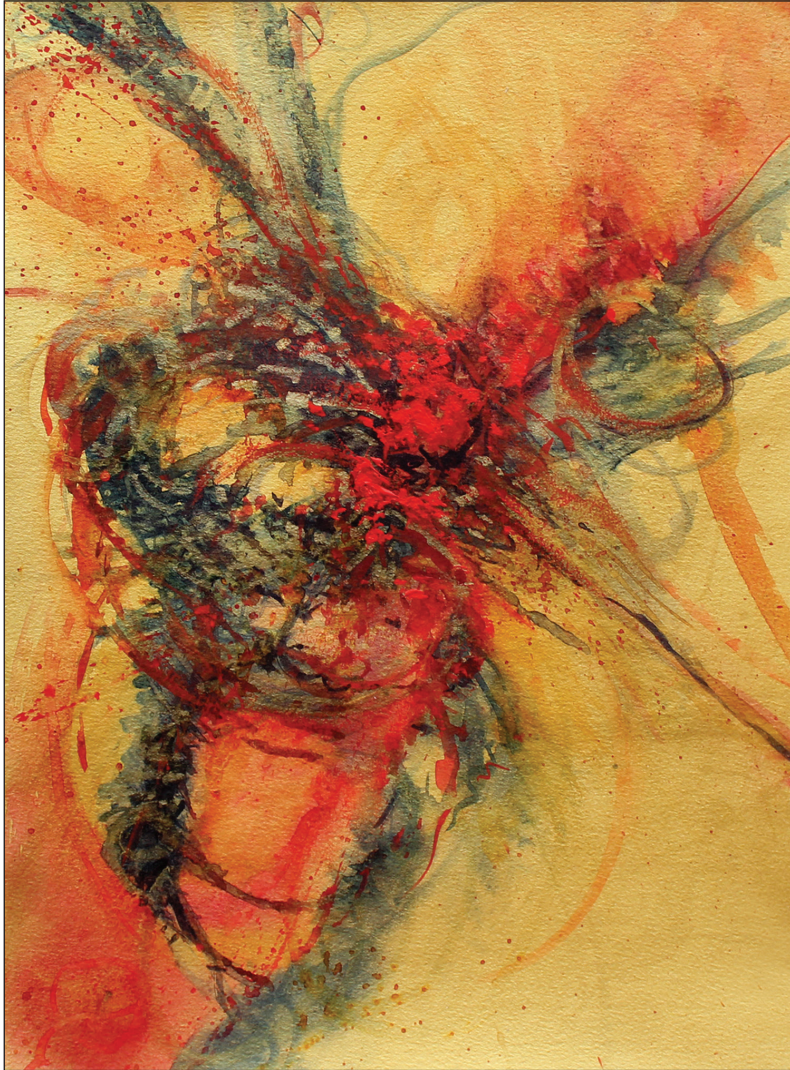


BAR BULLETIN

July 12, 2023 • Volume 62, No. 13



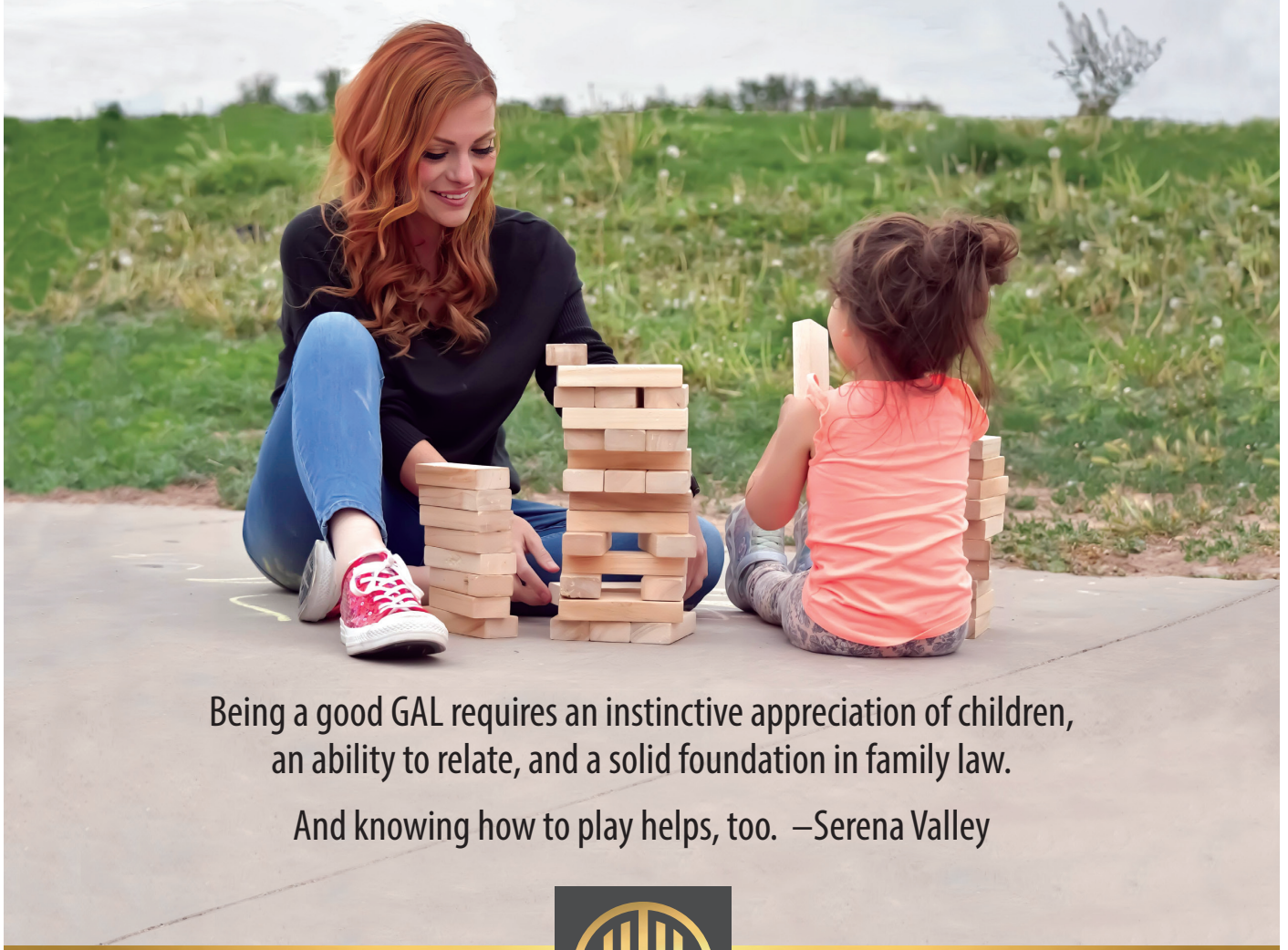
Mountain Dance, by Carla Forrest (see page 6)

carlaforrest.com

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I DO MY BEST WORK PLAYING



Being a good GAL requires an instinctive appreciation of children,
an ability to relate, and a solid foundation in family law.

And knowing how to play helps, too. —Serena Valley



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The logo for Spence features a stylized, yellow, brush-stroke-like 'S' that curves around the word 'SPENCE'. The word 'SPENCE' is written in a bold, white, serif font.

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Resolved**

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for Permian Basin
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in Industrial Worksite
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- A copy of any other relevant licenses or certifications.



New Mexico State Bar
5121 Masthead St. NE
Albuquerque, NM



Friday, August 4th
12 p.m. - 4 p.m.
&
Saturday, August 5th
10 a.m. - 2 p.m.

Questions? Email:

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Meetings

July

- 12
Animal Law Section**
Noon, virtual
- 14
Cannabis Law Section**
9 a.m., virtual
- 14
Prosecutors Section**
Noon, virtual
- 17
Children's Law Section**
Noon, virtual
- 20
Public Law Section**
Noon, virtual
- 21
Indian Law Section**
Noon, virtual
- 25
Intellectual Property Law Section**
Noon, virtual
- 28
Immigration Law Section**
Noon, virtual

Workshops and Legal Clinics

July

- 18
Common Legal Issues for Senior Citizens Workshop**
11 a.m.-noon, Virtual
For more details and to register, call
505-797-6005
- 26
Consumer Debt/Bankruptcy Workshop**
6-8 p.m., virtual

August

- 2
Divorce Options Workshop**
6-8 p.m., virtual
- 15
Common Legal Issues for Senior Citizens Workshop**
11 a.m.-noon, Virtual
For more details and to register, call
505-797-6005
- 23
Consumer Debt/Bankruptcy Workshop**
6-8 p.m., virtual

About Cover Image and Artist: Award-winning contemporary artist Carla Forrest paints the New West in her spectral luminescent works, inspired by direct observation of nature and life. Honored as a Local Treasure by the Albuquerque Arts Business Association, Carla obtained her Bachelor of Arts in studio art from State University of New York, Master of Science in Teaching Visual Arts from Rochester Institute of Technology, and Doctorate in Organizational Learning and Instructional Technologies from the University of New Mexico. "I approach painting as an observer of the soul, enlightening the viewer about the presence, wonder, and dignity of nature and life. I want the viewer to value place and person in a space of spirit and heart and bring this illumination into their personal environments."

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. (MT). Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. (MT). For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

N.M. Administrative Office of the Courts Introducing the "Justice for All" Newsletter

"Justice for All" is a brand-new monthly newsletter from the New Mexico Commission on Access to Justice. Learn about New Mexico's champions of justice, civil legal services providers and pro bono events you can participate in. Email atj@nmcourts.gov to be placed on the email list or visit <https://accesstojustice.nmcourts.gov/> to view.

Sixth Judicial District Court Notice of Mass Reassignment of Cases

Effective July 1, in Hidalgo County, all new, pending, and reopened CR, JR, LR, YR, PD, and SI cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new, pending, and reopened JQ and FC cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new PQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). Effective July 1, in Luna County, all new, pending, and reopened CR, JR, LR, YR, PD, and SI cases will be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened JQ and FC cases will be assigned

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications.

to the Honorable Jarod K. Hofacket (100%). All new PQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable James B. Foy (100%). Effective July 1, in Grant County, all new, pending, and reopened CR, JR, LR, YR, and SI cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new, pending, and reopened JQ and FC cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new and pending PD cases will be assigned to the Honorable James B. Foy (100%). All new PQ cases shall be assigned to the Honorable James B. Foy (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable Thomas F. Stewart (100%). Parties to these cases who have not previously exercised their right to excuse a judge may do so within 10 days of the last publication in the Bar Bulletin, pursuant to Rule 1-088.1 NMRA.

Eighth Judicial District Court Announcement of Applicants

Five (5) applications have been received in the Judicial Selection Office as of June 27 for the vacancy in the Eighth Judicial District Court in Raton, N.M. due to the retirement of the Honorable Judge Melissa Kennelly, effective June 30. The Eighth Judicial District Court Judicial Nominating Commission will convene at 9:30 a.m. (MT) on July 18 to interview applicants for the Raton, New Mexico position at the Eighth Judicial District Court located at 105 Albright St., Taos, New Mexico. The applicants include **Rachel Kolman, Ben Andrew Mondragon, Elizabeth A. Musselman, Thomas C. (Timo) Platt and Steven Anthony Romero.**

Notice of Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's Subcommittee on Judicial Nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meeting of the Eighth Judicial District Court Judicial Nominating

Commission. The Commission meeting is open to the public beginning at 9:30 a.m. (MT) on July 18 at the Eighth Judicial District Court located at 105 Albright St., Taos, N.M. Please email Beverly Akin (akin@law.unm.edu) if you would like to request a copy of the proposed changes.

United States District Court, District of New Mexico Notice Concerning Reappointment of Incumbent United States Magistrate Judge

The current term of office of Full-Time United States Magistrate Judge Gregory J. Fouratt is due to expire on Feb. 28, 2024. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term. The duties of a magistrate judge in this court include the following: (1) presiding over most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) presiding over various pretrial matters and evidentiary proceedings on delegation from a district judge, (4) taking of felony pleas and (5) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to MJMSP@nmcourt.uscourts.gov. Questions or issues may be directed to Monique Apodaca, (575) 528-1439. Comments must be received by Aug. 17.

STATE BAR NEWS Board of Bar Commissioners Appointment to NM Risk Management Advisory Board Vacancy

There is currently a vacancy on the Risk Management Advisory Board for an unexpired four-year term, which expires June 30, 2026. Pursuant to Section 15-7-4 NMSA 1978, the President of the Board of Bar Commissioners makes one appointment to the Risk Manage-

ment Advisory Board. The Advisory Board is charged with, among other duties, reviewing insurance policies to be purchased by the Risk Management Division, professional services and consulting contracts and agreements, companies and agents that submit proposals, rules and regulations promulgated by the division, certificates of coverage to be issued by the division, and investments to be made by the division. Applicants must be licensed to practice law in New Mexico. Members who wish to apply to serve on the Board should send a letter of interest and brief resume by July 31 to bbc@sbnm.org.

Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in questions to Equity in Justice Program Manager Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to www.sbnm.org/eij, click on the Ask Amanda link and submit your question. No question is too big or too small.

New Mexico State Bar Foundation

Announcement of Fundraising Events at the 2023 Annual Meeting

The New Mexico State Bar is hosting two fundraising events at this year's Annual Meeting; all of the proceeds will go to the Bar Foundation to support its mission. The first is a raffle for a chance to win a vacation package valued at \$2,500 and includes a Southwest Airlines Gift Card and a Visa Gift Card. The tickets are \$100 and can be purchased during the Annual Meeting at the Registration Desk anytime on Thursday, July 27, or Friday, July 28 at the Hyatt Regency Tamaya Resort & Spa. The drawing will take place on the evening of July 28, and you don't have to be present to win. If you will be unable to attend the Annual Meeting, you can still purchase raffle tickets using the secure Jotform by clicking on the button below and we will enter your name in the raffle. For questions please contact info@sbnm.org. The other event that will take place at the Annual Meeting is a "Snag a Bag" event.

The tickets are \$50 and everyone is a winner! Pick up your bag at the Registration Desk. Purchase raffle tickets at form.jotform.com/sbnm/BarFoundationRaffle.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pam.moore@sbnm.org or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on July 13, Oct. 5 and Jan. 11, 2024. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

New Mexico Medical Review Commission Notice for Seeking Additional Panelists

The New Mexico Medical Review Commission seeks additional volunteer attorney panelists to serve on the Commission's screening panels under the New Mexico Medical Malpractice Act. Each screening panel is made up of three medical professionals and three attorneys of the State Bar of New Mexico. Hearings are held Monday through Thursday at 7 p.m. (MT) by Zoom. Medical records and

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other panel materials are provided to each panelist a few days prior to the hearing. Attorneys who participate in panel hearings are eligible for one self-study CLE credit per panel hearing and up to four credits per year. Please fill out a panelist form at <https://forms.office.com/pages/responsepage.aspx?id=UUe4lvuTBEu-9Ca6-oN8EnkRV4L2OL7xKgbdoNY4m-8i1UNDJOWjk5TUVLU1RKNUFZ-REQwVjJVT1RWVY4u>.

UNM SCHOOL OF LAW Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m.-8 p.m. (MT) Monday through Thursday and 8 a.m.-6 p.m. (MT) on Fridays. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see lawlibrary.unm.edu.



A Message from State Bar President Benjamin I. Sherman

Dear Member of the State Bar:

It's hard to believe that we are already half-way through the year. For many of us, as we leave the pandemic behind, we feel as busy as ever, balancing work responsibilities with family and social obligations. It is during these times that it is important to remember that the State Bar is here to support you, both in your legal career and your overall well-being. From our Lawyer Assistance Program and

Professional Development Program to our Equity in Justice and Judicial Well Being Program, we are here for you. Our website contains valuable information on the multiple resources available to you and your staff and we hope you take the opportunity to check it out.

One great opportunity to connect with your colleagues, get all of your CLE's completed, and learn about an exciting array of legal topics is the State Bar of New Mexico's Annual Meeting. The 2023 Annual Meeting will once again be held at the Hyatt Regency Tamaya Resort & Spa from July 27 – 29. This year's Annual Meeting will contain a wide variety of exciting and relevant topics, which are further detailed below. Our keynote speaker is New York University School of Law Professor of Clinical Law Emeritus Anthony C. Thompson. Professor Thomson will discuss how being taught to lead should be an integral part of law school, as many attorneys often go on to hold positions of leadership within and outside their legal careers. Other plenary sessions will include sessions on Technology, Legal Writing, Reciprocity Update, Coaching, and Ethics.

The 2023 Annual Meeting will feature five specific breakout tracks. In addition to track sessions put on by the State Bar of New Mexico's Indian Law Section, Employment and Labor Law Section and Paralegal Division, this year's Annual Meeting will also have a "Back to Law School" track. Led by a group of professors from the University of New Mexico School of Law, the Back to Law School track will provide engaging and insightful sessions about how to effectively navigate the legal profession and will present ideas that cover core principles of law practice. The Writing & Professional Development track will expand on this with sessions that explore how attorneys can employ best practices to strictly adhere to the ethics and values that are vital to a successful legal career.

While the Annual Meeting will be a great time to gain further insight into relevant and critical legal topics, it will also be an excellent opportunity to have fun and network, with activities such as a Guided Meditation, Wine and Watercolor, Santa Ana Pueblo Storytelling, Tamaya Stables Riding Clinic, and Poolside Yoga, all of which offer the chance to decompress and socialize. There will even be a Pub-Style Trivia Contest hosted by the Young Lawyers Division!

Let's all take a moment to relax, network and celebrate New Mexico's legal community at the 2023 Annual Meeting. With plenty of educational and social opportunities, it will serve as a wonderful moment to learn more about various legal topics of the day and enjoy the company of your peers. Please join me, President-Elect Erin Atkins, Secretary-Treasurer Aja Brooks, Past President Carolyn Wolf and the Board of Bar Commissioners at the Annual Meeting this year. We look forward to seeing you all!

Sincerely,

A handwritten signature in black ink, appearing to read "B. Sherman", written in a cursive style.

Benjamin I. Sherman
President, State Bar of New Mexico

STATE BAR OF NEW MEXICO
2023 ANNUAL MEETING

Hyatt Regency Tamaya Resort & Spa • July 27–29

www.sbnm.org/AnnualMeeting2023

Welcome Back to the Tamaya!

The Hyatt Regency Tamaya Resort & Spa has been a popular Annual Meeting venue among attendees, with the 2023 Annual Meeting once again returning for its events. While the event highlights at the 2023 Annual Meeting are the plenaries, CLE sessions and wellness activities, it's good to know what the Tamaya has in store for Annual Meeting attendees who want to explore the resort's other features during their stay.



PARTAKE IN WINE AND WATERCOLOR

Thursday, July 27, 6:30 p.m.

The Tamaya is host to some of the finest views in New Mexico, and Wine and Watercolor is a true testament to this. Offering patrons the opportunity to paint the Sandia Mountains while enjoying the refreshing wines provided by the resort, Wine and Watercolor is a relaxing way to end the day.



LISTEN TO STORYTELLING AT SUNSET

Thursday, July 27, 7:45 p.m.

The Tamaya's "Storytelling at Sunset" activity engages attendees and connects them with the sacred land through tribal stories and recollections from the ancient past, as told by a member of the Santa Ana Pueblo.



TAKE A HORSEBACK RIDE

Saturday, July 29, 10 a.m.

One of the Tamaya's most unique offerings comes on behalf of the Stables at Tamaya. Saddle up for a horseback riding session, during which attendees can experience a novel horseback ride on the beautiful lands of the Tamaya.



TWIN WARRIORS GOLF CLUB

Based on availability throughout the duration of the conference.

Home to the 2023 PGA Professional Championship, the Tamaya's Twin Warriors Golf Club is one of the Southwest's most acclaimed golf clubs among New Mexico's best. Between amazing upkeep, gorgeous scenery and excellent design, the Twin Warriors Golf Club will provide the perfect opportunity for attendees to show off their golf game!

Pre-registration is required for these events.

Visit <https://www.sbnm.org/CLE-Events/Annual-Meeting-2023/Activities> for more information.



STATE BAR OF NEW MEXICO
2023 ANNUAL MEETING

Hyatt Regency Tamaya Resort & Spa • July 27–29
www.sbnm.org/AnnualMeeting2023

Registration Open Through July 19

Well-Being at the Annual Meeting

The 2023 Annual Meeting will feature many opportunities to focus on and improve your personal well-being. From a Guided Meditation to Therapy Dogs, Chair Massages, Blood Pressure Checks, and a Financial Consultant, there will be no shortage of ways in which you can center yourself and tend to your overall wellness.



State Bar of New Mexico
Lawyer Assistance
Program

LAWYER ASSISTANCE PROGRAM

The New Mexico Lawyer Assistance Program is a free service for all members of the New Mexico bench and bar and law students. NM LAP offers confidential professional and peer assistance to help individuals identify and address struggles with alcohol and other drugs, depression and other mental health/emotional struggles, as well as with issues related to cognitive impairment. Stop by and learn more about NM LAP, how it can help you, and how you can be of service to your colleagues.

Thursday, July 27

- Guided Meditation Session

Friday, July 28

- Blood pressure Checks
- #Fit2Practice Walking Meditation
- Financial Consultant
- Therapy Dogs
- Chair Massages
- Mocktail Bar
- Support Group Meeting

Saturday, July 29

- #Fit2Practice Poolside Yoga



The
Solutions
Group

THE SOLUTIONS GROUP - EMPLOYEE ASSISTANCE PROGRAM

The Solutions Group believes everyone can benefit from living a healthier life. As the health and wellness division of Presbyterian Healthcare Services, TSG provides wellness programs for a wide variety of employers. TSG is available to you all day Thursday and Friday of the Annual Meeting. Stop by their table for swag, information and good conversation. Visit their website at www.solutionsbiz.com.



State Bar of
New Mexico
Est. 1886

STATE BAR OF NEW MEXICO 2023 ANNUAL MEETING

Annual Meeting THROWBACK

By Brandon McIntyre and Celeste Valencia

With the 2023 Annual Meeting just two weeks away, it's important to observe the rich history of the Annual Meeting. Beginning in the 19th century, the State Bar of New Mexico has celebrated its membership in some way on an annual basis. Each year has seen variation in venue and legal topics, and each annual meeting has consistently been focused on celebrating the rich and vibrant legal community of New Mexico.

In this issue of the *Bar Bulletin*, we look back on the Annual Meetings of the past decade, from 2013 to 2022, highlighting each Annual Meeting's venue, topics and more.



2013

The 2013 Annual Meeting was held in June 2013 at the Santa Fe Community Convention Center in New Mexico's capital. This Annual Meeting was host to many notable speakers, including Director of the Center for Courts & Media Ben Holden, former UNM School of Law Interim Dean Barbara Bergman and two American Bar Association authors. The topics spanned everything from maximizing ethics in law practice, judicial excusals and the importance of the Fourth Estate.

2014

Hyatt Regency Tamaya Resort & Spa has been a favorite venue for the Annual Meeting over the years, and our 2014 Annual Meeting was held at the beautiful venue. The Annual Meeting's theme was "Justice at Stake," surrounded by numerous programs, such as those regarding legal aid issues, civil justice, civil and criminal procedure and reciprocity, which will be a main topic at this year's Annual Meeting. Multiple featured speakers were there for the event, including Governor Michelle Lujan Grisham, who was a D.C. congresswoman at the time, and presented on the Paycheck Fairness Act.



2015

The 2015 Annual Meeting took State Bar staff and its membership to the Broadmoor in Colorado Springs, which 2015 State Bar President Martha Chicoski referred to as "an amazing and tranquil backdrop for our Conference" in her introductory letter in the 2015 Annual Meeting Program. The 2015 Annual Meeting's theme was "Celebrating Connections and Community," which was headlined by keynote speaker Dave McGilivray, race director of the Boston Athletic Association Boston Marathon. The 2015 Annual Meeting's plenaries included "The Challenges of Dealing with Incivility in the Practice of Law," "Advancing Women's Economic Security in the 21st Century," "Invasion of the Drones/IP—Privacy, Policies Profits" and "Civil and Criminal Procedure Updates."



2016

In 2016, the Annual Meeting returned to Santa Fe at the gorgeous Buffalo Thunder Resort, complete with wonderful vistas and breathtaking scenery. The 2016 Annual Meeting featured speakers that spoke on topics such as journalism and its relationship with law and ethics, social media and gender issues. The 2016 Annual Meeting's biggest highlight was its keynote speaker, U.S. Supreme Court Associate Justice Ruth Bader Ginsburg. The 2016 Annual Meeting's entertainment included a performance at the world-renowned Santa Fe Opera.



2017

The 2017 Annual Meeting was held at the Inn of the Mountain Gods in Mescalero, N.M. in July 2017. Surrounded by expansive and lush green forests and bordering a beautiful lake, it was the perfect setting for the event, which featured O.J. Simpson prosecutor Marcia Clark in a Q & A session mediated by anchor Carla Aragon. In addition, the 2017 Annual Meeting featured multiple other high-profile speakers as well as in-depth plenaries and sessions exploring the First Amendment, pro bono representation and succession planning.

2018

In 2018, the Annual Meeting was once again held at the Hyatt Regency Tamaya Resort & Spa in early August. Featuring a wide variety of topics and sessions led by top-tier speakers, including technology and marketing expert Mark Homer, "CLE Performer" Stuart Teicher and the wrongfully convicted Michael Morton, who spent over two decades in prison over a crime he had no involvement in. The 2018 Annual Meeting's primary legal topics included the use of social media in law practice, the opioid crisis in New Mexico and immigration issues.



2019

The 2019 Annual Meeting brought the State Bar's membership to Hotel Albuquerque at Old Town in early August. The headlining speaker of the event, ABC News Chief Legal Affairs Anchor Dan Abrams, presented "Covering the Courts: The Convergence of Law and Media in Today's High Profile Cases." In addition to Abrams, the 2019 Annual Meeting's other content included a plenary on building and utilizing resilience in law practice to maximize performance and the social and entertainment events that have been central pillars of the Annual Meeting over the years.

2020

The 2020 Annual Meeting was a very unique event in its own way. Taking place in September 2020, in the throes of the COVID-19 pandemic, the 2020 Annual Meeting was entirely virtual. While this did mean that social and networking events would be constrained, the topics of the event were no less relevant or engaging. Featuring New Mexico Supreme Court Justice David K. Thomson and Justice Michael E. Vigil, as well as current Chief Justice C. Shannon Bacon, the 2020 Annual Meeting's presentations were primarily focused on law practice in the COVID-19 era but also discussed wellness and diversity and their place in the practice of law.



2021

In 2021, the Annual Meeting made a soft return to its traditional in-person format, as the event was streamed online as well. The 2021 Annual Meeting took place in limited fashion at the State Bar Center and featured remarks by then-Chief Justice Michael E. Vigi and American Bar Association President Reggie Turner. The event also featured best-selling author Cory Muscara, who spoke to the importance of being present and optimizing wellness in law practice. The Commission on Equity and Justice, which had formed in 2020, also had a large presence at the 2021 Annual Meeting in its presentation on inequities in the justice system and improving diversity in the judiciary.



2022

Last year's Annual Meeting was our first true return to an in-person format, seeing enormous turnout at the Hyatt Regency Tamaya Resort & Spa. Featuring keynote speaker Desmond Meade and with a focus on equity in justice and cannabis law issues, the 2022 Annual Meeting was full of diverse content and speakers. Complete with wellness activities and social events, the 2022 Annual Meeting was enjoyed by all and marked a return to normal, which was much needed after two years of coping with the effects of the COVID-19 pandemic.



The past decade of Annual Meetings alone tells a story about the event itself. Each Annual Meeting hones in on the topics of the day. By including experts across various fields, the State Bar's Annual Meeting provides members with engaging and compelling opportunities to become more informed about fields they may not be as practiced in or brush up on their own fields. The Annual Meeting is a time to celebrate and a perfect opportunity to gather as one of New Mexico's richest communities in its mission to represent the diverse peoples of New Mexico and seek the justice they deserve.

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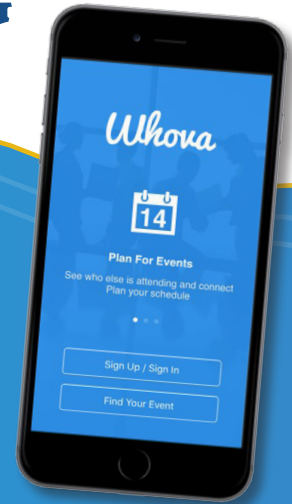
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Panelists Needed for the New Mexico Medical Review Commission

Howard R. Thomas

The New Mexico Medical Review Commission was created in 1976, pursuant to the New Mexico Medical Malpractice Act, NMSA 1978 §§ 41-5-1 et seq. The Commission relies on volunteer panelists to screen medical malpractice claims against health care providers who are qualified under the Act before the claims are allowed to proceed in court. Earlier this year, I was appointed State Bar Chair of the Commission. And as I have for many years, I continue to serve as a volunteer panelist.

Each screening panel is comprised of three (3) medical professionals (of the same licensure as the health care provider against whom the claim has been made) and three (3) attorneys of the New Mexico State Bar. All members of the State Bar are welcome to serve on the panels; prior experience with medicine or malpractice claims is not required. Each panel is chaired by the Commission Director, Edward “Ned” Shepherd, one of the standing panel chairs (Judith Durzo and William Herring), or another attorney designated by the Director.

Through Jessica Lagoda, Supervising Medical Legal Coordinator, and Benjamin Maggard, Medical Legal Coordinator, prospective panelists are polled each month to determine their availability to serve on a panel during the following month. Usually, panelists are not asked to serve on a panel more often than once per month. Sometimes, volunteers may also be asked if they are available to fill in for another panelist who has become unavailable to serve on a particular panel. The hearings are held Monday through Thursday at 7 p.m. via Zoom. Panel hearings, including panel deliberations and votes, generally last about two (2) to three (3) hours. Medical records and other panel materials are provided to panelists a few days before the panel hearing. Attorneys who serve as panelists are eligible for one (1) CLE credit per completed panel hearing and up to four (4) CLE credits per calendar year.

That panel hearings are being conducted via Zoom greatly expands the opportunities for New Mexico attorneys to participate as panelists regardless of where they live or practice and irrespective of time and travel constraints they might otherwise have. And we would like to deepen and broaden- demographically, geographically, and numerically- our pool of attorney panelists.

Over the years serving on Commission panels, I have learned a lot about good lawyering (and in recent years) good virtual lawyering). I’ve served with lawyers and physicians who I already knew and met many who I would never have known had it not been for panel service. Along the way, I’ve learned a bit about different areas of medicine.

Most important is that the Commission’s screening panel process is highly effective. Parties and their lawyers gain valuable, objective insights into their own case and the other side’s case during each hearing. Immediately after each hearing, the panel deliberates and then votes by secret ballot. The panel’s informed though not binding vote on the merits further educates counsel and their clients. This often leads to resolution. The process is a singularly effective and efficient means of alternative dispute resolution. Service on NMMRC’s panels is an important service to the public and to the medical and legal professions.

Attorneys who may be interested in serving as volunteer panelists can find more information at the at the Commission’s website <https://nmmedicalreviewcommission.org>, the New Mexico Medical Society’s website <https://www.nmms.org/nm-medical-review-commission>, and the New Mexico State Bar’s website <https://www.sbnm.org/Leadership/Committees/NM-Medical-Review-Committee>.

I hope that you’ll decide to sign up as a NMMRC panelist- it’s easy and convenient. You’ll find the panelist sign-up form at <https://nmmedicalreviewcommission.org/panelists>. I’m confident that you’ll find panel service to be as professional fulfilling and educational as I do. I’m looking forward to serving on a panel with you sometime soon!

Many thanks!

Order of Suspension

From the New Mexico Supreme Court

June 28, 2023

No. S-1-AO-2023-00004

IN THE MATTER OF THE SUSPENSION OF ACTIVE MEMBERS OF THE STATE BAR OF NEW MEXICO FOR NONCOMPLIANCE WITH NEW MEXICO SUPREME COURT ORDER NO. 22-8500-029

SECOND AMENDED ORDER OF SUSPENSION

WHEREAS, this Court previously issued Order No. 20-8500-011, permitting the admission of attorneys during the COVID-19 pandemic by alternate methods and for a limited duration, subject to eventual compliance with this Court's traditional requirements for admission, including signing the Roll of Attorneys, once public health circumstances allowed;

WHEREAS, Order No. 20-8500-011, notified applicants seeking admission under that order that failure to sign the Roll of Attorneys once permitted to do so would result in the immediate termination of their license to practice law in New Mexico;

WHEREAS, this Court sent notice to the affected attorneys that the Roll of Attorneys was available for signing beginning February 2022 during regular

business hours at the Clerk's Office in Santa Fe and that the Roll would be available in Las Cruces and Albuquerque on select dates, which were published in the *Bar Bulletin*;

WHEREAS, this Court thereafter issued Order No. 22-8500-029, on June 17, 2022, notifying attorneys admitted under Order No. 20-8500-011 during the period of April 21, 2020, to June 17, 2022, that they must appear in person and sign the Roll of Attorneys no later than June 16, 2023, or their law licenses would be immediately suspended;

WHEREAS, this Court thereafter provided additional notice to affected attorneys of the opportunity to sign the Roll in Santa Fe or on select dates in Albuquerque; and

WHEREAS, the time permitted to sign the Roll having

elapsed and failing to achieve full compliance with Order No. 22-8500-029, and the Court being sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the attorneys listed below **ARE SUSPENDED FROM THE PRACTICE OF LAW** in the courts of this state by reason of noncompliance with Supreme Court Order No. 22-8500-029;

IT IS FURTHER ORDERED that the Clerk of this Court shall change the Official Roll of Attorneys to reflect suspended status of the attorneys listed below and that notice thereof be given to each judge in the State of New Mexico through publication in the *Bar Bulletin*;

IT IS FURTHER ORDERED that an attorney suspended under this order may seek reinstatement of their license to practice law by filing a motion for reinstatement in this Court and showing good cause for failing to sign the Roll;

IT IS FURTHER ORDERED that only upon a finding of good cause by this Court, may an attorney suspended under this order seek reinstatement of their license to practice law with the State Bar of New Mexico; and

IT IS FURTHER ORDERED that an attorney suspended under this order and seeking reinstatement with the State Bar of New Mexico shall be subject to the requirements for reinstatement set forth in Rule 15-302(B) NMRA.

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Walter P. Zivley Jr.
8584 Katy Fwy., Suite 105
Houston, TX 77024

Legal Education

July

- | | | |
|--|---|--|
| <p>1-31 Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set
1.0 G, 2.0 EP
Online On-Demand
The Ubuntuworks Project
www.ubuntuworksschool.org</p> | <p>13 Family Law Lunch n Learn: Savvy Social Security
1.25 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>13 Law and Technology Series: Electronic Courtroom Presentation Workshop
16.7 G
Live Program
Administrative Office of the U.S. Courts
www.uscourts.gov</p> <p>14 How to Take Charge of Technology - Ethically and Mindfully
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 Battling Gender Bias: How Bill Cosby and Other Sexual Predators Escape Punishment
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>19 Please Help; I Feel So Conflicted Right Now! Common Conflict Issues
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>20 The Anthony G. Amsterdam Capital Post-Conviction Skills Seminar
19.4 G
Live Program
Administrative Office of the U.S. Courts
www.uscourts.gov</p> |
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August

- | | | |
|--|---|--|
| <p>1-31 Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set
1.0 G, 2.0 EP
Online On-Demand
The Ubuntuworks Project
www.ubuntuworksschool.org</p> | <p>2 2023 Albert J. Krieger Annual Meeting of NACDL "Cross-A-Palooza: Techniques for Winning with Effective Cross-Examination"
13.4 G, 1.0 EP
Live Program
National Association of Criminal Defense Lawyers
www.nacdl.org</p> <p>2 Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set
1.0 G, 2.0 EP
Live-Moderated
The Ubuntuworks Project
www.ubuntuworksschool.org</p> | <p>16 Follow Me on Insta! Social Media in Your Practice - How, Why, and What are the Risks?
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
|--|---|--|

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions.

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 May 26, 2023

PUBLISHED OPINIONS

A-1-CA-39732	M Johnson v. Board of Education for APS	Reverse/Remand	05/23/2023
A-1-CA-39835	H Lopez v. Transitional Hospitals Corporation of NM	Affirm	05/25/2023

UNPUBLISHED OPINIONS

A-1-CA-40282	State v. D Little	Affirm/Reverse	04/17/2023
A-1-CA-37324	State v. C Rodriguez	Affirm	05/22/2023
A-1-CA-38439	R Case v. Hanna Plumbing & Heating	Affirm/Reverse/Remand	05/22/2023
A-1-CA-40650	State v. J Wiggins	Affirm	05/24/2023
A-1-CA-40722	State v. S Swaim	Affirm	05/24/2023
A-1-CA-39770	State v. M Dirickson	Affirm	05/25/2023
A-1-CA-39828	City of Hobbs v. F Sifford	Affirm	05/25/2023

Effective June 9, 2023

PUBLISHED OPINIONS

A-1-CA-39633	State v. L Garcia Pacheco	Affirm	05/30/2023
A-1-CA-38256	State v. V Herrera	Reverse	06/01/2023
A-1-CA-39539	NM Medical Board v. B Rauth, MD	Affirm	06/07/2023

UNPUBLISHED OPINIONS

A-1-CA-40755	M Carlisle v. J Hawes	Affirm	05/30/2023
A-1-CA-38671	State v. R Kelsey	Affirm	06/01/2023
A-1-CA-39578	L Marker v. NM Oil Conservation Commission	Affirm	06/01/2023
A-1-CA-40260	CYFD v. Christopher M.	Affirm	06/01/2023
A-1-CA-40307	State v. D Dawes	Reverse/Remand	06/01/2023
A-1-CA-40380	J Read v. TJ O'Connor Cattle Company	Reverse	06/01/2023
A-1-CA-40430	M Gordyn v. L Potter	Affirm	06/01/2023
A-1-CA-40344	CYFD v. Nellie M	Affirm	06/06/2023
A-1-CA-41006	Brenda P. v. Estevan R.	Affirm	06/06/2023
A-1-CA-39472	J Palacios v. New Mexico Expo	Affirm	06/08/2023
A-1-CA-40269	J Doe v. New Mexico State University Board of Regents	Affirm	06/08/2023
A-1-CA-40558	State v. D Clowers-Yarnell	Dismiss	06/09/2023

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

Effective June 16, 2023**PUBLISHED OPINIONS**

A-1-CA-38700	S Guest v. Allstate Insurance	Affirm/Reverse/Remand	06/12/2023
A-1-CA-40049	A Imming v. O De La Vega	Affirm	06/12/2023
A-1-CA-40005	State v. V Castillo	Affirm	06/13/2023

UNPUBLISHED OPINIONS

A-1-CA-39555	State v. K Jensen	Affirm	06/14/2023
A-1-CA-39513	State v. P Sanders	Affirm	06/15/2023
A-1-CA-40131	A Erinle v. V Erinle	Affirm	06/15/2023
A-1-CA-40723	State v. B Sizemore	Affirm	06/15/2023

Effective June 23, 2023**PUBLISHED OPINIONS**

A-1-CA-39784	Robison Medical Resource Goup v. NM Taxation & Revenue	Affirm	06/20/2023
A-1-CA-38585	UPS Inc. v. NM Tax & Rev	Affirm	06/22/2023

UNPUBLISHED OPINIONS

A-1-CA-38557	R Duran v. D Delgado	Reverse/Remand	06/20/2023
A-1-CA-40024	State v. Z Trower	Affirm	06/20/2023
A-1-CA-40114	State v. C Middlebrook	Reverse/Remand	06/20/2023
A-1-CA-40378	K Elkins v. Dollar Tree	Reverse	06/20/2023
A-1-CA-38172	S Smith v. C Dickinson	Affirm	06/21/2023
A-1-CA-38978	Republican Party of NM v. M Oliver	Dismiss	06/21/2023
A-1-CA-40059	City of Hobbs v. A Nunez-Morales	Affirm	06/21/2023
A-1-CA-40398	B Franklin v. Secretary of Corrections	Affirm	06/21/2023
A-1-CA-40902	M Greenham v. S Greenham-Rodriguez	Affirm	06/21/2023
A-1-CA-41005	State v. P Evans	Affirm	06/21/2023
A-1-CA-39307	In Re S. Raphaelson	Reverse/Remand	06/22/2023
A-1-CA-39586	E Pearson v. Genesis Healthcare	Affirm	06/22/2023

Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-003
No: S-1-SC-39004 (filed February 6, 2023)

STATE OF NEW MEXICO,
Plaintiff-Respondent,
v.

FRANCISCO JAVIER GRANADOS,
Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Steven Blankinship, District Judge

Bennett J. Bauer,
Chief Public Defender
Kimberly M. Chavez Cook, Assistant
Appellate Defender
Santa Fe, NM

for Petitioner

Hector H. Balderas, Attorney General
Charles J. Gutierrez,
Assistant Attorney General
Santa Fe, NM

for Respondent

DECISION

VARGAS, Justice.

{1} Four narcotics agents working with the Otero County Narcotics Enforcement Unit (NEU) attempted to stop Defendant Francisco Javier Granados based on a confidential informant tip and the agents' brief surveillance of Defendant interacting with a woman at an Alamogordo gas station. When confronted by the agents, Defendant fled. During the ensuing vehicle pursuit, one of the agents saw Defendant toss an object out of his left front window. Shortly after, Defendant stopped and spoke with the agents. Another agent backtracked and recovered the object Defendant had discarded. That object turned out to be a plastic bag containing approximately fifty grams of cocaine.

{2} Defendant made two motions to suppress, arguing that the NEU agents did not have a legitimate basis on which to stop him. The district court denied the motions because it concluded that Defendant was not seized and that the agents possessed a reasonable suspicion that Defendant was engaging or about to engage in illegal conduct. Defendant was convicted of trafficking a controlled substance (possession with intent to distribute), contrary to NMSA 1978, Section 30-31-20(A){3}

(2006) and tampering with evidence, contrary to NMSA 1978 Section 30-22-5 (2003). The Court of Appeals affirmed the district court's order denying suppression in a split opinion, concluding only that the agents possessed reasonable suspicion to stop Defendant when they first confronted him. *State v. Granados*, A-1-CA-37417, mem. op. ¶¶ 6-14 (N.M. Ct. App. July 26, 2021) (nonprecedential).

{3} We granted Defendant's petition for writ of certiorari and reverse the Court of Appeals. We hold that Defendant's seizure was unreasonable under Article II, Section 10 of the New Mexico Constitution. Because the issues have been previously decided and we reverse based on the absence of substantial evidence, we dispose of this case by nonprecedential memorandum opinion. Rule 12-405(B)(1), (2) NMRA.

I. BACKGROUND

{4} The relevant facts are largely undisputed. On April 29, 2013, NEU Agent Rodney Scharmack received a phone call from a confidential informant. This informant was a "documented reliable informant," meaning that the informant was known to the NEU and had previously assisted in narcotics investigations. The informant said that Defendant was in possession of and distributing a large amount of cocaine. The informant was not able to provide a physical address for Defendant, but described two of Defendant's vehicles:

a black pickup truck and a black Chrysler 300 sedan.

{5} Agent Scharmack was already familiar with Defendant from past narcotics investigations. NEU agents had also received incriminating information about Defendant "here and there" in the weeks prior to this particular informant tip, and Defendant was currently "on [NEU's] radar" for narcotics trafficking offenses.

{6} On May 2, 2013, Agent Scharmack, NEU Commander Neil LaSalle, Border Patrol Agent Timothy Huffman, and NEU Agent Obed Marte were patrolling Alamogordo in an unmarked surveillance vehicle. The four agents spotted Defendant sitting alone in his black pickup truck in the parking lot of a local grocery store. The agents decided to follow Defendant and trailed him to a Giant gas station on the outskirts of Alamogordo.

{7} As the agents drove by the gas station, they observed Defendant reversing his truck into a parking spot in an open gravel lot next to the convenience store. The agents then saw a smaller white pickup pull up near Defendant's truck. The agents recognized the white pickup and believed that it belonged to a previous target of their narcotics trafficking investigations, Anthony Montoya.

{8} The agents saw a woman exit the white pickup and approach Defendant's open left front window. Although the agents described the interaction between the woman and Defendant as "almost like an exchange," the agents did not actually see Defendant and the woman exchange anything. Nevertheless, each of the agents asserted that, in light of their "training and experience," they believed that Defendant was then engaging or about to engage in a narcotics transaction with the woman. However, the agents did not identify which facts about this interaction led them to suspect that the two individuals were exchanging narcotics, or explain how their training and experience infused special meaning into the interaction that they observed. For example, Agent Huffman testified that his suspicions were aroused because of the tip and his knowledge of Defendant and Anthony Montoya through past investigations.

{9} The agents decided to "make contact" with Defendant at that point. Having already driven about half a block away, the agents made a U-turn and proceeded back to the gas station. The agents planned to stop their surveillance vehicle in front of Defendant's truck, but their vehicle overshoot its intended destination and skidded to a stop just past the truck. The agents exited their vehicle, approached Defen-

dant's open window, shouted "Sherriff's Office" or "Otero County," and ordered Defendant to exit his vehicle. The agents were dressed in civilian clothes but were displaying official badges in either their hands or hanging from lanyards around their necks. At least one of the agents had his hand on his holstered weapon.

{10} Defendant pointed his finger at the agents with a surprised look on his face. He then grabbed his steering wheel and sped out of the lot. Agent Scharmack, Commander LaSalle, and Agent Huffman returned to their vehicle and followed Defendant. Agent Marte stayed behind and briefly spoke with the woman from the white pickup. The woman was Defendant's mother, but the agents only later learned of her identity and relationship to Defendant.

{11} The agents followed Defendant through a nearby residential area. At one point during the pursuit, Agent Huffman saw Defendant toss a white, softball-sized object out of his front window. After taking a few more turns, Defendant stopped his truck in the middle of the road. The agents pulled up directly behind Defendant's truck. Defendant exited his vehicle and began asking the agents questions. During this conversation, Defendant specifically addressed Commander LaSalle as "Neil," using the Commander's given name.

{12} While the other agents spoke with Defendant, Commander LaSalle backtracked into the nearby residential area and recovered the object that Defendant had discarded. That object was a plastic bag containing 49.97 grams (1.76 ounces) of cocaine.

{13} In response to the State's charges, Defendant made motions to suppress both prior to and at trial, arguing that the narcotics evidence was obtained in violation of his rights under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The State argued that the motions should be denied because Defendant was not seized at the gas station. Alternatively, the State argued that the agents had reasonable suspicion to stop Defendant when they first approached him at the gas station. The district court denied suppression, agreeing with the State that Defendant was not seized at the gas station.

{14} On direct appeal from his convictions for trafficking and tampering with evidence, a majority of the Court of Appeals affirmed the district court. *Granados*, A-1-CA-37417, mem. op. ¶¶ 6-14. Unlike the district court, however, the Court of Appeals did not consider when Defendant was effectively seized. *Id.* ¶ 7 n.2. The Court of Appeals instead

explained that the totality of the circumstances supported a reasonable suspicion to stop Defendant at the time the agents decided to confront Defendant at the gas station. *Id.* ¶ 7. According to the majority, those circumstances included: "(1) the agents' knowledge that Defendant was a known drug trafficker; (2) a tip from a reliable [confidential informant]; (3) the agents' verification of specific aspects of the tip's information; and (4) the agents' belief, based on substantial training and experience, that Defendant was engaged in criminal activity." *Id.* ¶ 7. Judge Attrep filed a dissenting opinion, arguing that Defendant's seizure was not shown to be objectively reasonable for reasons that we find persuasive here. *Id.* ¶¶ 30-39 (Attrep, J., dissenting).

{15} We granted Defendant's petition for writ of certiorari and have jurisdiction. Rule 12-502 NMRA. In addition to challenging the decision on his motion to suppress, Defendant raises three other issues for our review. As we hold that Defendant's seizure was unreasonable under Article II, Section 10, we discuss only the suppression issue and do not reach the merits of Defendant's remaining challenges. We also do not address Defendant's arguments regarding the asserted staleness of the confidential informant tip because we conclude that the tip was not shown to be reliable.

II. STANDARD OF REVIEW

{16} Our review of a motion to suppress evidence presents mixed questions of law and fact. *State v. Neal*, 2007-NMSC-043, ¶ 15, 142 N.M. 176, 164 P.3d 57. With respect to questions of fact, we defer to the findings of the district court if supported by substantial evidence. *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. Further, "[a]n appellate court must indulge in all reasonable inferences in support of the district court's decision and disregard all inferences or evidence to the contrary." *State v. Martinez*, 2018-NMSC-007, ¶ 15, 410 P.3d 186 (text only) (citation omitted).

{17} We review questions of law de novo. *Urioste*, 2002-NMSC-023, ¶ 6. "This Court sits as final arbiter of what the law is and how it applies to any given set of facts." *State v. Martinez*, 2020-NMSC-005, ¶ 16, 457 P.3d 254. As relevant to the current appeal, these questions of law include whether, in light of the facts presented, a defendant was subjected to "such a level of accosting and restraint" so as to be seized, *State v. Jason L.*, 2000-NMSC-018, ¶ 19, 129 N.M. 119, 2 P.3d 856, or whether a seizure was objectively reasonable. *State v. Rowell*, 2008-NMSC-041, ¶ 8, 144 N.M.

371, 188 P.3d 95. "Warrantless seizures are presumed to be unreasonable and the State bears the burden of proving reasonableness." *Id.* ¶ 10 (internal quotation marks and citation omitted).

III. DISCUSSION

A. Reasonable Suspicion

{18} The Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution "provide overlapping protections against unreasonable searches and seizures, including safeguards for brief investigatory stops of persons or vehicles that fall short of traditional arrest." *Martinez*, 2018-NMSC-007, ¶ 10 (text only) (citations omitted). Although Defendant previously asserted that his seizure violated both the federal and state constitutions, in his briefing to this Court, Defendant argues only that his seizure violated Article II, Section 10. We therefore consider the issues presented only under state constitutional law.

{19} Like the federal constitution, the New Mexico constitution permits a law enforcement officer with "a reasonable suspicion that the law is being or has been broken to conduct a temporary, investigatory . . . stop." *State v. Yazzie*, 2016-NMSC-026, ¶ 38, 376 P.3d 858. "Police officers possess reasonable suspicion when they are aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring." *Urioste*, 2002-NMSC-023, ¶ 6 (internal quotation marks and citation omitted). In evaluating whether an officer possessed a reasonable suspicion of illegal conduct, "the totality of the circumstances—the whole picture—must be taken into account." *Martinez*, 2020-NMSC-005, ¶ 19 (quoting *United States v. Cortez*, 449 U.S. 411 (1981)). An officer's "[u]nsupported intuition and inarticulate hunches are not sufficient." *State v. Cobbs*, 1985-NMCA-105, ¶ 12, 103 N.M. 623, 711 P.2d 900.

{20} In the present appeal, the parties dispute whether the NEU agents had reasonable suspicion to stop Defendant at the gas station. The parties specifically debate whether the confidential informant's tip and the agent's surveillance provided sufficient grounds for the stop. As the parties center their debate on these two facts, we specifically discuss the standards relevant to each; but in keeping with the totality of the circumstances approach to reasonable suspicion analysis, *see Martinez*, 2020-NMSC-005, ¶ 19 (requiring court to consider the totality of the circumstances when evaluating reasonable suspicion), we consider all facts and reasonable inferences available to the agents at the time they

¹ The "text only" parenthetical as used in this decision indicates the omission—for enhanced readability—of all of the following nontextual marks that may be present in the source text: brackets, ellipses, and internal quotation marks.

confronted Defendant. See *Yazzie*, 2016-NMSC-026, ¶ 19 (explaining that courts must consider whether the officer's action was justified at its inception).

1. The confidential informant's tip

{21} Defendant argues that the confidential informant's tip was unreliable. In *State v. Cordova*, 1989-NMSC-083, 109 N.M. 211, 784 P.2d 30, this Court adopted the two-pronged test of *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969) ("*Aguilar-Spinelli* test"), to evaluate whether an officer could reasonably rely on information obtained from an unnamed informant under Article II, Section 10. *Cordova*, 1989-NMSC-083, ¶ 17. In adopting the *Aguilar-Spinelli* test, we declined to follow the totality of the circumstances approach adopted by the United States Supreme Court in *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983), to evaluate tips from confidential informants under the Fourth Amendment. *Cordova*, 1989-NMSC-083, ¶ 17.

{22} *Cordova* and *Aguilar-Spinelli* require officers who rely "wholly or in part on hearsay provided by an unnamed informant" in justifying a seizure to identify (1) "some of the underlying circumstances from which the informant concluded that the facts were as he claimed they were," and (2) "some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable." *Cordova*, 1989-NMSC-083, ¶ 6 (text only) (quoting *Aguilar*, 378 U.S. at 114); see also Rule 5-208(C) NMRA ("The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished."). "[T]he two prongs of *Aguilar-Spinelli* and of [Rule 5-208(C)] have been characterized as independent and analytically severable requirements." *Cordova*, 1989-NMSC-083, ¶ 12 (internal quotation marks and citation omitted).

{23} The first prong of *Aguilar-Spinelli* is referred to as the *reliability* or *basis of knowledge* prong. See *State v. Eskridge*, 1997-NMCA-106, ¶ 19, 124 N.M. 227, 947 P.2d 502 ("Our Supreme Court in *Cordova* held that the allegations of an informant alone cannot provide probable cause to issue a search warrant unless officers can show both (1) the reliability of the information and (2) credibility of the informant."); see also *State v. Gonzales*, 1999-NMCA-027, ¶ 23, 126 N.M. 742, 975 P.2d 355 ("[A] more precise name for the reliability prong is the *basis-of-knowledge* prong"). The basis of knowledge prong requires that the officer provide "the factual basis for any conclusions drawn

by the informant to enable the court to perform an independent analysis of the facts and conclusions." *State v. Barker*, 1992-NMCA-117, ¶ 4, 114 N.M. 589, 844 P.2d 839. "Under the basis of knowledge prong of the test, we ask whether the affidavit provides a substantial basis for concluding the informants gathered the information of illegal activity in a reliable fashion." *State v. Haidle*, 2012-NMSC-033, ¶ 23, 285 P.3d 668 (text only) (citation omitted). "First-hand observations by the informant serve to meet the 'basis of knowledge' prong of the *Cordova* test." *Barker*, 1992-NMCA-117, ¶ 5; see also *State v. Lujan*, 1998-NMCA-032, ¶ 9, 124 N.M. 494, 953 P.2d 29 (explaining that an informant's participation in a controlled buy was sufficient to establish a reliable factual basis for the tip).

{24} The second prong of *Aguilar-Spinelli*, known as the *credibility* or *veracity* prong, requires that "facts be presented to the court to show either that the informant is inherently credible or that the information from the informant is reliable on this particular occasion." *Barker*, 1992-NMCA-117, ¶ 4. Defendant does not challenge the informant's veracity, but argues only that the informant's tip lacked a reliable basis of knowledge. We therefore limit our analysis to the first prong of *Cordova* and *Aguilar-Spinelli*.

{25} We agree with Defendant that the confidential informant tip was not shown to have a reliable factual basis. Agent Scharmack explained that he received information from a credible informant that Defendant was trafficking a large amount of cocaine. However, Agent Scharmack did not explain how this informant became aware of the information. It is unknown whether the informant, for example, participated in a controlled buy, otherwise personally observed Defendant's illicit conduct, or simply conveyed rumors or suppositions based on Defendant's reputation as a drug dealer. Given this, no evidence was presented upon which the district court could evaluate whether Agent Scharmack's reliance on the hearsay information was reasonable.

{26} In this regard, the present appeal is analogous to *Cordova*, 1989-NMSC-083, as the affidavit at issue in that case asserted that the defendant was distributing heroin, but was utterly "devoid of any indication of how the informant gathered this information." *Id.* ¶ 21. The *Cordova* Court concluded that the tip was thus entitled to "little or no weight in determining" whether a search was warranted. *Id.* ¶ 22. Similarly, the tip received by Agent Scharmack is devoid of any supporting detail regarding the source of the informant's knowledge. The tip thus lacks a reliable factual basis and is entitled to little or no weight in our

reasonable suspicion analysis.

{27} Also, like the tip in *Cordova*, the tip at issue here was not sufficiently detailed so that we may assume that the informant had a reliable factual basis for the information provided. See *id.* ¶ 25 (concluding that the police officer's corroboration of "only the informant's description of the house and car" was not sufficient to establish that the informant had a reliable factual basis to support the allegations of criminal conduct). When an informant's tip fails to specify the basis of the informant's knowledge, a court may nevertheless assume that the informant has a reliable factual basis for that information "if the informant describes the criminal activity in such detail that a judge will know the informant relies on more than a casual rumor or reputation of the defendant." *State v. Baca*, 1982-NMSC-016, ¶ 18, 97 N.M. 379, 640 P.2d 485. Such a detailed tip is said to be *self-verifying*. See *Cordova*, 1989-NMSC-083, ¶ 9 ("[W]hen an affidavit does not affirmatively state an informant's basis of knowledge, it may be inferred that an informant who otherwise is known to be credible obtained the information set forth in the affidavit in a reliable fashion if the tip contains enough detail to be *self-verifying*." (second emphasis added)).

{28} In assessing whether a tip is *self-verifying*, our courts frequently have made "a distinction between a tip predicting a subject's movements on the one hand, and on the other, a tip which merely describes a status quo, or the state of things at a given time, of which the subject is a part." *Urioste*, 2002-NMSC-023, ¶¶ 11-13. Thus, "where an informant's details were limited and provided only innocent facts unrelated to the alleged illegal activity, we found there was insufficient corroboration to rely on the hearsay." *Haidle*, 2012-NMSC-033, ¶ 26. In contrast, courts may infer that an informant possesses a reliable basis of knowledge when the corroborated portions of the tip conveyed specific, predictive information about the defendant's movements demonstrating a familiarity with the defendant's criminal conduct. See, e.g., *State v. Robbs*, 2006-NMCA-061, ¶¶ 2, 19, 139 N.M. 569, 136 P.3d 570 (concluding that hearsay information that a vehicle with a personalized license plate would be delivering narcotics to a specific street address was reliable "because significant aspects of the tip, including [the d]efendant's future movement, were corroborated by the officers prior to the stop"); *State v. Alderete*, 2011-NMCA-055, ¶ 18, 149 N.M. 799, 255 P.3d 377 (explaining that reasonable suspicion arose from "a tip from a reliable, confidential informant, which included specific, predictive information that a large amount of marijuana was going to be delivered to the house

under surveillance”).

{29} The informant’s tip here did not predict Defendant’s future movements, but only conveyed an allegation of trafficking and a generic description of Defendant’s two vehicles. The agents partially corroborated this detail, as they confirmed that Defendant drove at least one of the vehicles. However, standing alone, the type of vehicle driven by an individual is an innocuous, status quo detail that is readily observable by the public. See *State v. Bedolla*, 1991-NMCA-002, ¶ 15, 111 N.M. 448, 806 P.2d 588 (concluding that a search was unreasonable when the corroborated portions of an informant’s tip, including a description of the defendant’s vehicle, were all “readily available to any member of the public”). This detail does not reveal that the informant had any special familiarity with Defendant such that we can infer that there was a reliable factual basis for the informant’s allegations.

{30} We thus conclude that the informant’s tip fails the first prong of *Aguilar-Spinelli* and *Cordova*. The district court had insufficient evidence on which to conclude that the basis of the informant’s knowledge was reliable, and thus the tip does not support a reasonable suspicion of criminal conduct.

2. The agents’ surveillance

{31} We next consider whether the NEU agents’ surveillance of Defendant supported a reasonable suspicion of illegal conduct. Defendant argues that the agents did not have reasonable suspicion because they only saw innocent activity and did not adequately explain why their training and experience suggested that he was engaging or about to engage in a narcotics exchange. The State responds that the agents described their qualifications as narcotics agents and sufficiently recounted the facts leading them to reasonably suspect Defendant of illegal conduct. Both parties also compare the facts of the current appeal to *Martinez*, 2020-NMSC-005, and *Neal*, 2007-NMSC-043.

{32} In *Neal*, a police officer observed a defendant briefly interact with a suspected narcotics dealer in front of a house that was under investigation for drug trafficking. 2007-NMSC-043, ¶¶ 4-5. The officer saw the two individuals meet at the window of the defendant’s vehicle, but “could not see what, if anything, they were doing, aside from talking, and could not hear what they were saying.” *Id.* ¶ 27. In concluding that the officer did not have reasonable suspicion to expand a subsequent traffic stop, the *Neal* Court explained that the defendant’s “mere association with a convicted felon . . . who was under surveillance in an ongoing drug investigation, was insufficient to create reasonable suspicion.” *Id.* ¶ 30. The “[d]efendant’s innocent con-

duct and the surrounding circumstances, viewed together and indulging the factual inferences drawn by [the officer], do not constitute the type of individualized, specific, articulable circumstances necessary to create reasonable suspicion that [the d]efendant himself was involved in criminal activity.” *Id.* ¶ 31.

{33} In *Martinez*, an officer was surveilling a gas station in a high drug crime area when he saw the defendant and his accomplice briefly interact with an individual in the parking lot of a gas station and in the rear seat of the defendant’s vehicle. *Martinez*, 2020-NMSC-005, ¶ 4. Shortly after, the officer saw the defendant and his accomplice briefly meet with another, unrelated individual in the rear seat of the defendant’s vehicle. *Id.* ¶ 5. The officer testified that, based on his training and experience, the circumstances of the two meetings suggested the defendant might have been trafficking narcotics. *Id.* ¶ 6. Importantly, “[w]hen asked why he suspected” trafficking, the officer explained that he had participated in back-seat drug exchanges while working undercover at that gas station, and that the two interactions he observed were “consistent with what [he had] done and seen.” *Id.* ¶¶ 3, 6. The *Martinez* Court concluded that the potentially innocent facts observed by the officer supported a reasonable suspicion to stop. *Id.* ¶ 25. Because the officer observed the defendant “partake in two instances of exactly the kind of drug activity [the officer] had previously observed at the [gas station],” the Court explained that the officer’s “suspicion was grounded upon specific facts and rational inferences from those facts.” *Id.*

{34} We agree with Defendant that this appeal is analogous to *Neal* and distinguishable from *Martinez*, in that the agents did not articulate specific facts supporting a reasonable suspicion of illegal conduct. Like the *Neal* Court, we cannot reasonably infer criminal activity based on the fact that Defendant met with a woman who was driving a vehicle similar to Anthony Montoya’s white pickup. Although the NEU agents described this meeting between Defendant and the then-unidentified woman as “almost like an exchange,” they did not see Defendant and the woman actually exchange anything. Nor could the agents hear anything the two individuals were saying, as the agents were still driving when they decided to “make contact” with Defendant. All the agents saw was Defendant meeting with someone potentially associated with a suspected narcotics dealer.

{35} Similar to *Neal*, Defendant’s “mere association” with an individual driving a suspicious vehicle did not provide sufficient grounds for an investigatory stop. *Neal*, 2007-NMSC-043, ¶ 30. Our courts

have repeatedly emphasized, “[g]uilt by association and generalized suspicions are insufficient grounds upon which to base an investigatory detention.” *State v. Prince*, 2004-NMCA-127, ¶ 17, 136 N.M. 521, 101 P.3d 332; see also *State v. Jones*, 1992-NMCA-064, ¶ 15, 114 N.M. 147, 835 P.2d 863 (refusing to infer that “gang membership and presence in a gang activity area [were] sufficient alone to support reasonable suspicion”); *In re Eli L.*, 1997-NMCA-109, ¶ 13, 124 N.M. 205, 947 P.2d 162 (concluding that an officer’s knowledge that juvenile was a gang member and “may have been warning other gang members that officers were present” was insufficient to give rise to a reasonable suspicion of criminal activity); *State v. Graves*, 1994-NMCA-151, ¶ 17, 119 N.M. 89, 888 P.2d 971 (holding that a defendant’s “mere presence” at a location subject to a search warrant was insufficient to “justify the arrest or detention of a person, other than the resident, at a residence lawfully being searched”). In the absence of any additional facts suggestive of trafficking, it was not reasonable for the agents to believe that Defendant was engaging or about to engage in a narcotics exchange with the woman.

{36} We also do not see the agents’ unadorned invocation of their “training and experience” as sufficient to establish reasonable suspicion. Each of the NEU agents recounted their qualifications as narcotics agents, testified to their observations, and opined that Defendant was trafficking. However, the agents did not explain how their expertise informed their understanding of the apparently innocent facts they observed. In the absence of this explanation, we cannot conclude that these facts were objectively suggestive of illegal conduct.

{37} We acknowledge that “[a] reasonable suspicion of criminal activity can arise from wholly lawful conduct.” *Urioste*, 2002-NMSC-023, ¶ 10 (internal quotation marks and citation omitted). An officer is not required to rule out innocent explanations for suspicious activity before performing an investigatory stop, “because the principal function of an investigation is to resolve whether certain activity is in fact legal or illegal.” *Martinez*, 2020-NMSC-005, ¶ 31. We also “recognize that officers may draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *Neal*, 2007-NMSC-043, ¶ 21 (internal quotation marks and citation omitted). A reviewing court considers an officer’s training and experience when the officer’s expertise “enhanced [the officer’s] ability to derive and articulate particularized and

objective indicia of criminal activity” from otherwise innocent-seeming facts. *State v. Van Dang*, 2005-NMSC-033, ¶ 16, 138 N.M. 408, 120 P.3d 830.

{38} However, if an officer intends to rely on the officer’s training and experience to derive meaning from circumstances that would seem innocent to a lay observer, then “it is incumbent upon the arresting or searching officer to explain the nature of [the officer’s] expertise or experience and how it bears upon the facts which prompted the officer to arrest or search.” 2 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 3.2(c) (6th ed. 2021). Accordingly, in *Martinez* we reiterated, “[w]hen an officer relies upon training and experience to effectuate a stop, it is necessary that the officer explain why [the officer’s] knowledge of particular criminal practices gives special significance to the apparently innocent facts observed.” 2020-NMSC-005, ¶ 22 (internal quotation marks and citation omitted). “Or, as was said in *Terry v. Ohio*, [392 U.S. 1, 21 (1968),] ‘the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.’” *Martinez*, 2020-NMSC-005, ¶ 22 (brackets omitted).

{39} This requirement that officers provide specific, articulable facts is central to our search and seizure jurisprudence and is in keeping with the judiciary’s role as the ultimate arbiter of a seizure’s reasonableness. We employ an objective standard for assessing whether an officer’s suspicion was reasonable in light of all the circumstances, and “the subjective belief of the officer does not in itself affect the validity of the stop.” *Yazzie*, 2016-NMSC-026, ¶ 20 (text only) (citation omitted). “The purpose of requiring objectively reasonable suspicion based on the circumstances is to prevent and invalidate police conduct based on hunches, which are, by definition, subjective.” *State v. Ochoa*, 2009-NMCA-002, ¶ 25, 146 N.M. 32, 206 P.3d 143 (internal quotation marks and citation omitted); see also *Alderete*, 2011-NMCA-055, ¶ 11 (noting that the purpose of an objective standard “is to prevent officers from arbitrarily acting on whims or unsupported hunches” (internal quotation marks and citation omitted)).

{40} For example, the *Martinez* Court concluded that the officer’s subjective suspicions were reasonable because the officer explained why, in light of his training and experience, the two interactions he observed in the back seat of the defendant’s vehicle suggested the defendant may have been trafficking. *Martinez*, 2020-NMSC-005, ¶¶ 3-6. Similarly, in *State v. Hernandez*, 2016-NMCA-008, ¶¶ 14-16, 364 P.3d 313, the Court of Appeals distinguished

Neal and held that officers there had reasonable suspicion to stop a vehicle because the officers linked the vehicle to a pattern of narcotics transactions.

{41} In the current appeal, we are missing that vital logical connection between the agents’ expertise and the facts presented. Without this connection, this Court cannot assess the objective reasonableness of the agent’s subjective suspicions. For example, in its briefing on appeal, the State argues that the agents could have inferred illegal activity from Defendant’s parking position, as the agents recounted that Defendant reversed his vehicle into a parking spot. But the agents did not make this inference or otherwise explain why Defendant’s parking position was suggestive of illegal conduct. On the record presented, we cannot reasonably infer that reversing into a parking space at a gas station objectively suggests that an individual is going to exchange narcotics with another individual. We therefore conclude that the agents’ surveillance did not establish reasonable suspicion that Defendant was about to engage or was engaging in a narcotics exchange at the gas station.

3. Totality of the circumstances

{42} Although we have identified deficiencies in the two circumstances discussed above, a “reasonable suspicion determination requires us to assess the totality of the circumstances,” and we must not engage in “a divide-and-conquer analysis in which we view each individual factor or circumstance in a vacuum.” *Neal*, 2007-NMSC-043, ¶ 28 (text only) (citation omitted). However, we conclude that the facts, viewed objectively and as a whole, did not support a reasonable suspicion to stop.

{43} Aside from the unreliable informant tip and the agents’ subjective belief that Defendant was engaging in a narcotics exchange, all the agents knew at the time they confronted Defendant was that Defendant had a history and reputation as a drug dealer and that they had received information from various other informants that Defendant was currently selling drugs. However, it is unclear what role Defendant’s history and reputation played in the district court’s findings, and on the record presented, we see this factor as giving rise to no more than a generalized suspicion of wrongdoing. The prior information received by the NEU agents, which placed Defendant “on [their] radar,” also amounts to little more than rumor. The agents did not explore whether these prior informants had reliable bases of knowledge, and nothing was said about these informants’ veracity. *Cordova*, 1989-NMSC-083, ¶¶ 6, 17.

{44} We therefore hold that, in the totality of the circumstances, the agents did not

have a reasonable suspicion of criminal activity when they confronted Defendant.

B. Point of Seizure

{45} In light of our holding, we are called to address a question ruled on by the district court but not reached by the Court of Appeals: specifically, whether Defendant was seized when agents first confronted him at the gas station or at some other point during the encounter. The district court concluded that Defendant was not seized, and thus suppression was not warranted, because Defendant fled from the agents. The Court of Appeals assumed that Defendant was seized, but declined to expressly rule on the moment of seizure or resolve the parties’ debate about preservation of Defendant’s arguments under Article II, Section 10 regarding the point of seizure. *Granados*, A-1-CA-37417, mem. op. ¶¶ 7 n.2, 30 n.4. The State asks this Court to make a similar assumption and suggests that, if we reverse the lower courts’ reasonable suspicion analysis, then we should remand to the Court of Appeals to determine when Defendant was seized and whether he preserved his state constitutional claims.

{46} This Court will address the issue, rather than remand for further appellate consideration, as we reverse the lower courts’ reasonable suspicion analysis and wish to provide clarity to the district court on remand. Cf. *State v. Ellenberger*, 1981-NMSC-056, ¶ 12, 96 N.M. 287, 629 P.2d 1216 (reaching an issue left unaddressed by the Court of Appeals due to this Court’s alternate disposition of the case); *Ferrell v. Allstate Ins. Co.*, 2008-NMSC-042, ¶ 58, 144 N.M. 405, 188 P.3d 1156 (same). Determining the moment of seizure is “pivotal” to resolution of Defendant’s direct appeal, because “[t]he point at which the seizure occurs . . . determines the point in time the police must have reasonable suspicion to conduct an investigatory stop.” *State v. Harbison*, 2007-NMSC-016, ¶ 10, 141 N.M. 392, 156 P.3d 30. “Reasonable suspicion must exist at the inception of the seizure. The officer cannot rely on facts which arise as a result of the encounter.” *Jason L.*, 2000-NMSC-018, ¶ 20 (citation omitted). The parties had fair opportunity to brief the merits of this issue in filings before this Court and the Court of Appeals. We therefore decide the moment of Defendant’s seizure to promote judicial efficiency and meaningful appellate review.

1. Preservation of the seizure issue

{47} The State questions whether Defendant adequately preserved his arguments about seizure under the state constitution. During the evidentiary hearing on Defendant’s motion to suppress, the State cited *State v. Maez*, 2009-NMCA-108, 147 N.M. 91, 217 P.3d 104, to argue that Defendant was not effectively seized because he fled

from the agents. *Maez* was a decision made under Fourth Amendment jurisprudence, and did not discuss the standards relevant to determination of a seizure under Article II, Section 10. 2009-NMCA-108, ¶ 15. Defense counsel did not cite any contradictory authority on this point or otherwise inform the district court of the divergence in state constitutional precedent. The district court ultimately agreed with the State's analysis. Now on appeal, the State asserts that Defendant did not preserve his state constitutional arguments.

{48} The State seeks to impose too high a burden for preservation of this issue, as our established precedent has long construed Article II, Section 10 as providing greater protections than its federal counterpart. See, e.g., *State v. Garcia*, 2009-NMSC-046, ¶ 31, 147 N.M. 134, 217 P.3d 1032 (“Article II, Section 10 is calibrated slightly differently than the Fourth Amendment. It is a foundation of both personal privacy and the integrity of the criminal justice system, as well as the ultimate regulator of police conduct.”). In *State v. Gomez*, 1997-NMSC-006, ¶ 22, 122 N.M. 777, 932 P.2d 1, we explained that

[i]f established precedent construes [a] provision [of the New Mexico Constitution] to provide more protection than its federal counterpart, the claim may be preserved by (1) asserting the constitutional principle that provides the protection sought under the New Mexico Constitution, and (2) showing the factual basis needed for the trial court to rule on the issue.

Where, as here, we have interpreted the relevant provision of our state constitution as providing greater protections, a party may preserve its state constitutional claim “in the same manner as any other argument.” *State v. Leyva*, 2011-NMSC-009, ¶ 42, 149 N.M. 435, 250 P.3d 861. “[O]nly where a state constitutional provision had never been interpreted to provide greater protection than its federal analog are parties required to alert the trial court and articulate reasons for departure.” *Id.*

{49} Defendant argued in his motion to suppress that his rights had been violated under Article II, Section 10. He also developed the necessary factual record in an evidentiary hearing and at trial. Cf. *State v. Martinez*, 1980-NMSC-066, ¶ 16, 94 N.M. 436, 612 P.2d 228 (concluding that an appellate court may examine the whole record to ascertain the reasonableness of a search and seizure); accord *State v. Monafó*, 2016-NMCA-092, ¶ 10, 384 P.3d 134 (“Rather than being limited to the record made on a motion to suppress, appellate courts may review the entire record to determine whether there was sufficient

evidence to support the trial court's denial of the motion to suppress.” (internal quotation marks and citation omitted)). Defense counsel was not required to inform the district court of the divergent treatment of the issue for preservation purposes. “*Gomez* held that, although the defendant did not cite cases interpreting Article II, Section 10 more expansively, this did not operate to prejudice the State in any way because the district court is charged with knowing and correctly applying established New Mexico precedent interpreting the state constitution.” *Leyva*, 2011-NMSC-009, ¶ 41 (internal quotation marks and citation omitted). Defendant preserved his state constitutional claims for our review. Rule 12-321 NMRA.

2. Defendant was seized at the gas station

{50} In *Jason L.*, 2000-NMSC-008, ¶ 19, we held that “[t]he determination of a seizure has two discrete parts.” First “what were the circumstances surrounding the stop, including whether the officers used a show of authority[?]” *Id.* Second, “did the circumstances reach such a level of accosting and restraint that a reasonable person would have believed he or she was not free to leave?” *Id.* The first part of this inquiry presents a question of fact that we review for substantial evidence; the second part presents a question of law that we review de novo. *Id.* Although the district court ruled that Defendant was not seized, it made no explicit findings as to whether the agents made a show of authority when they approached Defendant at the gas station. The absence of explicit findings is a “regular occurrence when we review decisions on motions to suppress” and in these circumstances, “our practice has been to employ presumptions and as a general rule we will indulge in all reasonable presumptions in support of the district court's ruling.” *Id.* ¶ 11 (text only) (citation omitted).

{51} However, we are not “bound by a trial court's ruling when predicated upon a mistake of law.” *State v. Werner*, 1994-NMSC-025, ¶ 10, 117 N.M. 315, 871 P.2d 971 (internal quotation marks and citation omitted). The district court in the proceedings below was mistaken as to the appropriate standard applied to determination of a seizure under the New Mexico Constitution, as the court applied the federal constitutional standard. In *California v. Hodari D.*, 499 U.S. 621, 627-28 (1991), the United States Supreme Court held that a defendant is not seized within the meaning of the Fourth Amendment when the defendant does not yield to an officer's show of authority seeking to effectuate a stop. Thus, as correctly ruled on by the district court, Defendant was not seized for Fourth Amendment purposes

because he did not submit to the agents before abandoning the cocaine. “If [the d]efendant was not seized at the time [the defendant] discarded the contraband, then the evidence would be considered abandoned and Fourth Amendment protections would not apply.” *Harbison*, 2007-NMSC-016, ¶ 10.

{52} However, this Court has explained that “*Hodari D.* does not comport with the distinctive New Mexico protection against unreasonable searches and seizures” under Article II, Section 10. *Garcia*, 2009-NMSC-046, ¶ 27. New Mexico courts follow the standard set by *United States v. Mendenhall*, 446 U.S. 544 (1980), and its progeny in evaluating claims of illegal seizure under our state constitution. Under *Mendenhall*, “a person has been ‘seized’ . . . only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.” *Id.* at 554. A “reasonable person would not feel free to leave when his or her freedom of movement is restrained, or when the facts show accosting and restraint.” *Garcia*, 2009-NMSC-046, ¶ 37 (citations omitted). The district court did not consider whether the agents made a show of authority as relevant to our analysis under state constitutional law.

{53} In analyzing whether a reasonable person would feel free to leave, we examine the “(1) the conduct of the police, (2) the person of the individual citizen, and (3) the physical surroundings of the encounter.” *Jason L.*, 2000-NMSC-018, ¶ 15 (internal quotation marks and citation omitted). An officer may “approach an individual, ask questions, and request identification without the encounter becoming a seizure.” *State v. Walters*, 1997-NMCA-013, ¶ 18, 123 N.M. 88, 934 P.2d 282. “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” *Id.* ¶ 12 (quoting *Terry*, 392 U.S. at 19 n.16). Factors indicating a seizure include “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.” *State v. Lopez*, 1989-NMCA-030, ¶ 3, 109 N.M. 169, 783 P.2d 479 (quoting *Mendenhall*, 446 U.S. at 554), modified on other grounds by *Jason L.*, 2000-NMSC-018, ¶ 19.

{54} The record shows that the agents attempted to prevent Defendant from leaving the gas station parking lot by pulling in front of his vehicle, but failed to do so because their vehicle skidded past Defendant's truck. After coming to a stop, the four agents exited their vehicle, displayed

their official badges, invoked their authority as law enforcement officers by shouting into Defendant's open left front window, and ordered Defendant to exit his vehicle. At least one of the agents had his hand on his holstered weapon.

{55} On the facts presented, the language and conduct displayed by the agents in this case "would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." *Walters*, 1997-NMCA-013, ¶ 12 (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). Although the agents were not successful in their plan to block Defendant's vehicle, they approached Defendant in an accusatory and accosting manner and a reasonable person in Defendant's position would not have felt free to leave. *See, e.g., Lopez*, 1989-NMCA-030, ¶ 12 (finding that a defendant was seized when "[t]he police

officers used their vehicle to block [the] defendant's vehicle, there were four police officers approaching the pickup truck, and the officers were invoking their authority as police officers by displaying badges"); *State v. Boblick*, 2004-NMCA-078, ¶ 10, 135 N.M. 754, 93 P.3d 775 ("[W]e doubt that a reasonable person would feel free to leave after officers knocked on [the person's] car window, asked [the person] to exit the vehicle, and questioned [the person] about weapons."). The agents displayed a show of authority such that Defendant was seized at the gas station under Article II, Section 10 of the New Mexico Constitution. Defendant's refusal to submit to that show of authority does not alter this conclusion. *Garcia*, 2009-NMSC-046, ¶¶ 37, 41.

{56} As we have explained that the agents did not have a reasonable suspicion that Defendant was engaged or about to be engaged in an illegal narcotics exchange

when they confronted Defendant, we hold the agents did not have a legitimate basis for the stop and Defendant's seizure violated Article II, Section 10.

IV. CONCLUSION

{57} Defendant was unreasonably seized under Article II, Section 10 of the New Mexico Constitution. The district court erred when it denied Defendant's motion to suppress. The district court's order denying suppression and the Court of Appeals' majority opinion affirming that order are reversed. We remand this matter to the district court with instructions to grant the motion to suppress and for further proceedings consistent with this opinion.

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

JULIE J. VARGAS, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

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No. A-1-CA-37324

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CHRISTOPHER RODRIGUEZ,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY**

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for Appellant

► **Introduction of Opinion**

This appeal is again before us on remand from our Supreme Court in *State v. Rodriguez* (*Rodriguez II*), 2023-NMSC-004, ___ P.3d ___, where the Court instructed us to reach the merits of Defendant Christopher Rodriguez's appeal of the district court's determination that he was not amenable to treatment or rehabilitation under the Delinquency Act, NMSA 1978, §§ 32A-2-1 to -33 (1993, as amended through 2021). For the reasons that follow, we affirm.

Jacqueline R. Medina, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

J. Miles Hanisee, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-37324>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/22/2023

No. A-1-CA-38439

RICKY D. CASE,
Worker-Appellee,
v.

HANNA PLUMBING & HEATING COMPANY, INC.
and MECHANICAL CONTRACTORS
ASSOCIATION OF NEW MEXICO, INC. WORKERS'
COMPENSATION GROUP FUND,
Employer/Insurer-Appellants.

APPEAL FROM THE WORKERS' COMPENSATION
ADMINISTRATION

Leonard J. Padilla,
Workers' Compensation Judge

Gerald A. Hanrahan
Albuquerque, NM

for Appellee

Maestas & Suggett, P.C.
Paul Maestas
Albuquerque, NM

for Appellants

► Introduction of Opinion

This is the second appeal in this workers' compensation case. In the first appeal, Hanna Plumbing and Heating Company, Inc. (Employer) challenged the Workers' Compensation Judge's (WCJ) compensation order, contending (1) "the WCJ's award of both permanent partial disability (PPD) benefits, under NMSA 1978, Section 52-1-42 (1990, amended 2015) and scheduled injury benefits under NMSA 1978, Section 52-1-43 (2003), improperly duplicated Worker's benefits"; and (2) "the WCJ erred in the start date for Worker's PPD benefits." Case v. Hanna Plumbing & Heating Co., A-1-CA No. 34,934 memo op. ¶ 1 (N.M. Ct. App. July 18, 2017) (nonprecedential) (Case I). Ricky Case (Worker) cross-appealed, contending the WCJ erred in its "assessments of his (1) total impairment rating, (2) impairment at a less than additive value through the 'combined values' methodology, and (3) tort damages in assessing Employer's reimbursement rights." *Id.* We reversed and remanded on all issues with instructions to the WCJ to "assess his previous determinations and rulings based upon the analysis we set forth [in our memorandum opinion]." *Id.* ¶ 82.

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Gerald E. Baca, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38439>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/23/2023

No. A-1-CA-39732

MCKENZIE JOHNSON,

Plaintiff-Appellant,

v.

**BOARD OF EDUCATION FOR
ALBUQUERQUE PUBLIC SCHOOLS**

and MARY JANE EASTIN,

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY**

Benjamin Chavez, District Court Judge

Parnall & Adams Law

Charles S. Parnall

David M. Adams

Albuquerque, NM

ACLU of New Mexico

Leon Howard

Maria Martinez Sánchez

Preston Sanchez

Albuquerque, NM

NM Center on Law and Poverty

Sovereign Hager

Verenice Peregrino Pompa

Albuquerque, NM

for Appellant

Walsh Gallegos Treviño Kyle & Robinson, P.C.

Roxie P. Rawls-De Santiago

Karla Schultz

Stephanie Mendivil, Et al.

Albuquerque, NM

for Appellee Board of Education
for the Albuquerque Public Schools

► Introduction of Opinion

This appeal asks whether a public secondary school in New Mexico can be classified as a public accommodation under the pre-2023 iteration of the New Mexico Human Rights Act (the NMHRA), NMSA 1978, §§ 28-1-1 to -15 (1969, as amended through 2021), and therefore subject to the requirements of that statute.¹ Although one interpretation of historic New Mexico Supreme Court precedent suggests otherwise, see *Hum. Rts. Comm'n of N.M. v. Bd. of Regents of Univ. of N.M. Coll. of Nursing (Regents)*, 1981-NMSC-026, ¶ 11, 95 N.M. 576, 624 P.2d 518 (determining a state university not to be a public accommodation within the meaning of the NMHRA), we conclude differently here based on the plain language of the NMHRA, the differing circumstances of this case, and our Supreme Court's own language declaring Regents' limited prospective application, even to the very state university at issue therein.

Plaintiff appeals the grant of Albuquerque Public Schools (APS) and teacher Mary Jane Eastin's (collectively, Defendants') motion to dismiss under the NMHRA.

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J. Miles Hanisee, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39732>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/25/2023

No. A-1-CA-39770

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MICHAEL SHAINÉ DIRICKSON,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF OTERO COUNTY**

Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Leland M. Churan, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Mary Barket, Assistant Appellate Defender
Santa Fe, NM

for Appellant

► Introduction of Opinion

Defendant Michael Dirickson was convicted of possession of methamphetamine, contrary to NMSA 1978, Section 30-31-23(E) (2011, amended 2021). Defendant argues on appeal: (1) his counsel was ineffective for failing to move to suppress evidence; and (2) the evidence presented was insufficient to support his conviction. We affirm.

Jacqueline R. Medina, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39770>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/25/2023

No. A-1-CA-39828

CITY OF HOBBS,

Plaintiff-Appellee,

v.

FRANK SIFFORD,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

William G. W. Shoobridge, District Court Judge

Efren Cortez, City Attorney

Valerie S. Chacon, Deputy City Attorney

Rocio A. Ocano, Assistant City Attorney

Hobbs, NM

for Appellants

Law Office of Ross Bettis

Ross R. Bettis

Hobbs, NM

for Appellees

► Introduction of Opinion

Defendant Frank Sifford appeals a district court denial of his motion to suppress, in which he argued that no reasonable suspicion supported the traffic stop that led to his arrest for aggravated driving while intoxicated, contrary to NMSA 1978, Section 66-8-102(D)(3) (2016). On appeal, Defendant argues that the district court erred in denying his motion because the relevant dashcam footage conflicted with the arresting officer's testimony, and as such the findings of the district court are unsupported by substantial evidence. We disagree and affirm.

Zachary A. Ives, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39828>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/25/2023

No. A-1-CA-39835

**HELEN LOPEZ, as Personal Representative
of the Wrongful Death Estate of EULALIA M.**

PANTOJA-GONZALES,

Plaintiff-Appellee,

v.

**TRANSITIONAL HOSPITALS OF
NEW MEXICO, LLC d/b/a KINDRED HOSPITAL
ALBUQUERQUE; and KATE ZILAR,**

Defendants-Appellants.

**APPEAL FROM THE DISTRICT COURT
OF SANTA FE COUNTY**

Francis J. Matthew, District Court Judge

Fuqua Law & Policy, P.C.

Scott Fuqua
Santa Fe, NM

for Appellee

Quintairos, Prieto, Wood & Boyer, P.A.

Frank Alvarez
Jo Beth Drake
Dallas, TX

for Appellant Transitional Hospitals Corporation of
New Mexico, LLC d/b/a Kindred Hospital--
Albuquerque

Altura Law Firm
Andrew Indahl
Albuquerque, NM

for Appellant Kate Zilar

► Introduction of Opinion

Transitional Hospitals Corporation of New Mexico, LLC d/b/a Kindred Hospital-Albuquerque (the Facility), and Kate Zilar (collectively, Defendants) appeal the district court's denial of Defendants' motion to compel arbitration. At issue is an arbitration agreement (the Agreement) signed by Jorge Luis Denis Pantoja (Son) in connection with the admission of his mother, Eulalia M. Pantoja-Gonzales (Resident) to Kindred Hospital-Albuquerque. Defendants argue the district court erred in denying their motion to compel arbitration because: (1) Son had authority to agree to arbitration, (2) the Agreement was not unconscionable, (3) issues of arbitrability were delegated to the arbitrator for decision; and (4) Defendants' claims fell within the scope of the Agreement. We conclude that the terms of the Agreement do not clearly and unmistakably provide that gateway issues of arbitrability are to be decided by an arbitrator, rather than by the district court. The district court, therefore, did not err in proceeding to decide the gateway issues. On the merits of those issues, we agree with the district court that Son lacked agency authority under the terms of Resident's advance health-care directive at the time he signed the Agreement on her behalf, and therefore affirm.

Kristina Bogardus, Judge
WE CONCUR
J. Miles Hanisee, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39835>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 5/30/2023

No. A-1-CA-39633

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

LEONA LOUISE GARCIA PACHECO,

Defendant-Appellant.

**APPEAL FROM THE METROPOLITAN COURT
OF BERNALILLO COUNTY**

Jill M. Martinez, Metropolitan Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Leland M. Churan, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Luz C. Valverde, Assistant Appellate Defender

Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Leona Garcia Pacheco appeals the metropolitan court's conviction for driving while under the influence of intoxicating liquor (DWI), impaired to the slightest degree, contrary to NMSA 1978, Section 66-8-102(A) (2016).¹ On appeal, Defendant asserts that the metropolitan court improperly admitted and relied on a breath test result based on a single usable breath sample and that its admission was not harmless. We have previously affirmed the suppression of breath test results when an officer obtained only a single usable breath sample, based on the regulation in effect at that time. See *State v. Ybarra*, 2010-NMCA-063, ¶ 1, 148 N.M. 373, 237 P.3d 117; see also 7.33.2.12(B)(1) NMAC (3/14/2001) (the 2001 Regulation). The regulation relied on in *Ybarra*, however, has since been amended, and the State maintains that the current regulation, 7.33.2.15 NMAC (the Current Regulation), does not require the breath test to be excluded. We hold that the State did not lay a sufficient foundation to admit the breath test results under the Current Regulation, but that the error in admitting the results was harmless. We therefore affirm.

Katherine A. Wray, Judge

WE CONCUR:

Zachary A. Ives, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39633>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 6/1/2023

No. A-1-CA-39578

LARRY MARKER,
Plaintiff-Appellant,
v.

NEW MEXICO OIL CONSERVATION COMMISSION,
Defendant-Appellee,
and

MARATHON OIL COMPANY,
Intervenor-Appellee.

► Dispositional Order

THIS MATTER is on appeal from the district court's order granting summary judgment in favor of Defendants New Mexico Oil Conservation Commission and Marathon Oil Company. We note the following:

1. Plaintiff Larry Marker argues, as he did below, that Section 7 and 9 of House Bill 546 of the 54th Legislature violate Article IV, Section 15 and 16 of the New Mexico Constitution. See H.B. 546, 54th Leg., 1st Sess. (N.M. 2019), <https://nmlegis.gov/Sessions/19%20Regular/final/HB0546.pdf>.

2. We review the district court's grant of summary judgment de novo. See *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280.

3. We have carefully reviewed the briefs, applicable law, and arguments made by Plaintiff. We have also reviewed the entire record, including the district court's order granting summary judgment to Defendants.

4. We conclude that the district court's order correctly applies the law to the facts of this case and correctly granted summary judgment to Defendants.

5. We adopt the district court's order, including its findings of fact and conclusions of law, and affirm.

Shammara H. Henderson, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39578>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 6/1/2023

No. A-1-CA-38671

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ROBERT KELSEY,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF DE BACA COUNTY**

Matthew E. Chandler, District Court Judge

Raúl Torrez, Attorney General
Van Snow, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook, Appellate Defender
Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Robert Kelsey appeals his conviction for third-degree criminal sexual contact of a minor (NMSA 1978, § 30-9-13(C) (2004) (child under thirteen)). Defendant claims (1) the admission of a videotaped deposition of the minor victim at trial was contrary to Rule 5-504 NMRA and violated his Sixth Amendment right to confrontation, (2) his conviction is not supported by sufficient evidence, and (3) the district court made several evidentiary errors. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

J. Miles Hanisee, Judge

Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38671>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 6/1/2023

No. A-1-CA-40260

**STATE OF NEW MEXICO ex rel. CHILDREN,
YOUTH & FAMILIES DEPARTMENT,**

Petitioner-Appellee,

v.

CHRISTOPHER M.,

Respondent-Appellant,

and

NELLIE M.,

Respondent,

IN THE MATTER OF BRUCE W.,

Child.

**APPEAL FROM THE DISTRICT COURT OF GRANT
COUNTY**

Thomas F. Stewart, District Court Judge

Children, Youth & Families Department

Mary McQueeney,

Chief Children's Court Attorney

Santa Fe, NM

Kelly P. O'Neill, Children's Court Attorney

Albuquerque, NM

for Appellee

Susan C. Baker

El Prado, NM

for Appellant

Francis J. Rio, III

Clovis, NM

Guardian Ad Litem

► Introduction of Opinion

Christopher M. (Father) appeals from the district court's adjudication of child neglect. Father argues that the district court erred in denying his motion to dismiss the abuse and neglect petition because (1) the adjudicatory hearing was not commenced within the time limits set in the children's code and the children's court rules and (2) the delay violated his right to due process. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Shammara H. Henderson, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-40260>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 6/1/2023

No. A-1-CA-38256

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

VALEREY HERRERA,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF OTERO COUNTY**

James Waylon Counts, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Walter Hart, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Allison H. Jaramillo, Assistant Appellate Defender
Santa Fe, NM

for Appellant

► Introduction of Opinion

A jury convicted Defendant Valerey Herrera of fraudulent use of a credit card and conspiracy to commit fraudulent use of a credit card after she was shown on video making a purchase using a credit card belonging to a local business. In total, eight other fraudulent transactions were made on the business credit cards over a five-day period. Defendant raises three issues on appeal: (1) the State presented insufficient evidence to support her conviction for conspiracy to commit fraudulent use of a credit card; (2) the district court erred in setting the amount of restitution; and (3) the district court erred in denying her presentence confinement credit for the period between sentencing in an earlier case and sentencing in this case. We affirm Defendant's conviction for conspiracy regarding the transaction she made, but because the district court's order of restitution was based on the value of all nine transactions and not the single transaction for which Defendant was convicted, we reverse the district court's order of restitution and remand with instructions to recalculate the restitution amount. Finally, we affirm the district court's denial of presentence confinement credit because the time Defendant seeks was already counted toward a sentence imposed in a prior case and the facts of this case do not meet the narrow exception for dual credit.

Megan P. Duffy, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38256>

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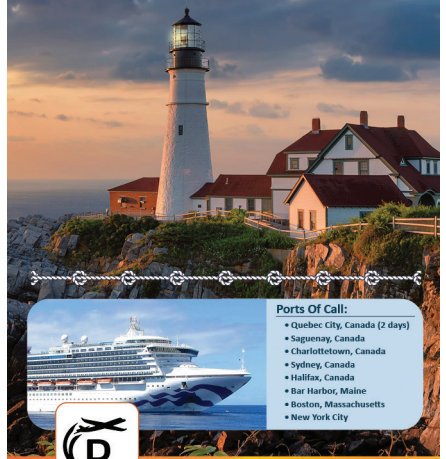
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Attorney

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Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Torrance County (Estancia, NM). Estancia is an hour drive from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be \$76,611 - \$95,763, and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans in the country. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us .

Medical Malpractice Attorney

Hinkle Shanor LLP is seeking an attorney to join their Albuquerque office. The Albuquerque office of Hinkle Shanor is a busy office and heavily specialized in medical malpractice defense litigation. Candidates must have 5+ years of medical malpractice experience. Interested candidates should submit a resume and cover letter. Highly competitive salary and benefits. All inquiries will be kept confidential. Please email resumes and cover letters to recruiting@hinklelawfirm.com.

Associate Attorney

Moses, Dunn, Farmer & Tuthill (MDFT) is seeking a 3-to-6-year attorney. Our firm practices in a wide variety of civil practice areas including transactions, employment, litigation, and commercial legal advice, serving the needs of our world-wide business clientele and individuals from all walks of life. We are an AV Preeminent® firm serving New Mexico clients for more than 68 years. We offer a flexible billable hour requirement and compensation structure. At MDFT, you will be mentored by attorneys with decades of experience and be given ample opportunities to grow. Along with a collegial and collaborative environment from the top down, is the expectation that you will take ownership over your work and invest in the Firm and its clients just as they are investing in you. If you share our values and believe that you can thrive at MDFT, we look forward to talking with you about joining our team! Please send your resume to Lucas Frank, lucas@moseslaw.com.

Bernalillo County Hiring 20 Prosecutors

Are you ready to work at the premiere law firm in New Mexico? The Bernalillo County District Attorney's Office is hiring 20 prosecutors! Come join our quest to do justice every day and know you are making a major difference for your community. We offer a great employment package with incredible benefits. If you work here and work hard, you will gain trial experience second to none, collaborating with some of the most seasoned trial lawyers in the state. We are hiring at all levels of experience, from Assistant District Attorneys to Deputy District Attorneys. Please apply to the Bernalillo County District's Attorney's Office at: <https://berncoda.com/careers-internships/>. Or contact us at recruiting@da2nd.state.nm.us for more information.

Director of Bar Exam Success

UNM School of Law is accepting applications for the Director of Bar Exam Success: Designs, leads, coordinates, implements, and assesses integrated school wide academic programs aimed to increase law graduates' success on the bar exam through collaboration with faculty and administration. Teaches or assists in the coordination of for-credit bar strategies courses. Tracks all students' preparation for the bar exam and performance on the exam. Monitors bar exam developments in New Mexico and nationally. Evaluates new developments in the delivery of bar support by law schools. Has knowledge and understanding of multicultural and disability issues. Ability to build rapport with all students, especially at-risk students. JD preferred. FBC: July 25, apply at UNMJobs.unm.edu job req25943.

Assistant Federal Public Defender-Trial Attorney in Las Cruces, NM

The Federal Public Defender for the District of New Mexico is pleased to offer you an opportunity to join our amazing team as an Assistant Federal Public Defender-Trial Attorney in the Las Cruces office. The Federal Public Defender provides legal representation in federal criminal cases and related matters. The Federal Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. Our attorneys enjoy a full, comprehensive benefits package with Health, Vision, Dental and Life benefits, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$69,107 to \$180,756 determined by experience, qualifications, and budgetary constraints. AFPDs develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. Prior criminal defense or related experience preferred. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. How to Apply: In one PDF document, please submit a statement of interest, resume describing your trial and appellate work, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference 2023-08 in the subject line. Closing Date July 30, 2023. Writing samples will be required only from those selected for interview. For complete job announcement and more information about our office, please visit <https://nm.fd.org/>

Assistant Federal Public Defender-Trial Attorney in Albuquerque, NM

The Federal Public Defender for the District of New Mexico is pleased to offer you an opportunity to join our amazing team as an Assistant Federal Public Defender-Trial Attorney in the Albuquerque office. The Federal Public Defender provides legal representation in federal criminal cases and related matters. The Federal Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. Our attorneys enjoy a full, comprehensive benefits package with Health, Vision, Dental and Life benefits, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$69,777 to \$182,509 determined by experience, qualifications, and budgetary constraints. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney, three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. How to Apply: Please submit a statement of interest, resume describing your trial and appellate work, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference 2023-07 in the subject line. Closing

Date July 30, 2023. Writing samples will be required only from those selected for interview. For complete job announcement and more information about our office, please visit <https://nm.fd.org/>

Attorney

Lasater & Martin, a busy civil defense law firm with offices in Colorado, Texas and New Mexico seeks a 3+ year attorney with experience in construction defect litigation for our New Mexico office. We litigate matters ranging from construction defect, product, general and premises liability to professional and municipal liability defense, so this attorney would have the opportunity to work on a wide range of interesting cases. Lasater & Martin offers a competitive salary and benefits, a flexible and family-friendly environment/workload, and a unique office atmosphere that facilitates professional growth. A NM license is required. Please send a resume and writing sample to Carli M. Marshall, Esq., at carli@lasaterandmartin.com.

Assistant General Counsel

The New Mexico State University seeks a highly efficient, organized and productive attorney to serve as Assistant General Counsel. The selected candidate will report to the General Counsel and work with other university attorneys, outside counsel and university administrators providing legal services relating to public entity law, policy development, academic and student affairs, athletics, contracts, litigation support, civil rights, international programs, real estate, water rights, employment matters and other legal issues in higher education, as well as the regulatory activities of the New Mexico Department of Agriculture. The attorney will assist in coordinating the University's responses to subpoenas and public records requests. Proficient writing skills and good business judgment are essential. All applications must be submitted online. The full position posting is available online <http://careers.nmsu.edu/cw/en-us/job/498098>. Requisition No. 498098. Questions related to this posting may be sent to Estela Heredia, 575-646-3499, eheredia@nmsu.edu. NMSU is an equal opportunity and affirmative action employer committed to assembling a diverse, broadly trained faculty and staff. Women, minorities, people with disabilities, and veterans are strongly encouraged to apply. NMSU is an equal opportunity and affirmative action employer.

General Counsel and Chief Legal Affairs Officer – New Mexico State University

New Mexico State University (NMSU) seeks a highly qualified attorney to serve as Chief Legal Affairs Officer for the NMSU System (General Counsel). As a member of NMSU's senior leadership team, the General Counsel serves as a strategic contributor to NMSU achieving its mission as a land grant institution and a comprehensive research university dedicated to teaching, research, public service and outreach at all levels. The General Counsel provides NMSU management and its Board of Regents with legal advice on a broad range of complex legal issues including, but not limited to: institutional governance; business transactions; procurement; federal, state and local regulatory matters; internal policy development; research compliance; athletics business and conference compliance; employment matters; litigation oversight and support; intellectual property; academic affiliation agreements; international academic arrangements; campus safety and security; privacy; New Mexico Inspection of Public Records Act; New Mexico Open Meetings Act; and student conduct and academic matters. Required Education: Doctor of Jurisprudence from a law school accredited by the Association of American Law Schools. Required Experience: Ten (10) years of professional experience related to the duties associated with this position. Required Certification/License: Admitted to the New Mexico Bar or eligible for admission to the New Mexico Bar within one year of accepting position (Reciprocal Admission or Public Employee Limited License acceptable). All applications must be submitted online. For more information and to apply for the position, click <http://careers.nmsu.edu/cw/en-us/job/498110>. Requisition No. 498110. Questions related to this posting may be sent to Estela Heredia, 575-646-3499, eheredia@nmsu.edu. NMSU is an equal opportunity and affirmative action employer committed to assembling a diverse, broadly trained faculty and staff. Women, minorities, people with disabilities, and veterans are strongly encouraged to apply. NMSU is an equal opportunity and affirmative action employer.

Plaintiff Firm Seeking 3+ Year Litigation Associate

Collins & Collins, P.C. is seeking an associate with a minimum of 3 years civil litigation experience. Responsibilities include: 1) Assisting in all aspects of civil litigation including motion practice and hearings, 2) legal research and writing, 3) incoming and outgoing discovery drafting, review and analysis, and 4) deposition and trial preparation assistance. Salary is dependent upon experience. Benefit package is provided. For more information, please send a resume, cover letter and writing sample to info@collinsattorneys.com.

Civil Litigation Defense Firm Seeking Associate and Senior Associate Attorneys

Ray Pena McChristian, PC seeks both new attorneys and attorneys with 3+ years of experience to join its Albuquerque office either as Associates or Senior Associates on a Shareholder track. RPM is an AV rated, regional civil defense firm with offices in Texas and New Mexico handling predominantly defense matters for businesses, insurers and government agencies. If you're a seasoned NM lawyer and have clients to bring, we have the infrastructure to grow your practice the right way. And if you're a new or young lawyer we also have plenty of work to take your skills to the next level. RPM offers a highly competitive compensation package along with a great office environment in Uptown ABQ and a team of excellent legal support professionals. Email your resume and a letter of interest to cray@raylaw.com.

Lateral Partner/Senior Associate Attorney

Moses, Dunn, Farmer & Tuthill (MDFT) is seeking a lateral partner or senior associate attorney with 5 to 15 years' experience in business and/or commercial litigation and real estate law. The ideal candidate is an experienced attorney who will take pride in their work and who is interested in growing and expanding their established client base at MDFT. Our firm is an AV Preeminent® firm that has expertise in a wide variety of civil practice areas including real estate, business transactions, probate, employment, and litigation. MDFT has served the needs of its world-wide business clientele and individuals from all walks of life for more than 68 years and we are committed to continuing that legacy for years to come. We offer a collegial and collaborative work environment. We look forward to talking with you about joining our team! Please send your resume to [Alicia Gutierrez, alicia@moseslaw.com](mailto:Alicia.Gutierrez,alicia@moseslaw.com).

2023 Bar Bulletin Publishing and Submission Schedule

The *Bar Bulletin* publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

**For more advertising information, contact:
Marcia C. Ulibarri at 505-797-6058 or
email marcia.ulibarri@sbnm.org**

The publication schedule can be found at
www.sbnm.org

Disability Rights Attorney

Disability Rights New Mexico, a statewide non-profit agency protecting, promoting and expanding the rights of persons with disabilities, seeks a full-time Attorney primarily to represent agency clients in legal proceedings. The position also involves a variety of policy and other systemic advocacy. Must have excellent research and writing skills, and competence in a range of legal practice including litigation. Advanced education, work experience, or volunteer activities relevant to disability issues preferred. Must be licensed or eligible for license in NM. Persons with disabilities, minorities, and bilingual applicants strongly encouraged. Competitive salary and benefits. Send letter of interest addressing qualifications, resume, and names of three references to DRNM, 3916 Juan Tabo Blvd. NE, Albuquerque, NM 87111, or by email to galavizl@DRNM.org. Applicants encouraged to apply ASAP, but no later than 8/4/2023. AA/EEO.

Legal Assistant

We are seeking a full-time legal assistant for our Albuquerque office. If you are proficient in Timeslips, Access, Odyssey, Word, Excel, and Outlook and are looking for an opportunity to work in a friendly office environment we encourage you to apply. The primary duties for this position include drafting documents and correspondence, maintaining files and court calendars, handling client relations and e-filing. The ideal candidate will be able to manage time effectively, handle complex cases, and have excellent organizational, proofreading, and communication skills. Please email your cover letter, current resume and three professional references to: kathleen@estateplannersnm.com.

Legal Assistant to Transactional Attorney

Boutique Santa Fe law firm seeking a legal assistant to assist with transactional matters involving business and real estate. Our office atmosphere is congenial and fun. Familiarity with Microsoft office and a basic knowledge of real estate transactions is preferred. The possibility of periodically working remotely from time to time may be offered to the right candidate. Albuquerque commuters are welcomed to apply. Competitive pay and benefits. Email resume and cover letter to jrj@newmexicolawgroup.com and lag@newmexicolawgroup.com.

Legal Assistant-Full-Time Remotely

George Feldman McDonald, PLLC – www.4-Justice.com - is a class action firm with offices in FL, NY and VA. GFM seeks to hire a full-time Legal Assistant to work remotely with the Class Action Practice Group. You will assist lawyers in NY and FL with all aspects of high-stakes and complex class action matters. Job duties will include proofing and editing briefs, drafting pleadings, discovery, calendaring and filing in both federal and state matters throughout the US. Hours will be 9 -5 Mountain Time, so GFM will have assistance 11 - 7 Eastern Standard Time. Salary range is \$35,000 - \$55,000. Benefits available after 60 days (Health, Vision, Dental, PTO and 401k with match). Please send resume to DGeorge@4-Justice.com

Legal Secretary

AV rated insurance defense firm seeks full-time legal assistant. Position requires a team player with strong word processing and organizational skills. Proficiency with Word, knowledge of court systems and superior clerical skills are required. Should be skilled, attentive to detail and accurate. Excellent work environment, salary, private pension, and full benefits. Please submit resume to mvelasquez@rileymlaw.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

Office Space

Office Building for Sale

3,640sf in the heart of Downtown Albuquerque with Off-street/secure parking, Within walking distance to court houses, Refrigerated air, 7 offices, Conference room, Reception, Break area, and 2 Bathrooms. Located at 715 Tijeras Ave. NW. For more information call Clay J. Azar at Metro Commercial Realty 505-480-9777.

620 Roma NW

The building is located a few blocks from the federal, state and metropolitan courts. Monthly rent of \$550 includes utilities (except phones), internet access, fax, copiers, front desk receptionist and janitorial service. You will have access to a law library, four conference rooms, a waiting area, off-street parking. Several office spaces are available. Call (505) 243 3751 for an appointment.

Miscellaneous

Want to Purchase

Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201

Search for Will

Searching for a Will and or Family Trust for Kimberly W. Brown, deceased, late of Albuquerque New Mexico. If you prepared either and or have the originals or copies please contact Edward J. Roibal, Attorney, 505-247-4404 or email ed@roibal.com.

Office Suites-No Lease-All Inclusive

Office Suites-NO LEASE-ALL INCLUSIVE-virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead in a professional environment. 2 convenient locations-Journal Center and Riverside Plaza. 505-796-9600/ officealternatives.com.

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Contact Marcia Ulibarri,
at 505-797-6058 or
email marcia.ulibarri@sbnm.org

A photograph of the City of Albuquerque Legal Department building and plaza. The building is a modern, multi-story structure with a glass facade and a prominent white lattice structure. The plaza in the foreground is paved with light-colored tiles and features several large, circular planters with greenery. The sky is blue with some clouds.

City of Albuquerque Legal Department

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ATKINSON & KELSEY, P.A.

DIVORCE & FAMILY LAW

Atkinson & Kelsey congratulates
Jon A. Feder
Upon his retirement as Managing Shareholder



Thank you Jon for your **42** years of service to your clients,
the firm, and the New Mexico Bar.

We are pleased to announce that Jon has transitioned to his new role as
Attorney of Counsel to the firm. We look forward to years of continued collaboration.

*"I am grateful for the 42 years I have spent helping people and
families going through the most difficult time of their lives." – Jon Feder*



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