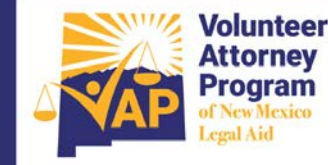


WELCOME TO THE VAP PRO BONO COLLABORATIVE ECHO CLE SERIES

04/09/2024

Adult Guardianship 101
Part 4: Post-Adjudication
Issues

Agenda



Introductions - Zac Addison, Esq., VAP Director, New Mexico Legal Aid, Inc.



Announcements for Session: Marissa Gonzalez, VAP Paralegal, New Mexico Legal Aid, Inc.



Topic Presentation: Adult Guardianship 101 – Part 4: Post-Adjudication Issues



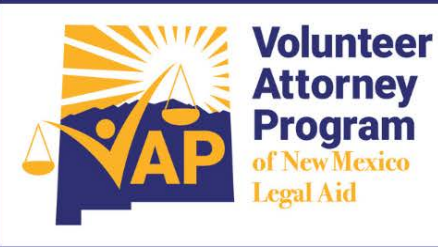
Topic Presenter: Patricia Galindo, JD – Supervising Attorney, Administrative Office of the Courts



Case Analysis and Q&A: Zac Addison and Patricia Galindo



Overview & Closing Remarks: Volunteer Attorney Program of New Mexico Legal Aid



Adult Guardianship 101 – Part 4: Post-Adjudication Issues



PATRICIA M. GALINDO, JD
Supervising Attorney

After a Judicial Determination Has Been Made
that an Alleged Incapacitated Person Needs a
Guardian and/or Conservator Appointed

Post-Adjudication

Change in Terminology



The alleged incapacitated person (AIP) is now referred to as the “Protected Person” in the adult guardianship proceeding.

Required Forms



In addition to the Order Appointing a Guardian &/or Conservator, there are several additional documents required post-adjudication.

Order of Persons Entitled to Notice & Access to Court Records

Form 4-993

4-993. Order identifying persons entitled to notice and access to court records.

[For use with Rules 1-140 and 1-141 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

In the matter of _____, No. _____
a Protected Person.

ORDER IDENTIFYING PERSONS ENTITLED TO NOTICE AND ACCESS TO COURT RECORDS

The court, having appointed a guardian and/or conservator in this matter by separate order, ORDERS that the following persons are entitled to notice of further proceedings and access to court records under Rule 1-079.1 NMRA and Sections 45-5-309(D) and/or 45-5-405(D) NMSA 1978.

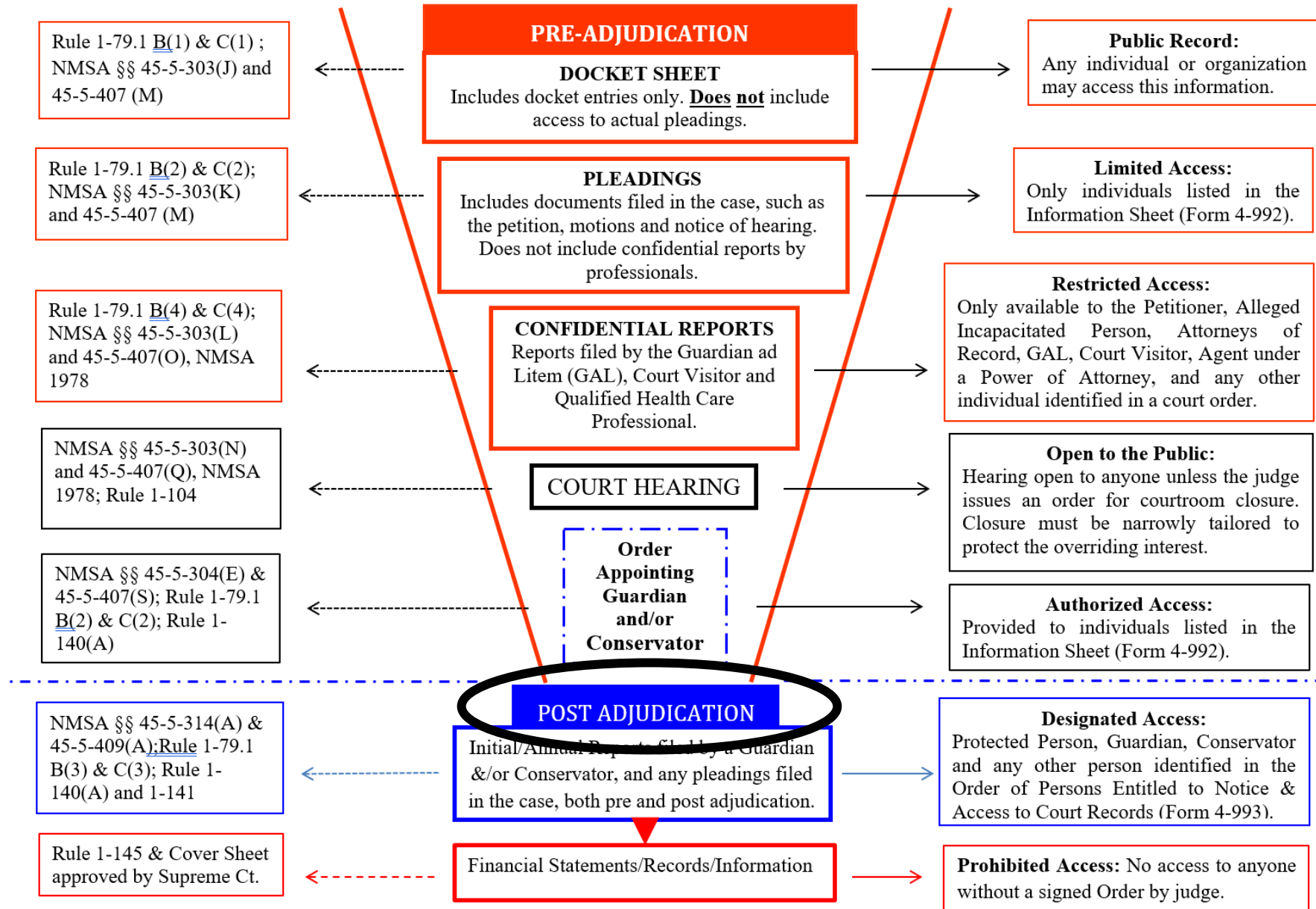
1. Protected person: _____
2. Guardian: _____
Conservator: _____
3. Other person(s) entitled to notice of subsequent proceedings and access to court records:

Name: _____
Relationship to protected person: _____
Mailing address: _____

Name: _____
Relationship to protected person: _____
Mailing address: _____

Name: _____
Relationship to protected person: _____
Mailing address: _____

ACCESS TO INFORMATION IN ADULT GUARDIANSHIP & CONSERVATORSHIP CASES

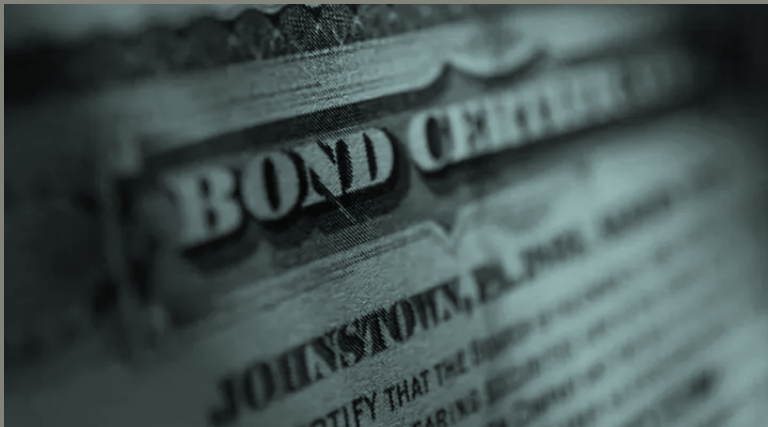


Bonding



Mandatory Bonding

§ 45-5-411



- Conservators are required to post a bond.
- Court may waive the bonding requirement if the Court makes specific findings that the bond “is not necessary to protect the interest of” the Protected Person.

Bonding Forms

Supreme Court Approved Forms

Mandatory for all Conservators:

- **Form 4-994** Order to Waive or Secure Bond

If Bond Applicable:

- **Form 4-995** Notice of Bonding
- **Form 4-995.1** Statement of Bond

Types of Guardianship/Conservatorship

LIMITED

Judge determines the adult is able to handle some affairs on their own but could use some assistance and appoints someone with limited duties and responsibilities.

PLENARY (FULL)

Judge determines the adult is unable to handle any of their own affairs and appoints someone else to make all decisions for them.

Firearms Notice



Form 4-940

4-940. Notice of federal restriction on right to possess or receive a firearm or ammunition.
[For use with Rule 1-131 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v.

No. _____

_____,
Respondent.

**NOTICE OF FEDERAL RESTRICTION ON RIGHT TO
POSSESS OR RECEIVE A FIREARM OR AMMUNITION**

TO: _____

ADDRESS: _____

YOU ARE HEREBY NOTIFIED that as a result of the order entered against you in this proceeding, you are prohibited from possessing or receiving a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

YOU ARE FURTHER NOTIFIED that the Administrative Office of the Courts is required under Section 34-9-19(B) NMSA 1978 to report information about your identity to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System (NICS).

YOU ARE FURTHER NOTIFIED that you may petition the Court as provided in Section 34-9-19 NMSA 1978 to restore your right to possess or receive a firearm or ammunition and to remove your name from the NICS.

DISTRICT COURT

[Provisionally approved by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016; approved by Supreme Court Order No. 17-8300-003, effective for all orders filed on or after March 31, 2017.]



Mandatory Reports for Guardians and Conservators



GUARDIAN

- **90 Day and Annual Report**
Form 4-996

CONSERVATOR

- **Conservator's Inventory**
Form 4-997
- **Annual Report**
Form 4-998



I need help with...



Welcome to Adult Guardianship & Conservatorship

About Adult Guardianship & Conservatorship

Learn how a Guardian and/or Conservator is appointed and what their roles are.



Videos

The Adult Guardian and Conservator Orientation Program is a series of videos that describe the duties and obligations of a Guardian and a Conservator.



New Laws

Learn about laws that have changed the Adult Guardianship and Conservatorship system in New Mexico.



Rule Changes

Find the new Rules of Civil Procedure for District Courts.



Forms

Find Supreme Court approved forms for Adult Guardianship/Conservatorship cases here.



Grievance

Information on how to file a complaint against a Guardian or Conservator.



Improvements to the Adult Guardianship System

Supreme Court Committees/Commissions created to improve the Guardianship System.



Frequently Asked Questions (FAQs)

Find answers about required forms, where to submit reports, and more.



www.adultguardianship.nmcourts.gov

Ongoing Monitoring



After judge appoints a Guardian and/or Conservator, a judge must:

→ Continue to monitor cases

★ Annual Reports



Reviews & Audits

GARRD



Guardianship Annual Report Review Division

GARRD

§45-5-314



Guardianship Annual Report Review Division

Required by statute to review all annual reports submitted by guardians.

GARRD



- ▶ Responsible for reviewing the contents of the Guardian's Annual Report. Will look to see if the Guardian is complying with statutory requirements and court orders.
- ▶ Information on GARRD's review will be forwarded to the judge for any further action.
- ▶ No in person visits with the Protected Person.

Audits



Office of the State Auditor

§ 45-5-409(H)



State Auditor – required by statute to review all conservator’s annual reports.

State Auditor:

Accept – full audit

Decline – full audit

Referral to State Auditor



If the judge has questions about a Conservator's Annual Report

→ Judge should set a hearing to question the Conservator

If questions still remain after the hearing, a judge may refer the case to the State Auditor for review.



Supreme Court Approved Forms

www.nmcourts.gov




NEW MEXICO COURTS
The Judicial Branch of New Mexico

[News](#)

[Resources](#)

[Court Administration](#)

 [ADA & Accommodations](#)

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[FIND YOUR COURT](#)

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[SELF-REPRESENTATION](#)

[PAY FINES/FEES](#)

[SERVICES & PROGRAMS](#)

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I need help with...

Enter search term



Search for Your Court

Look for your court by zip code, county, name or map.



Jury Duty

Find information on when, where and how to serve on jury duty.



Case Lookup

See current electronic court records from all New Mexico Courts.





SERVICES & PROGRAMS

CLOSE 

[Adult Guardianship](#)



[Alternative Dispute Resolution \(ADR\) Services](#)

[Bernalillo County Criminal Justice Coordinating Council \(BCCJCC\)](#)

[Court Appointed Special Advocates \(CASA\)](#)

[Court Improvement Project](#)

[Department for Therapeutic Justice](#)

[Domestic Violence](#)

[Judicial Performance Evaluation](#)

[NM AOC Pretrial Justice Program](#)

[Safe Exchange & Supervised Visitation \(SESV\)](#)

[Tribal-State Judicial Consortium](#)

www.adultguardianship.nmcourts.gov

The screenshot shows the top portion of the website. The main header is dark grey with the text "Adult Guardianship & Conservatorship" in white. To the right of the header are links for "Case Lookup", "ADA & Accommodations", and "Español". Below the header is a navigation bar with a light beige background. It contains a home icon, "HOME", "ABOUT", "LAWS & RULES", "FORMS & FILES" (which is highlighted with a red box and has a black arrow pointing to it from the right), and a "SEARCH" button with a magnifying glass icon. Below the navigation bar is a large banner image of a desert landscape at sunset. At the bottom of the banner is a search bar with the text "I need help with..." and a placeholder "Enter search term".

Welcome to Adult Guardianship & Conservatorship

A grid of six service tiles, each with a title, a brief description, and a right-pointing arrow icon. The tiles are arranged in two rows of three. The "Forms" tile in the second row is highlighted with a red rounded rectangle.

- About Adult Guardianship & Conservatorship**
Learn how a Guardian and/or Conservator is appointed and what their roles are.
- Videos**
The Adult Guardian and Conservator Orientation Program is a series of videos that describe the duties and obligations of a Guardian and a Conservator.
- New Laws**
Learn about laws that have changed the Adult Guardianship and Conservatorship system in New Mexico.
- Rule Changes**
Find the new Rules of Civil Procedure for District Courts.
- Forms**
Find Supreme Court approved forms for Adult Guardianship/Conservatorship cases here.
- Grievance**
Information on how to file a complaint against a Guardian or Conservator.



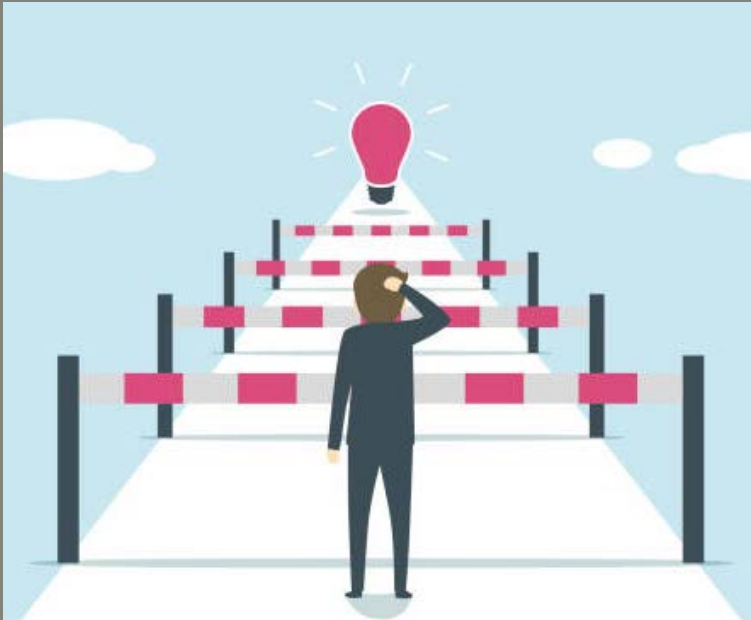
Supreme Court Approved Forms

Forms for Adult Guardianship/Conservatorship Cases

Beginning on July 1, 2018, new rules and forms were approved for use by the Supreme Court for adult guardianship and conservatorship cases. Since 2018, there have been several other changes. The following table outlines these changes:

Document	Form	Description
Information Sheet	4-992	Required for all new petitions filed pursuant to Supreme Court Rule of Civil Procedure for District Courts 1-003.2.
Order – Persons Entitled To Notice & Access to Court Records (Post Adjudication)	4-993	Required when a guardian and/or conservator is appointed pursuant to Supreme Court Rule of Civil Procedure for District Courts 1-141.
Notice of Hearing and Rights	4-999	Required to be provided to all individuals identified in the Petition and Information Sheet, including the alleged incapacitated person under Sections 45-5-309(B) & (C) and 45-5-405 (B) & (C).
Order – Waive or Secure Bond	4-994	Required for all conservatorship cases under Section 45-5-411 NMSA 1978.
Notice of Bonding	4-995	Required when the court orders the conservator secure a bond. Should be filed at the same time that an inventory or report is filed, pursuant to Section 45-5-409 NMSA 1978.
Statement of Bond	4-995.1	Required when the court orders the conservator secure a bond. Should be attached to the Notice of Bonding.
Guardian's Report	4-996	Required for filing a ninety (90)-day, annual, or final report under Section 45-5-314 NMSA 1978.

Obstacles to Taking First Pro Bono Case



- Unsure of process
- Concerns with meeting deadlines
- Unfamiliarity with pleadings
- Afraid of doing something “wrong”
- Insufficient resources
- Lack of mentorship/shadowing

Collaboration with Office of Guardianship

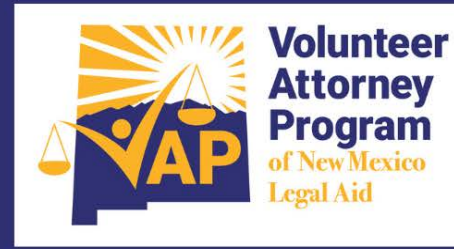


NEW MEXICO
Developmental
Disabilities
Council

Alternatives to Guardianship and Using the PRACTICAL Tool

BONUS SESSION #5
TUESDAY, APRIL 23, 2024

Case Presentation



LEGAL ISSUE #1: Is failure to file guardianship reports grounds for changing the guardian?

Factual Summary #1

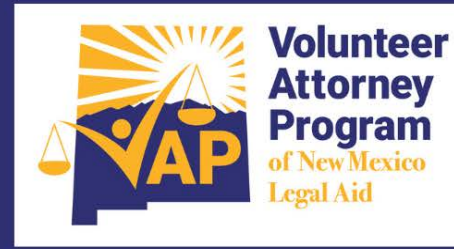
Father was appointed guardian for adult Daughter with mental disabilities but failed to file guardianship reports for 5 years. Father only speaks Spanish and did not fully understand his obligation to file annual guardianship reports. When Father and Mother disagree on Daughter's medical care, Mother files a motion to change guardian.



Questions:

1. What steps can Father take to bolster his chances of retaining guardianship rights for Daughter?
2. What resources are available to assist him in fulfilling his court obligations?

Case Presentation



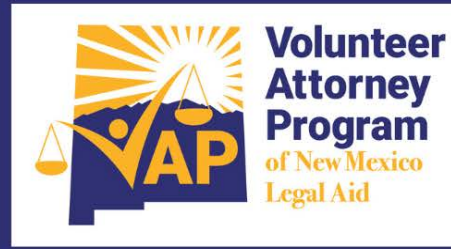
LEGAL ISSUE #2: What step(s) should be taken by attorney representing Petitioner in an Adult Guardianship case to prevent receipt of notices after appointment of the Guardian?

Factual Summary #2

Attorney represented Father 6 years ago in his petition to be appointed guardian of adult Daughter with developmental disabilities. Two years after Father was appointed, he forgot about his obligation to file annual guardian reports with the court using Form 4-996. When Attorney received a notice of a status conference from the court ordering him to appear at a hearing to explain why the reports were not filed, Attorney tried to call Father only to learn his telephone number on file had been disconnected.

Question: What step(s) should Attorney have taken to prevent being ordered to appear?

Case Presentation



LEGAL ISSUE #3: Can a Conservator ask the court to terminate the bond requirement when assets change?

Factual Summary #3

When Chloe is appointed Conservator for her grandmother, Ethel, who has dementia, Ethel's estate consists of retirement income of \$3K/month, \$200K in stocks, and a home worth \$500K.

After spending down Ethel's stock portfolio to \$25K over 18 months to pay for Ethel's in-home care, Chloe decides to sell Ethel's home and move her into a nursing home, which costs \$12K/month. Chloe petitions the court under NMRA 45-5-411 to waive her bond requirement.

Question: Are there grounds for the court to waive the bond? Does it matter if Ethel's home equity is \$50K versus \$500K?

Next Sessions

Adult Guardianship 101 – Bonus Part 5:

Alternatives to Guardianship and Using the PRACTICAL Tool – *presented by the NM Office of Guardianship*

Tuesday, April 23, 2024

3:30 P.M. – 5:00 P.M.

Navigating Foreclosure & Learning Alternatives for Your Clients – *presented by Penelope Quintero, Esq., O’Brien & Padilla*

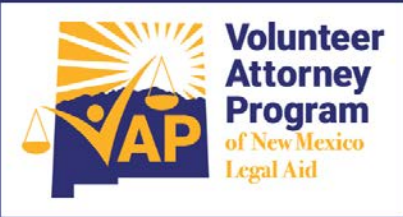
Thursday, June 6, 2024

11:30 A.M. – 1:00 P.M.

Presenter Needed: Judgment Collections

- **Peter Johnstone Day Legal Fair in Albuquerque:**
Saturday, April 13
- **Legal Fair in Hernandez:**
Saturday, April 27
- **McKinley County Teleclinic:**
Friday, May 3
- **Statewide Teleclinic:**
Thursday, May 16

If you are interested in volunteering at an upcoming legal fair or teleclinic, please sign-up [here](#).



THANK YOU FOR JOINING TODAY'S VAP PRO BONO COLLABORATIVE ECHO SESSION!

SESSION 4
APRIL 9, 2024

Topic Presenter:

Patricia Galindo, Supervising Attorney, Administrative Office of the Courts

Case Presenter:

Zac Addison, Esq., VAP Director, NM Legal Aid

Patricia Galindo, Supervising Attorney, Administrative Office of the Courts

Facilitated By:

Zac Addison, Esq., VAP Director, NM Legal Aid

Marissa Gonzalez, VAP Paralegal, NM Legal Aid

vapecho@nmlegalaid.org