Introduction

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Recommended Citation
Available at: https://digitalrepository.unm.edu/nmlr/vol42/iss1/2
INTRODUCTION

Welcome to the first issue of Volume 42 of the New Mexico Law Review. We hope that you will find the articles contained in this issue both educational and informative. Our editorial board continues the tradition of publishing articles relevant to the New Mexico bench and bar. It has been an exciting year for the New Mexico Law Review. In addition to our editorial duties, we instituted a seminar for second-year staff devoted to recent developments in New Mexico jurisprudence. We believe this new seminar will solidify the New Mexico Law Review’s commitment to our state’s unique legal landscape and give our staff a stronger foundation in New Mexico law.

We begin this issue with Jacob M. Appel’s The Dangers of the Underprivileged Ethicist: Revising the Rules of Evidence After the Bioethics Revolution. Dr. Appel advocates for the creation of a new testimonial privilege between clinical ethicists and patients and their loved ones. Clinical ethicist consultations are on the rise in the healthcare field. He argues that this privilege would protect these vital communications from legal disclosure and encourage those facing a medical crisis to candidly discuss the ethical implications of their decisions.

Next, we have Nicola A. Boothe-Perry’s Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation. Professor Boothe-Perry argues that the ABA should institute a professionalism standard as a requirement for law school accreditation. She provides key insights into the American Bar Association’s accreditation process. After noting a growing trend of unprofessional lawyer behavior, she encourages the ABA to adopt a standard professionalism accreditation requirement so that law students will be trained in this essential skill before entering practice.

In Hiring Sexters to Teach Children: Creating Predictable and Flexible Standards for Negligent Hiring in Schools, Professor Kelly M. Feeley conducts a theoretical exploration of the potential consequences teens face after using technology to send sexually explicit photos and how doing so might impact their later careers in education. In examining how other jurisdictions evaluate negligent hiring claims, Feeley demonstrates that there is not a clear or consistent approach to investigating the backgrounds of potential employees. In conclusion, she suggests a way for schools and legislatures to negotiate a balance between predictability and flexibility in hiring decisions regarding applicants with a juvenile record resulting from using technology to send sexually explicit messages.

In Reclaiming the Promise of the Indian Child Welfare Act: A Study of State Incorporation and Adoption of Legal Protections for Indian Status Offenders, Professor Thalia González advocates for consistent application of the Indian Child Welfare Act (ICWA) to Native American
status offenders to ensure tribal integrity. González conducts the first statewide study highlighting inconsistent application of ICWA’s procedural protections to Native American status offenders. She concludes that states must recognize ICWA’s procedural protections in order to effectuate beneficial systemic changes for tribal youth.

Next is Professor Daniel L. Hatcher with Purpose Versus Power: Parens Patriae, and Agency Self-Interest. Hatcher explores the underlying conflict between child welfare agencies and their fiscal self-interests. He then examines instances in which child welfare agencies appropriate the social security benefits of children in their charge. He concludes that child welfare agencies are created with the purpose of serving the best interest of children; when these agencies place fiscal self-interest above this purpose, they do so at the expense of vulnerable children.

In Respecting the Privilege Against Self-Incrimination: A Call for Providing Miranda Warnings in Non-Custodial Interrogations, Dr. Rinat Kitai-Sangero argues that non-custodial interrogations pose the same inherent pressures on suspects as custodial interrogations. Kitai-Sangero examines three commonly cited rationales for protecting the privilege against self-incrimination and concludes that these rationales support providing Miranda warnings to suspects in non-custodial interrogations.

We conclude this issue with two student articles. In Protecting Small Business Owners: Why New Mexico Should Adopt the Uniform Limited Liability Company Act, Jaya M. Rhodes provides a number of reasons why New Mexico should adopt the Uniform Limited Liability Company Act. Rhodes explores why New Mexico’s current Limited Liability Company Act presents disadvantages for small business owners, including potentially unnecessary litigation. Rhodes concludes that because of the increased use of limited liability companies in this state, it is time for the New Mexico Legislature to enact a comprehensive limited liability company law that provides guidance to both New Mexico’s judiciary and its small businesses. Next, in The Confrontation Clause and New Mexico’s Short-Lived Acceptance of Surrogate Forensic Witnesses, Ethan Thomas traces the path of the recent Bullcoming decision, in which the New Mexico Supreme Court’s acceptance of surrogate forensic witness testimony was reversed by the U.S. Supreme Court. Thomas concludes that while the Confrontation Clause does place a potentially substantial burden on states, allowing a substitute forensic analyst to testify in place of the analyst who performed the actual tests places government convenience above constitutional protections.

We hope that you will enjoy this volume of the New Mexico Law Review as much as we have enjoyed working on it. Be on the look-out for our Fall 2012 issue (Vol. 42, No. 2), which will honor New Mexico’s centennial. Happy reading!

—Katie Gleeson & Chris McNair, Editors-in-Chief