NEW MEXICO

SUPREME COURT

JUDICIAL EVALUATION

2009

The Economic Judicial Report®

Prepared by:
Judicial Evaluation Institute, Washington, D.C.,
and Sequoyah Information Systems®

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NEW MEXICO SUPREME COURT
The higher the score, the more the judge’s decisions have had the effect of restraining the spread of liability.

Justice Daniels was not scored because he did not participate in a sufficient number of cases during the time period evaluated in the study.
What is the New Mexico Supreme Court Judicial Evaluation?
The New Mexico Supreme Court Judicial Evaluation evaluates the judges of the New Mexico Supreme Court on issues of civil liability. It assesses each judge’s record, in comparison to the records of the other judges on this court, in cases that involve civil liability creation and expansion—or restraint.

Why was this project undertaken?
The purpose of this project is to give the people of New Mexico meaningful information about the state’s supreme court judges.

Who commissioned this study?
This study was commissioned by the Judicial Evaluation Institute for Economic Issues (JEI). JEI is a Washington, D.C.-based research institute formed to educate the public on the importance of evaluating judges’ performance with respect to the spread of liability in American society and its effect on our prosperity and our institutional life. JEI encourages the development of information necessary to accomplish that task.

Who actually prepared this study?
The Economic Judicial Report (EJR), based in Oklahoma, and JEI prepared the study. Recognized as the national leaders in conducting judicial evaluations, EJR and JEI have completed similar studies of the judiciaries in many states, including Alabama, Arkansas, California, Colorado, Florida, Illinois, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nevada, North Carolina, Ohio, Pennsylvania, Texas, and West Virginia. Using attorneys to do all the research and analysis, we have earned a reputation for producing careful, non-partisan reports that provide an accurate reflection of each judge’s values and jurisprudence with respect to liability in our civil justice system.

Explain the rating given to each judge.
Each member of the New Mexico Supreme Court has been evaluated on his or her decisions in six broad areas of law and the effect of those decisions on civil liability in New Mexico’s law and courts. The areas are: employment, insurance, medical malpractice, “other liability lawsuits,” product liability, and workers’ compensation. Each judge is given an overall cumulative score. The higher the score, the more the judge’s opinions have had the effect of restraining liability, in EJR’s and JEI’s opinion.

Do EJR and JEI have a point of view?
Yes. EJR and JEI evaluate these judges from a particular substantive-policy point of view. The fundamental policy premise behind the evaluations is that the extremes of expansion of civil liability in the American courts over recent decades inhibit growth, discourage enterprise, and change for the worse the way we conduct our personal and professional lives. Judge-made law in the state courts has created much of this liability expansion and many of its destructive features. The evaluation assesses a judge’s record, in comparison to the records of other judges on this same court, on issues that involve the creation of liability and expansion of liability, or, on the other hand, the restriction or tempering of liability. The evaluation focuses especially on cases where the judges have disagreed with each other or with other courts that have adjudicated the same case, and it compares the voting records of the judges in these cases.
What do EJR and JEI mean by “liability”?  
EJR and JEI do not mean simply manufacturers’ and merchants’ liability, or product liability. The “expansion of liability” means that all of us are more and more vulnerable to being sued for an ever greater array of causes. Judge-made law has made employers, school teachers, other professionals, school boards, towns and counties, churches and voluntary associations, our colleges and universities, neighbors and schoolmates, caregivers, physicians and pharmacists more likely to have their activities and decisions second-guessed by lawyers and to be dragged into litigation.

What criteria were used to evaluate the judges on the New Mexico Supreme Court?  
EJR and JEI believe that an inordinate spread of civil liability has harmed American economic and institutional life. EJR and JEI have developed strict criteria for evaluating judges objectively from this point of view. The report includes cases spanning a period of years to provide the best understanding of a judge’s philosophy in cases affecting the spread of liability in our society. The decisions chosen for inclusion in the report are principally those that meet two criteria: first, in the opinion of EJR and JEI they will tend either to expand liability even further or, conversely, help stop its spread; second, they present legal issues about which judges who heard or reviewed a case disagreed. Among the questions we ask are whether a decision further expands liability, tends to affect the availability of beneficial services, creates certainty or uncertainty in the law, tends to encourage or discourage business expansion in New Mexico, and fosters or discourages job creation in the state.

Are EJR and JEI saying they want judges to give a higher priority to slowing down the spread of liability than to impartiality and proper application of the law?  
Absolutely not. Nor are we saying it is preferable for a judge to have a 100% rating. If a common sense, faithful reading of a statute or the common law says that a certain injured person should be compensated for that injury, or that one business or not-for-profit agency has somehow wronged another person or entity, we believe that is how a judge should decide the case. EJR and JEI want judges to follow the law and do justice. As indicated above, it is principally when judges do not agree that this evaluation studies and critiques their decisions. By analyzing a judge’s record over numbers of cases where outcomes have not been dictated clearly or easily by current law (and therefore the judges have disagreed or the court has had to struggle with a new issue of law), this study gives insight into each judge’s philosophy and values. And these beliefs and values are very important, for much of the law applied in our courts is “common law” or “judge made” law. Torts law, for instance, is largely a matter of common law. Judges create these common-law rules, one precedent at a time.

Aren’t fairness and impartiality the most important traits for a judge?  
Without question, fairness and impartiality are the first qualities we should expect all our judges to strive for. Rating fairness—even defining fairness—is virtually impossible, however. Every judge would claim to be fair and impartial in every case, but still we have split decisions in which judges disagree. Where the controlling law is susceptible to disagreement, or when judges are in effect “making new law,” judges are forced, consciously or not, to look to another guide to help them form their individual opinions or votes on the case—and this other guide, finally, will be their own beliefs and philosophy
about judging and liability. Voters and other selectors of judges are entitled to know the pattern of each judge’s rulings.

What do EJR and JEI believe are the practical implications of restraint in the area of civil liability?
A small business can plan its growth better when the body of law that governs its activities and responsibilities is steady, clear and predictable. Businesses of all sizes are more likely to locate and expand in New Mexico if they know they will be in a legal climate where the courts can be relied on to give statutes the meaning that the legislature appears to have intended. Towns and colleges and not-for-profits will have lower litigation budgets. The price of automobile insurance, malpractice insurance, and homeowners’ and renters’ insurance will be lower in a New Mexico where people have a clear sense of what the court will do if there is an accident or other unfortunate event.

What do EJR and JEI mean when they suggest that the rapid spread of liability in recent decades has harmed American institutional life?
They mean that towns and schools and churches will be better able to ask, “How can we serve the people?”—if they don’t have to ask first, “Will a lawsuit and a surprise ruling ruin us?” They mean that higher scoring judges have fostered a legal climate in which fewer of citizens’ dollars have to be spent to protect against lawsuits, a society that lets voluntary associations and families concentrate more on their essential purposes and less on avoiding lawyers and litigation.

Is this a one-time project?
No, we plan to update this study biennially.

Are EJR and JEI endorsing any of the members of the New Mexico Supreme Court based on these ratings?
No. We hope to contribute to a more informed public discussion. In the past, citizens typically had little or no information on the records of their judges. Information they did have tended to be anecdotal and limited to a highly publicized case or two. This did not constitute a sound basis for assessing a judge’s record. It also was unfair to the judges. New Mexico citizens now will have reliable, empirical judicial ratings of their supreme court. These ratings are based on issues of civil liability that are important to their families, places of employment, and communities.
The purpose of this study is to evaluate judicial rulings on issues that affect civil liability in our system of justice. Evaluation of the judiciary is a complicated and difficult process involving sometimes subjective determinations. Although this evaluation inevitably contains some subjectivity in the opinion of EJR and JEI, we adhere to strict criteria to achieve the most objective evaluation possible.

The fact that there are so often differing opinions among judges is evidence that the law frequently is subject to interpretation. This characteristic of the law heightens the impact of judicial rulings and makes these evaluations an important informational tool.

- The cases chosen for evaluation we believe will have the effect either of slowing the spread of liability in the law or accelerating it. The report evaluates both cases that affect liability in particular industries and professions, such as manufacturing, insurance, and health care, and cases in areas that affect business and institutional liability in general – areas such as employment law, workers’ compensation, and torts. Cases from the Employment, Medical Malpractice, Other Liability Lawsuits and Workers’ Compensation categories have been summarized to give an insight into the analysis involved in evaluating the cases. Summarized cases are located at the beginning of their respective categories. The remaining cases in the report are not summarized in the report, but are listed and show the ratings given to the current judges who participated in the decisions.

- We include cases spanning a period of years. As a general rule, the greater the number of cases reviewed, the higher the degree of confidence we have in our understanding of the general philosophy of each judge. A judge who has been on the court longer usually will have participated in more cases.

- Each judge has been assigned an overall score. The overall score indicates the percentage of cases evaluated in which we believe the judge made a decision that tends to have the effect of moderating the spread of liability in the state’s law and, consequently, in the state’s economic and institutional life. The higher the score, the more often the judge’s rulings have had this effect.
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Evaluation Criteria

CATEGORIES OF LAW

- Employment
- Insurance
- Medical Malpractice
- Product Liability
- Workers’ Compensation
- Other Liability Lawsuits

CIVIL LIABILITY ISSUES

EJR and JEI consider a variety of issues in selecting and evaluating cases that affect civil liability in our system of justice. These issues include whether a decision will have the effect of exposing more people to being sued, or discouraging other judges from dismissing far-fetched claims, or making the state’s law more uncertain and unpredictable. Consideration of such issues underscores the interrelationship of judge-created liability and the state’s economic and institutional health.

JUDICIAL SCORING

EJR’s and JEI’s evaluation of the effect a decision is likely to have on liability in the state’s law determines the judge’s score. Judges are not scored if they did not participate in a decision, were not on the court at the time of the decision, or were replaced by a visiting judge. A judge who wrote the opinion in the case is not scored differently for having authored the opinion. Minority opinions are substantively reviewed to determine each judge’s position on the determinative issue(s) in each case. In the event the judge previously sat on a lower court adjudicating the case, the score the judge received while serving on that court may be provided, but it is not used in calculating the judge’s score in this study.

FINAL SCORES

An overall cumulative score has been computed for each judge in the study. As previously noted, the higher the judge’s evaluation score, the more of his or her decisions we believe have the effect of moderating the spread of liability.
Each judge is rated according to his or her participation in each case. Each case summary includes a rating for the overall effect of the case and for the effect of each judge’s decision. The following abbreviations are used:

- **+** Positive rating: The judge’s decision tends to slow the expansion of liability.
- **–** Negative rating: The judge’s decision has the effect of expanding liability.
- **Ø** No rating: The judge’s decision does not lend itself to a definite rating.
- **NP** Not participating: The judge did not sit for this particular decision.
- **NA** Not applicable: The judge was not on the court at the time of this decision.
- **NDO** No differing opinion: Every judge that heard the case agreed with the ruling.
- **1st Imp.** First impression: The issue in the case presents a novel question of law for the decision of the court.
- **(+)** or **(–)** Ruled at trial: The judge ruled at a lower court level. The ruling is not included in the judge’s overall score, but is provided with the case summary for informational purposes.
- *** See case notation: The case contains some feature that merits further explanation.**
The plaintiff or defendant may appeal a lower court’s ruling to an appellate court. Appeals may be based on alleged errors in trial procedure or on questions of substantive law, that is, interpretation of the law by the trial judge. This study primarily focuses on appeals involving questions of substantive law.

**METHOD OF REVIEW**

On appeal, the appellate court reviews the written record of the case. The record consists of papers and exhibits filed in the trial court as well as the court reporter's transcript of the trial. The court reviews the case based solely on the record. There is no jury, and the court does not see witnesses or hear testimony. New evidence cannot be presented on appeal. As a general rule, the court may hear oral arguments by the attorneys.

**THE OPINION**

When the appellate court reaches a decision, in most instances one judge is assigned the task of writing the majority opinion. An opinion is a statement of the court's decision and the reasons for which that decision is made. The opinion will show how many judges agreed with the decision. A judge agreeing with the majority opinion may write a separate opinion explaining why he or she concurred. If a judge disagrees with the majority opinion, he or she may file a dissenting opinion.

As a general rule, the court may do one or more of the following in rendering a decision:

- The court may agree with the lower court’s ruling.
- The court may fundamentally agree with the lower court’s ruling, but alter the ruling or return the case to the lower court for further proceedings.
- The court may set aside the lower court’s ruling, rendering a new decision in its place.
- The court may disagree with and set aside the lower court’s ruling and return the case to the lower court for further proceedings.
- The court may answer a question regarding state law for a federal court or lower state court, or for the state legislature.
Supreme Court
5 justices

The Supreme Court is the court of last resort. It has jurisdiction in civil, criminal, administrative agency, juvenile, disciplinary, original proceeding, and interlocutory decision cases. It also has jurisdiction to decide certified questions of New Mexico law referred by federal courts.

Court of Appeals
10 judges sit in panels of 3

This court is the intermediate appellate court. It has jurisdiction in civil, noncapital criminal, administrative agency, juvenile, and interlocutory decision cases.

District Court
13 districts

The district court has jurisdiction in civil, criminal, domestic relations, and juvenile cases. The option of a trial by jury is available in most cases.

Other Courts

- Bernalillo County Metropolitan Court
- Magistrate Court
- Municipal Court
- Probate Court

Source: The National Center for State Courts (www.ncsconline.org) Fiscal Year 2007
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Court Description

NEW MEXICO SUPREME COURT

The Supreme Court is New Mexico’s court of last resort. The court consists of five justices who serve eight-year terms. When a vacancy occurs, the Appellate Judges Nominating Commission recommends qualified candidates to the governor and the governor makes an appointment. The appointee must run in the next partisan election and thereafter be subject to retention or rejection on a nonpartisan ballot. The chief justice is elected by peer vote for a two-year term. In the absence of the chief justice, the senior justice exercises the powers of the chief justice. Seniority is determined by the length of continuous service on the court. Retired judges may serve temporarily by assignment of the chief justice.

The Supreme Court has appellate jurisdiction over all District Court decisions in criminal cases imposing the death penalty or life imprisonment and in appeals from the Public Regulation Commission. In its discretion, the Court may issue writs of certiorari, mandamus, prohibition and all other writs necessary for the complete exercise of its jurisdiction and to hear and determine the same. The Court has supervisory and administrative control over all lower courts and has the authority to discipline attorneys and judges for professional misconduct and unethical behavior.

The Court sits en banc in Santa Fe.

JUSTICES AND TERMS OF OFFICE

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<th>Name</th>
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<td>Richard C. Bosson</td>
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<td>Petra Jimenez Maes</td>
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<td>Patricio M. Serna</td>
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Sources: Court information was provided by the New Mexico Supreme Court Website (nmsupremecourt.nmcourts.gov) and the New Mexico Constitution Article VI. Unless otherwise noted, the dates were provided by the Judicial Yellow Book (Spring 2009 Edition).

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Of the cases selected for this report, the largest categories are Insurance and Other Liability Lawsuits at 30%.

Other categories are:

- Employment 17%
- Medical Malpractice 4%
- Product Liability 2%
- Workers' Compensation 17%