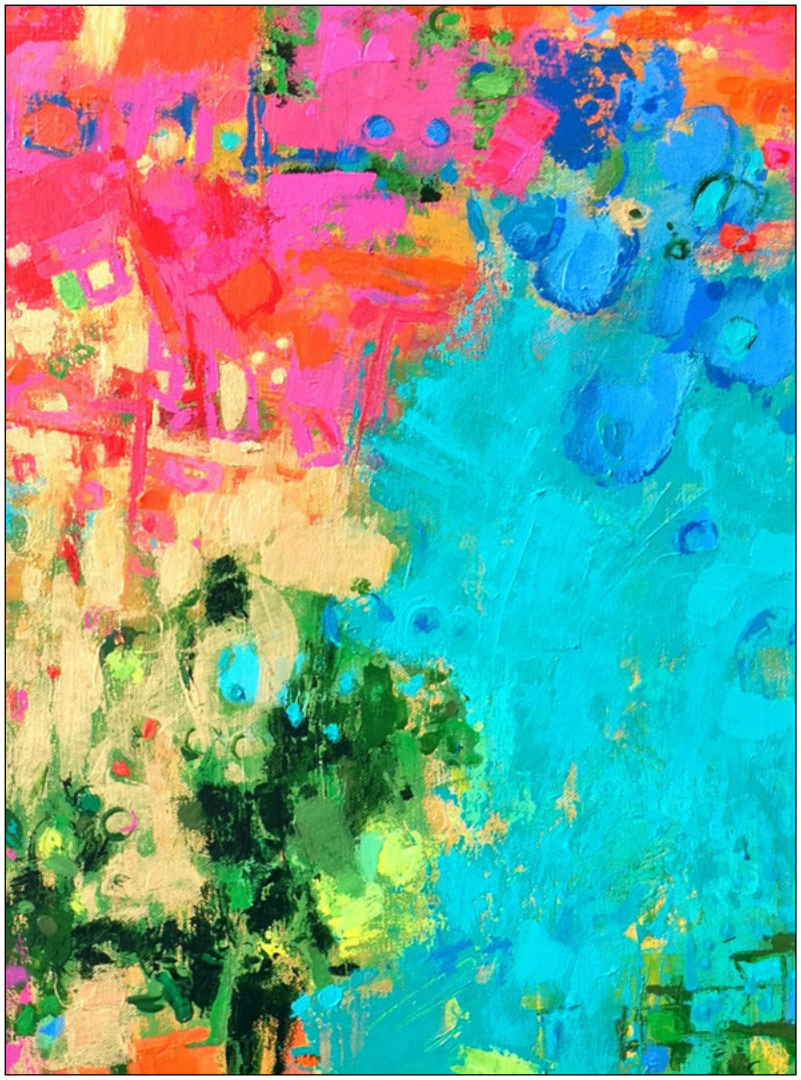

Quoth The Peacock, by Janet Bothne (see page 3) www.janetbothne.com

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Special Insert
Disciplinary Board of the New Mexico Supreme Court Attorney Newsletter

Top 10 reasons to sail the St. Lawrence River with us on the ms Veendam:

10. Spend an extra day or two in Montreal or Boston.
9. Visit the historic and beautiful site of Anne of Green Gables.
8. Explore the St. Lawrence River, Atlantic Seaboard, and 5 interesting ports of call.
7. CLE classes are conducted in a relaxed atmosphere on a luxury liner.
6. See where Alexander Graham Bell invented the telephone.
5. You CAN master the French "R."
4. Obtain all CLE credits while taking a vacation.
3. Veendam is a damn fun word to say!
2. Mingle with colleagues and State Bar President Scotty Holloman.
1. It's like visiting France without crossing the Atlantic!

CLE *at* Sea 2017

7-Day Canada and NE Discovery • July 1-8

Departs Montreal, Quebec, Canada | Arrives Boston

For more information, visit **www.nmbar.org/CLEatSea**

Reserve now! Group offer expires on March 31*

STATE BAR of NEW MEXICO
CENTER FOR LEGAL EDUCATION

STATE BAR of NEW MEXICO

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Meetings

March

31
Immigration Law Section Board,
Noon, teleconference

April

2
Young Lawyers Division Board,
10 a.m., State Bar Center

4
Bankruptcy Law Section Board
Noon, U.S. Bankruptcy Court

4
Health Law Section Board
9 a.m., teleconference

5
Employment and Labor Law Section Board, noon, State Bar Center

7
Criminal Law Section Board
Noon, Kelley & Boone, Albuquerque

11
Appellate Practice Section Board
Noon, teleconference

12
Taxation Section Board
11 a.m., teleconference

Workshops and Legal Clinics

April

1
Civil Legal Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

5
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

7
Civil Legal Clinic
10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

8
Legal Fair
10 a.m.–1 p.m., Beatrice Martinez Senior Center, Española 505-814-5033

14
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

19
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

About Cover Image and Artist: Janet Bothne has been passionate about the power of color throughout her life, calling intense color her "natural anti-depressant." Born near Boston, Bothne embraced art at a young age, winning awards and scholarships that brought her to study fine art at the University of Massachusetts at Amherst and the Fuller Museum School and later at UCLA. She's exhibited in numerous shows, including venues such as Los Angeles County Museum's Sales & Rental Gallery and The Santa Monica Art Museum. Her works have become favorites of set designers on television programs such as "Grey's Anatomy," "The Mentalist" and "Better Call Saul." Bothne relocated to New Mexico in 2013 and now works and teaches from her studio in Los Ranchos. For more of Bothne's work, visit www.janetbothne.com.

Notices

Court News

New Mexico Supreme Court

Proposed Amendments to Rules of Practice and Procedure

In accordance with the Supreme Court's annual rulemaking process under Rule 23 106.1 NMRA, which includes an annual publication of proposed rule amendments for public comment every spring, the following Supreme Court Committees are proposing to recommend for the Supreme Court's consideration proposed amendments to the rules of practice and procedure summarized below. If you would like to view and comment on the proposed amendments summarized in the March 8 issue of the *Bar Bulletin* (Vol. 56, No. 10) before they are submitted to the Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's website at supremecourt.nmcourts.gov/open-for-comment.aspx, by email to nmsupremecourtclerk@nmcourts.gov, by fax to 505-827-4837, or by mail to Joey D. Moya, Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, New Mexico 87504-0848. Comments must be received by the Clerk on or before April 5 to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Board of Legal Specialization

Comments Solicited

The following attorney is applying for certification as a specialist in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 19-101 through 19-312 NMRA, which provide that the names of those seeking to qualify shall be released for publication. Further, attorneys and others are encouraged to comment upon any of the applicant's qualifications within 30 days after the publication of this notice. Address comments to New Mexico Board of Legal Specialization, PO Box 93070, Albuquerque, NM 87199.

Consumer Bankruptcy Law
Ronald E. Holmes

Secured Odyssey Public Access

New Registration Required for SOPA System

The Supreme Court has approved the New Mexico Judiciary Case Access Policy for Online Court Records to expand online access to court records for attorneys and their staff, governmental justice partners, and the press through the Secured Odyssey Public Access webiste. To register as an attorney, visit www.nmcourts.gov/public-access-help.aspx and choose Public Access to Court Records > Tier 1 SOPA Applications > Attorney Application.

Sixth Judicial District Court

Announcement of Vacancy

A vacancy on the Sixth Judicial District Court will exist as of March 27 due to the retirement of Hon. H.R. Quintero effective March 24. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Alfred Mathewson, chair of the Sixth Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., April 13. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Sixth Judicial District Court Judicial Nominating Commission will meet beginning at 9 a.m. on April 27 to interview applicants for the position in Silver City. The Commission meeting is open to the public and anyone who has comments will be heard.

Bernalillo County Metropolitan Court

Investiture Ceremony of Judge Christine E. Rodriguez

The judges and employees of the Bernalillo County Metropolitan Court invite members of the legal community and the public to attend the investiture of the Hon. Christine E. Rodriguez, Division II. The ceremony will be held at 5:15 p.m., April 6 , in the Bernalillo County Metropolitan Court Rotunda. Following the investiture, the reception will be held at the Slate Street Café, 515 Slate Avenue NW. Judges who wish to participate in the ceremony, should bring their robes and report to the 1st Floor Viewing Room by 5 p.m.

Professionalism Tip

With respect to my clients:

I will be courteous to and considerate of my client at all times.

State Bar News

Attorney Support Groups

- April 3, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- April 10, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- April 17, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Animal Law Section

Animal Talk: City of ABQ Trap, Neuter and Return Program

Join the Animal Law Section for a lively discussion of the legal issues arising out of the City of Albuquerque's Trap, Neuter and Return Program. The Animal Talk will be from noon-1 p.m., March 31, at the State Bar Center. The speakers for this event represented the parties in *Britton v. Bruin*, et al., decided by the New Mexico Court of Appeals on Feb. 22, 2016. Professor Marsha Baum of the UNM School of Law will moderate the discussion between A. Blair Dunn and Nicholas H. Bullock, the attorneys who represented the parties in *Britton v. Bruin*. Dunn, of Western Agriculture Resource and Business Advocates LLP, represented Petitioner-Appellant Marci Britton. Bullock, assistant city attorney for the City of Albuquerque, represented Respondent-Appellee City of Albuquerque. Contact Breanna Henley at bhenley@nmbar.org to indicate your attendance.

Board of Bar Commissioners

Appointment to DNA–People's Legal Services, Inc.

The Board of Bar Commissioners will make two appointments to the DNA–People's Legal Services, Inc., Board for two-year terms. Members interested in serving on the

Board should send a letter of interest and brief résumé by April 12 to Executive Director Joe Conte at jconte@nmbar.org or PO Box 92860, Albuquerque, NM 87199-2860.

Committee on Women and the Legal Profession

Professional Clothing Closet

Does your closet need spring cleaning? The Committee on Women seeks gently used, dry cleaned professional clothing donations for their professional clothing closet. Individuals wishing to donate to the closet may drop off donations at the West Law Firm, 40 First Plaza NW, Suite 735 in Albuquerque, during business hours or to Committee Co-chair Laura Castille at Cuddy & McCarthy, LLP, 7770 Jefferson NE, Suite 102 in Albuquerque. Individuals who want to look for a suit can stop by the West Law Firm during business hours or call 505-243-4040 to set up a time to visit the closet.

UNM

Law Library

Hours Through May 13

Building & Circulation	
Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.

Mexican American Law Student Association

Annual Fighting for Justice Banquet

Join the Mexican American Law Student Association for the 22nd Annual Fighting for Justice Banquet honoring Emerita Professor Eileen Gauna. Executive Director of Enlace Comunitario Antoinette Sedillo-Lopez will be the keynote speaker for the evening. The event will start at 6 p.m., April 14, at Hotel Albuquerque in Old Town Albuquerque and will feature a cocktail hour, live music and a silent auction. To purchase tickets or sponsorship packages visit www.malsanm.org or contact MALSA President Mish Rosete at mishrosete@gmail.com.

Other Bars

Albuquerque Lawyers Club

April Luncheon Meeting

The Albuquerque Lawyers Club invites members of the legal community to its next lunch meeting featuring a panel discussion entitled "The Truth Underlying the Reporting on Guardianships/Conservatorships in New Mexico" led by Greg MacKenzie and including Judge Alan Malott, Ellen Leitzer and Mary Galvez. The meeting will be held at noon on April 5 at Seasons Rotisserie and Grill. For more information, contact Yasmin Dennig at ydennig@Sandia.gov or 505-844-3558.

New Mexico Criminal Defense

Trial Skills College

The New Mexico Criminal Defense Lawyers Association's highly popular Trial Skills College is back March 30–April 1 with a new case file and an incredible faculty lineup. Hear lectures and demonstrations by some of the best trial attorneys in the state, then move into small groups for focused practice and feedback. Only 35 seats available at this two-day intensive workshop, with some seats available to civil attorneys as well. Visit www.nmcdla.org to register, or call 505-992-0050 for more information.

Other News

New Mexico Chapter of the Federal Bar Association

An Amazing Time in the Supreme Court with Erwin Chemerinsky

The New Mexico Chapter of the Federal Bar Association is pleased to have Dean Erwin Chemerinsky return to Albuquerque. On March 31, Dean Chemerinsky will present his popular talk about the Supreme Court and its recent cases, "An Amazing Time in the Supreme Court." The talk will be presented at the Hotel Andaluz in downtown Albuquerque. The price is $75 for non-FBA members, $50 for FBA members, and $20 for law students. Check-in begins at 11:30 a.m., lunch begins at 11:45, and the CLE runs from 12:30 to 1:30. For more information, email nmfedbar@gmail.com.

New Mexico Christian Legal Aid

Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. Christian Legal Aid will be hosting a Training Seminar from noon–5 p.m. on April 21 at the State Bar Center. Join them for free lunch, 4 free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505610-8800 or email christianlegalaid@hotmail.com.

New Mexico Workers' Compensation Administration

New Judge Reassignment

Effective April 10, all pending and administratively closed cases before the New Mexico Workers' Compensation Administration previously assigned to Judge Terry Kramer will be reassigned to newly appointed Judge Rachel Bayless. Parties who have not yet exercised their right to challenge or excuse will have 10 days from April 10, to challenge or excuse Judge Bayless pursuant to N.M.A.C. Rule 11.4.4.13. Questions about case assignments should be directed to WCA Clerk of the Court Heather Jordan at 505-841-6028.

Volunteer Attorney Program

CLE for Volunteer Attorneys

The Volunteer Attorney Program and Justice for Families Project are holding a CLE for volunteer attorneys (1.5 G) from 3:30–5 p.m. on April 13 at New Mexico Legal Aid, 301 Gold Ave. SW, Albuquerque. This CLE will also be broadcasted live via Skype. The CLE will be presented by Grace Allison, Andrew H. Weinstein, and Katie Withem. The seminar is free for VAP volunteers and attorneys willing to sign up to take a VAP/JFP case. Donations welcome from non-volunteers ($25 or more per person suggested). For more information or to register, contact Katie Withem at 505-768-6134 or katiew@nmlegalaid.org.

Invitation to Participate in Survey: Law Practice in New Mexico

The Board of Bar Commissioners of the State Bar of New Mexico has contracted with Research & Polling to conduct an Economics of Law Practice in New Mexico Survey. By now you should have received an e-mail from Research & Polling (emails went out to attorney members the week of March 6) with a link and password to the survey. The results from the survey will provide members of the State Bar with a detailed analysis of information on the types of law practices and the compensation, in addition to perceived barriers to practicing law, in New Mexico. It will gauge whether various legal services are charged to clients, including legal research, duplicating, support staff/paralegal time, travel, etc. The survey will also assist members to better understand the economics of law practice, activities, services, time keeping and billing methods in New Mexico. We encourage you to complete the survey; everyone who completes the survey will have an opportunity to be entered into a drawing for a $200 or $100 gift card.

Please be assured that no one with the State Bar will have access to any individual results, so you will remain anonymous and your individual results will remain confidential. The survey instrument is completely confidential; however, participation is crucial to ensure the thoroughness and accuracy of the study. Upon completion of the survey, we will publish the summary results on the State Bar website so that the entire membership will have access.

STATE BAR of NEW MEXICO

2017 Annual Meeting– Bench & Bar Conference

Call for Nominations

State Bar of New Mexico 2017 Annual Awards

Nominations are being accepted for the 2017 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2016 or 2017. The awards will be presented July 28 during the 2017 Annual Meeting—Bench and Bar Conference at the Inn of the Mountains Gods in Mescalero. All awards are limited to one recipient per year, whether living or deceased. *Previous recipients for the past five years are listed below. To view the full list of previous recipients, visit www.nmbar.org/Awards.*

Distinguished Bar Service Award-Lawyer

Recognizes attorneys who have provided valuable service and contributions to the legal profession and the State Bar of New Mexico over a significant period of time.

Previous recipients: Hannah B. Best, Jeffrey H. Albright, Carol Skiba, Ian Bezpalko, John D. Robb Jr.

Distinguished Bar Service Award–Nonlawyer

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

Previous recipients: Tina L. Kelbe, Kim Posich, Rear Admiral Jon Michael Barr (ret.), Hon. Buddy J. Hall, Sandra Bauman

Justice Pamela B. Minzner* Professionalism Award

Recognizes attorneys or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

Previous recipients: Arturo L. Jaramillo, S. Thomas Overstreet, Catherine T. Goldberg, Cas F. Tabor, Henry A. Kelly

*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

Outstanding Legal Organization or Program Award

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: Self Help Center at the Third Judicial District Court, Pegasus Legal Services for Children, Corinne Wolfe Children's Law Center, Divorce Options Workshop, United South Broadway Corp. Fair Lending Center

Outstanding Young Lawyer of the Year Award

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

Previous recipients: Denise M. Chanez, Tania S. Silva, Marshall J. Ray, Greg L. Gambill, Robert L. Lucero Jr.

Robert H. LaFollette* Pro Bono Award

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

Previous recipients: Billy K. Burgett, Robert M. Bristol, Erin A. Olson, Jared G. Kallunki, Alan Wainwright

*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

Seth D. Montgomery* Distinguished Judicial Service Award

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and bar; generally given to judges who have or soon will be retiring.

Previous recipients: Justice Richard C. Bosson (ret.), Hon. Cynthia A. Fry, Hon. Rozier E. Sanchez, Hon. Bruce D. Black, Justice Patricio M. Serna (ret.)

*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. **Please note that we will be preparing a video on the award recipients which will be presented at the awards reception, so please provide names and contact information for three or four individuals who would be willing to participate in the video project in the nomination letter.**

Deadline for Nominations: May 12

Legal Education

March

29 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Environmental Regulations/Oil and Gas Industry (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Fear Factor: How Good Lawyers Get Into Ethical Trouble (2016)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **BDITs: Beneficiary Defective Inheritor's Trusts—Reducing Taxes, Retaining Control**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

30 **2016 Trial Know-How! (The Reboot)**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Trial Skills College**
14.7 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org

30 **The U.S. District Court: Appealing Disability Denials (2015)**
3.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Professional Liability Insurance: What You Need to Know (2015)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **SALT: How State and Local Tax Impacts Major Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Ethics for Government Attorneys**
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **ABA YLD Mountain West States Regional Summit**
9.5 G, 3.5 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **The Trial Variety: Juries, Experts and Litigation (2015)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **Ethically Managing Your Law Practice (2016 Ethicspalooza)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **Living with Turmoil in the Oil Patch (2016)**
5.8 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

April

4 **Retail Leases: Drafting Tips and Negotiating Traps**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **All About Basis Planning for Trust and Estate Planners**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

6 **Basics of Adoption Law**
1.0 G
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038

7 **Advanced Attorney-Mediator Training**
5.2 G, 2.0 EP
Live Seminar, Santa Fe
Association of Attorney Mediators
www.attorney-mediators.org

11 **Add a Little Fiction to Your Legal Writing**
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

11 **H-1B Cap Subject Visa 2017: Exploring Key Issues, Trends and Alternatives**
2.0 G
Live Webcast
The Knowledge Group LLC
theknowledgegroup.org/event-homepage/?event_id=2154

13 **Representing Low Income Taxpayers Before the IRS**
1.5 G
Live Seminar, Albuquerque
New Mexico Legal Aid
505-814-5038

April

19 **Estate Planning and Elder Law**
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

19 **Examining the Excessive Cost of Lawyer Stress**
2.0 EP
Live Seminar, Albuquerque
TRT CLE
www.trtcle.com

21 **Ethics of Representing the Elderly**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Legal Aid Training Seminar**
4.0 G
Live Seminar, Albuquerque
New Mexico Christian Legal Aid
christianlegalaid@hotmail.com

26 **Landlord Tenant Law**
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

27 **Settlement Agreements in Employment Disputes and Litigation**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Annual Conference**
13.0 G
Live Seminar, Santa Fe
Transportation Lawyers Association
www.translaw.org

28 **Diversity Issues Ripped From the Headlines**
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

May

5 **32nd Annual Bankruptcy Year in Review (2017)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **Deposition Practice in Federal Cases (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **2016 Mock Meeting of the Ethics Advisory Committee**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **Lawyer Ethics and Client Development**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **Charitable Estate Planning—What Opportunities Am I Missing?**
2.5 G
Live Seminar, Santa Fe
St. Vincent Hospital Foundation
505-913-5209

9 **Undue Influence and Duress in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **Ethics of Co-Counsel and Referral Relationships**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Annual Estate Planning Update**
5.0 G, 1.0 EP
Live Seminar, Albuquerque
Wilcox Law Firm
www.wilcoxlawnm.com

19 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **NM DWI Cases: From the Initial Stop to Sentencing; Evaluating Your Case (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Human Trafficking (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Ethics in Discovery Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Drafting Gun Wills and Trusts—and Preventing Executor Liability**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Living with Turmoil in the Oil Patch: What It Means to New Mexico (2016)**
5.8 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **27th Annual Appellate Practice Institute (2016)**
6.4 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective March 17, 2017

Published Opinions

No. 34792	12th Jud Dist Lincoln CR-13-236, STATE v B TURNER (affirm)	3/14/2017

Unpublished Opinions

No. 35212	2nd Jud Dist Bernalillo CR-15-877, STATE v D CORDOVA (vacate and remand)	3/14/2017
No. 35819	3rd Jud Dist Dona Ana DM-10-474, C STEPHENS v C BAKER (affirm)	3/14/2017
No. 35248	3rd Jud Dist Dona Ana CR-14-400, STATE v L LOCKWOOD (affirm)	3/14/2017
No. 34571	2nd Jud Dist Bernalillo LR-14-35, STATE v A GARCIA (affirm)	3/15/2017
No. 35168	2nd Jud Dist Bernalillo CR-12-3474, STATE v W AINSWORTH (affirm)	3/16/2017
No. 35866	2nd Jud Dist Bernalillo CV-15-6836, F MONTANO v BOA (affirm)	3/16/2017

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective March 29, 2017

Pending Proposed Rule Changes Open for Comment:

See the special summary of proposed rule amendments published in the March 8, 2017, issue of the Bar Bulletin. *The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 5, 2017.*

Recently Approved Rule Changes Since Release of 2017 NMRA:

		Effective Date
Rules of Civil Procedure for the District Courts		
1-079	Public inspection and sealing of court records	03/31/2017
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
Rules of Civil Procedure for the Magistrate Courts		
2-112	Public inspection and sealing of court records	03/31/2017
Rules of Civil Procedure for the Metropolitan Courts		
3-112	Public inspection and sealing of court records	03/31/2017
Civil Forms		
4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
4-941	Petition to restore right to possess or receive a firearm or ammunition	03/31/2017
Rules of Criminal Procedure for the District Courts		
5-123	Public inspection and sealing of court records	03/31/2017
5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	03/31/2017
Rules of Criminal Procedure for the Magistrate Courts		
6-114	Public inspection and sealing of court records	03/31/2017
6-207	Bench warrants	04/17/2017
6.207.1	Payment of fines, fees, and costs	04/17/2017
Rules of Criminal Procedure for the Metropolitan Courts		
7-113	Public inspection and sealing of court records	03/31/2017
7-207	Bench warrants	04/17/2017
7-207.1	Payment of fines, fees, and costs	04/17/2017
Rules of Procedure for the Municipal Courts		
8-112	Public inspection and sealing of court records	03/31/2017
8-206	Bench warrants	04/17/2017
8-206.1	Payment of fines, fees, and costs	04/17/2017
Criminal Forms		
9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
Children's Court Rules and Forms		
10-166	Public inspection and sealing of court records	03/31/2017
Rules of Appellate Procedure		
12-314	Public inspection and sealing of court records	03/31/2017

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

Proposed Revisions to the Rules of Criminal Procedure for the District Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Metropolitan Courts, and Rules of Appellate Procedure

Proposal 2017-041

The Supreme Court is considering the adoption of new rules to govern pretrial detention proceedings, *see* Proposed New Rules 5409, 6409, and 7409 NMRA, as well as amendments to the rules governing appeals from orders concerning pretrial detention or release pending appeal. *See* Rules 5405, 12204, and 12205 NMRA.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at supremecourt.nmcourts.gov/openforcomment.aspx or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 875040848
nmsupremecourtclerk@nmcourts.gov
5058274837 (fax)

Your comments must be received by the Clerk on or before April 17, 2017, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]

5-409. Pretrial detention.

A. **Scope.** Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico Constitution and Rule 5-401 NMRA, under Article II, Section 13 and this rule, the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a motion and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

B. **Motion for pretrial detention.** The prosecutor may file a motion for pretrial detention at any time in the district court. If the case is pending in the magistrate or metropolitan court, the prosecutor shall immediately file a copy of the motion in the court where the case is pending. The motion shall include the specific facts that warrant pretrial detention.

(1) The prosecutor shall immediately deliver a copy of the motion to

(a) the detention center holding the defendant, if any;

(b) the assigned district court judge, or, if a district court judge has not been assigned, to the chief district judge or designee; and

(c) the defendant and defense counsel of record, or, if defense counsel has not entered an appearance, to the local law office of the public defender or, if no local office exists, to the director of the contract counsel office of the public defender.

(2) The defendant may file a response to the motion for pretrial detention, but the filing of a response shall not delay the hearing under Paragraph E of this rule. If a response is filed, the defendant shall promptly provide a copy to the assigned district court judge and the prosecutor.

C. **Detention pending hearing; warrant.** The defendant shall be detained pending the completion of a pretrial detention hearing.

(1) ***Defendant in custody when motion is filed.*** If a detention center receives a copy of a motion for pretrial detention, the detention center shall distribute the motion to any person designated by the district, magistrate, or metropolitan court to release defendants from custody under Section 31-3-1 NMSA 1978 and Rule 5-401(L), 6-401(J), or 7-401(J) NMRA. All authority of any person to release a defendant pursuant to such designation is terminated upon receipt of a detention motion.

(2) ***Defendant not in custody when motion is filed.*** The district court shall issue a warrant for the defendant's arrest if the defendant is not in custody when the prosecutor files a motion that alleges sufficient facts for pretrial detention.

D. **Case pending in magistrate or metropolitan court.** Upon the filing of a motion for pretrial detention, the magistrate or metropolitan court clerk shall promptly provide to the district court clerk a copy of the criminal complaint and all other papers filed in the case. The magistrate or metropolitan court's jurisdiction to set or amend conditions of release shall be terminated, and the district court shall acquire exclusive jurisdiction over issues of pretrial detention or release.

E. **Pretrial detention hearing.** The district court shall hold a hearing on the motion for pretrial detention to determine whether any release condition or combination of conditions set forth in Rule 5-401 NMRA will reasonably protect the safety of any other person or the community.

(1) ***Time.***

(a) *Time limit.* The hearing shall be held promptly, but no later than three (3) days after the later of the following events:

(i) the filing of the motion for pretrial detention; or

(ii) the date the defendant is arrested as a result of the motion for pretrial detention.

(b) *Extensions.* The time enlargement provisions in Rule 5104 NMRA do not apply to a pretrial detention hearing. The court may extend the time limit for holding the hearing as follows:

(i) for up to three (3) days upon a showing that extraordinary circumstances exist and justice requires the delay;

(ii) upon the defendant filing a written waiver of the time limit; or

(iii) upon stipulation of the parties.

(2) ***Defendant's rights.*** The defendant has the right to be present and to be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed. The defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise.

If the defendant testifies at the hearing, the defendant's testimony shall not be used against the defendant at trial except for impeachment purposes or in a subsequent prosecution for perjury.

(3) ***Prosecutor's burden***. The prosecutor must prove by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release conditions will reasonably protect the safety of any other person or the community.

(4) ***Evidence.*** The New Mexico Rules of Evidence shall not apply to the presentation and consideration of information at the hearing.

F. **Order for pretrial detention.** The court shall issue an order for pretrial detention if, on completion of the pretrial detention hearing, the court determines by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably protect the safety of any other person or the community. The court shall issue its written order at the conclusion of the pretrial detention hearing. An order for pretrial detention shall include findings of the individualized facts justifying the detention.

G. **Order setting conditions of release.** The court shall deny the motion for pretrial detention if, on completion of the pretrial detention hearing, the court determines that the prosecutor has failed to prove the grounds for pretrial detention by clear and convincing evidence. At the conclusion of the pretrial detention hearing, the court shall issue

(1) an order setting forth written findings of the reasons for denying the motion for pretrial detention; and

(2) an order setting conditions of release under Rule 5-401 NMRA.

H. **Further proceedings in magistrate or metropolitan court.** Upon completion of the hearing, if the case is pending in the magistrate or metropolitan court, the district court shall promptly transmit to the magistrate or metropolitan court a copy of either the order for pretrial detention or the order setting conditions of release. The district court shall retain exclusive jurisdiction over issues of pretrial detention or release.

I. **Expedited trial scheduling for defendant in custody.** The district court shall provide expedited priority scheduling in a case in which the defendant is detained pending trial.

J. **Appeal.** Either party may appeal the district court order disposing of the motion for pretrial detention. The district court order shall remain in effect pending disposition of the appeal.

[Adopted by Supreme Court Order No. _____, effective _____.]

Commentary. —

Paragraph A - In addition to the ground for detention described in Paragraph A of this rule, Article II, Section 13 of the New Mexico Constitution also permits pretrial detention of a person charged with a capital offense "when the proof is evident or the presumption great." *See Tijerina v. Baker*, 1968NMSC009, ¶ 13, 78 N.M. 770, 438 P.2d 514 ("[T]he charge of a capital offense raises a rebuttable presumption that the proof is evident and the presumption great that the defendant so charged committed the capital offense, and one so accused is not entitled to bail until that presumption is overcome.").

Paragraph B - Paragraph B permits the prosecutor to file a motion for pretrial detention in the district court at any time. The prosecutor may file the motion at the same time that the prosecution requests a warrant for the defendant's arrest under Rule 5-208(D) NMRA.

Paragraph C - As set forth in Paragraph C, a defendant who is subject to a motion for pretrial detention shall be held in custody until the detention hearing is held. If a detention center receives a copy of a motion for pretrial detention, the detention center must hold the defendant in custody pending further order of the district court. If the defendant is not in custody when the pretrial detention motion is filed, the district court must issue an arrest warrant or bench warrant, as appropriate.

Paragraph D - Under Paragraph D, the filing of a motion for pretrial detention deprives the magistrate or metropolitan court of jurisdiction to set or amend the conditions of release. The filing of the motion does not, however, stay the case in the magistrate or metropolitan court. Nothing in this rule shall prevent timely preliminary examinations from proceeding while the detention motion is pending.

Paragraph E - Paragraph E sets forth procedures for pretrial detention hearings. Subparagraph (E)(2) describes the defendant's rights at the hearing. The defendant shall be entitled to appear and participate personally with counsel before the judge conducting the detention hearing, rather than by any means of remote electronic conferencing. Subparagraph (E)(4) provides that the Rules of Evidence do not apply at a pretrial detention hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. Like other types of proceedings where the Rules of Evidence do not apply, at a pretrial detention hearing the court is responsible "for assessing the reliability and accuracy" of the information presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge "retains the responsibility for assessing the reliability and accuracy of the government's information, whether presented by proffer or by direct proof"); *see also_United States v. Marshall*,_519 F. Supp. 751, 754 (E.D. Wis. 1981) ("So long as the information which the sentencing judge considers has sufficient indicia of reliability to support its probable accuracy, the information may properly be taken into account in passing sentence."),_*aff'd*_719 F.2d 887 (7th Cir.1983); *State v. Guthrie*, 2011NMSC014, ¶¶ 3639, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation revocation hearing, the court should focus on the reliability of the evidence); *State v. Vigil*, 1982NMCA058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation hearing that hearsay untested for accuracy or reliability lacked probative value).

Paragraphs F and G - As set forth in Paragraphs F and G, at the conclusion of the detention hearing the district court must rule on the motion and immediately issue a written order setting forth the reasons for the court's decision. If the district court denies the detention motion, the district court must also issue an order setting conditions of release under Rule 5-401 NMRA.

Paragraph H - Following a detention hearing, the district court retains exclusive jurisdiction over matters of detention or release regardless of whether the case is still pending in the magistrate or metropolitan court.

Paragraph I - Paragraph I requires the district court to prioritize the scheduling of trial and other proceedings for cases in which the defendant is held in custody. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate due process, in part due to "the stringent time limitations of the Speedy Trial Act, 18 U.S.C. § 3161"); Am. Bar Ass'n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11 (3d ed. 2007) ("Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice.").

Paragraph J - Either party may appeal the district court's ruling on the detention motion in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA. Under Article II, Section 13, an "appeal from an order denying bail shall be given preference over all other matters."

[Commentary adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

6-409. Pretrial detention.

A. **Scope**. This rule governs the procedure for the prosecutor to file a motion for pretrial detention in the district court while a case is pending in the magistrate court. Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico Constitution and Rule 6-401 NMRA, under Article II, Section 13 and Rule 5-409 NMRA, the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a motion and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

B. **Motion for pretrial detention.** The prosecutor may file a motion for pretrial detention at any time in the district court under Rule 5-409 NMRA. If the case is pending in the magistrate court, the prosecutor shall immediately file a copy of the motion in the magistrate court. The motion shall include the specific facts that warrant pretrial detention.

C. **Determination of motion by district court.** Upon the filing of a motion for pretrial detention, the magistrate court clerk shall promptly provide to the district court clerk a copy of the criminal complaint and all other papers filed in the case. The magistrate court's jurisdiction to set or amend conditions of release shall be terminated, and the district court shall acquire exclusive jurisdiction over issues of pretrial detention or release. The defendant shall be detained pending the completion of a pretrial detention hearing.

D. **Further proceedings.** Upon completion of the hearing, the district court shall promptly transmit to the magistrate court a copy of either the order for pretrial detention or the order setting conditions of release. The district court shall retain exclusive jurisdiction over issues of pretrial detention or release.

[Adopted by Supreme Court Order No. _____, effective _____.]

Commentary. — The filing of a motion for pretrial detention deprives the magistrate court of jurisdiction to set or amend the conditions of release. The filing of the motion does not, however, stay the case in the magistrate court. Nothing in this rule shall prevent timely preliminary examinations from proceeding while the detention motion is pending. Following a detention hearing, the district court retains exclusive jurisdiction over matters of detention or release.

[Commentary adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

7-409. Pretrial detention.

A. **Scope**. This rule governs the procedure for the prosecutor to file a motion for pretrial detention in the district court while a case is pending in the metropolitan court. Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico Constitution and Rule 7-401 NMRA, under Article II, Section 13 and Rule 5-409 NMRA, the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a motion and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

B. **Motion for pretrial detention.** The prosecutor may file a motion for pretrial detention at any time in the district court under Rule 5-409 NMRA. If the case is pending in the metropolitan court, the prosecutor shall immediately file a copy of the motion in the metropolitan court. The motion shall include the specific facts that warrant pretrial detention.

C. **Determination of motion by district court.** Upon the filing of a motion for pretrial detention, the metropolitan court clerk shall promptly provide to the district court clerk a copy of the criminal complaint and all other papers filed in the case. The metropolitan court's jurisdiction to set or amend conditions of release shall be terminated, and the district court shall acquire exclusive jurisdiction over issues of pretrial detention or release. The defendant shall be detained pending the completion of a pretrial detention hearing.

D. **Further proceedings.** Upon completion of the hearing, the district court shall promptly transmit to the metropolitan court a copy of either the order for pretrial detention or the order setting conditions of release. The district court shall retain exclusive jurisdiction over issues of pretrial detention or release.

[Adopted by Supreme Court Order No. _____, effective _____.]

Commentary. — The filing of a motion for pretrial detention deprives the metropolitan court of jurisdiction to set or amend the conditions of release. The filing of the motion does not, however, stay the case in the metropolitan court. Nothing in this rule shall prevent timely preliminary examinations from proceeding while the detention motion is pending. Following a detention hearing, the district court retains exclusive jurisdiction over matters of detention or release.

[Commentary adopted by Supreme Court Order No. _____, effective _____.]

5-405. Appeal from orders regarding release or detention.

A. **Right of appeal.** A party may appeal an order regarding release or detention as provided by Article II, Section 13 of the New Mexico Constitution, Section 39-3-3(A)(2) NMSA 1978, or as otherwise provided by law. In accordance with the Rules of Appellate Procedure, an appeal may be filed in the Supreme Court or Court of Appeals, as jurisdiction may be vested by law, under the following circumstances.

(1) ***Order setting conditions of release.*** [~~If after~~] After a hearing by the district court [~~pursuant to Paragraph F or G of~~] under Rule 5-401(G) or (K) NMRA[~~:~~], the defendant may appeal if

Disciplinary Board of the New Mexico Supreme Court

Attorney Newsletter | Spring 2017

From Chief Disciplinary Counsel

Greetings from the Office of Disciplintary Counsel and the Disciplinary Board of the New Mexico Supreme Court. This newsletter is intended to inform and educate members of the New Mexico Bar regarding activities and initiatives of the Board. The "Disciplinary Notes" are intended solely for informational and education purposes and do not represent advisory opinions by the Board, nor are they intended to serve as binding precedent for any particular matter coming before the Board.

No Nonrefundable Advance Fees

The Office of Disciplinary Counsel regularly receives complaints that involve the payment of a nonrefundable flat fee, nonrefundable retainer, or "earned when paid" retainer. Nonrefundable advance fees, whatever they might be called, are not allowed in New Mexico.

As an initial matter, effective December 31, 2015, written fee agreements are generally required whenever a fee is charged or whenever a change is made to a previously agreed basis or rate of the fee. Rule 16-105(B) of the Rules of Professional Conduct. A fee agreement must set forth "the scope of the representation and the basis of the fee and expenses. . . ." *Id.* The rare exception to the requirement of a written fee agreement is set forth in 16-105(C).

A frequent complaint is where a lawyer charges a nonrefundable flat fee or nonrefundable retainer. Such fees are prohibited. See *In re Dawson,* 2000-NMSC-024, ¶¶ 11. Flat fees are allowed so long as the fee is deposited into a trust account and paid out only when earned, and if the work is not done, the balance of the fee is returned to the client. *Id.*

A written fee agreement for a refundable flat fee or retainer must set forth the amount of fee that will be charged for delineated milestones or benchmarks. For example, in a criminal case, the milestone or benchmark could be pre-trial work, with a further sub-category of plea negotiations. In a domestic relations case, preparation of initial pleadings; settlement negotiations; trial.

What if a client wants to pay with something other than money? "An attorney may accept a nonmonetary fee, but regardless of the form it takes any fee must be reasonable and must be refundable until it is fully earned." *In re Montclare*, 2016-NMSC-023, ¶ 16. If a client pays with real property, the attorney must first ensure that:

(1) the [terms of a nonmonetary fee agreement] are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Montclare, 2016-NMSC-023, ¶ 16 (quoting Rule 16-108(A)).

Second, as with monetary payments, nonmonetary payments must be "identified as belonging to the client, safeguarded, and promptly returned when the client is so entitled. Rule 16–115(A), (D)." *Montclare*, 2016-NMSC-023, ¶ 19. A payment by real property is acceptable, but the "deed [should be] held in escrow by a neutral, third party until the attorney has earned the full value of the property." *Id*. If the client requests the property back, and the full amount of the value of the property has not been earned, then the deed should be destroyed, or, if recorded, deeded back to the client. *Id*. Of course, if reasonable fees were incurred, the lawyer may seek payment for that amount.

As with many areas of lawyers' ethical responsibilities, compliance with the Court's rulings on fees and with Rules 16-105 and 16-115 the Rules of Professional Conduct may provide a viable defense *if* a client complains about your fees to the Disciplinary Board.

Notable Recent Rule Changes and a Reminder About a Few That Changed But Not All That Recently

The Rules of Professional Conduct and Rules Governing Discipline are ever changing and warrant notation by all attorneys when changes are put into place. In the past few years there have been some minor changes to essentially "clean up" rules, which we will not address here, as well and significant changes that could make a major impact on your practice. A brief review of some of those changes, including some that are not really that new, are as follows:

I. **Rule 16-104(C)** was put into place in 2009, but unfortunately the Office of Disciplinary Counsel has found that not all attorneys are in compliance. That rule states:

16-104(C) Disclosure of professional liability insurance.

(1) If, at the time of the client's formal engagement of a lawyer, the lawyer does not have professional liability insurance policy with limits of at least one-hundred thousand dollars ($100,000) per claim

and three-hundred thousand dollars ($300,000) in the aggregate, the lawyer shall inform the client in writing using the form of notice prescribed by this rule. If during the course of representation, an insurance policy in effect at the time of the client's engagement of the lawyer lapses, or is terminated, the lawyer shall provide notice to the client using the form prescribed by this rule. (2) The form of notice and acknowledgment required under this Paragraph shall be:

NOTICE TO CLIENT

Pursuant to Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that ["I" or "this Firm"] [do not][does not][no longer] maintain[s] professional liability malpractice insurance of at least one-hundred thousand dollars ($100,000) per occurrence and three-hundred thousand dollars ($300,000) in the aggregate.

_____
Attorney's Signature

CLIENT ACKNOWLEDGMENT

I acknowledge receipt of the notice required by Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct that [insert attorney or firm's name] does not maintain professional liability malpractice insurance of at least one-hundred thousand dollars ($100,000) per occurrence and three-hundred thousand dollars ($300,000) in the aggregate.

_____
Client's signature

The above language **must** be used, exactly as written, to notify clients of the lack of professional liability insurance that exceeds the minimum limited amounts of coverage. Merely disclosing to the client a lack of insurance is insufficient, and using any language other than the above or failing to obtain the client's signature on the mandatory acknowledgement is a violation of the Rule.

II. **Rule 16-105:** On December 31, 2015, the Supreme Court implemented a rule that directly affects most attorneys in New Mexico. Rule 16-105 now states that the basis or rate of fee and expenses SHALL BE COMMUNICATED IN WRITING.

16-105(B) Basis or rate of fees.

Whenever a fee is charged, and except as provided in Paragraph C, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicate to the client in writing.

III. **Rule 16-108(J):** A rule that many attorneys understood was actually in place, but was only covered previously by conflict of interest rules was implemented December 31, 2016. That rule states:

16-108(J). Client-lawyer sexual relationships.

A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.

IV. **Rule 24-111**: While not a Rule of Professional Conduct there is a new designation of counsel entitled "Emeritus attorney."

24-111. Emeritus attorney.

An "emeritus attorney" is an attorney who is or was a licensed attorney in good standing in the State of New Mexico or other jurisdiction who voluntarily withdrew from the practice of law or transferred to inactive status and does not ask for or receive compensation of any kind for the performance of legal services, but who is granted permission under Paragraph D of this rule to participate in the emeritus *pro bono* program described in Paragraph B of this rule.

These rules are not the only changes made to the Rules of Professional Conduct or Rules Governing Discipline, but only a few which are notable. One other that underwent a major modification was Rule 17-204 NMRA, which is covered separately in this newsletter. Further, it is suggested that all attorneys and their staff review these rules in their entirety yearly to insure that their practice is ethical and competent.

Significant Changes to Trust Account Rules

Effective December 31, 2016, the Rules pertaining to attorney trust accounts changed in some important ways and now impose requirements on all attorneys who have or work in a law firm with a trust account to take certain steps to insure compliance with the Rule. The specific changes were made to **Rule 17-204 NMRA** which, along with Rule 16-115 NMRA, govern the manner in which attorneys maintain and operate client trust funds, or IOLTA accounts. While the text of the Rule is too long to repeat in this short note, attorneys are strongly encouraged to read the rule in its entirety as soon as possible to insure compliance. Among other new or changed features, the Rule now provides that:

1. **Only licensed attorneys can sign on the IOLTA**. In the past, a non-attorney could be an authorized signer. No more. If you have a non-attorney signing your trust account, he or she must be removed from the account immediately.

2. **Reconciliation** of the bank balance, general ledger and individual client ledgers must be performed at least **monthly** (rather than quarterly as in the past).

3. All lawyers or law firms must have a **trust plan** (a sample is attached at the end of this note) that, at a minimum, includes

   (a) the name(s) of the lawyer(s) who have authority to sign client trust account checks;

   (b) the name(s) of the lawyers who is or are responsible for monthly reconciliations of the law firm's trust account(s);
   (c) the name(s) of the lawyer(s) who is or are responsible for

answering any questions, including those from the Disciplinary Board, regarding the client trust account(s) and the names of all persons who will be responsible for maintaining the records of and continuing the maintenance of the client trust account(s) in the event the law firm dissolves, is sold, or otherwise ceases to exist or provide legal services.

4. The **records** required to be **maintained** by this Rule and by Rule 16-115 must be readily accessible to the lawyer and available for production to the Disciplinary Board *and* the Client Protection Fund in a timely manner upon request or demand by either entity whether by letter or subpoena. Failure to produce the records within 10 days of a request may lead to an administrative suspension.

5. **All attorneys in private practice are required to attend a course in trust accounting at least once every three years.**

Determination of an attorney's compliance with the terms of the Rule will take two forms. First, attorneys who are not otherwise exempt from the Rule will be required to certify compliance, including the existence of a trust plan and the attendance of a trust accounting course within the prior three (3) years on the attorney's annual registration statement filed under Rule 17-202 NMRA. Second, whenever a disciplinary complaint is filed against an attorney that includes allegations involving client funds, disciplinary counsel may, in addition to requiring a response to all other allegations in the complaint, require proof of compliance with Rule 17-204.

Sample Law Firm

Trust Account Plan Effective 1/1/2017

A. Names of lawyer(s) with authority to sign the trust account:

B. Names of lawyer(s) responsible for monthly reconciliations:

C. Names of lawyer(s) responsible for answering questions and responsible for maintain records:

D. Names of lawyers responsible for maintaining records should the entity dissolve:

Responding to a Disciplinary Complaint

The New Mexico Disciplinary Board (the "Board") receives approximately 700 complaints against licensed New Mexico attorneys each year. With few exceptions that are provided for in the Rules Governing Discipline, these complaints are sent to the attorney about whom the complaint is made for an initial response. A responding attorney should keep several things in mind when responding to a disciplinary complaint.

1. **Respond.** Rule 16-803(D) NMRA requires an attorney to "give full cooperation and assistance to the . . . disciplinary board." But beyond the fact that the Rules of Professional Conduct require an attorney to respond to an inquiry from the Board, the first step in a disciplinary investigation is to hear from the responding attorney about the matter, and consider any evidence the responding attorney provides in support of his/her response. By failing to respond, an attorney loses the opportunity to present his/her side of the story and a complaint that might otherwise be dismissed or amount to very little can quickly become much more serious and result in a greater disciplinary sanction. Moreover, Rule 17-207(B) provides that when an attorney fails respond to the Board, Disciplinary Counsel may file a petition with the New Mexico Supreme Court seeking the immediate administrative suspension of the attorney's license to practice law. So, respond.

2. **Respond fully and responsively**. *"This is the stupidest complaint on the face of the planet and I cannot believe you didn't have the brains to dismiss it without even asking me for a response."* The foregoing may be the first reaction an attorney has upon opening that first letter from the Board informing the attorney of a disciplinary complaint. Please understand that when the Board receives a complaint, it will be sent to the attorney for a response if the factual allegations, outrageous or not, if proven, would support a charge that the Rules of Professional Conduct were violated. So a response that simply tells the Board how ridiculous the complaint is without otherwise addressing the substance of the complaint benefits no one. Not only is it nonresponsive (see Rules 16-803(D) and 17-207(B) NMRA, above), it simply delays the matter and means that the Board will be sending another letter asking for a response to the substantive allegations of the complaint.

3. **Respond truthfully**. Rule 16-803(D)'s mandate to cooperate with the Disciplinary Board implicitly requires truthful responses. Further, 16-804(C) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The Board is not interested in "winning" nor in punishing attorneys. The Board's goal is to find the truth and to fashion a reasonable and appropriate disposition for every disciplinary complaint. While a failure to respond at all might lead to greater disciplinary sanctions, misrepresentations in the course of a disciplinary matter are virtually certain to do so. Indeed, the Board is simply an agency of the New Mexico Supreme Court meaning, in essence, when a lawyer lies to the Board that is a lie being told to the Court and directly calls into question the lawyer's fitness to practice. So, again: respond, and do so truthfully.

4. **Think about hiring a lawyer**. Abraham Lincoln is often quoted as saying "He who represents himself has a fool for a client." Lawyers make a living counseling others who are in the midst of a matter that is likely unfamiliar and somewhat distressing rendering that person unable to objectively navigate the issues ahead. A lawyer facing a disciplinary complaint is no different: someone has called into question whether you have engaged in misconduct in violation of the rules governing your practice. You are unlikely to be objective. Having another lawyer help you with the issues ahead can be extremely useful. While many, indeed most, attorneys handle the initial response to the Board themselves, if the Board notifies you that it intends to take your deposition, begins subpoenaing your bank account records, or informs you that charges are forthcoming, you should give serious consideration to hiring an attorney to represent you. The good news is that malpractice carriers often will provide you with legal counsel to respond in a disciplinary matter. By the way, the Board does not think that if you hire a lawyer you must have violated the Rules. Instead, it simply means that you want to deal with the matter in a professional, objective manner.

[~~(1)~~] (a) the defendant is detained or continues to be detained because of an inability to post a secured bond or [~~a failure to~~] meet [~~a condition imposed, or~~] a condition of release; or

[~~(2)~~] (b) the defendant is subject to a condition of release that requires the defendant [~~requirement~~] to return to custody [~~after~~] for specified hours following release for employment, schooling, or other limited purposes. [~~is continued, the defendant may appeal such order to the Supreme Court or Court of Appeals, as jurisdiction may be vested by law, in accordance with the Rules of Appellate Procedure.~~]

(2) ***Order revoking release.*** After a hearing by the district court under Rule 5-403 NMRA, the defendant may appeal if the defendant is subject to an order revoking release.

(3) ***Order granting or denying motion for pretrial detention.*** After a hearing by the district court under Rule 5-409 NMRA,

(a) the defendant may appeal if the district court has granted the prosecutor's motion for pretrial detention; or

(b) the state may appeal if the district court has denied the prosecutor's motion for pretrial detention.

B. **Stay of proceedings.** An appeal [~~pursuant to~~] under this rule does not stay proceedings in the district court.

[As amended, effective September 1, 1990; March 1, 1995; as amended by Supreme Court Order No. 138300046, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — [~~This rule as amended continues the same criteria for an appeal, i.e., when conditions of release have been imposed:~~

~~(1) which result in the continued detention of the defendant;~~

~~(2) which require the defendant to return to custody after specified hours; or~~

~~(3) which are designed to assure the orderly administration of justice under Paragraph D of Rule 5401 NMRA.~~] This rule was amended in 2017 in response to the 2016 amendment to Article II, Section 13 of the New Mexico Constitution. As amended, Article II, Section 13 (1) permits a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community, and (2) requires the district court to release a defendant who is in custody solely due to financial inability to post a secured bond.

[As amended by Supreme Court Order No. 138300046, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]

12-204. [~~Appeals~~] Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction.

A. **Scope.** This rule governs appeals under Rule 5-405 NMRA from orders regarding release or detention. The provisions of Rules 12-201, 12208, 12210, and Rule 12-404 NMRA shall not apply to appeals under this rule.

B. **Computation of time.** All time periods set forth in this rule shall be construed as calendar days, and the manner of computing time set forth in Rule 12308 NMRA for periods of less than eleven (11) days shall not apply. If the last day of a time period prescribed by this rule falls on a weekend, court holiday, or other day that the appellate court is closed or unavailable for filing, the required action shall be deemed timely if taken on the next day that the court is open and available for filing. The three (3)day mailing period set forth in Rule 12308 NMRA shall not apply to the time periods set forth in this rule. The court shall not extend the time periods set forth in this rule.

[~~B.~~]C. **Initiating the appeal.**

(1) ***Motion.*** An appeal [~~provided for by Section 3933A(2) NMRA 1978 and Rule 5405 NMRA of the Rules of Criminal Procedure~~] under this rule shall be [~~taken~~] initiated by filing a motion with the clerk of the appropriate appellate court within ten (10) days after the decision of the district court is filed.[~~and serving a copy on the district attorney and the appellate division of the attorney general. The three (3) day mailing period set forth in Rule 12308 NMRA does not apply to the above time limit.~~] The motion shall specify the decision appealed from[~~;~~] and shall include, by attachments, any materials deemed necessary for consideration of the matter by the appellate court. The docket fee shall be paid [~~or a free process order filed~~] at the time the motion is filed, subject to the provisions of Rules 12-304 and 23-114 NMRA.

(2) ***Notice.*** The appellant shall give notice of the filing of the motion to the appellate division of the attorney general, appellate division of the public defender, trial judge, and trial counsel of record for each party other than the appellant.

(3) ***Stay of proceedings.*** An appeal under this rule does not stay the proceedings in the trial court.

[~~B. **Response.** The state may file a response, with attachments, if any, with the appellate court clerk within five (5) days after service of the motion and serve a copy on appellant.~~]

[~~C.~~]D. **Appellate court review.**

(1) ***Initial evaluation.*** The appellate court clerk shall docket the appeal upon receipt of the motion and present it to the court. [~~Upon disposition of the appeal, the appellate court clerk shall send a copy of the order disposing of the appeal to the parties and the district court clerk.~~] The appeal may be submitted to a panel of three (3) justices or judges for decision. Within five (5) days of the filing of the motion, the appellate court shall do one of the following:

(a) if it appears that the appeal is without merit, affirm the decision of the district court in accordance with Subparagraph (D)(2) of this rule; or

(b) order the appellee to file a response within five (5) days of the date of the order requesting the response.

(2) ***Disposition.***

(a) *Time.* The appellate court shall review the appeal in an expedited manner. If the appellate court has ordered the appellee to file a response, the court shall dispose of the appeal within five (5) days after the response is filed. If the appellee fails to file a timely response, the court shall dispose of the appeal within five (5) days after the response was due.

(b) *Standard of review.* The decision of the district court shall be set aside only if it is shown that the decision

[~~(1)~~] (i) is arbitrary, capricious, or reflects an abuse of discretion;

[~~(2)~~] (ii) is not supported by substantial evidence; or

[~~(3)~~] (iii) is otherwise not in accordance with law.

(c) *Effect.* The appellate court's final disposition shall be effective in accordance with the following provisions.

(i) A final disposition in the Court of Appeals shall not be subject to a motion for rehearing and shall not be effective until eleven (11) days after filing the disposition with the

appellate court clerk unless a petition for writ of certiorari is filed under Paragraph F of this rule, in which case the Court of Appeals' disposition shall be automatically stayed pending the outcome of the proceeding on certiorari. If a petition for writ of certiorari is not filed within the time deadline in Paragraph F of this rule, the Court of Appeals shall immediately issue its mandate.

(ii) A final disposition in the Supreme Court shall not be subject to a motion for rehearing, and its mandate shall issue immediately.

[~~D.~~]F. **Further review by certiorari.**

(1) [~~The defendant~~]Notwithstanding the time provisions in Rule 12-502(B) NMRA, a party may seek review of a decision of the Court of Appeals by filing a petition for [~~a~~] writ of certiorari under Rule 12502 NMRA no later than ten (10) days after the disposition is filed in the Court of Appeals.

(2) The cover page of the petition shall be labeled "Expedited Petition for Writ of Certiorari." In all other respects, the form and content of a petition shall be governed by the provisions of Rule 12-502 NMRA.

(3) The petition may be submitted to a panel of three (3) justices for decision. The Supreme Court shall review the petition in an expedited manner. No response to the petition shall be filed except as directed by order of the Supreme Court, provided that the respondent shall have a right to file a response, as directed by the Supreme Court, before any petition is granted.

(4) The final disposition of a petition shall be effective upon filing with the Supreme Court clerk and shall not be subject to a motion for rehearing. If the petition is denied, a copy of the Supreme Court order shall be immediately delivered to the Court of Appeals, which shall immediately issue its mandate in accordance with Rule 12-402(C) NMRA. If the petition is granted, the final decision disposing of the certiorari proceeding shall also constitute the mandate of the Supreme Court.

[As amended by Supreme Court Order No. 168300011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — This rule addresses appeals under Article II, Section 13 of the New Mexico Constitution and NMSA 1978, Section 39-3-3(A)(2). An appeal under this rule should be filed in the Court of Appeals or the Supreme Court, as jurisdiction may be vested by law. The Supreme Court has "exclusive jurisdiction over interlocutory appeals [~~from pretrial release orders~~] . . . in cases where the defendant faces a possible sentence of life imprisonment or death." *State v. Brown*, 2014NMSC038, ¶ 17, 338 P.3d 1276.

This rule was amended in 2017 in response to the 2016 amendment to Article II, Section 13. As amended, Article II, Section 13 (1) permits a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community, and (2) requires the district court to release a defendant who is in custody solely due to financial inability to post a secured bond. "An appeal from an order denying bail shall be given preference over all other matters." N.M. Const. Art. II, § 13.

[Adopted by Supreme Court Order No. 168300011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

12-205. Release pending appeal in criminal matters.

A. **Appeal by the state.** When the state appeals an order dismissing a complaint, information, or indictment, the district court shall consider releasing the defendant on [~~nominal bail or his own~~] personal recognizance or unsecured appearance bond pending final determination of the appeal. When the state appeals an order suppressing or excluding evidence or requiring the return of seized property, the defendant may be released under conditions determined in accordance with [~~Paragraph B of~~] Rule 5401 NMRA[~~of the Rules of Criminal Procedure~~].

B. **Motion to review conditions of release.** Upon motion, the district court shall initially set conditions of release pending appeal. A motion by either party for modification of the conditions of release shall first be made to the district court and may be decided without the presence of the defendant. If the district court has refused release pending appeal or has imposed conditions of release pending appeal [~~which~~] that the defendant cannot meet, a motion for modification of the conditions may be made to the [~~court of appeals~~] appropriate appellate court. If the case has not been previously docketed in the [~~court of appeals~~] appellate court, subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the docket fee [~~or order granting free process~~] shall accompany the motion. The motion may be made at any time and shall be determined promptly by the appellate court [~~upon such~~] on the papers, affidavits, and portions of the record [~~as~~] presented by the parties[~~shall present~~].

C. **Further review by certiorari.** [~~Either~~]A party may seek [~~a~~] review of [~~the~~] a decision of the [~~court of appeals~~] Court of Appeals by filing a petition for writ of certiorari [~~pursuant to~~] under Rule 12502 NMRA. Upon the granting of a petition for certiorari by the [~~supreme court~~] Supreme Court, the defendant may file a motion in the [~~supreme court~~] Supreme Court for modification of conditions of release in accordance with Paragraph B of this rule.

[~~C.~~]D. **United States Supreme Court[~~; appeal; certiorari~~].** Upon filing an appeal or a petition for writ of certiorari in the United States Supreme Court, the defendant may file a motion for modification of conditions of release with the appellate court whose [~~judgment or~~] decision is sought to be reviewed.

[~~D.~~]E. **Further appeal by state.** If the state files a petition for rehearing or for certiorari in the [~~supreme court~~] Supreme Court or in the United States Supreme Court, and the mandate is stayed in accordance with Rule 12402 NMRA, the defendant may file a motion for release or modification of conditions of release with the appellate court whose [~~judgment or~~] decision is sought to be reviewed.

[Amended by Supreme Court Order No. _____, effective _____.]

Committee commentary.—The Supreme Court has exclusive appellate jurisdiction over the conditions of release pending appeal in a case where the defendant faces a possible sentence of life imprisonment or death or in a case where the district court has imposed a sentence of life imprisonment or death. *See* N.M. Const. art. VI, § 2; *State v. Brown*, 2014-NMSC-038, ¶ 17, 338 P.3d 1276.

[Adopted by Supreme Court Order No. _____, effective _____.]

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-008

No. 34,869 (filed September 13, 2016)

2727 SAN PEDRO LLC, a limited liability company,
Petitioner-Appellant,
v.
BERNALILLO COUNTY ASSESSOR,
Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
DENISE BARELA SHEPHERD, District Judge

J. VICTOR PONGETTI
Albuquerque, New Mexico
(Inactive as of 12/31/2015)
for Appellant

VANESSA R. CHAVEZ
MARCUS J. RAEL, JR.
ROBLES, RAEL & ANAYA P.C.
Albuquerque, New Mexico
for Appellee

Opinion

James J. Wechsler, Judge

{1} This appeal arises from proceedings related to Appellant 2727 San Pedro LLC's formal protest of Appellee Bernalillo County Assessor's (the Assessor) 2014 notice of value for the subject property for property tax purposes. After considering evidence from both parties, the Bernalillo County Valuation Protests Board (the Protests Board) valued the property at $900,200—the amount proposed by the Assessor. Appellant appealed to the district court, which affirmed.

{2} This Court granted certiorari under Rule 12-505 NMRA to resolve questions related to the sufficiency of the evidence. After reviewing the testimony supporting the Assessor's valuation and considering our substantial evidence jurisprudence, we conclude that the testimony does not support a conclusion that the Assessor's valuation of the property resulted from the application of generally accepted appraisal techniques. We therefore vacate the Protests Board's valuation and remand to the Protests Board for additional proceedings consistent with this opinion. In its appellate briefing, Appellant raised several legal issues not contemplated in its petition for writ of certiorari. Based on Rule 12-505(D)(2)(b), we decline to review these issues.

BACKGROUND

{3} Appellant is the owner of a commercial office building located at 2727 San Pedro NE in Albuquerque, New Mexico. Appellant received the property's annual valuation report from the Assessor on or around May 22, 2014. This report valued the property at $1,113,300. Appellant filed a petition protesting the Assessor's assessment of value and proposed that the correct value was $753,690. This petition additionally proposed that the income method of valuation was the most appropriate method by which to determine the value of the property. The Protests Board scheduled a hearing for July 8, 2014.

{4} On June 25, 2014, the Assessor recalculated its valuation of the subject property and sent Appellant a new valuation report. This report valued the property at $1,031,500. On July 8, 2014, immediately prior to the protest hearing, the Assessor again recalculated its valuation, further reducing the value to $900,200. Ms. Arlene Jaramillo, an appraiser employed by the Assessor's office, represented the Assessor before the Protests Board. Jaramillo conceded during the hearing that properties considered as part of a commercial sales comparison were not sufficiently similar to support a valuation of the property. Because of the lack of sufficiently comparable properties, Jaramillo stated that the Assessor utilized the income method of valuation to determine the value of the property.

{5} Appellant introduced evidence supporting its proposed valuation, including Annual Property Operating Data (APOD) reports for the years 2011 through 2013 and a projected APOD for the year 2014. It also offered the testimony of a local real estate agent, although this witness was expressly not qualified as an expert in commercial real estate appraisal.

{6} With respect to the central issue in this case, Appellant argued that the Assessor, in applying the income method of valuation, should have utilized Appellant's actual operating expenses, as reflected in the 2014 projected APOD, rather than limiting its expenses to forty-five percent of the effective gross income. In support of this argument, Appellant introduced the Protests Board's 2009 decision and order for the property, in which the Protests Board stated that such an "expense limit is not a generally accepted appraisal technique."

{7} Jaramillo testified that the Assessor's application of the income method of valuation utilized a forty-five percent limitation on operating expenses based upon independent sources of market research. Specifically, Jaramillo stated, "[F]rom what we have seen as far as what people are bringing in, what we've researched from Business Weekly and Co-Star, right now the max[imum] vacancy is at fifteen percent and the max[imum] expenses [are] at forty-five percent, so that's what we allowed" and "[We] us[ed] the market vacancies, expenses, reserves, and such that we have been giving everybody else based on the research we have done with Co-Star, Business Weekly, and everybody else that has brought us any kind of information." Jaramillo also testified that Appellant's "expenses were at eighty-seven percent, which is really high for what the market is doing."[1] Jaramillo did not testify to the scope, with respect to the time period or property type, of the Assessor's application of the forty-five percent operating expense limitation.

{8} The Protests Board concluded that its preference would be "to see the Assessor's actual market studies to support the expense limits imposed[,]" but that

[1]The Assessor asserts that analysis of Appellant's 2013 APOD results in a proposed operating expense of eighty-seven percent. The Assessor calculates this percentage by "adding the 2013 [o]rdinary [e]xpenses and [t]otal [o]ther [e]xpenses, subtracting [r]eal [e]state [p]roperty [t]axes, and then dividing by the [g]ross [o]perating [i]ncome."

"the Assessor's approach to value is most reliable." The Protests Board entered a decision and order that valued the subject property at $900,200. The decision and order additionally noted that the Assessor "offers an income approach valuation employing [Appellant's] numbers, but limits vacancy to [thirteen percent],[2] management fees to [three percent], reserves to [four percent] and expenses to [forty-five percent], in accordance with the Assessor's market research and review of data from other properties." The order did not expressly state the source of, or basis for, these figures, or whether Appellant had overcome the statutory presumption of correctness afforded to the Assessor's determination of value by NMSA 1978, Section 7-38-6 (1981).

{9} Appellant timely filed a notice of appeal and statement of appellate issues. Appellant raised eight issues on appeal to the district court. Five of those issues related directly or indirectly to whether substantial evidence supported the Protests Board's implied conclusion that the Assessor's valuation of the subject property was based upon generally accepted appraisal techniques. Appellant also asserted that the Protests Board erred in failing to expressly conclude that Appellant had overcome the statutory presumption of correctness. In its statement of appellate issues, Appellant provided an alternative calculation of its total operating expenses, amounting to sixty-two percent of gross operating income.[3]

{10} The district court affirmed the Protests Board's valuation in a memorandum opinion and order filed on June 23, 2015. Due to a clerical mistake, the order was amended and refiled on June 25, 2015. The district court first addressed the Protests Board's failure to expressly conclude whether Appellant had overcome the statutory presumption of correctness afforded to the Assessor's determination of value, stating, "The Court agrees the [Protests] Board should have made a finding on this issue[,] . . . [but] will assume, for purposes of this appeal, that the presumption was overcome."

{11} The district court, quoting *First National Bank v. Bernalillo County Valuation Protest Board*, 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174, noted that without a presumption of correctness, the burden shifted to the Assessor to "prove that his [or her] method of valuation used a generally accepted appraisal technique." It also concluded that the Assessor has a policy, based upon market research, that places a forty-five percent limitation on operating expenses when applying the income approach to valuation. It ruled that "substantial evidence supports the use of market data to determine the amount of ordinary and necessary expenses when valuing property for taxation purposes using the income method." In support of its ruling, the district court stated that Jaramillo's "sworn testimony that the Assessor employs a [forty-five percent] cap is itself competent evidence that such a policy exists." The district court also noted that "there is no evidence in the record to dispute the conclusion that the use of market data to determine the expense ratio is a generally accepted technique[,]" that "Appellant has identified no provision in the statutes or regulations that requires the Assessor to use[] a subject property's actual expenses," and that the Protests Board "determined upon independent review that the Assessor's approach was reliable." The district court was not persuaded that the Protests Board's 2009 decision and order for the property (1) was relevant in determining whether a policy limiting operating expenses to an established percentage is a generally accepted appraisal technique or (2) had any estoppel effect on the 2014 valuation.

{12} Appellant filed a petition for writ of certiorari to this Court. Appellant's writ presented two questions for review:

> [1] Was there substantial evidence to support the decision of the [Protests] Board that the method used by the Assessor met the statutory requirement in [NMSA 1978, Section 7-36-15(B) (1995)] as a generally accepted appraisal technique?
>
> [2] Was the decision of the District Court affirming the decision of the [Protests] Board arbitrary because there was no substantial evidence to support the [Protests] Board's decision that the Assessor's technique met the requirements of [Section 7-36-15(B)] as a generally accepted appraisal technique?

We granted Appellant's petition to address these questions.

PRESERVATION

{13} As a general rule, claims of error are reviewed by this Court only if preserved at trial. Rule 12-216(A) NMRA. However, this rule is limited in the context of administrative hearings. *See Dick v. City of Portales*, 1994-NMSC-092, ¶¶ 5-6, 118 N.M. 541, 883 P.2d 127 (holding that "[o]ur statutes do not require formal preservation of error before appeal may be taken" in cases in which the determination of a local governing body acting in a quasi-judicial capacity is challenged based upon a substantial evidence argument). "A [property tax valuation] protest board is a quasi-judicial body." *First Nat'l Bank*, 1977-NMCA-005, ¶ 18. While Appellant did not raise a substantial evidence argument before the Protests Board, it did raise this argument on appeal to the district court and in its petition for writ of certiorari to this Court. As such, this Court may review Appellant's substantial evidence based arguments.

STANDARD OF REVIEW

{14} Rule 12-505 "governs review by the Court of Appeals of decisions of the district court . . . from administrative appeals pursuant to Rule 1-074 NMRA, Rule 1-077 NMRA, or [NMSA 1978,] Section 39-3-1.1 [(1999).]" Rule 12-505(A). If granted, this Court's scope of review under Rule 12-505 is limited to the questions presented in the petition for writ of certiorari. *See* Rule 12-505(D)(2)(b) ("The petition shall contain a concise statement showing . . . the questions presented for review by the Court of Appeals (the Court will consider only the questions set forth in the petition)[.]" (emphasis omitted)); *San Pedro Neighborhood Ass'n v. Bd. of Cty. Comm'rs of Santa Fe Cty.*, 2009-NMCA-045, ¶ 29, 146 N.M. 106, 206 P.3d 1011 ("The issue now raised was not set forth by either the [b]oard or [the a]pplicant in their petitions for certiorari. We therefore do not consider it.").

{15} "Upon a grant of a petition for writ of certiorari under Rule 12-505, this Court conducts the same review of an administrative order as the district court sitting in its appellate capacity, while at the same time determining whether the district court erred in the first appeal." *Town & Country Food Stores, Inc.*

[2]Jaramillo testified that the maximum vacancy allowable at the time of the assessment was fifteen percent. We presume that the thirteen percent cited in the Protests Board's decision and order was a clerical mistake.

[3]Appellant applied projected gross operating income and total operating expenses for 2014.

v. N.M. Regulation & Licensing Dep't, 2012-NMCA-046, ¶ 8, 277 P.3d 490 (alteration, internal quotation marks, and citation omitted). Our appellate courts apply a whole record standard of review to administrative decisions. *In re Otero Cty. Elec. Coop., Inc.*, 1989-NMSC-033, ¶ 6, 108 N.M. 462, 774 P.2d 1050. This standard requires that "[w]e independently review the entire record of the administrative hearing to determine whether the . . . decision was arbitrary and capricious, not supported by substantial evidence, or otherwise not in accordance with law." *City of Albuquerque v. AFSCME Council 18 ex rel. Puccini*, 2011-NMCA-021, ¶ 8, 149 N.M. 379, 249 P.3d 510 (internal quotation marks and citation omitted); *see* § 39-3-1.1 (governing appeals from decisions of a county valuation protests board as stated in NMSA 1978, Section 7-38-28(A) (1999, amended 2015) and providing that a court "may set aside, reverse or remand the final [administrative] decision if it determines that . . . the final decision was not supported by substantial evidence").

{16} Substantial evidence supporting an administrative decision is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Dick*, 1994-NMSC-092, ¶ 8 (emphasis, internal quotation marks, and citation omitted). In determining whether substantial evidence supports an administrative decision, our appellate courts "view[] the evidence in the light most favorable to the agency decision but may not view favorable evidence with total disregard to contravening evidence." *Nat'l Council on Comp. Ins. v. N.M. State Corp. Comm'n*, 1988-NMSC-036, ¶ 7, 107 N.M. 278, 756 P.2d 558 (citation omitted).

VALUATION OF PROPERTY FOR TAXATION PURPOSES

{17} The valuation of real property for property tax purposes is governed by the Property Tax Code, NMSA 1978, §§ 7-35-1 to -38-93 (1973, as amended through 2016), which provides that "the determination of value is made by the [taxation and revenue] department or the county assessor." Section 7-36-15(A). The value for taxation purposes is the market value "as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods." Section 7-36-15(B). In applying any of these approved methods, "the valuation authority . . . shall apply generally accepted appraisal techniques[.]" Section 7-36-15(B)(1); *First Nat'l Bank*, 1977-NMCA-005, ¶ 22.

{18} The Taxation and Revenue Department has promulgated regulations that guide the application of these methods. 3.6.5.22 NMAC. The income method of valuation is appropriate "when the market value method cannot be used due to lack of data on sales of comparable properties[.]" 3.6.5.22(A)(1) NMAC. "Expenses," for purposes of applying the income method of valuation, are defined as "the outlay or average annual allocation of money or money's worth that can fairly be charged against the revenue or receipts from the property" and are "limited to those which are ordinary and necessary in the production of the revenue and receipts from the property[.]" 3.6.5.22(A)(6) NMAC.

{19} Determinations of valuation by the Taxation and Revenue Department or a county assessor are presumed to be correct. Section 7-38-6; *First Nat'l Bank*, 1977-NMCA-005, ¶ 24. "This presumption can be overcome by [the] taxpayer showing that the assessor did not follow the statutory provisions . . . or by presenting evidence tending to dispute the factual correctness of the valuation." *First Nat'l Bank*, 1977-NMCA-005, ¶ 24. In determining the weight to give admitted evidence of valuation, the protests board members "may use their knowledge and experience[.]" 3.6.7.36(H)(1) NMAC.

{20} Whether an appraisal technique is "generally accepted" is a question of fact. *See First Nat'l Bank*, 1977-NMCA-005, ¶ 23 (stating that a taxpayer has a "duty to dispute . . . by expert testimony" whether an appraisal technique is generally accepted). If the taxpayer overcomes the statutory presumption of correctness, "the burden shifts to the assessor to prove that his [or her] method of valuation utilized a generally accepted appraisal technique." *Id.* ¶ 25 (internal quotation marks and citation omitted).

{21} Prior to addressing Appellant's issues on appeal, we must address whether Appellant's testimony and admitted evidence were sufficient to overcome the statutory presumption of correctness afforded to the Assessor's valuation of the subject property. The Assessor proposed a market value based upon its own application of the income method of valuation; an application that utilized a market research-based, forty-five percent limitation on operating expenses. Appellant did not offer expert testimony indicating that the Assessor's application of the income method of valuation did not utilize generally accepted appraisal techniques as outlined in *First National Bank*. *See id.* ¶ 23. However, both the Protests Board, impliedly, and the district court, expressly, indicated that Appellant had overcome the statutory presumption of correctness.

{22} During the July 8, 2014 hearing, Appellant proposed a market value based upon its own application of the income method of valuation. This application utilized actual operating expenses, as reflected in the 2014 projected APOD. While Appellant's application of the income method of valuation differs from that advocated by the Assessor, the Assessor did not offer expert testimony disputing that the use of actual expenses is a generally accepted appraisal technique. *See id.* As such, Appellant's "evidence of value . . . tend[s] to dispute the factual correctness of the method of valuation[.]" *Id.* ¶ 24. Neither the Protests Board nor the district court ruled that Appellant failed to overcome the statutory presumption of correctness afforded to the Assessor's valuation. *Cf. Peterson Props., Del Rio Plaza Shopping Ctr. v. Valencia Cty. Valuation Protests Bd.*, 1976-NMCA-043, ¶ 14, 89 N.M. 239, 549 P.2d 1074 (holding that, in the absence of evidence based on generally accepted appraisal techniques, the petitioner did not overcome the statutory presumption of correctness). In the absence of such a ruling, the burden of proof shifted to the Assessor "to prove that his [or her] method of valuation utilized a generally accepted appraisal technique." *First Nat'l Bank*, 1977-NMCA-005, ¶ 25 (internal quotation marks omitted).

SUFFICIENCY OF THE EVIDENCE

{23} Because Appellant overcame the statutory presumption of correctness afforded to the Assessor's valuation of the subject property, we turn to the issue of whether substantial evidence exists such that a reasonable person could conclude that the Assessor's application of the income method utilized generally accepted appraisal techniques. In this inquiry, we account for regulatory language allowing Protests Board members to apply their own experience and knowledge to the admitted evidence. 3.6.7.36(H)(1) NMAC. For the reasons discussed below, we conclude that the Assessor's testimony is insufficient to support such a conclusion.

{24} The income method of real estate valuation derives market value from a formula that multiplies a given capitalization rate by the net operating income for the subject property. *Encyclopedia of Real Estate Appraising* 54-55 (Edith J. Friedman

ed., 1959). Net operating income is calculated "by deducting from gross income all costs of maintenance and operation." *Id.* at 55. As discussed above, Jaramillo testified at the July 8, 2014 hearing that, when applying the income method of valuation, the Assessor applies a forty-five percent limitation on operating expenses rather than applying the taxpayer's actual reported expenses. Our independent research indicates that such a limitation, based solely on market research, is not universally applied. *See, e.g.*, *Willow Valley Manor, Inc. v. Lancaster Cty. Bd. of Assessment Appeals*, 810 A.2d 720, 726-27 (Pa. Commw. Ct. 2002) ("In estimating expenses, the appraiser . . . must make a stabilized expense projection, considering *actual expenses* and industry standards." (emphasis added)); *Smith v. Bd. of Supervisors of Fairfax Cty.*, 361 S.E.2d 351, 355 (Va. 1987) ("Where an assessment is based on the capitalization of income, contract rent and *actual expenses* must be considered in arriving at economic income[.]" (emphasis added)).

{25} Jaramillo testified that the Assessor derived its forty-five percent limitation on operating expenses from market research from sources including Business Weekly, Co-Star, and "everybody else that has brought us any kind of information." This testimony, however, in no way indicated that the forty-five percent limitation on operating expenses was properly applied (1) to Appellant's office building or (2) during the time period at issue. *See generally Encyclopedia of Real Estate Appraising*, *supra* (describing different considerations in appraising different types of commercial property including apartment buildings, office buildings, retail stores, shopping centers, and industrial property). The Protests Board highlighted this deficiency by stating its preference "to see the Assessor's actual market studies to support the expense limits imposed." Taxpayers are entitled to a "current and correct value[] of property" for taxation purposes. Section 7-36-16(A). Commercial real estate markets, however, fluctuate. Absent data supporting the Assessor's claim that forty-five percent is an appropriate limitation on operating expenses *in this market, for this property type, and during this time period*, we are disinclined to conclude that a reasonable person could conclude that the Assessor conducted the appraisal using generally accepted appraisal techniques.

{26} Furthermore, the Protests Board's 2009 decision and order for the subject property, which was admitted as evidence in this case, demonstrates that the Protests Board had recently repudiated the utilization of blanket limitations on operating expenses when applying the income valuation method. While this order has no precedential value, it indicates a dramatic shift with respect to what constitutes a generally accepted appraisal technique between 2009 and 2014. It is not for this Court to determine whether the Assessor's limitation on operating expenses is, or is not, a generally accepted appraisal technique. However, the Protests Board's 2009 decision and order for this property raises questions as to whether the Assessor's 2014 valuation of the property was the result of the application of generally accepted appraisal techniques, and Jaramillo's testimony does not resolve those questions.

{27} Both the Assessor and the district court note, in reference to 3.6.7.36(H)(1) NMAC, that members of the Protests Board "determined upon independent review that the Assessor's approach was reliable." However, we do not consider that determination to be sufficient in this context without data, or some other objective source of information, to which the board members may apply such independent review. *Cf. Four Hills Country Club v. Bernalillo Cty. Prop. Tax Protest Bd.*, 1979-NMCA-141, ¶¶ 13, 23, 94 N.M. 709, 616 P.2d 422 (reversing the protest board's determination of value and discounting the testimony of the expert appraiser, stating, "If the only purpose for calling an expert is to have him put forth the hearsay opinion of another, the trier of facts could as well obtain the material itself and dispense with hearing any witnesses.").

{28} In support of its decision, the district court additionally stated, "Appellant has identified no provision in the statutes or regulations that requires the Assessor to use[] a subject property's actual expenses, and the case law does not support his position." We also do not consider this statement to be convincing. First, the case cited by the district court in support of "mass appraisal[s]" relates to the appraisal of undeveloped lots using the comparable sales method. *In re Protest of Cobb*, 1991-NMCA-122, ¶ 2, 113 N.M. 251, 824 P.2d 1053. Second, and more importantly, the district court's argument incorrectly shifts the burden of proof back to Appellant. *See First Nat'l Bank*, 1977-NMCA-005, ¶ 25 ("When a taxpayer overcomes the presumption of the correctness of the assessor's method of valuation, the burden shifts to the assessor to prove that his [or her] method of valuation utilized a generally accepted appraisal technique." (internal quotation marks omitted)). Similarly, in discussing the sufficiency of Jaramillo's testimony to carry the burden of proof, the district court stated that Jaramillo's "sworn testimony that the Assessor employs a [forty-five percent] cap is itself competent evidence that such a policy exists." The question at issue in this case, however, is not whether a certain policy exists or is employed by the Assessor. The question at issue, instead, is whether that policy utilizes generally accepted appraisal techniques to determine current and correct valuations for property tax purposes. We are unable to draw such a conclusion from Jaramillo's testimony before the Protests Board.

CONCLUSION

{29} At oral argument before this Court, Appellant requested that we apply its proposed valuation for the 2014 tax year. Because we lack a sufficient basis to say that Appellant's proposed valuation resulted from the application of generally accepted appraisal techniques, we decline to take such action. Instead, we vacate the Protests Board's valuation of the subject property and remand to the Protests Board for additional proceedings consistent with this opinion.[4]

{30} **IT IS SO ORDERED.**

JAMES J. WECHSLER, Judge

WE CONCUR:
RODERICK T. KENNEDY, Judge
LINDA M. VANZI, Judge

[4]On remand, Mr. Pongetti, as an inactive attorney, should not be allowed to represent 2727 San Pedro LLC. *See Martinez v. Roscoe*, 2001-NMCA-083, ¶¶ 5-7, 131 N.M. 137, 33 P.3d 887.

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-009

No. 34,486 (filed September 27, 2016)

MIRA CONSULTING, INC., a New Mexico Corporation,
Plaintiff-Appellant,
v.
BOARD OF EDUCATION, ALBUQUERQUE PUBLIC SCHOOLS,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
NANCY J. FRANCHINI, District Judge

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Opinion

Michael D. Bustamante, Judge

{1} Mira Consulting, Inc. appeals the dismissal of its complaint for declaratory judgment. We agree with the district court that New Mexico's Procurement Code does not apply here and that dismissal under Rule 1-012(B)(6) NMRA was appropriate. We therefore affirm.

BACKGROUND

{2} Mira Consulting, Inc. (Mira) is a for-profit New Mexico corporation providing dental services primarily in Albuquerque. Albuquerque Public Schools (APS) issued a "Request for Information" (RFI) soliciting information about "dental health providers who are interested [in] delivering direct services in APS for the 2014-2015 [s]chool [y]ear." Through the program, successful applicants would be permitted to provide dental services in APS schools. The RFI stated that "[a]ll services performed per an award for this RFI must be performed at no cost to APS. Successful applicants will be directed to bill Medicaid, other third party payers or provide services pro[]bono."

{3} Mira responded to the RFI. Three other dental service providers also submitted information. After four reviewers scored each response, Mira and Smiles for New Mexico Kids were selected as providers. Although Mira was "awarded" sixty-eight schools and Smiles for New Mexico Kids was awarded thirty schools, Mira filed a bid protest with APS's procurement division pursuant to Section 13-1-172 of New Mexico's Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2015). The bid protest was based in part on the distribution of elementary schools and high schools between Mira and Smiles for New Mexico Kids, as well as proximity of the schools to each company's "dental home." APS responded to the bid protest by stating that the protest procedures in the Procurement Code were inapplicable because the Procurement Code does not apply to transactions in which APS does not expend any funds.

{4} Mira then filed a complaint for declaratory judgment requesting an order declaring that the RFI was subject to the Procurement Code. After a hearing on a motion to dismiss, the district court agreed with APS that the Procurement Code did not apply and dismissed the complaint for failure to state a claim under Rule 1-012(B)(6). Mira appeals.

DISCUSSION

{5} Our review of statutory construction questions is de novo. *See Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, ¶ 14, 128 N.M. 309, 992 P.2d 860. In construing a statute, we seek to "determine and give effect to the intent of the [L]egislature." *Id.* ¶ 18 (internal quotation marks and citation omitted). We are guided by common principles of statutory construction, including the following:

> [(1)] The plain language of a statute is the primary indicator of legislative intent.
> [(2)] Courts are to give the words used in the statute their ordinary meaning unless the [L]egislature indicates a different intent.
> [(3)] The court will not read into a statute or ordinance language which is not there, particularly if it makes sense as written.

Id. (alteration, internal quotation marks, and citations omitted).

{6} Although the "plain meaning rule" is a guiding principle, "[i]ts beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *State v. Smith*, 2004-NMSC-032, ¶ 9, 136 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted). Therefore, "[t]he plain meaning rule must yield on occasion to an intention otherwise discerned in terms of equity, legislative history, or other sources." *Id.* (internal quotation marks and citation omitted).

{7} Section 13-1-30(A) addresses the applicability of the Procurement Code. It provides that "[e]xcept as otherwise provided in the Procurement Code, that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services[,] and construction." An "expenditure" is "[t]he act or process of spending or using money, time, energy, etc.; esp., the disbursement of funds . . . [or a] sum paid out." *Black's Law Dictionary* 698 (10th ed. 2014). Mira argues that, although the Procurement Code clearly applies to "every expenditure," nothing in Section 13-1-30 indicates that it applies *only* when there is an expenditure. But this argument ignores the second sentence of Section 13-1-30(A), which states that the Procurement Code "*also applies to concession contracts* at the New Mexico state fair in excess of twenty thousand dollars ($20,000), whether those concession contracts generate revenue and earnings or expand]sic[funds." (Emphasis added.) A "concession" contract is "[a] government grant for specific privileges." *Black's Law Dictionary* 350; *see* 19.5.1.7(J) NMAC (" 'Concession contract' means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations[,] or facilities

within a park."). Although the parties do not describe it this way, the arrangement at issue here falls within this definition.

{8} We conclude that the Procurement Code does not apply here for two reasons. First, concession contracts typically do not involve expenditures by the public entity. *See* John Ziegler, *The Dangers of Municipal Concession Contracts: A New Vehicle to Improve Accountability and Transparency*, 40 Pub. Cont. L.J. 571, 575 (2011) (discussing basic concession contracts); *see also Kayak Ctr. at Wickford Cove, LLC v. Town of Narragansett*, 116 A.3d 250, 255 (R.I. 2015) (describing concession contracts as "contracts that produce revenue and not purchases"). Second, we interpret the second sentence of Section 13-1-30(A) as a narrow exception to the expenditure requirement in the first sentence. Phrased another way, this provision means that the only time a transaction not involving an expenditure is covered by the Procurement Code is when it is a concession contract at the New Mexico state fair for over $20,000. Furthermore, under the principle of *inclusio unius est exclusio alterius*, the inclusion of state fair concession contracts over $20,000 in the statute also acts as an exclusion of omitted alternatives—being concession contracts of other kinds. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 11, 85 N.M. 747, 517 P.2d 69 (stating that *inclusio unius est exclusio alterius* "means the inclusion of one thing is the exclusion of the other"). When the first sentence is read in the context of the second, there is a clear implication that non-state fair concession contracts are not covered by the Procurement Code. We conclude that the Procurement Code does not apply to APS's RFI or Mira's response to it.

{9} Other courts have held under similar circumstances that concession contracts are excluded from the ambit of their states' procurement codes. In *Kayak Centre*, the Rhode Island Supreme Court considered a request for declaratory judgment similar to that here. 116 A.3d at 252-53. The plaintiff argued that the defendant had violated a procurement statute when it did not award a concession contract to the plaintiff, who proposed a higher payment to the defendant than its competitors. *Id.* In addition to requiring competitive sealed bidding, the statute at issue provided that "[t]he contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price, or lowest evaluated or responsive bid price." R.I. Gen. Laws § 45-55-5(e) (1998). Relying on this language and references to "purchases" and "procurement" in the statute, the *Kayak Centre* court held that "[t]he language of the statute is clear and unambiguous. As a result, we need not delve into the intent of the [g]eneral [a]ssembly, except to say that in our opinion, in enacting [Section] 45-55-5 the [l]egislature sought to regulate contracts that require the expenditure of public funds." *Kayak Ctr.*, 116 A.3d at 254. The court held that the procurement statute did not apply, stating, "We cannot rewrite the statute by essentially exchanging the word lowest for the word highest, as [the] plaintiff would have us do, because we will not insert words into an unambiguous statute." *Id.*; *see Indep. Taxicab Ass'n of Columbus v. Columbus Green Cabs, Inc.*, 616 N.E.2d 1144, 1149 (Ohio Ct. App. 1992) (holding that, where the plaintiff sought to provide taxi management services at the airport, because "the [defendant-]city is not purchasing services from [the winning contractor, it] was not required to comply with the competitive bidding procedures set forth in [the defendant-city's procurement code]"); *see also* 10 McQuillin Mun. Corp., *Contracts in General* § 29:38 (3d ed.) ("Where a city is not purchasing services but granting a license or franchise to do business, it is not required to comply with a competitive bidding ordinance.").

{10} We briefly address Mira's arguments that the plain language of Section 13-1-30 is not dispositive. To the extent Mira argues that because APS's RFI resembled and functioned like a Request for Proposals (RFP), it should be treated like an RFP under the Procurement Code, we disagree for two reasons. *See* § 13-1-112 (governing requests for proposals). First, APS's decision to use methods for soliciting and evaluating dental service providers that resembled those for RFPs does not transform a non-covered transaction into a covered one, or vice versa. If the methods chosen determined whether the Procurement Code applied, then Section 13-1-30(A) would be superfluous. Moreover, public entities could avoid the Procurement Code's requirements simply by not following its RFP procedures. Second, the RFI made clear that APS was not offering to buy services from respondents to the RFI. Instead, it stated several times that the selected vendors must bill third parties for payment. *Cf. Lowe v. City of Hot Springs*, 2015 SD 3, ¶ 19, 859 N.W.2d 612 (rejecting an argument that, because the defendant "utilized the RFP process," the solicitation was for procurement of services on the ground that "the RFP itself indicated that the [defendant] was not seeking to procure services" (internal quotation marks omitted)).

{11} Mira also relies on *Memorial Medical Center, Inc. v. Tatsch Construction, Inc.*, to argue that the Procurement Code applies. 2000-NMSC-030, 129 N.M. 677, 12 P.3d 431. In *Memorial Medical Center*, the issue was whether a private entity (MMCI) could be considered a "political subdivision" or "local public body" by virtue of its relationship with the public entities (the City of Las Cruces and County of Doña Ana) that leased MMCI the hospital facility. *Id.* ¶¶ 1-2 (internal quotation marks omitted). The issue in *Memorial Medical Center* was not whether the Procurement Code would apply to a new construction project entered into by the City or the County, as public entities. *Id.* ¶ 1. It was fully understood that the Procurement Code would apply to the new hospital construction project if the City or County had continued to own and operate the hospital. *Id.* ¶¶ 4, 20-36. More specifically, the question was whether the Procurement Code and related statutes should also apply to MMCI, a private entity, "because the private entity has so many public attributes, is so controlled and conducted, or otherwise is so affiliated with a public entity that as a matter of fairness it must be considered as the same entity." *Id.* ¶ 34.

{12} In the present case, we understand Mira's argument to be that, because it was so intertwined with a public entity (APS) in offering to provide dental services to APS schools, the Procurement Code must apply to the RFI selection process for providing these services. We are not persuaded by Mira's argument. Mira is not stepping in as a private entity to pay for dental services on behalf of APS, as its alter ego or otherwise. *Id.* ¶ 35. Mira does not dispute that these dental services will be paid by Medicaid, other third party payers, or provided pro bono to students. Mira did not assert that the third party payers and Medicaid are acting as an alter ego for APS. Unlike the new hospital construction project in *Memorial Medical Center*, Mira is not acting to procure and pay a third party for providing dental services. Neither APS nor Mira pay third parties to provide dental services to APS students. Mira is simply applying to be one of the third party providers of the dental service. No private entity acting as the "alter ego" for APS has been established. The alter

ego theory offered under *Memorial Medical Center* is inapplicable to Mira, and the Procurement Code will not be altered or expanded to apply to the RFI under these factual circumstances.

{13} Finally, although Mira makes several policy arguments for why concession contracts should be subject to the Procurement Code, such issues call for "legislative therapy and not judicial surgery." *State v. Gardner*, 1991-NMCA-058, ¶ 9, 112 N.M. 280, 814 P.2d 458 (internal quotation marks and citation omitted). "Unless a statute violates the Constitution, we will not question the wisdom, policy, or justness of legislation enacted by our Legislature." *Aeda v. Aeda*, 2013-NMCA-095, ¶ 11, 310 P.3d 646 (alteration, internal quotation marks, and citation omitted). The Legislature could have made all concession contracts subject to the Procurement Code. *See State v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 ("The Legislature knows how to include language in a statute if it so desires." (alteration, internal quotation marks, and citation omitted)); *cf.* Albuquerque, N.M., Code of Ordinances § 5-5-28(A) (2011) (distinguishing between "purchases" and "concession contracts" and stating that "[a]ll purchases of goods, services, and construction in excess of $25,000, and the establishment of concession contracts expected to exceed $75,000 in revenues to the contractor shall be made by competitive sealed bid except as otherwise authorized by this article."). Our Legislature chose not to do so, and we must honor that choice. *Jones v. Holiday Inn Express*, 2014-NMCA-082, ¶ 19, 331 P.3d 992 ("Courts must construe statutes as they find them and may not amend or change them under the guise of construction." (internal quotation marks and citation omitted)).

CONCLUSION

{14} We conclude that the Procurement Code does not apply to contracts such as that contemplated by APS's RFI. Hence, we affirm the district court's dismissal of Mira's complaint for declaratory judgment.

{15} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:
JONATHAN B. SUTIN, Judge
TIMOTHY L. GARCIA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-010

No. 34,282 (filed October 6, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
TERENCE GOODMAN,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
CHARLES W. BROWN, District Judge

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Opinion

Roderick T. Kennedy, Judge

{1} In this case we determine that a five- to fifteen-second delay in proceeding from a red light turned green does not constitute obstructing traffic as a matter of law in violation of a City of Albuquerque Ordinance entitled "Vehicles, Pedestrians Not to Obstruct Streets." Albuquerque, N.M., Rev. Ordinances ch. 8, art. I, § 8-2-1-33 (1974) (the Ordinance). Consequently, we also hold that the officer who stopped Defendant solely for a violation of the Ordinance based on that transitory delay was operating under an unreasonable mistake of law, and lacked reasonable suspicion for the stop. All evidence obtained as a result of the improper stop should have been suppressed. The district court having ruled otherwise, we reverse.

I. BACKGROUND

{2} While traveling southbound on Second Street in downtown Albuquerque at approximately two o'clock in the morning, Officer Mark Landavazo pulled up behind Defendant at a red light. The light was red when Officer Landavazo arrived, and there were no other cars at the intersection or on the adjoining streets. The street on which the two vehicles were traveling was three lanes wide: one northbound lane, one southbound lane, and one turning lane allowing traffic from either direction to turn left. When the light turned green, from five to fifteen seconds passed before Defendant began driving forward. As soon as Defendant started driving through the intersection, Officer Landavazo initiated his emergency lights. Defendant pulled over immediately. The delay between the light turning green and Defendant's departure was the sole basis on which Officer Landavazo stopped Defendant. Defendant was ticketed for obstructing traffic. No other alleged traffic violation occurred. Officer Landavazo stated that he stopped Defendant because he believed that Defendant's delay impeded the flow of traffic, contrary to the Ordinance, which prohibits obstructing traffic.

{3} Defendant filed a motion to suppress evidence obtained as a result of the stop. Defendant argued that Officer Landavazo did not have reasonable suspicion to stop Defendant.[1] The metropolitan court concluded that Officer Landavazo had reasonable suspicion to conduct his stop of Defendant and denied Defendant's motion. Defendant pled guilty, reserving his right to appeal the denial of his suppression motion. The district court affirmed in a memorandum opinion. Defendant now appeals the district court's decision to affirm the metropolitan court's denial of his motion to suppress.

II. DISCUSSION

{4} There is no legal touchstone, nor any evidentiary basis in this case for what constitutes an obstruction, or how long one has to be stationary in a street to be one. Arguments presented by Defendant in this appeal unconvincingly suggest that all three lanes of Second Street must be obstructed to be a violation under the definition of a "public way," while the State argues that there is no minimum delay in proceeding from a newly-green traffic light that is incapable of being investigated as a violation. We ascribe to neither position. The State cites to NMSA 1978, Section 66-7-105(A) (1978) to demonstrate that vehicular traffic facing a green light "may proceed straight through or turn right or left," but nowhere is there a time limit for doing so. We recognize that our Supreme Court requires that an ordinance must be specific enough to afford fair notice of what is prohibited to potential violators, *Harris Books, Inc. v. City of Santa Fe*, 1982-NMSC-078, ¶ 9, 98 N.M. 235, 647 P.2d 868, and that we have previously held that when an ordinance fails to create minimum guidelines for the reasonable police officer, charged with enforcement of the statute to a point that encourages subjective and ad hoc application, a statute cannot stand. *State v. Jacquez*, 2009-NMCA-124, ¶ 6, 147 N.M. 313, 222 P.3d 685. The State raises the Ordinance's ambiguity on appeal, but fails to demonstrate that the issue was raised below; we accordingly do not consider the argument. *See Cent. Sec. & Alarm Co. v. Mehler*, 1996-NMCA-060, ¶ 25, 121 N.M. 840, 918 P.2d 1340. In an attempt to follow as linear a path as possible, we first address whether reasonable suspicion existed to initiate the stop. After an analysis of the Ordinance, we conclude that Officer Landavazo had no reasonable suspicion to stop Defendant. In all, statutory analysis of the Ordinance drives this case.

{5} The denial of a motion to suppress presents a mixed question of fact and law. *State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183. Thus, the appellate court reviews the facts for substantial evidence, deferring to the lower court's findings regarding the evidence presented. *State v. Leyva*, 2011-NMSC-009, ¶ 30, 149 N.M. 435, 250 P.3d 861. We review the application of law to the

[1]Defendant also argued in metropolitan court that Officer Landavazo's stop of Defendant was pretextual, but that issue is not before us in this appeal.

facts de novo. *Almanzar*, 2014-NMSC-001, ¶ 9. We are not bound by a lower court's ruling that is predicated on a mistake of law. *Boone v. State*, 1986-NMSC-100, ¶ 10, 105 N.M. 223, 731 P.2d 366.

{6} The stop of a vehicle for the purpose of investigating a traffic violation is an investigative seizure and must be justified at its inception. *Leyva*, 2011-NMSC-009, ¶ 10. Justification consists of an officer having reasonable, articulable suspicion that a particular individual is breaking or has broken the law. *See State v. Jason L.*, 2000-NMSC-018, ¶ 20, 129 N.M. 119, 2 P.3d 856 (setting forth standard for reasonable suspicion); *see also State v. Duran*, 2005-NMSC-034, ¶ 23, 138 N.M. 414, 120 P.3d 836 (stating that New Mexico courts apply reasonable suspicion analysis for investigatory stops to traffic stops), *overruled on other grounds by Leyva*, 2011-NMSC-009. This includes reasonable suspicion that a traffic law has been violated. *State v. Prince*, 2004-NMCA-127, ¶ 9, 136 N.M. 521, 101 P.3d 332.

{7} The Ordinance provides the following:

> It shall be unlawful for any person either to operate or to stand a vehicle on any public way in such a manner as to obstruct the free use of such public way, or to place himself, to place or direct another or to place or direct the placement of any material, object, or vehicle on any public way in such a manner as to obstruct the free use of such public way. The term "public way" shall include an intersection. This section shall not be interpreted to prohibit the lawful parking of vehicles, trailers, and the like.

Albuquerque, N.M., Rev. Ordinances § 8-2-1-33. We note that there is no requirement of *intentionally* obstructing a public way, or any element of scienter at all in the Ordinance. Albuquerque, N.M., Rev. Ordinances § 8-2-1-33. A "public way" is defined as "[t]he entire width between the property lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel[.]" Albuquerque, N.M., Rev. Ordinances ch. 8, art. I, § 8-1-1-2(B) (1974, amended 2014). The "public way" includes the "unused right of way[.]" *Id.*

A. Officer Landavazo Had No Reasonable Suspicion That Defendant Obstructed Free Use of the Public Way Contrary to the Ordinance

{8} Defendant argues that the traffic stop was not supported by reasonable suspicion because Officer Landavazo made a mistake of law when he believed Defendant's actions constituted a violation of the Ordinance. Specifically, Defendant contends that the Ordinance, when read in conjunction with the definition of "public way," requires that the entire public way be utterly impassable. Thus, because portions of the unused right of way—the opposite northbound lane and southbound left-turn lane—were not both obstructed, Defendant argues that the Ordinance could not have been violated. The State, on the other hand, argues that Defendant's vehicle prohibited Officer Landavazo from proceeding forward through the intersection in the southbound lane, and thus, regardless of the temporal or spatial extent of the obstruction, the Ordinance was violated.

{9} Our determination of whether Officer Landavazo made a mistake of law in initiating a traffic stop, based on the belief that Defendant had committed a violation of the Ordinance, begins with an analysis of the Ordinance itself. *See State v. Scharff*, 2012-NMCA-087, ¶ 11, 284 P.3d 447 (determining whether a deputy made a mistake of law beginning with analysis of the section of the Motor Vehicle Code). Both the State and Defendant agree that Defendant did not immediately move forward when the traffic signal changed from red to green. *State v. Olivas*, 2011-NMCA-030, ¶ 8, 149 N.M. 498, 252 P.3d 722 (viewing the facts in the light most favorable to the decision below). It is also undisputed that Officer Landavazo initiated the stop immediately once Defendant began driving through the intersection and had no other reason for the stop than the delay in starting from a dead stop once the light turned green. Our task is to determine whether this delay is within the ambit of the type of conduct that the Ordinance is aimed at preventing. *See State v. Hall*, 2013-NMSC-001, ¶ 9, 294 P.3d 1235 (deciphering legislative intent by examining "the object the [L]egislature sought to accomplish and the wrong it sought to remedy" (internal quotation marks and citation omitted)).

{10} We interpret an ordinance in the same manner as we would a statute. *See Lantz v. Santa Fe Extraterritorial Zoning Auth.*, 2004-NMCA-090, ¶ 7, 136 N.M. 74, 94 P.3d 817; *see also Almanzar*, 2014-NMSC-001, ¶ 9 (applying a de novo standard of review). We aim, above all, to give effect to the intent of the Legislature, or, in this case, the city council. *See Almanzar*, 2014-NMSC-001, ¶ 14; *see also* Albuquerque, N.M., Rev. Ordinances ch. 8, art. I, § 8-1-3-22 (1974, amended 1994) (acknowledging the city council's authority to pass portions of the traffic code). To do this, we look "to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." *Almanzar*, 2014-NMSC-001, ¶ 14 (internal quotation marks and citation omitted). Where the language of a statute is clear and unambiguous, this is the end of our inquiry. *Id.* However, courts must approach ambiguity with caution when applying the plain meaning rule: "Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. If a statute's language is unclear or ambiguous, we must conduct further statutory analysis by looking to the history, background, and overall structure of the statute. *See Almanzar*, 2014-NMSC-001, ¶ 15.

{11} Courts conducting statutory interpretation must also keep in mind that the plain meaning of a statute's language "does not trump common sense." *State v. Trujillo*, 2009-NMSC-012, ¶ 21, 146 N.M. 14, 206 P.2d 125. Thus, courts refrain from employing a mechanical construction that renders an absurd or unreasonable result. *Almanzar*, 2014-NMSC-001, ¶ 15. When looking to the plain meaning of a statute's language, "it is necessary to think thoughts and not words." *State v. Strauch*, 2015-NMSC-009, ¶ 13, 345 P.3d 317. Doing so requires us to examine the object that the Legislature sought to accomplish or the wrongs it sought to remedy. *Hall*, 2013-NMSC-001, ¶ 9. We avoid adopting a construction that would lead to injustice or contradiction. *Strauch*, 2015-NMSC-009, ¶ 13.

{12} The Ordinance prohibits obstructing free use of a public way. To "obstruct" is [t]o block or stop up (a road, passageway, etc.)" or to close off something. *Black's Law Dictionary* 1246 (10th ed. 2014). For the purposes of the Ordinance, a public way is the entire roadway, including all lanes of travel, as well as the intersection. *See* Albuquerque, N.M., Rev. Ordinances § 8-2-1-33; Albuquerque, N.M., Rev. Ordinances § 8-1-1-2. Defendant suggests we adopt an interpretation that would require a person to obstruct the entirety

of the public right of way—including all usable lanes of traffic—to violate the Ordinance. Nothing in the Ordinance's language supports such an interpretation, though such an interpretation is possible under the plain language of the Ordinance. *See* Albuquerque, N.M., Rev. Ordinances § 8-2-1-33 (prohibiting the placing of a vehicle in a manner that "obstruct[s] the free use of [a] public way"). The functional repercussions of Defendant's interpretation, however, lead to an absurd result. We can easily see that obstructing the only lane of traffic save those reserved for oncoming traffic or turns is possible. Without deciding the matter, the single lane of through traffic is, in our view of this case, capable of being obstructed by a single vehicle. *See May v. Baklini*, 1973-NMCA-043, ¶ 14, 85 N.M. 150, 509 P.2d 1345 (holding that obstruction can occur in one lane irrespective of the availability of others). Though *May* is distinguishable from this case in many ways—it was a civil case dealing with a prior version of the Ordinance, and presented a factual rather than legal issue—it is still relevant to our interpretation of the Ordinance. The Ordinance in 1973 contained language that prohibited obstructing the "free use" of a "public way." *May*, 1973-NMCA-043, ¶ 11. The crux of this case, though, is under what circumstances failing to move from a dead stop occasioned by a red light gives rise to a reasonable suspicion that a crime has been committed.

{13} Defendant more persuasively suggests that the Ordinance implies a minimum time requirement through its use of the term "free use." He does not specify what precisely that requirement might be. We do not intend to forge a bright-line rule as to the extent of delay that is required to establish a violation of the Ordinance, but realize that some "obstructions" are more transitory than others. Officer Landavazo was not prevented from proceeding, but rather was simply delayed. Defendant was not moving along at a slow speed obstructing traffic in the lane as was arguable in *May*, but legally stopped for a red light for which the officer had to stop as well. Officer Landavazo considered a period from five to fifteen seconds to be an illegal "obstruction," but providing no standard by which he might judge what would be a permissible delay. Accordingly, the standard by which the officer decided the violation was entirely ad hoc, subjective and arbitrary as a result. Labeling a mere delay such as this one an obstruction under the Ordinance makes it subject to numerous inconsistent interpretations. There is no evidence in the record that Officer Lanadavazo was at all inconvenienced or even forced to wait through another full light cycle before proceeding through the intersection. He was fully stopped because of the same legal compulsion that required Defendant to obey a red light. As it is, Defendant continued on his way seconds after the light change, and Officer Landavazo was permitted to do the same. When Defendant moved, he ceased being any sort of an obstruction—but was seized by the officer.

{14} Our obligation as a reviewing court is to objectively judge the circumstances known to the officer to determine whether from the circumstances a reasonable person would believe that criminal activity occurred or was occurring. *State v. Hubble*, 2009-NMSC-014, ¶ 8, 146 N.M. 70, 206 P.3d 579. A delay of mere seconds after a mandatory stop, in our view, fails as a matter of law to "obstruct the free use" of the "public way," and therefore does not seem to be the harm that the Ordinance is intended to prevent. Chapter 8, Article I of the City of Albuquerque Ordinances is aimed at promoting public safety and efficiency. *See* Albuquerque, N.M., Rev. Ordinances § 8-1-2-1 (acknowledging that an effective traffic control program must provide efficient and safe movement of traffic). Stopping at traffic lights and proceeding when they turn green is in concert with this goal. A fifteen-second delay, standing quite alone, without any indication as why it occurred, is no threat to public safety or free use of the city's roads.

{15} The State suggests that any extent of delay impedes progress and therefore constitutes an obstruction under the Ordinance. In analyzing whether Defendant's role as a de minimis source of delay is adequate to constitute an obstruction under the Ordinance, we are mindful of the practical implications of any such decision in this case. *See Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 (acknowledging that, in addition to a plain meaning examination, courts consider the practical implications of the statute). The State's position is sound only under a formalistic reading of the language in the Ordinance, and fails when viewed under the lens of practicality and applied in terms of everyday occurrences. In fact, there are countless situations in which a driver is delayed in entering an intersection after a light change but neither poses a threat to public safety nor significantly impairs efficient travel on the roadways. We cannot assume the city council intended that everyone who stops at a stop light and is, for a myriad of legitimate reasons, unaware it became green, should be subject to punishment under the Ordinance. Such an outcome is both absurd and unjust, and we avoid such an interpretation. *See Almanzar*, 2014-NMSC-001, ¶ 15. We therefore conclude that the city council did not intend to penalize conduct such as Defendant's. The record supports no inference from Defendant's conduct to objectively support a reasonable suspicion that the violated the ordinance prohibiting obstructing traffic. No law required Defendant to immediately proceed on the change of the light, and nothing articulable indicates that five to fifteen seconds satisfies a requirement of obstructing traffic. In this instance, no circumstances known to a requirement of obstructing traffic. In this instance, no circumstances known to the officer for the period before or the fifteen seconds after the red light turned green would reasonably support an inference that the law was being violated.

III. CONCLUSION

{16} We conclude that the stop was initiated without reasonable suspicion that a crime was being committed by Defendant. We therefore reverse the district court's denial of Defendant's motion to suppress, vacate Defendant's conviction, and remand for further proceedings consistent with this opinion.

{17} IT IS SO ORDERED.
RODERICK T. KENNEDY, Judge

WE CONCUR:
MICHAEL E. VIGIL, Chief Judge
MICHAEL D. BUSTAMANTE, Judge

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For the past 20 years I have provided research and writing for NM attorneys, including some who are recognized as Super Lawyers, Best Lawyers in America, and AV-rated, as well as other hard-working lawyers who also may deserve such recognition. I have litigation and appellate experience. I have a talent for finding authority that others may have difficulty finding. I am a published author and a former professor of Canon Law. Terence Grant, J.D., magna cum laude. legalresearch@comcast.net. 505-508-1755.

Office Space

Office For Lease Or Sublease
1,877 sq. ft. corner office opens to atrium at One Executive Center, 8500 Menaul NE, A-400, three atty offices, conf. room, large secretary station, reception area, kitchen, telephone system, high speed internet, office rent $2,660; call Jim or Marcy @ 275-1222; 235-7697. Available March 31, 2017. Quality furniture for sale.

Law Office Property For Sale
Walking distance to Court Houses, prime frontage on Lomas, 1,960 SF, free standing, multiple offices, street signage, on-site parking, Seller Financing. 1408 Lomas Blvd. Call Mike @ 505-401-6268.

Downtown Office Space For Rent
Large executive office and secretarial station for rent in busy downtown plaintiff's office, in secure bank building, one block from all court houses, amenities: full kitchen, conference room and receptionist services. Possibility of case referral and co-counsel work. Office rent $1,000.00 p/mo., plus parking and copier use. Available first week in April. Contact Laura Peek at (505)242-6300.

Two Offices For Rent
Two offices for rent, one block from courthouses, all amenities: copier, fax, printer, telephone system, conference room, high speed internet, and receptionist, office rent $400 and $700, call Ramona @ 243-7170.

For Sale

Closing Law Office
Top quality exec. desks, chairs, credenzas, conf. table/chairs, bookcases, storage cabinets, and more. Call: 275-1222, 235-7697 or text 235-7693.

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Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

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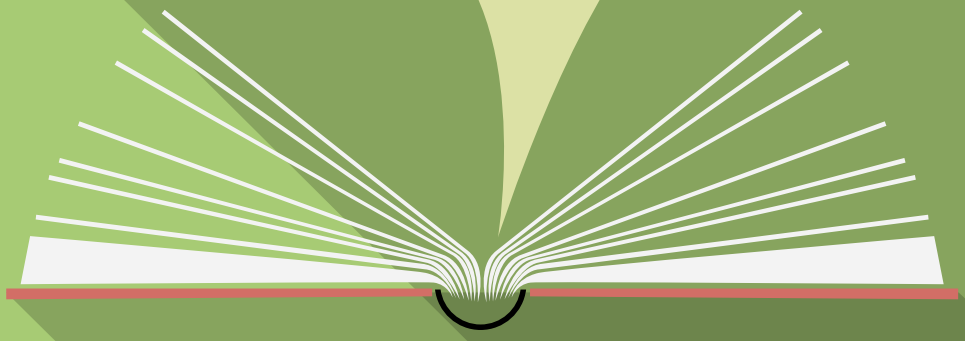

For more information, contact Marcia Ulibarri
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