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**GETTING OVER THE WALL —
EXAMINING TITLE TO PROPERTY
IN NEW MEXICO — CAN I,
SHOULD I, AND DO I NEED MY
PASSPORT OR LICENSE?**

Gregory J. Nibert and Jared A. Hembree

Gregory J. Nibert
Jared A. Hembree
Hinkle Shanor LLP
Roswell, New Mexico

gnibert@hinklelawfirm.com

jhembree@hinklelawfirm.com

575-622-6510

I. INTRODUCTION

New Mexico was admitted as a state in 1912, being the 47th State of the United States of America, but is often confused with Mexico, an independent nation to the south. New Mexicans are often asked if they need a passport to travel to another state. New Mexico is also often confused with the 48th State, being our sister state to the west, Arizona. New Mexico nonetheless is a state and its laws are not dissimilar to the laws found in most states. That said, Territorial Governor Lew Wallace (and author of *Ben-Hur*) once stated: “All calculations based on our experiences elsewhere fail in New Mexico.” The Land of Enchantment has some very unique concepts and traditions. It is a real mistake to make the statement: “That is not how we do it in Texas,” even when the way it is done in Texas makes all the sense in the world. In New Mexico, efficiency, ease and order are often thrown to the wind. The pace of life is different. The expectations of government are different. We suppose it has been that way for centuries as Lew Wallace made his observation in 1881. Some may say not much has changed since then, particularly with respect to the ability to take a program that works elsewhere and obtain the same results in New Mexico. There are several unique applications of the law in New Mexico that could ensnare an uninformed title examiner or transactional attorney. This paper will discuss the ethical considerations of examining title or participating in a transaction in New Mexico and provide some guidance as how to navigate through several of the unique laws, statutes, rules and regulations applicable to oil and gas mineral properties in New Mexico. To answer the questions in the title: (i) No, you do not need a passport; and (ii) Yes, you should have a license (to practice law there). We delve into the latter answer in more detail.

II. RULES OF PROFESSIONAL CONDUCT

With the advent of technology and the demands of clients who seek advice from lawyers who are not admitted to practice in New Mexico, lawyers in other states are being asked to render title opinions on tracts of land in New Mexico or assist clients in the due diligence phase of oil and gas acquisitions and divestures involving New Mexico properties. Admitted or not, often the lawyers have not been educated on some of the unique and peculiar rules or issues that arise in New Mexico real property transactions.

To avoid running afoul of the Rules of Professional Conduct, this paper is intended to give out of state lawyers who may be called upon to render a title opinion or conduct due diligence on New Mexico property an overview of a few of the unique and peculiar rules that may otherwise go unnoticed by an examiner. In preparing the paper, we have taken the perspective that most attorneys would be generally familiar with the laws in Texas. In order to help an out-of-state attorney fulfill his or her duties and responsibilities, we first set forth certain pertinent rules and then discuss their interplay.

A. Pertinent Rules:

1. **Unauthorized Practice of Law:** Rule 16-505 NMRA provides:

A. A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

D. A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by the Rules of Professional Conduct or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to

the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

E. A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that in compliance with Rule 24-106 NMRA (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; and (2) are in or reasonably related to a pending or potential proceeding before a court, legislative body, administrative agency, or other tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized.

F. A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction that without Rule 24-106 compliance (1) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or (2) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. In transactions involving issues specific to New Mexico law, the lawyer shall associate counsel admitted to practice in this jurisdiction; (3) are provided to the lawyer's employer or its organizational affiliates as in-house counsel subject to any registration requirements and are not services for which the forum requires *pro hac vice* admission; or (4) are services that the lawyer is authorized by federal or other law to provide in this jurisdiction.

2. Practice by Nonadmitted Lawyers: Rule 24-106 provides in part:

Upon compliance with the requirements of this rule, but only in association with an active member in good standing as a member of the State Bar of New Mexico, an attorney authorized to practice law before the highest court of record in any state or country ('nonadmitted attorney') may perform legal services on behalf of a client or a party, even though the attorney is not licensed to practice law in this state unless otherwise excepted under Rule 16-505(F). A non-admitted attorney shall comply separately for each action, suit, proceeding, or transactional matter in which the attorney plans to perform legal services with the limitation that the non-admitted attorney may not register more than five (5) times in any given calendar year.

3. Competency: The New Mexico Code of Professional Conduct requires a lawyer to be competent, prompt and diligent. Rule 16-101 NMRA states: "A lawyer shall provide

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