

BAR BULLETIN

DIGITAL ISSUE

December 27, 2023 • Volume 62, No. 24



Willow Creek Montana 2022, by Jeff Corwin (see page 6)

jeffcorwinfineart.com

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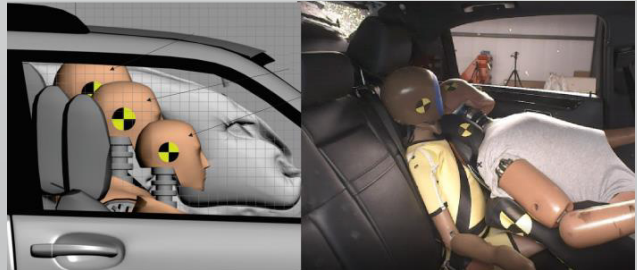
IS YOUR CASE AT A RECOVERY DEAD-END?

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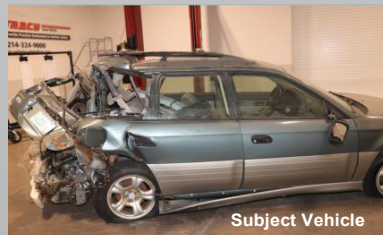


Crashworthiness

focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



If you have any questions about a potential case, please call Todd Tracy. Vehicle safety system defects may have caused your client's injury or death.



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New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



DECEMBER 28

Webinar

Battling Gender Bias: How Bill Cosby and Other Sexual Predators Escape Punishment

1.0 EP
11 a.m.–Noon

DECEMBER 28

Teleseminar

Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice & More

1.0 EP
11 a.m.–Noon

DECEMBER 28

Webinar

Why Lawyers Need To Know About AI (Artificial Intelligence)

1.0 G
1–2 p.m.

DECEMBER 29

Webinar

Ethics, Attorneys, and Social Media: How to Keep the Disciplinary Counsel from Knocking at Your Door

1.0 EP
11 a.m.–Noon

DECEMBER 29

Teleseminar

Ethical Issues in Contract Drafting

1.0 EP
11 a.m.–Noon

DECEMBER 29

Webinar

Practical Tips & Strategies To Combat Implicit Biases In Law Firms and Society

1.0 EP
1–2 p.m.

JANUARY 4

Webinar

How to Take Charge of Technology - Ethically and Mindfully

1.0 EP
11 a.m.–Noon

JANUARY 5

Webinar

Impeach Justice Douglas!

3.0 EP
11 a.m.–2:15 p.m.

JANUARY 10

Teleseminar

2024 Uniform Commercial Code Update

1.0 G
11 a.m.–Noon

JANUARY 11

Teleseminar

Taxation of Settlements & Judgments in Civil Litigation

1.0 G
11 a.m.–Noon

JANUARY 12

Teleseminar

Exit Rights in Business Agreements

1.0 G
11 a.m.–Noon

JANUARY 17

Teleseminar

Health Care Issues in Estate Planning

1.0 G
11 a.m.–Noon

JANUARY 17

Webinar

Identifying & Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV

1.0 EIJ (*new Equity in Justice credit*)
11 a.m.–Noon

JANUARY 17

Webinar

A Little Meaningful Planning Now, a Lot Less Painful Panic Later: Mandatory Succession Planning

1.0 EP
Noon–1 p.m.

**WHAT YOU MISSED
DURING THE 2023
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Donations for the New Mexico State Bar Foundation are gratefully accepted year-round. You can donate on our website at www.sbnm.org/Bar-Foundation/Donations or by contacting angela.sanchez@sbnm.org.



For more information on how you can **become involved** in these programs please contact caitlin.carcerano@sbnm.org.

Coming March 1, 2024!

Digital Resource Deskbook 2024–2025

Includes:

- ✓ State Bar Resources for Members
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- ✓ Sections and Committees
- ✓ Commissions and Divisions
- ✓ State and Federal Courts
- ✓ License Renewal Information
- ✓ Legal Services Providers
- ✓ Resources for the Public
- ✓ And More ...

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December

29
Immigration Law Section
 Noon, virtual

Workshops and Legal Clinics

January

16
Common Legal Issues for Senior Citizens Workshop
 11 a.m.-noon, virtual
 For more details and to register, call
 505-797-6005

24
Consumer Debt/Bankruptcy Workshop
 6-8 p.m., virtual

February

7
Divorce Options Workshop
 6-8 p.m., virtual

13
Common Legal Issues for Senior Citizens Workshop
 11 a.m.-noon, virtual
 For more details and to register, call
 505-797-6005

21
Consumer Debt/Bankruptcy Workshop
 6-8 p.m., virtual

About Cover Image and Artist: Over 40+ years as a successful award-winning commercial photographer, Jeff Corwin has taken photos out of a helicopter, in jungles, on oil rigs and an aircraft carrier. Assignments included portraits of famous faces and photos for well-known corporate clients. Corwin has turned his discerning eye to fine art photography. He still creates photographs grounded in design. Humble shapes, evocative lines. Eliminate clutter. Light when necessary. Repeat. His fine art photography has garnered awards, national and international museum exhibitions, gallery shows, work in permanent collections, features in numerous fine art publications, radio and newspaper interviews and representation by several contemporary galleries.

Notices

Please email notices desired for publication to notices@sbnm.org.

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://mmonesource.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

Learn About Access to Justice in New Mexico in the "Justice for All" Newsletter

Learn what's happening in New Mexico's world of access to justice and how you can participate by reading "Justice for All," the New Mexico Commission on Access to Justice's monthly newsletter! Email atj@nmcourts.gov to receive "Justice for All" via email or view a copy at <https://accesstojustice.nmcourts.gov>.

Third Judicial District Court Notice of Mass Reassignment of Cases

Effective Dec. 15 in Dona Ana County, all pending cases currently assigned to the Honorable Mark Standridge will be reassigned to Division IV Judge. New and reopened DM and DV cases will be assigned 40% to the Honorable Robert Lara, 30% to the Honorable Grace Duran and 30% to Division IV Judge. 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.

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will not adopt procedures that needlessly increase litigation expense.

STATE BAR NEWS

License Renewal and MCLE Compliance Due Feb. 1, 2024

State Bar of New Mexico annual license renewal and Minimum Continuing Legal Education requirements are due Feb. 1, 2024. For more information, visit www.sbnm.org/compliance. To complete your annual license renewal and verify your MCLE compliance, visit www.sbnm.org and click "My Dashboard" in the top right corner. For questions about license renewal and MCLE compliance, email license@sbnm.org. For technical assistance accessing your account, email techsupport@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 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. Join the meeting via Zoom at <https://bit.ly/attorneysupportgroup>

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on 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.

The Solutions Group Employee Assistance Program

Presented by the New Mexico Lawyer Assistance Program, the Solutions Group, the State Bar's Employee Assistance Program (EAP), extends its supportive reach by offering up to four complimentary counseling sessions per issue, per year, to address any mental or behavioral health challenges to all SBNM members and their direct family members. These counseling sessions are conducted by licensed and experienced therapists. In addition to this valuable service, the EAP also provides a range of other services, such as management consultation, stress management education, webinars, critical incident stress debriefing, video counseling, and a 24/7 call center. The network of service providers is spread across the state, ensuring accessibility. When reaching out, please make sure to identify yourself with the NM LAP for seamless access to the EAP's array of services. Rest assured, all communications are treated with the utmost confidentiality. Contact 505-254-3555 to access your resources today.

New Mexico State Bar Foundation Pro Bono Opportunities

The New Mexico State Bar Foundation and its partner legal organizations gratefully welcome attorneys and paralegals to volunteer to provide pro bono service to underserved populations in New Mexico. For more information on how you can help New Mexican residents through legal service, please visit www.sbnm.org/probono.

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.

Call for Nominations for the Alumni/ae Association Distinguished Achievement Awards

The nomination process for the Alumni/ae Association Distinguished Achievement Awards will begin and end earlier for next year. To nominate someone you think deserving of the Distinguished Achievement Award, please go to https://forms.unm.edu/forms/daad_nomination. Closing date for 2024 award nominations will be Feb. 15, 2024.

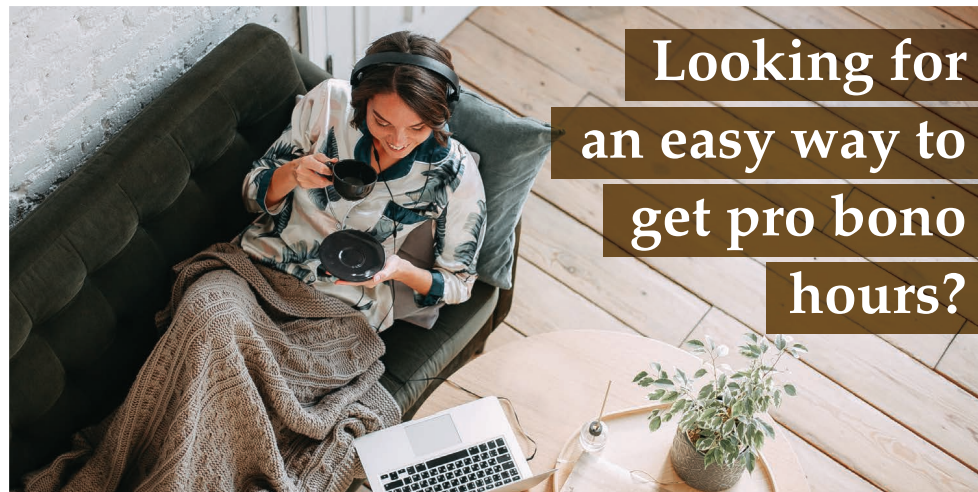
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To Register as a volunteer attorney:

- Go to <https://nm.freelegalanswers.org/>
- Click on "Attorney Registration" and follow the prompts



The NEW MEXICO STATE BAR FOUNDATION is the State Administrator of the ABA Free Legal Answers Program

Legal Education Calendar

December

- | | | |
|--|---|---|
| <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>28 Why Lawyers Need To Know About AI (Artificial Intelligence)
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Ethics, Attorneys, and Social Media: How to Keep the Disciplinary Counsel from Knocking at Your Door
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>27 Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 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>29 Ethical Issues in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| | <p>28 Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice & More
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Practical Tips & Strategies To Combat Implicit Biases In Law Firms and Society
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

January

- | | | |
|--|---|---|
| <p>4 How to Take Charge of Technology - Ethically and Mindfully
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>10 2024 Uniform Commercial Code Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>17 Webinar: Evidence Wednesdays: A Defender's Guide to 2023 Amendments
1.2 G
Webcast (Live Credits)
Administrative Office of the U.S. Courts
www.uscourts.gov</p> |
| <p>5 Impeach Justice Douglas!
3.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>12 Exit Rights in Business Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | |

WHAT YOU MISSED DURING THE 2023 ANNUAL MEETING –

Annual Meeting Highlights are now available at a discounted rate!
Watch for more upcoming Annual Meeting Highlights, available soon as **Live Replays** and **On-Demand Courses**

<https://cle.sbnm.org>

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.

December 13, 2023

No. S-1-AO-2023-00025

IN THE MATTER OF PROPOSED PUBLIC CENSURES IN ATTORNEY AND JUDICIAL DISCIPLINARY PROCEEDINGS

WHEREAS, this matter comes on for consideration upon the Court's own motion to implement policies and procedures for submitting proposed public censures in attorney and judicial disciplinary proceedings under Rule 17-206 NMRA and JSC Rule 36 NMRA, respectively;

WHEREAS, a public censure may be recommended to the Court by the Disciplinary Board and the Judicial Standards Commission (JSC) as a form of discipline for attorney and judicial misconduct for the purpose of admonishing a respondent for misconduct, to guard against future similar misconduct, and to restore public confidence in the practice of law and our judicial system, see *Matter of Ferguson*, 2021-NMSC-024, ¶ 1, 491 P.3d 745 (admonish and caution against future misconduct); *In re Naranjo*, 2013-NMSC-026, ¶ 22, 303 P.3d 849 (assure public and caution others);

WHEREAS, in general, a public censure may be recommended to the Court as a form of discipline in a proceeding initiated by the filing of either (1) a petition to accept stipulation agreement and consent to discipline, or (2) a decision and recommendation for discipline;

WHEREAS, disciplinary matters frequently come before the Court on the petition and record only, without the benefit of briefing or oral argument;

WHEREAS, the Disciplinary Board and JSC adjudicate disciplinary proceedings, conduct investigations and hearings, and review findings of fact and conclusions of law prior to submitting petitions for discipline to this Court, see Rule 17-102 NMRA; JSC Rules 4, 5 NMRA, making them well-suited to prepare and submit proposed public censures that, in part, outline the disciplinary matter's procedural history and provide relevant citations to authority and the record;

WHEREAS, the Court being desirous of the timely and efficient adjudication of disciplinary matters to safeguard the public by providing prompt notice of attorney and judicial misconduct, to warn attorneys and judges against future similar misconduct, and to provide attorneys and judges with timely resolution of disciplinary matters, the Court concludes that it would be in the best interest of judicial economy and the efficient administration of justice to require that proposed public censures be submitted in attorney or judicial disciplinary proceedings wherein public censure is recommended; and

WHEREAS, in light of the foregoing and the Court being otherwise 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 proposed public censures shall be prepared in the following form, unless otherwise ordered by the Court:

- (1) proposed public censures shall be non-precedential;
- (2) proposed public censures shall be limited to fifteen (15) pages, double-spaced, 14-pt Times New Roman font;
- (3) proposed public censures shall include, at minimum, a procedural history, including a citation to and explanation of the rules violated, and background and discussion sections with citations to the record proper and to authority;
- (4) all citations in proposed public censures shall conform to Rule 23-112 NMRA;

IT IS FURTHER ORDERED that public censures shall be submitted to the Court in accordance with one of two procedures outlined below:

- (1) For proceedings before the Court on petition to accept stipulation agreement and consent to discipline, proposed public censures shall be stipulated to and filed with the petition;
- (2) For proceedings before the Court on a decision and recommendation for discipline, proposed public censures:

a. shall be filed with the Court within forty-five (45) days after the filing of an order imposing a public censure as a form of discipline;

b. a response/objection to the proposed public censure shall be timely if filed within fifteen (15) days of the filing of the proposed public censure, see Rule 12-309(E) NMRA, provided that the findings and conclusions adopted by this Court in its order imposing discipline are final, and any motions for rehearing must be filed separately and in accordance with Rule 12-404 NMRA;

c. no reply to the response shall be permitted without further order of the Court;

IT IS FURTHER ORDERED that the final form and substance of a public censure shall be subject to the Court's discretion, irrespective of whether the parties have consented or stipulated to the proposed public censure;

IT IS FURTHER ORDERED that these policies and procedures shall be effective the date of this order and shall remain in place until further order of the Court; and

IT IS FURTHER ORDERED that the Clerk of Court is authorized and directed to give notice of the above referenced policy and procedures by posting notice on the New Mexico Judiciary website and by publishing notice in the *Bar Bulletin*.

IT IS SO ORDERED.

Rules/Orders

From the New Mexico Supreme Court

<http://www.nmcompcomm.us/>

THE SUPREME COURT OF NEW MEXICO ANNOUNCES OUT-OF-CYCLE RULEMAKING

In accordance with Rule 23-106.1 NMRA, the Supreme Court has adopted a new rule out-of-cycle. What follows is a summary of the new rule that the Court adopted on December 12, 2023. The new rule will take effect on December 31, 2023. The full text of the new rule in markup format and the related order are available on the Court's website at <https://supremecourt.nmcourts.gov/14056-2/>. The new rule will also appear on NMOneSource.com by its effective date.

SUPREME COURT

Chief Judge of the Court of Appeals – New Rule 23-109.1 NMRA

The Supreme Court adopted new Rule 23-109.1 NMRA, which sets forth the term and selection procedures for the chief judge of the Court of Appeals and establishes the duties and responsibilities of the chief judge of the Court of Appeals.

THE NEW RULE SUMMARIZED ABOVE CAN BE VIEWED
IN ITS ENTIRETY AT THE NEW MEXICO SUPREME COURT WEBSITE

<https://supremecourt.nmcourts.gov/14056-2/>

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today*

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State Bar Foundation**

THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **CONSUMER DEBT BANKRUPTCY WORKSHOP.**

Thank you for your professionalism, time and service to the community in New Mexico.

Mike Daniels
Matthew Gandert

Ron Holmes
Mike Lash

Arun Melwani

THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **DIVORCE OPTIONS WORKSHOP.** Thank you for your professionalism, time and service to the community in New Mexico.

Helen Bennett
Maria Montoya-Chavez

Tiffany Oliver Leigh
Meredith Johnstone

Allison Pieroni
Lucy Sinkular

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Program



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Advance Opinions

<http://www.nmcompcomm.us/>

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-025
No: S-1-SC-38937 (filed September 5, 2023)

STATE OF NEW MEXICO,
Plaintiff-Respondent,
v.
RICKY ANTHONY AYON,
Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Christina P. Argyres, District Judge

Bennett J. Baur, Chief Public Defender
Caitlin C.M. Smith,
Assistant Appellate Defender
Santa Fe, NM

for Petitioner
Hector H. Balderas, Attorney General
Meryl E. Francolini,
Assistant Attorney General
Santa Fe, NM

for Respondent

Law Office of Scott M. Davidson
Scott M. Davidson
Albuquerque, NM

Law Office of Jamison Barkley, LLC
Jamison Barkley
Santa Fe, NM

Angelica Hall
Albuquerque, NM

for Amicus Curiae New Mexico
Criminal Defense Lawyers Association

OPINION

THOMSON, Justice.

{1} Under the New Mexico Constitution, the state can bring felony charges in one of two ways: by presenting charges and evidence to a grand jury composed of lay citizens or to a judge at a preliminary hearing. N.M. Const. art. II, § 14. In *State v. Martinez*, this Court held that a district court has no authority to review the admissibility of evidence considered by a grand jury. 2018-NMSC-031, ¶¶ 1, 39, 420 P.3d 568. This case requires us to make an analogous determination in the context of a Rule 5-302 NMRA¹ preliminary examination (hereinafter “preliminary hearing”). We hold that a district court judge

presiding over a preliminary hearing has no authority to decide whether evidence was obtained from an unconstitutional search or seizure.

{2} At his preliminary hearing, Defendant Ricky Ayon successfully challenged the legality of the stop that led to the search incident to his arrest, and the district court refused to bind Defendant over for trial on the charge of heroin possession. The Court of Appeals reversed. Because we agree with the Court of Appeals that the district court exceeded its authority at the preliminary hearing to rule on whether the evidence was obtained from an unconstitutional search or seizure, we affirm and remand for proceedings consistent with this opinion.

I. BACKGROUND

{3} Defendant was walking with a bicycle and groceries on Isleta Boulevard in

Albuquerque when a Bernalillo County Sheriff’s Office deputy called out to him by name. When Defendant approached, the deputy immediately handcuffed him. After Defendant was in handcuffs, the deputy checked the National Crime Information Center (NCIC) database and found that Defendant had an active warrant. The deputy placed Defendant under arrest, then searched Defendant and found a small bag of a substance that field-tested as opiates.

{4} The State charged Defendant by criminal information with possession of heroin pursuant to NMSA 1978, Section 30-31-23 (2011, amended 2021). At Defendant’s preliminary hearing, the deputy explained what led to Defendant’s arrest. He testified that he recognized Defendant from past encounters and was aware that Defendant frequented a house that often required the attention of the police. About a week prior to spotting Defendant on the street, the deputy searched the judiciary’s public facing database for warrants on people known to frequent the house, including Defendant. Through that search, the deputy discovered that Defendant had a warrant. The deputy testified that Defendant was immediately handcuffed because he had run away from the deputy in the past. At the time the deputy handcuffed Defendant, the deputy did not know whether the warrant was still valid, and he noted that Defendant had not been doing anything illegal.

{5} As part of his defense at the preliminary hearing, Defendant argued that the deputy lacked reasonable suspicion to stop him because the deputy handcuffed Defendant before learning that Defendant had an active warrant through the NCIC database. The district court agreed, concluded that “the search was illegal,” and declined to bind the case over for trial. The portion of the preliminary hearing devoted to argument on this issue was approximately two-and-one-half minutes. Neither party provided authority to establish whether a district court judge presiding over a preliminary hearing has authority to determine whether “the search was illegal,” in effect to decide whether evidence was obtained from an unconstitutional search or seizure. In fact, no authority was cited by either party with reference to the deputy’s stop of Defendant, and the district court cited no authority in explaining its decision.

¹ Rule 5-302 NMRA (2017), effective for cases pending or filed after December 31, 2017, was in effect for the duration of the district court proceedings that gave rise to this appeal, and this rule has been amended twice since that time. While we have omitted date parentheticals in citations of this past rule, all references to the rule as it applies to this case reflect its 2017 amendment. Further, our holding in this case is consistent with the 2020 and current 2022 amendments to Rule 5-302.

{6} The State appealed, and the Court of Appeals reversed. *State v. Ayon*, 2022-NMCA-003, ¶ 1, 503 P.3d 405. The Court of Appeals concluded that the district court is without authority to determine at a preliminary hearing whether evidence was obtained illegally. *Id.* ¶¶ 1, 17. The Court of Appeals was persuaded that the reasoning in *Martinez* in the context of grand juries is applicable to preliminary hearings, given that both are aimed at a probable cause determination. *Id.* ¶ 11. It further concluded that no statute or court rule authorizes a district court to rule on the legality of the evidence presented at a preliminary hearing and noted several practical considerations that militate against Defendant's position. *Id.* ¶¶ 11-13, 15-16.

{7} We granted Defendant's petition for certiorari to determine whether the district court has the authority at a preliminary hearing to decide whether evidence was obtained from an unconstitutional search or seizure.²

II. DISCUSSION

{8} Defendant contends that the Court of Appeals erred in concluding that the district court has no authority to exclude illegally obtained evidence at a preliminary hearing for three reasons: (1) *Martinez* does not control the result in this case because there are substantial differences between grand jury proceedings and preliminary hearings; (2) the characteristics of preliminary hearings are such that, on balance, the district court should be allowed to exclude illegally obtained evidence at this stage in the proceeding; and (3) Article II, Section 10 of the New Mexico Constitution provides the right to exclude illegal evidence at preliminary hearings.

{9} We review interpretations of our rules of criminal procedure and questions of constitutional interpretation de novo. *State v. Adame*, 2020-NMSC-015, ¶ 7, 476 P.3d 872; *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806.

A. The Relationship and Similarities Between Grand Jury Proceedings and Preliminary Hearings Favor Congruent Rules as to the Power to Decide if Evidence Was Obtained From an Unconstitutional Search or Seizure

{10} In *Martinez*, two defendants filed a motion in district court challenging their grand jury indictment on the ground that unlawful subpoenas were used to obtain information presented to the grand jury. 2018-NMSC-031, ¶¶ 2, 5-6. This Court concluded that an otherwise lawful grand jury indictment cannot be overturned "because of trial inadmissibility or improprieties in the procurement

of evidence" presented to the grand jury. *Id.* ¶ 1. Accordingly, stated the *Martinez* Court, "suppression is a remedy for court determination in pretrial proceedings and is not one the grand jury is either equipped or called upon to decide." *Id.* ¶ 31.

{11} The State argues that preliminary hearings "share a common purpose and an identical function" with grand jury proceedings and that *Martinez* therefore controls the result in this case. Defendant, arguing to the contrary, points out that the *Martinez* analysis is deeply rooted in the specific history and development of New Mexico grand jury practice and concludes that this analysis is inapplicable to preliminary hearings. *See Martinez*, 2018-NMSC-031, ¶¶ 15-25 (reviewing statutory and precedential history specific to grand juries). Defendant further argues that *Martinez* is inapplicable because preliminary hearings and grand juries "are different proceedings with entirely different structures."

{12} The structure of a preliminary hearing is indeed very different from that of a grand jury proceeding. At a preliminary hearing, for example, the judge substantially controls the procedure, playing a much more prominent role than the judge at a grand jury proceeding. *See generally* Rule 5-302 (detailing time requirements and procedures administered by the district court judge). At a grand jury proceeding, the prosecutor is largely in control. *See Herrera v. Sanchez*, 2014-NMSC-018, ¶ 15, 328 P.3d 1176 ("The grand jury sits without direct supervision from the grand jury judge and fulfills its constitutional responsibilities with help from a prosecuting attorney."). At a preliminary hearing, the judge decides whether the state has demonstrated probable cause. Rule 5-302(D). But at a grand jury proceeding, a panel of "regular jurors" decides. NMSA 1978, § 31-6-1 (1983) (stating that at a grand jury proceeding all deliberations are conducted by jurors). Moreover, the rules of evidence do not apply at a grand jury proceeding, NMSA 1978, § 31-6-11(A) (2003), but are applicable at a preliminary hearing subject to limited exceptions, Rule 5-302(B)(5); *see* Rule 5-302.1 (Exceptions to rules of evidence for preliminary examinations).

{13} The rights of the target of a grand jury proceeding are more limited than the rights of a defendant at a preliminary hearing. *Cf. Herrera*, 2014-NMSC-018, ¶ 16. The grand jury target and counsel for the target can be present only if the target testifies, and only during that testimony. *Id.*; *see also* § 31-6-4(B)-(D) (2003). Moreover, the target's counsel may not speak to the grand jury. *Herrera*, 2014-

NMSC-018, ¶ 16; *see also* NMSA 1978, § 31-6-4(D). But at a preliminary hearing, "the defendant is permitted to be present with counsel throughout the duration of the proceedings, to cross-examine the State's witnesses, and to call and subpoena witnesses on the defendant's own behalf." *Herrera*, 2014-NMSC-018, ¶ 16 (citing *generally* Rule 5-302).

{14} "Grand jury proceedings are conducted in secret," *Herrera*, 2014-NMSC-018, ¶ 16 (citing § 31-6-4(B)-(D)), and are inquisitorial, *Martinez*, 2018-NMSC-031, ¶ 17. Preliminary hearings are adversarial in nature, *Herrera*, 2014-NMSC-018, ¶ 16, and open to the public, NMSA 1978, § 34-1-1 (1972); Rule 5-124(A) NMRA. The aforementioned differences, among others, lead us to conclude that the grand jury analysis in *Martinez* does not control the result in this case.

{15} Nevertheless, fundamental similarities between grand jury proceedings and preliminary hearings favor our conclusion that their rules on the exclusion of illegally obtained evidence should be congruent.

{16} Despite their differences, grand juries and preliminary hearings are directly related. A defendant in New Mexico cannot be made to answer for a serious criminal offense unless there has first been a determination of probable cause by a grand jury or a judge at a preliminary hearing. *State v. Lopez*, 2013-NMSC-047, ¶ 2, 314 P.3d 236; *see also* N.M. Const. art. II, § 14. The state chooses between these alternatives. *State v. Peavler*, 1975-NMSC-035, ¶ 6, 88 N.M. 125, 537 P.2d 1387. And, as already stated, a district court cannot review the admissibility of evidence presented to the grand jury. *See Martinez*, 2018-NMSC-031, ¶ 39. Therefore, providing an avenue for defendants to bring suppression actions in a preliminary hearing would incentivize the state to proceed by grand jury indictment rather than preliminary hearing. *See* Fed. R. Crim. P. 5.1 advisory committee notes (stating that "the preliminary examination is not the proper place to raise the issue of illegally obtained evidence" because "[o]therwise there will be increased pressure on [prosecutors] to abandon the preliminary examination in favor of the grand jury indictment"). We acknowledge that the differences between grand jury proceedings and preliminary hearings may already incentivize one over the other in certain situations. *See* Kathryn D. Sears, *Better Balance: Why the Second Judicial District in New Mexico Should Prioritize Use of Preliminary Hearings*, 51 N.M. L. Rev 524, 538 (2021) (stating that for some cases a grand jury proceeding, where the rules of evidence do not apply,

² We do not address whether the district court correctly ruled that the evidence was obtained unconstitutionally because we conclude that the district court exceeded its authority to make that determination at the preliminary hearing.

presents a “much simpler” way to bring felony charges). We are not inclined to add further imbalance between these two related alternatives for probable cause findings.

{17} Preliminary hearings and grand jury proceedings are not only related but are similar in at least two fundamental ways. They share a common primary purpose: to provide a neutral evaluation of whether the state has met its burden of demonstrating probable cause to prosecute a serious crime. *See State ex rel. Whitehead v. Vescovi-Dial*, 1997-NMCA-126, ¶ 5, 124 N.M. 375, 950 P.2d 818 (“The primary purpose of the preliminary examination is to provide an independent evaluation of whether the state has met its burden of demonstrating probable cause.”); *Herrera*, 2014-NMSC-018, ¶ 15 (stating that one of two primary functions of a grand jury is to “determine whether there is probable cause to believe that the target of an investigation has committed a crime”). And there is a significant procedural similarity: in *Lopez* we noted that both are nontrial, preliminary proceedings at the threshold of criminal prosecution at which guilt or innocence is not definitively determined. *Lopez*, 2013-NMSC-047, ¶¶ 18-19.

{18} In sum, *Martinez* does not control the result in this case. However, the fundamental similarities between grand jury proceedings and preliminary hearings support our adoption of congruent rules for both proceedings regarding the district courts’ power to determine whether evidence was obtained from an unconstitutional search or seizure.

B. Prudential Considerations Also Favor Our Conclusion That the District Court Lacks the Power to Decide at a Preliminary Hearing Whether Evidence Was Obtained From an Unconstitutional Search or Seizure

{19} According to Defendant, the prudential concerns raised by the Court of Appeals should not dissuade us from concluding that preliminary hearings are an appropriate stage to raise concerns about whether evidence was unlawfully obtained. Defendant argues that the district court should have the authority in any proceeding to evaluate whether evidence was illegally obtained because such authority is consistent with the judge’s role at a preliminary hearing. Defendant emphasizes that the rules of evidence generally apply at a preliminary hearing. *See* Rule 5-302(B)(5). Accordingly, notes Defendant, judges at preliminary hearings already adjudicate and screen evidentiary issues including, for example, hearsay and privileged material. *See, e.g.*, Rule 11-802 NMRA (establishing, pursuant to our rules of evidence, that hearsay is generally not

admissible). Defendant concludes that courts “routinely” address evidentiary issues at preliminary hearings, and therefore “[i]t is not clear [to Defendant] why ruling on search-and-seizure claims would be more onerous for a district court than addressing” these other issues.

{20} It is true that district courts already adjudicate evidentiary issues, but in our view there is much more to consider. Preliminary hearings take place on a brisk timeline, especially when the defendant is incarcerated. *See* Rule 5-302(A)(1) (providing for a ten-day time limit to hold a preliminary hearing if a defendant is in custody, and a sixty-day time limit otherwise). Actions to suppress evidence are not well-suited to such a tight timeline. Discovery is in its early stages, and it is limited by rule to the evidence in the state’s possession. Rule 5-302(B)(2). There is no provision for briefing in the preliminary hearing rule, so both the facts and the arguments about whether evidence was illegally obtained are likely to be underdeveloped. The result can be insufficiently informed rulings. *See* 4 Wayne R. LaFave, et al., *Criminal Procedure* § 14.4(b), at 392 (4th ed. 2015) (“In jurisdictions where the [preliminary] hearing is held with exceptional promptness, . . . there often will not be adequate time for the two sides to investigate and prepare.”).

{21} Defendant asserts that the district court was able to handle the suppression claim efficiently, noting that the preliminary hearing was only twenty-two minutes long. However, preliminary hearing suppression decisions would be subject to appeal. *See* NMSA 1978, § 39-3-3(B) (1972) (providing that the state can appeal orders suppressing evidence, excluding evidence, and dismissing a criminal information or indictment); § 39-3-3(A) (3) (providing an avenue for a defendant to bring an interlocutory appeal under limited circumstances). And such appeals can delay trials significantly. For example, Defendant’s preliminary hearing took place more than three years ago.

{22} Rule 5-212 NMRA, which provides the procedure for district court motions to suppress evidence, is significant here for several reasons. We note first that the procedure we have established in Rule 5-212 is more conducive to a full and fair hearing on suppression issues because the time constraints are considerably more relaxed, discovery is far more robust, and the rule explicitly provides for written motions. *See* Rule 5-212(C) (establishing that a motion to suppress must be filed at least sixty days before trial absent good cause shown); Rule 5-302(B)(2) (limiting discovery at the preliminary hearing to the evidence in the state’s possession); *see also* Rule 5-601 NMRA (establishing rules

for motions at the trial stage of a criminal case in district court). Defendant’s case illustrates the severe limitations of the preliminary hearing relative to our procedure for motions to suppress: no law was cited by either party in the two-minute suppression argument at the preliminary hearing, and no law was cited by the district court to explain its ruling.

{23} Also important is that the rules of evidence generally apply at a Rule 5-302 preliminary hearing but generally do not at a Rule 5-212 suppression hearing. *Compare* Rule 5-302(B)(5) (“The Rules of Evidence apply [at a preliminary hearing], subject to any specific exceptions in the Rules of Criminal Procedure for the District Courts.”), *with State v. Rivera*, 2008-NMSC-056, ¶ 15, 144 N.M. 836, 192 P.3d 1213 (“At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial.” (internal quotation marks and citation omitted)). As expressed in our rules of evidence, judges have the flexibility to consider evidence not admissible at trial in deciding suppression issues. *See* Rule 11-104(A); *cf. United States v. Matlock*, 415 U.S. 164, 175 (1974) (“[I]n proceedings where the judge himself is considering the admissibility of evidence, the exclusionary rules, aside from rules of privilege, should not be applicable; and the judge should receive the evidence and give it such weight as his judgment and experience counsel.”).

{24} Finally, and crucially, the availability of a Rule 5-212 suppression action already provides defendants with a pretrial opportunity to exclude inadmissible evidence and to avoid going to trial on the basis of inadmissible evidence. The trial is “the *only* point at which guilt or innocence may be definitively determined,” and a number of other important procedural protections applicable at trial are inapplicable at the preliminary hearing stage of a prosecution: the right to be free from double jeopardy, the right to confrontation, and the right to a jury as factfinder. *Lopez*, 2013-NMSC-047, ¶¶ 2, 18 (emphasis added). We are mindful of the advantage to the defendant to be unburdened from a nonviable prosecution at the earliest possible point. *Cf. Vescovi-Dial*, 1997-NMCA-126 ¶ 6 (“[A] preliminary examination operates as a screening device to prevent hasty and unwise prosecutions and to save an innocent accused from the humiliation and anxiety of a public prosecution.” (citing 2 Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 14.1(a) (1984))). But to allow a defendant to raise suppression issues at the preliminary hearing is largely duplicative and not necessary for effective screening. *See* 1 Wayne R. LaFave, *Search and Seizure* § 1.6(d) (6th ed. 2020) (stat-

ing that among the practical objections to allowing defendants to raise suppression issues at preliminary hearings is that doing so “would require two determinations of admissibility” (quoting Fed. R. Crim. P. 5.1 advisory committee notes); 4 LaFave, *supra*, § 14.4(b), at 392 (“[A]llowing the defense to raise the suppression issue [at a pretrial hearing] is viewed as unnecessary to achieving effective screening” because a “suppression motion can still be utilized to gain a pretrial ruling that will exclude the evidence and thereby preclude a trial”); *id.* at 390 (“Like all evidentiary rulings at a preliminary hearing, the ruling on a challenge to evidence as illegally acquired will not be binding upon the trial court.”). To adopt Defendant’s position, this Court would risk turning preliminary hearings into minitrials on the legality of the evidence. *Cf. Lopez*, 2013-NMSC-047, ¶ 24 (concluding that it was “unworkable” to provide confrontation rights at all stages of a criminal proceeding, including preliminary hearings). We decline Defendant’s invitation.

{25} We pause here to address one additional concern raised by Defendant. Defendant argues that if the district court considers illegally obtained evidence at a preliminary hearing, the judge “participate[s] in the violation of the defendant’s rights” and, quoting *State v. Gutierrez*, 1993-NMSC-062, ¶ 56, 116 N.M. 431, 863 P.2d 1052, becomes an “accomplice[] to unconstitutional executive conduct.” Defendant further quotes our caution in *Gutierrez* that “[t]he real and perceived affront to the integrity of the New Mexico judiciary is a critical state interest that militates in favor of the exclusionary rule.” *Id.* In the context of a preliminary hearing, we think Defendant is incorrect.

{26} In *Gutierrez*, this Court rejected the use of illegally obtained evidence at trial as contrary to the New Mexico Constitution. *Gutierrez*, 1993-NMSC-062, ¶ 56. Our opinion does not alter or undermine the *Gutierrez* trial stage protections. And the use of illegal evidence for the ultimate determination of guilt or innocence has very different implications than the use of such evidence at a preliminary hearing because the later protections of Defendant’s right to exclude illegal evidence still exist in full force. Our ruling today does not require district court judges to participate in rights violations, contrary to Defendant’s claim.

C. The New Mexico Constitution Does Not Provide the Right at a Preliminary Hearing to Exclude Evidence Obtained From an Unconstitutional Search or Seizure

{27} Defendant’s constitutional argument is somewhat tentative: arguing under Article II, Section 10 of the New Mexico

Constitution, Defendant states that “New Mexico’s law on the exclusionary rule strongly suggests that it attaches at the preliminary hearing stage.” (Emphasis added.) We take Defendant’s argument to be that Article II, Section 10 provides defendants with the right to exclude illegally obtained evidence at preliminary hearings.

{28} When analyzing a claim of right under the New Mexico Constitution, we apply the interstitial approach. *State v. Gomez*, 1997-NMSC-006, ¶ 21, 122 N.M. 777, 932 P.2d 1. “Under the interstitial approach, the court asks first whether the right being asserted is protected under the federal constitution. If it is, then the state constitutional claim is not reached. If it is not, then the state constitution is examined.” *Id.* ¶ 19. The state constitution may provide additional protections “for three reasons: a flawed federal analysis, structural differences between state and federal government, or distinctive state characteristics.” *Id.*

{29} Before addressing Defendant’s specific arguments, we note three points. First, Defendant asserts that there is no “clear authority on whether the Fourth Amendment exclusionary rule applies at a preliminary hearing.” We disagree. There clearly is no federal right to exclude illegally obtained evidence at a preliminary hearing. *See* Fed. R. Crim. P. 5.1(e) (“At the preliminary hearing, the defendant . . . may not object to evidence on the ground that it was unlawfully acquired.”); *see also Giordenello v. United States*, 357 U.S. 480, 484 (1958) (holding that the court was without power at preliminary hearing to determine the admissibility of heroin taken from the defendant’s person). Second, *Lopez* shows that not all constitutional rights are available at a preliminary hearing. 2013-NMSC-047, ¶ 26 (“[T]he right of confrontation . . . is a trial right that does not apply to probable cause determinations in preliminary examinations.”). Third, *Martinez* shows that there is no broad right to suppress evidence at the probable cause stage under the New Mexico Constitution. *See* 2018-NMSC-031, ¶¶ 22, 39. In light of these three considerations, Defendant has a narrow path to walk.

{30} Because the Fourth Amendment does not protect the right that Defendant asserts, we examine Article II, Section 10. Defendant does not appear to argue that Article II, Section 10 should be read more expansively than the Fourth Amendment because the federal analysis is flawed or that there are structural differences between state and federal government. Instead, we understand Defendant to argue that New Mexico has distinct state characteristics in that (1) Article II, Section 10 provides a substantive right to the

exclusion of illegally obtained evidence as recognized in *State v. Gutierrez*, 1993-NMSC-062; (2) *Gutierrez* states “that the New Mexico constitutional prohibition against unreasonable searches and seizures requires that we deny the state the use of evidence obtained in violation of Article II, Section 10 in a criminal proceeding,” *id.* ¶ 45 (emphasis added); and (3) a preliminary hearing is a criminal proceeding. Amicus Curiae substantially agrees with this argument and adds that failure to exclude illegally obtained evidence at the preliminary hearing stage would “[c]arve[] out a procedural ‘free fire zone’ where law enforcement’s violations of the constitution are ignored.”

{31} We agree with Defendant and Amicus that there is a salient difference between the exclusionary rule in New Mexico and its federal counterpart, in that we have recognized the exclusionary rule as part of the Article II, Section 10 right to be free from unreasonable search and seizure. *Compare Gutierrez*, 1993-NMSC-062, ¶ 50 (“The constitutional right to be free from unreasonable search and seizure includes the exclusionary rule.” (emphasis omitted)), and *id.* ¶ 53 (“The approach we adopt today focuses not on deterrence or judicial integrity, nor do we propose a judicial remedy; instead, our focus is to effectuate in the pending case the constitutional right of the accused to be free from unreasonable search and seizure.”), with *United States v. Calandra*, 414 U.S. 338, 348 (1974) (holding that “the [federal exclusionary] rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved”). We do not retreat from our holding in *Gutierrez* in this case.

{32} However, the strength of the personal right to the exclusionary rule in New Mexico does not mandate the timing for a suppression motion. The statement in *Gutierrez* that we must deny the state the use of illegally obtained evidence “in a criminal proceeding,” must be understood in the larger context of that case. 1993-NMSC-062, ¶ 45. *Gutierrez* arose from the district court’s suppression of evidence after a suppression hearing. *Id.* ¶ 7. No suppression issue was raised in that case at an earlier stage than the suppression hearing, and therefore *Gutierrez* cannot be read to require suppression at an earlier stage. *See Dominguez v. State*, 2015-NMSC-014, ¶ 16, 348 P.3d 183 (“[C]ases are not authority for propositions not considered.” (internal quotation marks and citation omitted)). Moreover, we read *Gutierrez*’s requirement for exclusion “in a criminal proceeding” to refer more generally to the entire criminal case rather than each separate pretrial hearing. We expressly stated

that “[d]enying the government the fruits of unconstitutional conduct *at trial* best effectuates the constitutional proscription of unreasonable searches and seizures by preserving the rights of the accused to the same extent as if the government’s officers had stayed within the law.” *Gutierrez*, 1993-NMSC-062, ¶ 55 (emphasis added). From that statement, we infer that *Gutierrez* contemplated exclusion of illegally obtained evidence at the guilt determination stage.³ See also, e.g., *id.* ¶ 51 (noting that, in another case, it was constitutional error to admit illegally obtained evidence “upon the trial” of the defendant (quoting *Weeks v. United States*, 232 U.S. 383, 398 (1914))). Therefore, Defendant’s reliance on *Gutierrez* is unavailing. Because Defendant does not point to any other distinctive state characteristics, we are not persuaded that Article II, Section 10 supports the right to exclude illegally obtained evidence at a preliminary hearing.

D. Response to the Dissent

{33} The dissent contends that the ruling established today by the majority “ignores a judge’s duty to protect a defendant’s constitutional rights.” *Dissent* ¶ 67; see also *dissent* ¶ 42 (stating that this Court “fails to acknowledge the fundamental importance of protecting the constitutional rights of the accused”). It does nothing of the sort. The majority opinion simply reserves any question regarding the legality by which the evidence was obtained for a later date than the preliminary hearing when the matter can be carefully considered.

{34} Defendants have an existing pretrial mechanism to vindicate their right to be free from unconstitutional searches and seizures: a motion to suppress. See Rule 5-212. Today’s ruling does nothing to diminish this remedy or change the majority’s commitment to protecting the right to be free from unconstitutional searches and seizures. Although one might not know it from the dissent, the sky has not fallen. A preliminary hearing bindover based on illegally obtained evidence, unlike a bindover based on other inadmissible evidence (e.g., hearsay), will not force the defendant to trial on incompetent evidence. 4 LaFave, *supra*, § 14.4(b).

{35} Our federal courts follow the approach established by the majority in this opinion. Fed. R. Crim. P. 5.1 (stating that

the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired); see also Fed. R. Crim. P. 5.1 advisory committee notes (“[S]ubdivision (a) [of Fed. R. Crim. P. Rule 5.1] provides that the preliminary examination is not the proper place to raise the issue of illegally obtained evidence. This is current law.” (citing *Giordenello v. United States*, 357 U.S. 480, 484 (1958))). And according to a leading commentator, “[t]he majority position refus[es] to allow exclusionary rule objections [at preliminary hearings].” 4 LaFave, *supra*, § 14.4(b), at 392 (emphasis added). Thus, the majority of judges across the country, including all of our federal judges, conduct preliminary hearings without addressing the exclusion of illegally obtained evidence. The dissent provides no substantive support for its position that the ruling announced today, which conforms with the federal practice and the majority of jurisdictions, would result in the judiciary ignoring their duty as judges, undermine the very fabric of our legal principles, and compromise the integrity of our justice system. See *dissent* ¶¶ 45, 67 (“Failing to consider the constitutionality of evidence undermines the very fabric of our legal principles and compromises the integrity of our justice system.”). Instead, they rely on broad rhetoric including heavy reliance on *United States v. MounDay*, 208 F. 186 (D. Kan. 1913), a district of Kansas case dating back to 1913.

{36} The essential question answered is whether a defendant’s clear interest in being unburdened from a nonviable prosecution as early as possible, which we recognize outweighs the jurisprudential problems involved in determining suppression issues at a preliminary hearing. See *maj. op.* ¶¶ 20-22 (noting that preliminary hearings must be held and adjudicated within ten days, discovery is limited to the evidence in the State’s possession, and that the preliminary hearing rule does not provide for briefing). The instant case pointedly illustrates why a preliminary hearing is an inappropriate stage of litigation to consider exclusionary rule objections.

{37} In the preliminary hearing in this case, no law was cited to the district court

to help determine whether the opiates found in Defendant’s possession were fruit of the poisonous tree and therefore subject to suppression. The dissent quotes the district court’s conclusion that “[t]here’s no reasonable suspicion to even stop [Defendant] . . . so [the case] won’t be bound over” and then states approvingly that “the district court . . . took into account the constitutionality of the evidence’s procurement, weighed the evidence, and then made a probable cause determination.” *Dissent* ¶ 44. That said, based on the sparse record developed soon after a filing of the information setting forth the charges, the dissent is ready to rule.

{38} However, one unaddressed issue in the district court was whether the attenuation exception to the exclusionary rule applies, given that the officer discovered a valid warrant after the stop. In *Utah v. Strieff*, the United States Supreme Court established that the attenuation exception can apply when, after initiating an unconstitutional investigatory stop, an officer discovers a valid arrest warrant and then seizes incriminating evidence during the search incident to the arrest. 579 U.S. 232, 235 (2016).⁴ Our Court of Appeals has applied the *Strieff* attenuation framework three times, two of which are formal opinions.⁵ Yet, none of these cases were brought to the attention of the district court during the preliminary hearing. Nor was the attenuation exception to the exclusionary rule brought to the court’s attention. In fact, there was no mention of this issue at the preliminary hearing.

{39} District court judges need the benefit of briefing, time, and a sufficient record to decide complex suppression issues. Asking trial courts to adjudicate these issues based on intuition and generalities, as the dissent does, rather than law is inappropriate. In the long run, that does not do justice to defendants, the state, the judiciary, or, ultimately, the people of New Mexico. The better path is for these issues to receive a full, fair, and focused suppression hearing, with the benefit of briefing, sufficient time, and a fully developed record.

III. CONCLUSION

{40} We hold that a district court judge has no authority at a Rule 5-302 preliminary examination to decide whether evidence was obtained from an unconstitu-

³ We leave for another day the question raised by Defendant of whether the exclusionary rule applies at a preliminary hearing to statements obtained in violation of the Fifth Amendment and/or Article II, Section 15 of the New Mexico Constitution protections against self-incrimination. See, e.g., *Vogt v. City of Hays*, 844 F.3d 1235, 1241-42 (10th Cir. 2017) (holding that statements obtained in violation of the Fifth Amendment must be suppressed at preliminary hearing). This case only requires that we determine whether evidence may be suppressed at a preliminary hearing when the evidence was obtained through an unreasonable search and seizure in violation of Article II, Section 10.

⁴ The skeletal facts of *Strieff* are very much like the facts in this case. In *Strieff*, an officer stopped the defendant without reasonable suspicion. 579 U.S. at 235-36, 239. During the illegal investigatory stop, the officer discovered that the suspect had a valid arrest warrant. *Id.* at 235. The officer then discovered illegal drugs and drug paraphernalia when conducting a search incident to arrest. *Id.* at 235-36. The defendant was charged with unlawful possession of the drug-related materials. *Id.* at 236.

tional search or seizure, and we remand for proceedings consistent with this opinion.

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

DAVID K. THOMSON, Justice

WE CONCUR:

JULIE J. VARGAS, Justice

BRETT R. LOVELESS, Judge

Sitting by designation

C. SHANNON BACON, Chief Justice, dissenting

MICHAEL E. VIGIL, Justice, dissenting

VIGIL, Justice (dissenting).

I. INTRODUCTION

{42} According to the majority, a district court judge conducting a preliminary examination⁶ “should receive the evidence and give it such weight as his judgment and experience counsel,” *maj. op.* ¶ 23 (quoting *United States v. Matlock*, 415 U.S. 164, 175 (1974)); however, the judge “has no authority to decide whether evidence was obtained from an unconstitutional search or seizure,” *maj. op.* ¶ 1. This contradictory conclusion clashes with basic principles enshrined in the New Mexico Constitution and fails to acknowledge the fundamental importance of protecting the constitutional rights of the accused. We cannot agree to such a conclusion.

{43} The majority characterizes a district court judge’s consideration of the constitutionality of evidence in a preliminary examination as a “suppression issue.” *Maj. op.* ¶ 32. Granted, the evidence is suppressed for the purposes of the preliminary examination, but this does not necessarily mean the evidence is suppressed for the trial itself. A preliminary examination and a trial are distinct proceedings, each with its own set of rules and considerations. *See State v. Garcia*, 1968-NMSC-119, ¶ 5, 79 N.M. 367, 443 P.2d 860. Moreover, the issue of whether a suppression ruling in a preliminary examination has preclusive effect on the subsequent trial and other procedural issues are not before us. We are confident that our Rules of Criminal Procedure for the State Courts Committee could amend Rule 5-302 NMRA to address any procedural concerns that may arise in the future.

{44} The issue at hand is one of authority and the proper weighing of evidence. Here, the district court judge stated that she would not bind the case over “for a number of reasons.” The district court judge explained,

There was no reason to detain [Defendant] to begin with, I mean that’s what I’m finding. There’s no reason. [Defendant] wasn’t doing illegal activity, he complied with the orders. [The officer] recognized him I understand that, but he wasn’t doing anything. There’s no reasonable suspicion to even stop him. [The officer] called him out by name; [Defendant] complied. He wasn’t doing any criminal activity at that time so [the case] won’t be bound over.

Thus, the district court, in its wisdom, took into account the constitutionality of the evidence’s procurement, weighed the evidence, and then made a probable cause determination. Such actions are well within the purview of a district court judge’s authority and duty.

{45} It is incumbent upon judges to safeguard constitutional rights and ensure that justice is served. *See State v. Gutierrez*, 1993-NMSC-062, ¶ 55, 116 N.M. 431, 863 P.2d 1052 (“The very backbone of [the judiciary’s] role in a tripartite system of government is to give vitality to the organic laws of this state by construing constitutional guarantees in the context of the exigencies and the needs of everyday life.”). Failing to consider the constitutionality of evidence undermines the very fabric of our legal principles and compromises the integrity of our justice system. *See id.* ¶¶ 50-56 (explaining that the exclusionary rule is not based on judicial integrity or deterrence, yet it undeniably promotes these crucial state policies).

{46} In light of these concerns, we respectfully dissent.

II. DISCUSSION

{47} A district court, entrusted with the solemn task of dispensing justice, has the authority to assess the constitutionality of evidence during a preliminary examination. The reasoning behind our assertion is firmly rooted in the authority provided to district courts under the New Mexico Constitution and our Rules of Criminal Procedure for District Courts, a judge’s duty to protect constitutional rights, the disparities between a preliminary examination and a grand jury proceeding, and this Court’s core interpretation of Article II, Section 10 of the New Mexico Constitution.

A. A Judge’s Authority

{48} Under the New Mexico Constitution, district courts are explicitly granted the power to hold preliminary examinations. The New Mexico Constitution unequivocally states that the judicial power of the state is vested in various courts, including district courts, N.M. Const. art. VI, § 1, which possess “original jurisdiction in all matters and causes not excepted in [the New Mexico Constitution], and such jurisdiction of special cases and proceedings as provided by law.” N.M. Const. art. VI, § 13. One such proceeding is a preliminary examination. *See* N.M. Const. art. VI, § 21 (“District judges and other judges or magistrates designated by law may hold preliminary examinations in criminal cases.”); *see also* N.M. Const. art. II, § 14 (“No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.”). Further, with regard to a district court’s original jurisdiction, “the district court has the authority to consider constitutional claims in the first instance.” *Maso v. N.M. Tax’n & Revenue Dep’t, Motor Vehicle Div.*, 2004-NMCA-025, ¶ 14, 135 N.M. 152, 85 P.3d 276; *see Marchman v. NCNB Texas Nat’l Bank*, 1995-NMSC-041, ¶ 27, 120 N.M. 74, 898 P.2d 709 (“The district court thus is a court of general jurisdiction, because it has jurisdiction over all matters not expressly consigned to other courts.”).

{49} In light of these constitutional provisions, it becomes abundantly clear that district courts possess the authority to hold preliminary examinations and consider constitutional issues. This authority is not only granted by the New Mexico Constitution, but it is also recognized as an essential aspect of our judicial system. *See State ex rel. Whitehead v. Vescovi-Dial*, 1997-NMCA-126, ¶ 6, 124 N.M. 375, 950 P.2d 818 (“[A] preliminary examination operates as a screening device to prevent hasty and unwise prosecutions and to save an innocent accused from the humiliation and anxiety of a public prosecution.”).

{50} Additionally, our Rules of Criminal Procedure for the District Courts clarify that district courts have the responsibility and authority to adjudicate evidentiary issues during preliminary examinations. *See* Rule 5-302(D) (requiring the court to make a probable cause determination); *see also* Rule 5-302(B)(5) (providing that the

⁵ *State v. Ramey*, 2020-NMCA-041, ¶¶ 1, 6, 19-28, 473 P.3d 13 (engaging in the attenuation analysis and citing *Strieff*, where the defendant was assumed to be seized without reasonable suspicion, followed by the discovery of a valid arrest warrant and a search incident to arrest leading to the seizure of incriminating evidence); *State v. Edwards*, 2019-NMCA-070, ¶¶ 1, 4, 6-12, 452 P.3d 413 (similar); *State v. Baca*, A-1-CA-36722, mem. op. ¶¶ 3-8 (N.M. Ct. App. Jan. 7, 2020) (nonprecedential) (similar).

⁶ For consistency with the language in our Constitution (N.M. Const. art. II, § 14; art. VI, § 21) and Rule 5-302 NMRA, this dissent uses the term preliminary examination to refer to the proceeding at issue in this case. We note that the majority uses the term preliminary hearing to refer to the same proceeding.

Rules of Evidence apply in a preliminary examination). This includes weighing the evidence presented “and assess[ing] the existence of probable cause from a developed factual record.” *State v. Muraida*, 2014-NMCA-060, ¶ 23, 326 P.3d 1113; see *State v. Archuleta*, 1970-NMCA-131, ¶ 25, 82 N.M. 378, 482 P.2d 242 (stating that where the “defendant was charged by an information, he ha[s] a constitutional right to a preliminary examination”); see also UJI 14-8001 NMRA (instructing grand jurors that a decision on probable cause must be based “solely upon the evidence received” which may be determined to be “true or false” and given “whatever weight . . . it deserves”). Thus, district court judges are empowered by our own rules to conduct preliminary examinations, adjudicate evidentiary issues, weigh the evidence presented, and make probable cause determinations. See *Muraida*, 2014-NMCA-060, ¶ 23. And, in exercising its original jurisdiction, district courts have “the authority to consider constitutional claims in the first instance.” *Maso*, 2004-NMCA-025, ¶ 14.

{51} While the majority acknowledges the existence of this authority, *maj. op.* ¶¶ 20, 23, it still questions whether district courts may consider the constitutionality of the evidence in making a probable cause determination. The answer is a resounding yes. It is the duty of every judge, including those presiding over preliminary examinations, to ensure that the constitutional rights of a defendant are upheld. They are empowered and equipped to do so.

B. A Judge’s Duty

{52} On numerous occasions, this Court has emphasized that a judge must “protect the constitutional rights of [a] defendant and the integrity of the court.” *State v. Hildreth*, 2022-NMSC-012, ¶ 38, 506 P.3d 354; see *State v. Grogan*, 2007-NMSC-039, ¶ 10, 142 N.M. 107, 163 P.3d 494 (providing that “in cases of obvious ineffective assistance of counsel, the trial judge has the duty to maintain the integrity of the court, and thus inquire into the representation”). This duty to protect the constitutional rights of a defendant is no less applicable in the context of a preliminary examination. See *State v. Vaughn*, 1964-NMSC-158, ¶ 9, 74 N.M. 365, 393 P.2d 711 (“When violation of a constitutional right in the proceedings before the magistrate is brought to the attention of the trial court and found to exist, the accused’s right and the court’s duty is to abate the information until there has been a proper preliminary examination.” (emphasis added)). Consequently, it is not only a prerogative but also an obligation of a judge to consider the constitutionality of the evidence presented in a preliminary examination.

{53} As guardians of justice, judges must

carefully evaluate the evidence presented and assess its legality. If judges—in their experience and judgment—believe that evidence was obtained in an unconstitutional manner, they have the authority and duty to give that evidence little, if any, weight in making a probable cause determination. Such a duty is consistent with the constitutional requirement that “every person elected or appointed to any office shall . . . subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.” N.M. Const. art. XX, § 1.

{54} Moreover, when we examine the substantial differences between a preliminary examination and a grand jury proceeding, the importance of weighing the constitutionality of the evidence becomes ever more apparent. This is because preliminary examinations provide crucial procedural safeguards and afford defendants a range of rights that are not present in a grand jury setting.

C. Preliminary Examinations and Grand Jury Proceedings

{55} Before detailing the disparities between a preliminary examination and a grand jury proceeding, some context is necessary. To charge a defendant with a felony, the state may either obtain an indictment from a grand jury or file a criminal information. See N.M. Const. art. II, § 14. “If charged by criminal information, a defendant has a right to a preliminary examination. No such right exists if the defendant is indicted by a grand jury.” *State v. Burk*, 1971-NMCA-018, ¶ 2, 82 N.M. 466, 483 P.2d 940. “The choice to proceed by information or indictment is that of the [s]tate.” *Id.* ¶ 6. “The state may choose to seek a grand jury indictment for the same offense following an unfavorable preliminary examination.” *State v. White*, 2010-NMCA-043, ¶ 12, 148 N.M. 214, 232 P.3d 450.

{56} Our Court of Appeals correctly stated that “[t]he primary purpose of the preliminary examination is to provide an independent evaluation of whether the state has met its burden of demonstrating probable cause.” *Whitehead*, 1997-NMCA-126, ¶ 5. Importantly, the New Mexico Constitution “provides . . . for a preliminary examination as a right which is personal to the accused, for his or her benefit, and accordingly one which is waivable in its entirety by the defendant and not enforceable independently by the prosecution.” *Id.* ¶ 12; see N.M. Const. art. II, § 14. This personal right of the accused to a preliminary examination is included in the Bill of Rights of the New Mexico Constitution, “stand[ing] shoulder to

shoulder with the most basic guarantees of individual liberty against the power of the state, such as the right of self-government ([N.M. Const.] art. II, § 3), the right to life, liberty and property ([N.M. Const.] art. II, § 4), the right of habeas corpus ([N.M. Const.] art. II, § 7), the right to bear arms ([N.M. Const.] art. II, § 6), the freedom of elections ([N.M. Const.] art. II, § 8), . . . the freedoms of speech, press, and religion ([N.M. Const.] art. II, §§ 11, 17),” *Whitehead*, 1997-NMCA-126, ¶ 12, and notably, the right to be free from an unreasonable search and seizure (N.M. Const. art. II, § 10). These are all “guarantees of liberty to be invoked by the accused in a criminal prosecution, as the accused sees fit.” *Whitehead*, 1997-NMCA-126, ¶ 12. With this important context, we now turn to the many differences between a preliminary examination and a grand jury proceeding.

{57} A preliminary examination is a critical stage of the criminal proceedings against an accused, *Vaughn*, 1964-NMSC-158, ¶ 3, where “the state is required to establish, to the satisfaction of the examining judge, two components: (1) that a crime has been committed; and (2) probable cause exists to believe that the person charged committed it,” *White*, 2010-NMCA-043, ¶ 11. Preliminary examinations are adversarial in nature and open to the public. *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 16, 328 P.3d 1176. The defendant plays an active role and is permitted rights necessary to test the state’s case. *Id.* These include the right to be present with counsel throughout the proceeding, to cross-examine the State’s witnesses, to call and subpoena witnesses on the defendant’s own behalf, and to access any evidence in the prosecution’s possession that is material in the preparation of the defense. Rule 5-302(B)(1)-(4). Also, the New Mexico Rules of Evidence apply. Rule 5-302(B)(5). Notably, the committee commentary for Rule 5-302 stresses that these procedures and rights afforded to a defendant are “not intended to be a comprehensive list of the defendant’s rights.”

{58} Unlike the public and adversarial nature of preliminary examinations, grand jury proceedings are secretive and one-sided. *Herrera*, 2014-NMSC-018, ¶ 16. On the one hand, the prosecutor controls the grand jury process. *Id.* The prosecutor questions witnesses, presents evidence, and instructs the grand jury on the law and its application. *Id.* ¶¶ 15-16. On the other hand, the target of the grand jury proceeding has limited rights: the target can choose to testify, see NMSA 1978, § 316-11(C)(3)-(5) (2003), request the prosecutor inform the grand jury of exculpatory evidence and possible defenses, see § 31-6-11(B), and consult with counsel

in a manner that is not audible to the grand jurors, *see* NMSA 1978, § 31-6-4(D) (2003). Other than this silent consultation, the target's attorney may not participate in the proceedings. *Id.* Moreover, "[t]he grand jury sits without direct supervision from the grand jury judge," *Herrera*, 2014-NMSC-018, ¶ 15, and the rules of evidence do not apply, Section 31-6-11(A).

{59} This stark contrast between the rights afforded, the nature of the proceedings, the application of the rules of evidence, and a judge's involvement, counsels in favor of adopting a rule that district court judges have authority to take into account the constitutionality of the evidence's procurement during a preliminary examination. These disparities, in concert with the authority granted to district court judges under the New Mexico Constitution and their duty to protect a defendant's constitutional rights, strongly support the adoption of such a rule. Furthermore, the adoption of this rule seems inevitable given this Court's core interpretation of Article II, Section 10.

D. Article II, Section 10

{60} We now turn to this Court's precedent, particularly *Gutierrez*, 1993-NMSC-062, and its interpretation of Article II, Section 10. As will soon be clear, the majority's conclusion is in direct opposition to the *Gutierrez* Court's ruling, rationale, and understanding of the exclusionary rule.

{61} In *Gutierrez*, this Court analyzed "whether the New Mexico Constitution contemplates a good-faith exception to the exclusionary rule." 1993-NMSC-062, ¶ 15. The *Gutierrez* Court concluded that the federal good-faith exception was incompatible with the New Mexico Constitution. *Id.* ¶ 45. In arriving at this conclusion, the Court thoroughly examined the history and application of the federal exclusionary rule, New Mexico search and seizure jurisprudence, the framers' intent as to the scope, meaning, and effect of Article II, Section 10, and search and seizure law as it was in 1911. *Gutierrez*, 1993-NMSC-062, ¶¶ 16-43. In the end, the *Gutierrez* Court held that at its core, the "constitutional prohibition against unreasonable searches and seizures requires that we deny the state the use of evidence obtained in violation of Article II, Section 10 in a criminal proceeding." *Gutierrez*, 1993-NMSC-062, ¶ 45.

{62} The *Gutierrez* Court, *id.* ¶ 46, observed that "[a]s a starting point, Article II, Section 10 expresses the fundamental notion that every person in this state is entitled to be free from unwarranted governmental intrusions." The Court explained that "[t]his broad right . . . implicit in Article II, Section 10, considered in the context of criminal prosecution brought to bear after violation of that right," was

paramount to its rejection of the federal good-faith exception. 1993-NMSC-062, ¶ 46. The *Gutierrez* Court, *id.* ¶¶ 48-50, then utilized two cases to illustrate "the essential core" of its interpretation of Article II, Section 10—*United States v. MounDay*, 208 F. 186 (D. Kan. 1913) and *United States v. Wong*, 94 F. 832 (D. Vt. 1899). *MounDay* is particularly illuminating to the issue at hand.

{63} In *MounDay*, the defendants were arrested and private property was seized pursuant to an unconstitutional search. 208 F. at 186-87. "Thereafter [the] defendants were bound over to await the action of the grand jury." *Id.* at 187. After the arrest, but prior to the grand jury indictment, the defendants in *MounDay* filed an application to the district court requesting that the unconstitutionally obtained evidence be returned. *Id.* The district attorney filed a cross-application requesting authorization to present the illegally obtained evidence to the grand jury to secure an indictment. *Id.* The question before the *MounDay* Court was whether the state in a criminal prosecution may use illegally obtained evidence for the purpose of securing an indictment when "the question is presented and inquired of . . . in advance of investigation by the grand jury, or indictment returned[.]" *Id.* at 188. The *MounDay* Court concluded that the evidence could not be used either "before the grand jury or at the trial," and it granted the defendants' application and ordered the property to be returned. *Id.* at 190. The *MounDay* Court stated its rationale:

How, therefore, can the rights of defendants "to be secure in their persons, houses, papers and effects" be asserted by and granted to them, as the Constitution guarantees, in this court? Can it be done by placing in the hands of the government officials charged by law with the prosecution of defendants as offenders against its laws the fruits of this unlawful invasion of constitutional rights of defendants by the agents of the government, and this in the very teeth of that provision of article 5 above quoted, which declares "no person . . . shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law"? As yet, defendants stand charged with the commission of no criminal offense in this court. Even if so charged, this court must and will presume their innocence until the contrary is proven beyond reasonable doubt. In order to secure such proof and assist

the government in overcoming the presumption of innocence which attends upon defendants and all other citizens until lawful conviction had, shall this court wink at the unlawful manner in which the government secured the proofs now desired to be used, and condone the wrong done defendants by the ruthless invasion of their constitutional rights, and become a party to the wrongful act by permitting the use of the fruits of such act? Such is not my conception of the sanctity of rights expressly guaranteed by the Constitution to a citizen.

MounDay, 208 F. at 189.

{64} The *Gutierrez* Court quoted with approval the language above and expressed that it "suggest[s] the essential core of [the Court's] interpretation of Article II, Section 10." 1993-NMSC-062, ¶¶ 48, 50. The Court elaborated: "We ask, much as the court in *MounDay* asked, how this Court can effectuate the constitutional right to be free from unreasonable search and seizure. The answer to us is clear: to deny the government the use of evidence obtained pursuant to an unlawful search." *Id.* ¶ 50.

{65} *Gutierrez* teaches that at its core, Article II, Section 10 conveys a "broad right" to every person in this state "to be free from unwarranted governmental intrusions." *Id.* ¶ 46. It is not a right that is incumbent on a criminal prosecution or a phase where guilt or innocence is definitively determined. It is "a passive right" that all carry with them; it "lies in waiting, to curb the state's zeal in execution of the criminal laws." *Id.* ¶ 54. As succinctly stated by Chief Justice Bacon during oral argument, "We are talking about a constitutional right that we carry on our backs everywhere we go. Unlike many constitutional rights which are triggered once action is taken, this is something that we are imbued with in our everyday lives." The only way for this Court, or a district court for that matter, to "effectuate the constitutional right to be free from unreasonable search and seizure . . . is . . . to deny the government the use of evidence obtained pursuant to an unlawful search." *Id.* ¶ 50. This includes the use of illegally obtained evidence to get a probable cause determination in a preliminary examination.⁷

E. The Majority Opinion

{66} The majority acknowledges that "[t]he structure of a preliminary [examination] is indeed very different from that of a grand jury proceeding," *maj. op.* ¶ 12; however, the majority does not wish "to add further imbalance between these two related alternatives for probable cause findings," *maj. op.* ¶ 16, by ruling that a district court judge has the authority to

consider the constitutionality of evidence in a preliminary examination. This procedural concern is unconvincing for several reasons.

{67} First, the differences between a preliminary examination and a grand jury proceeding already incentivize the state to proceed by grand jury indictment. See *Burk*, 1971-NMCA-018, ¶ 5. Such is the state's prerogative. *Id.* ¶ 2. Second, the majority's conclusion ignores a judge's duty to protect a defendant's constitutional rights. See *Gutierrez*, 1993-NMSC-062, ¶ 55. Third, to "wink at the unlawful manner in which the government secured the proofs now desired to be used, and condone the wrong done [to Defendant] by the ruthless invasion of [his] constitutional rights, and become a party to the wrongful act by permitting the use of the fruits of such act," *MounDay*, 208 F. at 189, runs counter to this Court's holding in *Gutierrez*, 1993-NMSC-062.

{68} Next, the majority claims that if we were to allow district court judges to consider the legality of evidence in a preliminary examination, the judge's determinations would then be subject to appeal, causing significant delays. *Maj. op.* ¶ 21. To this point, the majority notes that Defendant's appeal relates to a preliminary examination which occurred more than three years ago. *Maj. op.* ¶ 21. However, this procedural argument suffers the same infirmities described above. What is more, the State in this case did not appeal from an order suppressing evidence, see NMSA 1978, § 39-3-3(B)(2) (1972), instead the State appealed pursuant to Section 39-3-3(B)(1), which is "a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts." Thus, this avenue of appeal is undisturbed by any rule this Court articulates today. Also, we again question characterizing the district court judge's consideration on the constitutionality of evidence as a suppression of evidence. See *maj. op.* ¶ 32. There was no order suppressing evidence. Because of this, we view the district court's actions as making a probable cause determination based on the evidence presented and taking into consideration the constitutionality of the evidence's procurement in making its determination. As reflected above, such actions are within a district judge's authority and duty.

{69} Aside from these procedural concerns, the majority makes three substantive points in support of its position: (1) *State v. Lopez*, 2013-NMSC-047, 314 P.3d 236, "shows that not all constitutional rights are available at a preliminary [examination]," (2) "*Martinez* shows that there is no broad right to suppress evidence at the probable cause stage under the New Mexico Constitution," and (3) "*Gutierrez* cannot be read to require suppression" of evidence at a stage earlier than that of a suppression hearing. *Maj. op.* ¶¶ 29-32. We disagree with the conclusions drawn from these cases. We address each point in turn. {70} In *Lopez*, this Court held "that the right of confrontation in Article II, Section 14 of the New Mexico Constitution is a trial right that does not apply to probable cause determinations in preliminary examinations." 2013-NMSC-047, ¶ 26. This makes sense. The right of confrontation prohibits the "admission of testimonial statements of a witness *who did not appear at trial* unless he was unavailable to testify, and the defendant ha[s] had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004) (emphasis added). Thus, a violation of the right is *triggered* when the witness is absent from trial and the defendant was given no prior opportunity to cross-examine. See *id.* at 59 n.9 ("Finally, we reiterate that, when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements."). This is not the case for the right to be free from an unreasonable search and seizure.

{71} A violation of the right to be free from an unconstitutional search and seizure is not dependent on some event at trial. The right is violated at the time of the unconstitutional search and seizure. See *Soldal v. Cook Cnty.*, 506 U.S. 56, 67 n.11 (1992) ("Fourth Amendment guarantees are triggered by governmental searches and seizures without regard to the use to which houses, papers, and effects are applied" (brackets, internal quotation marks, and citation omitted)); see also *Gutierrez*, 1993-NMSC-062, ¶ 46 ("As a starting point, we observe that Article II, Section 10 expresses the fundamental notion that every person in this state is entitled to be free from unwarranted governmental intrusions."). Surely the majority would

not suggest that Article II, Section 10 protections only attach at trial in a criminal prosecution or a phase where guilt or innocence is definitively determined.

{72} To the majority's second point, it is not at all clear how the majority can conclude "*Martinez* shows that there is no broad right to suppress evidence at the probable cause stage," *maj. op.* ¶ 29, and in the same breath "conclude that the grand jury analysis in *Martinez* does not control the result in this case," *maj. op.* ¶ 14. To the extent it is argued that *Martinez* has bearing on this case, we refer to the above analysis on the disparities between preliminary examinations and grand jury proceedings.

{73} The majority's final point is that *Gutierrez* does not compel the exclusion of evidence obtained in violation of Article II, Section 10 before a suppression hearing. *Maj. op.* ¶ 32. It reasons that because *Gutierrez* did not involve such a scenario, its pronouncement that we must bar the state from using unlawfully seized evidence "in a criminal proceeding," must be confined to the facts of that case. *Maj. op.* ¶ 32 (quoting *Gutierrez*, 1993-NMSC-062, ¶ 45). We urge the majority to follow its own counsel and appreciate the broader principle *Gutierrez* established.

{74} The majority latches onto the two times the *Gutierrez* Court utilized language beneficial to its position. See *maj. op.* ¶ 32. First, when the *Gutierrez* Court used the language "at trial," and second, when the Court quoted *Weeks v. United States*, 232 U.S. 383, 398 (1914) and its use of the language "upon the trial." *Gutierrez*, 1993-NMSC-062, ¶¶ 51, 55; see *maj. op.* ¶ 32. Close examination of the context in which the quoted language was used demonstrates it does not support the majority position.

{75} Immediately preceding the use of the language "at trial," the *Gutierrez* Court explains that the only way "this Court can effectuate the constitutional right to be free from unreasonable search and seizure . . . is . . . to deny the government the use of evidence obtained pursuant to an unlawful search." 1993-NMSC-062, ¶ 50. Over and over again, the *Gutierrez* Court announced a broad, sweeping rule to deny the government's use of evidence obtained in violation of Article II, Section 10. This comprehensive rule is sufficient to

⁷ We note that this conclusion is consistent with this Court's holding in *State v. Martinez*, 2018-NMSC-031, ¶ 1, 420 P.3d 568, that "a court may not overturn an otherwise lawful grand jury indictment because of trial inadmissibility or improprieties in the procurement of evidence that was considered by the grand jury." The distinction between *Martinez* and *MounDay* is that, in the latter case, the question of the legality of evidence was presented to a judge prior to obtaining a grand jury indictment. Thus, while a district court does not have the authority to overturn an otherwise lawful grand jury indictment which is based on illegal evidence, it does have the authority and duty to consider constitutional claims presented prior to an indictment. See *MounDay*, 208 F. at 188 ("Where it is conceded evidential matters material to the inquiry made have been seized, as in this case, may or should the court, on being inquired of, permit such use of such matters as is desired by the representative of the government, as is shown by his application in this case?" (emphasis added)).

encompass preliminary examinations. See *Gutierrez*, 1993-NMSC-062, ¶ 50. (“We ask, much as the court in *MounDay* asked, how this Court can effectuate the constitutional right to be free from unreasonable search and seizure. The answer to us is clear: to deny the government the use of evidence obtained pursuant to an unlawful search.”); *id.* ¶ 45 (“We are satisfied . . . that the New Mexico constitutional prohibition against unreasonable searches and seizures requires that we deny the state the use of evidence obtained in violation of Article II, Section 10 in a criminal proceeding.”); *id.* ¶ 46 (“As a starting point, we observe that Article II, Section 10 expresses the fundamental notion that every person in this state is entitled to be free from unwarranted governmental intrusions.”); *id.* ¶ 53 (“If, after consideration of the substantive constitutional issue, the court decides that the state has transgressed the constitutional rights of a person accused of a crime, we will not sanction that conduct by turning the other cheek.”); *id.* ¶ 54 (“Once violation of Article II, Section 10 has been established, we do no more than return the parties to where they stood before the right was violated.”). Additionally, by stating that *MounDay*—a case where the government was denied the use of illegally

obtained evidence before any suppression hearing, 208 F. at 189—“suggest[s] the essential core of our interpretation of Article II, Section 10,” the *Gutierrez* Court made clear that we are to deny the government the use of evidence obtained pursuant to an unlawful search at any stage in a criminal proceeding. 1993-NMSC-062, ¶ 50. {76} As for the quoted language in *Weeks*, the *Gutierrez* Court emphasized that the constitutional rights of the defendant in that case were violated not upon the use of illegally obtained evidence at trial, but when the court refused to return the defendant’s letters prior to trial:

We therefore reach the conclusion that . . . there was involved in the order refusing the application [for return of the seized property] a denial of the constitutional rights of the accused, and that the court should have restored these letters to the accused. In holding them and permitting their use upon the trial, we think prejudicial error was committed.

Gutierrez, 1993-NMSC-062, ¶ 51 (alterations in original) (internal quotation marks omitted) (quoting *Weeks*, 232 U.S. at 398). The *Gutierrez* Court emphasized

this language because it is wedded to the theory that the only way to vindicate the constitutional right to be free from unreasonable search and seizure is to deny the government the use of evidence obtained pursuant to an unlawful search. See *id.* ¶ 50 (“This, we believe, is the rationale at work in *Weeks*”). The majority’s reliance on the “upon the trial” language is thus misguided.

III. CONCLUSION

{77} Our position is that district court judges have both the power and the obligation to evaluate the constitutionality of evidence at a preliminary examination. This follows from the authority granted to district courts by the New Mexico Constitution and our Rules of Criminal Procedure, a judge’s responsibility to safeguard the constitutional rights of defendants, the differences between a preliminary examination and a grand jury proceeding, and this Court’s fundamental interpretation of Article II, Section 10 of the New Mexico Constitution. The majority does not share this view, so we respectfully dissent.

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

MICHAEL E. VIGIL, Justice

I CONCUR:

C. SHANNON BACON, Chief Justice

FORMAL OPINION

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No. A-1-CA-39686

ESPERANZA CASTRO,
Plaintiff-Appellant,

v.

JONES CONTRACTORS, INC.,

Defendant-Appellee,
and

JOSEPH E. SMITH,
Defendant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY

Raymond L. Romero, District Court Judge

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for Amicus Curiae

► Introduction of Opinion

Defendant Jones Contractors, Inc.'s employee, Joseph Smith, caused a car accident while driving to work in his personal vehicle, injuring Plaintiff.¹ Plaintiff filed suit alleging that Defendant was directly and vicariously liable for Smith's negligence. The district court granted summary judgment in favor of Defendant on Plaintiff's claims for respondeat superior, negligence, negligence per se, and negligent entrustment. The primary issue on appeal concerns Plaintiff's vicarious liability claim under the doctrine of respondeat superior. Applying the three-part test set forth in *Lessard v. Coronado Paint & Decorating Center, Inc.*, 2007-NMCA-122, ¶ 14, 142 N.M. 583, 168 P.3d 155, the district court concluded as a matter of law that Smith was not acting within the scope of employment when the accident occurred, and thus, Defendant could not be held vicariously liable for Smith's negligence. We conclude that conflicting inferences can be drawn as to whether Smith was within the scope of employment under the *Lessard* test, and therefore, the issue of respondeat superior liability must be determined by the fact-finder. Perceiving no error in the district court's handling of Plaintiff's other claims, we affirm in part, reverse in part, and remand for further proceedings.

Megan P. Duffy, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39686>

FORMAL OPINION

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

Filing Date: 11/20/2023

No. A-1-CA-40013

JOHNNY RAUL VALENZUELA,
Plaintiff-Appellee,

v.

**MY WAY HOLDINGS, LLC, a Nevada Limited
Company dba SUNLAND PARK RACETRACK and
CASINO, RICK BAUGH, JOHNNY P. LUNA,
MARTIN BUSTILLOS,**

Defendants-Appellants,
and

**VIOLET SMITH, in her individual capacity,
THE NEW MEXICO RACING COMMISSION; and
ISMAEL TREJO, EXECUTIVE DIRECTOR OF THE
NEW MEXICO RACING COMMISSION,
in his official capacity,**
Defendants.

**APPEAL FROM THE DISTRICT COURT
OF DOÑA ANA COUNTY**

Marci E. Beyer, District Court Judge

Daniel A. Marquez
El Paso, TX

Gene N. Chavez
Albuquerque, NM

for Appellee

Jennings Haug
Keleher Mcleod LLP
Thomas C. Bird
Deron B. Knoner
Ryan M. Walters
Albuquerque, NM
for Appellants

► Introduction of Opinion

In this case we interpret the scope of the jurisdiction granted to this Court by New Mexico’s statute prohibiting strategic litigation against public participation (Anti-SLAPP statute) expedited appeal provision, NMSA 1978, § 38-2-9.1(C) (2001), as well as considering the statute’s application under the circumstances. Appellants My Way Holdings, LLC, Rick Baugh, Johnny P. Luna, and Martin Bustillos appeal the district court’s denial of their motion to dismiss Appellee Johnny Raul Valenzuela’s complaint via special motion under the Anti-SLAPP statute, or in the alternative under Rule 1-012(B)(6) NMRA for failure to state a claim. In our calendar notice, this Court directed the parties to brief “whether the right to an expedited appeal described in . . . Section 38-2-9.1(C) . . . is applicable to the district court’s denial of [Appellants’] request for dismissal pursuant to Rule 1-012(B)(6).” {2} We first hold that the expedited appeal under Section 38-2-9.1(C) applies only to the special motion raising speech-based affirmative defenses under the Anti-SLAPP statute and the Noerr-Pennington doctrine. Therefore, we lack jurisdiction to consider Appellants’ alternative Rule 1-012(B)(6) arguments on expedited appeal. We next affirm the district court’s denial of Appellants’ special motion to dismiss.

Jacqueline R. Medina, Judge
WE CONCUR:
Jane B. Yohalem, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40013>

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: 11/2/2023

No. A-1-CA-39665

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

RANDALL PARKER,

Defendant-Appellant.

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

Michael E. Martinez, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Emily Bowen, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Thomas J. Lewis, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Randall Parker appeals the revocation of his probation, arguing the district court erred in denying his request to substitute counsel and his request to withdraw his plea. Because we conclude that Defendant was not denied due process and did not establish ineffective assistance of counsel, we affirm.

Shammara H. Henderson, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39665>

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: 11/8/2023

No. A-1-CA-40176

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ELEXUS JOLAINE GROVES,

Defendant-Appellant.

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

Brett Loveless, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Meryl E. Francolini, 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

Defendant Elexus Jolaine Groves appeals her convictions for seven offenses arising from the death of two persons and the serious injury of a third in an automobile collision, which occurred as Defendant fled law enforcement officers who had signaled her to stop. Defendant continued to flee after the collision, without assisting the victims. On appeal, Defendant raises nine issues (two of which we consider together): (1) whether there was a striking violation of Defendant's speedy trial right justifying review for fundamental error; (2) whether the district court properly instructed the jury on the elements of aggravated fleeing and whether there was sufficient evidence to support Defendant's conviction for aggravated fleeing; (3) whether the district court abused its discretion in denying Defendant's motion to exclude a witness; (4) whether the district court abused its discretion in denying Defendant's motion for a change of venue based on pretrial publicity; (5) whether the district court judge was biased against Defendant; **View full PDF online.**

Jane B. Yohalem, Judge

WE CONCUR:

Zachary A. Ives, Judge

Michael D. Bustamante, Judge, retired,
Sitting by designation

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-40176>

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: 11/13/2023

No. A-1-CA-40248

WILLIAM H. FITZPATRICK,

Plaintiff-Appellee,

v.

STEPHANIE PARKS,

Defendant-Appellant.

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

Benjamin Chavez, District Court Judge

FitzPatrick Law, LLC
Sean M. FitzPatrick
Albuquerque, NM

Stalter Law LLC
Kenneth H. Stalter
Albuquerque, NM

for Appellee

Western Agriculture, Resource
and Business Advocates, LLP

A. Blair Dunn
Jared R. Vander Dussen
Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Stephanie Parks appeals the district court's order holding her in civil contempt of court for failure to pay attorney fees and costs. The district court ordered attorney fees and costs as statutorily required when granting Plaintiff William FitzPatrick's motion to dismiss Defendant's counterclaim for malicious abuse of process under New Mexico's statute prohibiting strategic litigation against public participation (Anti-SLAPP statute), NMSA 1978, § 38-2-9.1(B) (2001). Defendant asks that we also review the merits of Plaintiff's special motion to dismiss through our jurisdiction over Defendant's appeal of the district court's contempt order. We decline to exercise our jurisdiction to review the district court's grant of Plaintiff's special motion to dismiss because the appeal is untimely. We also affirm the district court's decision to hold Defendant in civil contempt.

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-40248>

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: 11/13/2023

No. A-1-CA-39914

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

BENNIE LEWIS GARDNER,

Defendant-Appellee.

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

Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General

Laurie Blevins, Assistant Attorney General
Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Tania Shahani, Assistant Appellate Defender
Santa Fe, NM

for Appellee

► Introduction of Opinion

The State appeals the district court's order suppressing evidence found after Defendant gave consent to search the cab of his semi-truck. The district court concluded that the stop violated the Fourth Amendment because Defendant's consent was coerced. The State argues that the length of the stop was reasonable and, in the alternative, two exceptions to the exclusionary rule apply. We affirm.

Megan P. Duffy, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Michael D. Bustamante, Judge, retired,
sitting by designation

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39914>

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: 11/15/2023

No. A-1-CA-40374

**FAIRWAY VILLAGE NEIGHBORHOOD
COUNCIL, INC.,**

Appellant-Respondent,

v.

**BOARD OF COMMISSIONERS
OF DOÑA ANA COUNTY,**

Appellee-Petitioner,

and

**PICACHO HILLS
DEVELOPMENT COMPANY,**

Interested Party.

**APPEAL FROM THE DISTRICT COURT
OF DOÑA ANA COUNTY**

James T. Martin, District Court Judge

Karen E. Wootton Legal Services, P.C.

Karen E. Wootton
Las Cruces, NM

for Respondent

Macke Law & Policy, LLC

Daniel J. Macke
Albuquerque, NM

for Petitioner

► Introduction of Opinion

The Board of County Commissioners of Doña Ana County (Board) appeals from a district court order reversing the Board's approval of a zoning change. The Board contends the district court erred by (1) finding that the Board was required to make independent or separate findings rather than adopting findings and conclusions prepared by county development staff, and (2) concluding the Board's decision was not supported by substantial evidence. For the reasons that follow, we affirm the district court's order reversing the Board's decision.

Megan P. Duffy, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-40374>

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: 11/16/2023

No. A-1-CA-39546

CREIG BUTLER,

Judgment Creditor-Appellee,

v.

MOTIVA PERFORMANCE ENGINEERING, LLC,

Judgment Debtor,

and

DEALERBANK FINANCIAL SERVICES, LTD;

and ARMAGEDDON HIGH PERFORMANCE

SOLUTIONS, LLC;

Relief Defendants,

and

WILLIAM S. FERGUSON,

Relief Defendant-Appellant.

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

Victor S. Lopez, District Court Judge

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

Spencer L. Edelman

Elizabeth A. Martinez

Laura M. Unklesbay

Albuquerque, NM

for Appellee

Kennedy, Hernandez & Harrison, P.C.

Paul J. Kennedy

Jessica M. Hernandez

Elizabeth A. Harrison

Esther C. Jamison

Albuquerque, NM

for Appellant

► Introduction of Opinion

Appellant William S. Ferguson appeals the sanctions in the district court's order of civil contempt. His argument on appeal is two-fold. First, he argues that the sanctions imposed on him in paragraph C of the order of civil contempt are punitive as opposed to remedial and thus constitute procedurally defective criminal contempt sanctions. And second, that the district court lacked statutory authority to impose a \$50,000 fine payable to a charity, a third party not involved in the case. We affirm the district court's order, concluding that the sanctions in paragraph C of the order are appropriate under both Rule 1-011 NMRA and the court's inherent judicial powers.

Kristina Bogardus, Judge

I CONCUR:

Jacqueline R. Medina, Judge

Megan P. Duffy, Judge (dissenting)

I perceive a handful of issues with the analysis and disposition set forth in the majority opinion that prevent me from signing on to the result. I briefly summarize the points of disagreement in the order the issues are addressed in the opinion.

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39546>

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: 11/16/2023

No. A-1-CA-39890

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JESUS ROBLES,

Defendant-Appellant.

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

Thomas E. Lilley, District Court Judge

Raúl Torrez, Attorney General
Laurie Blevins, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Caitlin C. M. Smith, Assistant Appellate Defender
Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Jesus Robles appeals his conviction for second-degree murder (NMSA 1978, § 30-2-1(B) (1994)) for the killing of his girlfriend (Victim), following a jury trial. Defendant raises two arguments on appeal: (1) that his conviction should be reversed due to the purported erroneous admission of certain evidence at trial; and (2) that the district court judge erred by failing to recuse himself despite his previous representation of Defendant in a separate matter. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Gerald E. Baca, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39890>

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: 11/20/2023

No. A-1-CA-40151

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

KEYVIN ALEJANDRO SILVA-MUÑOZ,

Defendant-Appellant.

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

Britt Baca-Miller, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Meryl E. Francolini, 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

A jury convicted Defendant Keyvin Alejandro Silva-Muñoz of one count of aggravated burglary (with a deadly weapon), contrary to NMSA 1978, Section 30-16-4(A) (1963), and one count of bribery or intimidation of a witness, contrary to NMSA 1978, Section 30-24-3(A) (1997). Defendant appeals his conviction for aggravated burglary, arguing (1) that the jury instructions resulted in fundamental error because the jury was not instructed on all elements necessary to convict him of that offense, and (2) there was insufficient evidence to support his conviction. We reverse and remand.

Jacqueline R. Medina, 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-40151>

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: 11/20/2023

No. A-1-CA-40701

IVORY LYNN CONRAD,

Petitioner-Appellant,

v.

VALENTIN BORISSEVITCH,

Respondent-Appellee.

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

Amber Chavez Baker, District Court Judge

Kalm Law Firm, P.C.

C. James Kalm

Thomas L. Kalm

Albuquerque, NM

for Appellant

Stephen P. Eaton

Albuquerque, NM

for Appellee

► **Introduction of Opinion**

Petitioner Ivory Lynn Conrad (Mother) appeals the district court's order adopting the domestic relations hearing officer's report. Mother argues that the district court (1) abused its discretion in adopting the hearing officer's improperly calculated income for Respondent Valentin Borissevitch (Father); (2) erred in limiting child support interest; and (3) inappropriately denied costs and attorney fees. We agree with Mother's first argument and part of her second argument. Accordingly, we reverse and remand in part and affirm in part. {2} Because this nonprecedential memorandum opinion is issued solely for the benefit of the parties, we presume they are familiar with the facts and procedural history of this case, and we do not provide a general background.

Kristina Bogardus, 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-40701>

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: 11/20/2023

No. A-1-CA-40187

**LOYAL SERVICE AGENCY, INC.,
a New Mexico corporation,**

Plaintiff-Appellee,

v.

**NEW MEXICO TAXATION & REVENUE
DEPARTMENT; and STEPHANIE SCHARDIN
CLARKE, Secretary of the New Mexico
Taxation & Revenue Department,
Defendants-Appellants.**

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

Matthew Wilson, District Court Judge

Atkinson, Baker & Rodriguez, P.C.

Justin D. Rodriguez

Julia E. McFall

Albuquerque, NM

for Appellee

Raúl Torrez, Attorney General

David Mittle, Special Assistant Attorney General

Santa Fe, NM

for Appellants

► Introduction of Opinion

Defendant the New Mexico Taxation and Revenue Department (the Department) appeals the district court's grant of summary judgment to Plaintiff Loyal Services Agency, Inc. (Taxpayer), which concluded that Taxpayer was entitled to a refund of gross receipts taxes based on the deduction provided for by NSMA 1978, Section 7-9-93(A) (2016, amended 2023). The Department argues on appeal that (1) the deduction is available only to individual health care practitioners and not corporations; (2) as a matter of law, Taxpayer does not satisfy all of the criteria for the deduction; and (3) the regulations corresponding to Section 7-9-93 cannot expand the availability of the deduction. This Court recently resolved the Department's first and last arguments and held that Section 7-9-93(A) and the accompanying regulations permit "an employer entity to take the [d]eduction on behalf of an employee, provided that the entity is not otherwise excluded and the remaining requirements under the [s]tatute are satisfied." *Robison Med. Rsch. Grp. v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-065, ¶ 12, 535 P.3d 709.

Katherine A. Wray, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40187>

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: 11/21/2023

No. A-1-CA-40495

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

THOMAS BARKER a/k/a THOMAS E. BARKER

a/k/a THOMAS EUGENE BARKER,

Defendant-Appellee.

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

Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General

Benjamin L. Lammons, Assistant Attorney General

Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Kathleen T. Baldrige,

Assistant Appellate Defender

Santa Fe, NM

for Appellee

► Introduction of Opinion

A May 17, 2018 criminal complaint, charged Defendant Thomas Barker with kidnapping, contrary to NMSA 1978, Section 30-4-1(A) (2), (4) (2003); criminal sexual penetration, contrary to NMSA 1978, Section 30-9-11(E) (5) (2009); aggravated battery, contrary to NMSA 1978, Section 30-3-5(A), (B) (1969); and larceny, contrary to NMSA 1978, Section 30-16-1(C) (2006). On May 11, 2022, following a hearing on Defendant's second motion to dismiss for violating his right to a speedy trial and due process, the district court entered an order of dismissal on speedy trial and due process grounds. The State appeals from the order of dismissal. We reverse and remand.

Jacqueline R. Medina,

I CONCUR:

Michael D. Bustamante, Judge, retired,

Sitting by designation

Jane B. Yohalem, Judge (dissenting)

The majority opinion concludes that Defendant must make a particularized showing of prejudice even though the first two Barker factors—the length of the delay and the reasons for the delay—weigh heavily in favor of Defendant and against the State, and the third factor—the assertion of the delay—weighs in Defendant's favor albeit not heavily. **View full PDF online.**

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40495>

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: 11/21/2023

No. A-1-CA-39406

TAMMY WILLEY,
Plaintiff-Appellant,
v.
FARMERS INSURANCE OF ARIZONA,
Defendant-Appellee,
and
DONDEE BARRICK and DARIC GARBUTT,
Defendants.

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

Denise Barela Shepherd, District Court Judge

Houston Ross
Albuquerque, NM

for Appellant

Riley, Shane & Keller, P.A.
Courtenay L. Keller
Albuquerque, NM

for Appellee

► **Introduction of Opinion**

Plaintiff Tammy Willey appeals six summary judgment orders entered before a jury returned a verdict in favor of Defendant Farmers Insurance of Arizona (Defendant). On appeal, Plaintiff contends that Defendant failed to comply with the requirements of Rule 1-056(D)(2), (E) NMRA, failed to set forth specific material facts showing there were genuine issues that required a trial, and that the district court erred in granting Defendant's motions for summary judgment on issues not raised in the pleadings. Unpersuaded, we affirm the district court.

Gerald E. Baca, Judge
WE CONCUR:
Megan P. Duffy, Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39406>

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: 11/21/2023

No. A-1-CA-39134

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MODA JAMES BENTLEY,

Defendant-Appellant.

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

T. Glenn Ellington, District Judge

Raúl Torrez, Attorney General

Emily Tyson-Jorgenson, Assistant Attorney General

Teresa Ryan, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mark A. Peralta-Silva, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

This case is again before us following our Supreme Court's order (the remand order) in which it vacated our original opinion and remanded the case to this Court in light of the publication of its opinion in *State v. Banghart-Portillo*, 2022-NMSC-021, 519 P.3d 58. Defendant Moda James Bentley's original sentence of incarceration was suspended on the condition that he serve two eighteen-month probation terms, to be served consecutively. After violating the terms of his probation, the district court filed an amended judgment and sentence in which it revoked Defendant's probation, imposed the balance of the thirty-six total months of probation to be served via incarceration, and enhanced each sentence by four years due to two prior felony convictions that subjected Defendant to habitual offender status. Defendant appealed the amended judgment and sentence, raising the following arguments that we address anew here in accordance with the remand order: (1) the district court erred in enhancing Defendant's sentence following the revocation of his probation; **View full PDF online.**

J. Miles Hanisee, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39134>

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: 11/21/2023

No. A-1-CA-39846

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JERRY T. LOPEZ,

Defendant-Appellant.

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

Britt Baca-Miller, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Michael J. Thomas, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Tania Shahani, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Jerry Lopez appeals his conviction for robbery, pursuant to NMSA 1978, Section 30-16-2(A) (1963), based upon his use of a gun to threaten employees of an Albuquerque area dollar store and his removal of money from the cash register of the store. The eyewitness employees, both of whom were working the cash register at the time, testified at trial and identified Defendant as the perpetrator. On appeal, Defendant claims that the district court committed errors during his trial that were reversible individually or, absent that, cumulatively. He also contends that the trial record is incomplete to a degree that fails to facilitate sufficient appellate review, warranting reversal of his conviction. Because none of the asserted mistakes, collectively or in isolation, amount to reversible error, and because the trial record is sufficient to evaluate the merits of Defendant's appeal, we affirm. We briefly explain our reasoning.

J. Miles Hanisee, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39846>

DISPOSITIONAL ORDER

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: 11/21/2023

No. A-1-CA-39321

LOUISE CISNEROS,

Plaintiff-Appellant,

v.

CENTRAL NEW MEXICO COMMUNITY COLLEGE

BOARD OF REGENTS,

Defendant-Appellee.

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

Lisa C. Ortega, District Court Judge

Gilpin Law Firm, LLC
Donald G. Gilpin
Christopher P. Machin
Albuquerque, NM

for Appellant

Stiff, Garcia & Associates, LLC
John S. Stiff
Edward F. Snow
Albuquerque, NM

for Appellee

► Dispositional Order

THIS MATTER is on appeal from the district court's order granting summary judgment in favor of Defendant Central New Mexico Community College Board of Regents. **Read full opinion at the link below.**

Shammara H. Henderson, Judge

WE CONCUR:

Megan P. Duffy, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39321>

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Positions

Associate Attorney

Civerolo, Gralow & Hill, P.A. seeks an associate attorney for our fast paced, well established civil litigation defense firm. This is a great opportunity to grow and share your talent. Salary DOE, great benefits including health, dental & life insurance and 401K match. Please email your resume to kayserk@civerolo.com. Inquiries kept confidential.

Briefing Attorney

Excellent licensed briefing attorney with strong education, experience and appellate qualifications. Practice includes Texas, New Mexico, and other states, State and Federal Courts. Expect an active trial practice for Nationally recognized Texas NM Plaintiff PI trial attorney in El Paso/Las Cruces. Full-time Salary range: \$100,000.00 - \$180,000.00 per year. Please submit resume and writing sample to jimscherr@yahoo.com

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for Assistant Trial Attorneys, Trial Attorneys and Senior Trial Attorneys. You will enjoy working in a community with rich culture and history while gaining invaluable experience and making a difference. The McKinley County District Attorney's Office provides regular courtroom practice, supportive and collegial work environment. You are a short distance away from Albuquerque, Southern parts of Colorado, Farmington, and Arizona. We offer an extremely competitive salary and benefit package. Salary commensurate with experience. These positions are open to all licensed attorneys who have knowledge in criminal law and who are in good standing with the New Mexico Bar or any other State bar (Limited License). Please Submit resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to Bmartin@da.state.nm.us. Position to commence immediately and will remain opened until filled.

Litigation Attorney

The Albuquerque office of Lewis Brisbois is seeking associates with a minimum of three years litigation defense experience. Candidates must have credentials from ABA approved law school, be actively licensed by the New Mexico state bar, and have excellent writing skills. Duties include but are not limited to independently managing a litigation caseload from beginning to end, communicating with clients and providing timely reporting, appearing at depositions and various court appearances and working closely with other attorneys and Partners on matters. Please submit your resume along with a cover letter and two writing samples to rob.henderer@lewisbrisbois.com and indicate "New Mexico Associate Position". All resumes will remain confidential.

Assistant Attorneys General

The New Mexico Office of the Attorney General is committed to recruiting the highest quality Assistant Attorneys General candidates who support the values of integrity, excellence and service. We have a commitment to honesty, ethical behavior, and transparency in all actions and decisions. We strive for the highest level of professionalism and expertise in all aspects of our work. And we have a strong dedication to serving the public interest and prioritizing the well-being of the community - especially the interests of those least capable of defending themselves. The New Mexico Office of the Attorney General is an equal opportunity employer, and we encourage applicants from all backgrounds to apply. To apply please visit the State Personnel website at: www.spo.state.nm.us. For additional job opportunities please visit our website at: www.nmag.gov.

JSC Investigative Trial Counsel

State of NM Judicial Standards Commission located in Albuquerque seeks a JSC Investigative Trial Counsel, an FLSA exempt (not classified), at-will and full-time position with benefits including PERA retirement. NMJB Pay Range LL \$31.273/hr-\$62.546/hr, or (\$65,048-\$130,096) yearly. JSC target pay range (\$90,000 - \$95,000) DOE and budget. Flexible work schedules available. Under general direction and review, the Investigative Trial Counsel assists in the investigation and prosecution of matters before the Commission involving the discipline, removal, or retirement, of New Mexico judges and appear in cases before the New Mexico Supreme Court. No telephone calls, e-mails, faxes, or walk-ins accepted. See full job description and application instructions at <https://humanresources.nmcourts.gov/home/career-opportunities/or> on the News page of the Commission's website (www.nmjsc.org).

Hermit's Peak/Calf Canyon Fire Claims Office Attorney Vacancy Announcement

The Federal Emergency Management Agency's (FEMA) Office of Chief Counsel is seeking qualified applicants for an Attorney position to support the Hermit's Peak/Calf Canyon Fire Claims Office (Office). The duty station is Santa Fe, NM. Salary range is \$99,450 to \$152,775. The successful candidate will be expected to: Represent the Office in arbitration and support Federal court litigation; Support the administrative appeal program; Advise on claim handling/valuation issues and Office-specific authorities; and Advise Office leadership on general administrative legal issues. Qualifications: The candidate must possess strong oral and written communication skills and be able to discuss nuanced legal issues with program leadership, attorneys, and stakeholders both across and outside of the agency. Experience with insurance, property loss, business loss, tort or similar litigation required. The successful candidate will have the following minimum qualifications: 1. United States Citizenship; 2. Ability to successfully pass a background investigation; 3. Selective Service registration for males born after 12/31/59; 4. A J.D. or LL.B. degree from an ABA accredited law school; 5. An active membership, in good standing, of the bar of a state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. Minimum Experience: The candidate must demonstrate at least three years of full-time professional legal experience gained after being admitted to the bar, including at least three years of specialized experience that is directly related to the position being filled. Application Instructions: Interested applicants should submit a detailed resume and statement expressing their interest to Anthony Juzaitis via email at Anthony.Juzaitis@fema.dhs.gov. Applications must be received by 5PM ET on January 31, 2024. Candidates may be asked to provide additional documentation, including a list of references and a short response to a legal writing prompt.

Experienced Litigation Attorney

Priest & Miller LLP is seeking an experienced litigation attorney to join our team. Priest & Miller is a dynamic defense firm that handles complex cases involving claims of medical negligence, wrongful death, catastrophic injury, and oil and gas accidents. We are seeking attorneys with 3+ years of experience and who will thrive in a collaborative, flexible and fast paced environment. We offer highly competitive salaries and a generous benefits package. All inquiries will be kept confidential. Please email your resume to Resume@PriestMillerLaw.com.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is a successful and established Albuquerque-based complex civil commercial and tort litigation firm seeking motivated and talented associate attorney candidates with great academic credentials. Join our small but growing focused Firm and participate in litigating cases from beginning to end with the support of our nationally recognized, experienced attorneys! Come work for a team that fosters development and growth to become a stand-out civil litigator. Highly competitive compensation and benefits. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

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.

Requesting Letters of Interest for Contract Compliance Officer

The City of Albuquerque (City), through the City Council Services Department (Council Services) is requesting Letters of Interest (RFLI) for services to serve as a Contract Compliance Officer (CCO) to ensure compliance by the Civilian Police Oversight Agency (CPOA) and the Civilian Police Oversight Advisory Board (CPOAB) with the Police Oversight Ordinance and the 2014 DOJ Settlement Agreement with the City of Albuquerque. The selected candidate for this part-time contract position shall not be a current or former employee of the Albuquerque Police Department nor have served on the CPOA Board. Experience in compliance and familiarity with interpreting administrative or personnel policies, procedures and ordinances preferred. For a complete description of the position and to submit a letter of interest please visit: www.cabq.gov/complianceofficer

Associate Attorney

Kennedy, Hernandez & Harrison, P.C. is a small, Albuquerque-based firm with a focus on plaintiffs' civil litigation in the areas of civil rights, wrongful death, and serious personal injury. We are looking for attorneys with 0-5 years of experience who are self-motivated and eager to learn. As part of our collaborative team, associates gain experience in every aspect of our cases: meeting clients, investigating cases, drafting pleadings, handling discovery and depositions, briefing motions, and developing a case all the way through trial and appeal. Candidates should be hard-working and organized, with strong writing skills. Our firm is fast paced with competitive salary and benefits. Please send resumés and writing samples to Lhernandez@kennedyhernandez.com.

DNA-People's Legal Services Wants To Hire You!

DNA - People's Legal Services ("DNA") is committed to providing high quality legal services to persons living in poverty on the Navajo, Hopi and Jicarilla Apache Reservations, and in parts of Northern Arizona, New Mexico, and Southern Utah. DNA's main office, as well as DNA's Fort Defiance branch office, are located in Window Rock, Arizona. DNA also has branch offices in Chinle, Arizona, Tuba City, Arizona, Flagstaff, Arizona, on the Hopi BIA judicial compound near Keams Canyon, Arizona, and Farmington, New Mexico. DNA legal staff practice in tribal, state, federal, and administrative courts. DNA IS SEEKING TO HIRE MANAGING AND STAFF ATTORNEYS FOR THE FOLLOWING OPEN POSITIONS: 1. Managing and Staff Attorney (State Licensed – Multiple Locations – NM & AZ); 2. Managing and Staff Attorney (Tribal Court Licensed – Multiple Locations – NM & AZ); 3. NM VOCA Project Director (Farmington, NM or Hybrid-Remote). WHAT TO SUBMIT: Employment Application (found at <https://dnalegalservices.org/careeropportunities-2/>), Resume, Cover Letter, and upon request, Transcripts and (Writing Sample-Attorneys only). HOW TO APPLY: Email: HResources@dnalegalservices.org | Direct: 928.871.4151 ext. 5640 or Cell: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted). Preference is given to qualified Navajo and other Native American applicants. DNA requires all applicants to be eligible to work within the United States. DNA will not sponsor visas unless otherwise noted on the position description.

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid in person/remote work schedule available. The Legal Department's team of attorneys provides a broad range of legal services to the City and represents the City in legal proceedings in court and before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Current open positions include: Litigation Division: The City is seeking attorneys to join its in house Litigation Division, which defends claims brought against the City; Property and Finance Division: The City is seeking attorneys to enforce traffic violations, bring code enforcement actions, and serve as counsel to the planning department and other various City departments; Office of Civil Rights: The City is seeking an attorney to enforce the Human Rights Ordinance in conjunction with the Human Rights Board and enforce the Closed Captioning Ordinance. This attorney will advise various departments and conduct educational and investigative programs; General Counsel to APD: The City is seeking an attorney to advise APD regarding policies, procedures and training, review and negotiate contracts, review uses of force, draft legal opinions, review and draft legislation and administrative instructions. Additional duties may be assigned based on experience; Real Property Attorney: The City is seeking an attorney to represent the City in all aspects of its real property needs. Responsibilities include negotiating, drafting, reviewing, advising and approving commercial contracts for the sale/purchase, lease/rent, license, use, exchange, grants of easements and donation of real property. This attorney will represent the City in any related litigation, advise on implementation of federal, state and city rules and regulations concerning telecoms, property management, right-of-way acquisitions and relocations, and will prosecute condemnation, quiet title, eviction and foreclosure actions. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, government compliance, litigation, contracts, and policy writing. Salary based upon experience. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney (\$ 70,196.00) to a Senior Trial Attorney (\$82,739.00), based upon experience. Must be licensed in the United States. These positions are located in the Lovington, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

Modest Means Helpline Staff Attorney

Are you tired of billable hours? Would you love not to have to go to court? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks a Full-Time (40 hours/week) or Part-Time (30 hours/week) helpline staff attorney for its Modest Means Helpline. Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The position includes an excellent benefits package and competitive salary for legal work in the non-profit sector. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who have moderate or low income. Additionally, the attorney may conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico. Applicants must be licensed to practice law in New Mexico, and able to work as part of a busy team in a fast-paced environment. Excellent customer service and computer skills are required. Fluency in Spanish is a plus as is a demonstrable interest in issues affecting the lower-income community. To be considered, applicants must submit a cover letter and resume to hr@sbnm.org. In your cover letter, please explain why you are interested in working as a helpline attorney. EOE. Visit www.sbnm.org/sbnmjobs for full details and application instructions.

Associate Attorney

Mid size downtown Defense litigation firm looking for experience Associate Attorney in medical malpractice, complex liability, general liability, and or employment and civil rights. Excellent benefits. Pay at high end of range based on experience. Congenial and easy-going firm. Please contact Karen Arrants at Stiff, Garcia & Associates, KArrants@stiffllaw.com

**Deputy Attorney General for
Affirmative Litigation
New Mexico Office of the
Attorney General**

Santa Fe or Albuquerque, New Mexico

Job Description: The New Mexico Office of the Attorney General is seeking a highly-skilled and motivated individual to join our team as the Deputy Attorney General for Affirmative Litigation. The Deputy Attorney General will play a critical role in leading and managing our affirmative litigation efforts. They will work closely with the Attorney General, the Chief Deputy Attorney General and other senior staff members to develop and execute litigation strategies that promote justice, protect the public interest, and advance the rights of individuals and communities. This is an at-will position. Responsibilities: Lead and oversee the development and implementation of affirmative litigation strategies in collaboration with the Attorney General and other stakeholders including, but not limited to, civil rights, consumer protection, environmental protection, and corporate fraud; Conduct legal research and analysis to identify potential claims and develop legal theories to support affirmative litigation cases; Prepare and file legal documents, including complaints, motions, and briefs, in state and federal courts; Manage a team of attorneys and legal staff involved in affirmative litigation, providing guidance, feedback, and mentorship; Collaborate with relevant government agencies, nonprofits, and advocacy organizations to gather evidence, build partnerships, and leverage resources; Conduct investigations and discovery processes to gather evidence and build strong cases Represent the New Mexico Office of Attorney General in court proceedings, including hearings, trials, and possible appeals; Monitor developments in relevant legal areas and propose policy and procedural changes to enhance the effectiveness of affirmative litigation efforts; Maintain accurate and organized case files, records, and other documentation; Collaborate and monitor outside legal counsel pursuing legal claims and lawsuits on behalf of the office; Lead nationwide litigation in the pursuit of protecting public interests. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 10 years of experience in litigation, with a focus on affirmative litigation, and 5 years of management experience preferred; Knowledge of civil rights law, consumer protection law, and environmental law preferred; Excellent legal research, writing, and oral advocacy skills; Proven ability to lead and manage a team of attorneys and legal staff; Demonstrated experience in developing and executing litigation

strategies. Strong analytical and problem-solving skills; Exceptional organizational and time management abilities; Ability to work effectively under pressure and meet deadlines; Excellent interpersonal and communication skills. Application Instructions: To apply for the position of Deputy Attorney General for Affirmative Litigation, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience. 2. Resume/CV with a detailed overview of your educational and professional background. 3. Writing samples showcasing your legal research and writing abilities. 4. Contact information for three professional references.

**Division Director for Civil Rights
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Job Description: The New Mexico Office of the Attorney General is seeking a dynamic and experienced individual to join our team as the Division Director for Civil Rights. The Director will be responsible for overseeing and managing legal matters related to civil rights enforcement and protection. Their primary focus is promoting equality, combating discrimination, and upholding constitutional and statutory rights. The Director will work closely with the Attorney General, Chief Deputy Attorney General, and Deputy Attorney General for Affirmative Litigation and collaborate with a team of attorneys and legal professionals to develop and execute strategic litigation initiatives. Responsibilities: Provide legal counsel and guidance on civil rights laws, regulations, and policies to government agencies, departments, and officials; Oversee and manage civil rights investigations and enforcement actions; Assist in the development and implementation of policies and regulations aimed at protecting civil rights; Develop and implement outreach initiatives to raise awareness about civil rights, educate the public on their rights and protections, and promote inclusivity and diversity; Oversee and manage civil rights litigation, including working with other attorneys, developing case strategies, and representing the New Mexico Office of the Attorney General in court or administrative proceedings; Collaborate with other government agencies, civil rights organizations, community groups, and stakeholders to address civil rights issues effectively; Advocate for civil rights issues by engaging in public policy discussions, testifying before legislative bodies, and promoting legislation or regulations that enhance civil rights protections. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission

to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 6 years of experience in litigation, with a demonstrated focus on affirmative litigation and 3 years of management experience preferred; Strong knowledge of civil rights law, and other relevant legal areas; Proven track record of developing and executing successful litigation strategies; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders; Demonstrated commitment to social justice, equality, and public interest law. Application Instructions: To apply for the position of Division Director for Civil Rights, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references.

Immigration Attorney

Rebecca Kitson Law is seeking an Associate Attorney with passion and commitment to help immigrants in family based and humanitarian immigration relief. Our firm values compassion, teamwork, excellence, and fierce advocacy. Our team works collaboratively to create a warm and supportive work environment that provides the opportunity to transform people's lives, bring families together, and protect the vulnerable. We are proud to be inclusive firm that embraces and honors diversity in our staff and clients. We offer robust tiered benefits after probationary periods to include: extensive time off, fully funded health insurance, dental, vision, short- and long-term disability and life insurance and a 401k with employer contribution. Flexible hybrid work options are available, as well as a relocation budget if needed. Experience in immigration law is welcomed but not required. MUST be fully fluent in Spanish. Must have a law license in any state and be in good standing. Salary DOE. To be considered for the position, please submit a resume, letter of intent, and writing sample to mf@rkitsonlaw.com.

**Division Director for
Environmental Protection
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Job Description: The New Mexico Office of the Attorney General is seeking a dynamic and experienced individual to join our team as the Division Director for Environmental Protection. The Environmental Protection Division Director is responsible for overseeing and managing legal matters related to environmental protection and enforcement. Their primary focus is to ensure compliance with environmental laws and regulations, protect natural resources, pursue affirmative environmental protection litigation, and advocate for the preservation of environmental resources and environmental quality standards. Responsibilities: Provide legal counsel and guidance on matters related to environmental laws, regulations, and policies to various government agencies, departments, and officials; Oversee and manage enforcement actions related to environmental violations, which can involve conducting investigations, collaborating with law enforcement agencies, and initiating legal proceedings against violators; Assist in the development and implementation of environmental policies and regulations at the state or federal level; Advocate for environmental protection and conservation initiatives, including supporting or opposing environmental legislation, participating in public hearings, and representing the Attorney General's Office in environmental matters before administrative bodies and courts; Collaborate with other government agencies, non-profit organizations, and stakeholders involved in environmental protection and enforcement efforts; Oversee and manage litigation related to environmental matters, including working with other attorneys, managing case strategy, and ensuring legal actions are aligned with the overall objectives of the Attorney General's Office. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 6 years of experience in litigation, with a demonstrated focus on affirmative litigation and 3 years of management experience preferred; Strong knowledge of environmental law and other relevant legal areas; Proven track record of developing and executing successful litigation strategies; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize

tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders Demonstrated commitment to social justice, equality, and public interest law. Application Instructions: To apply for the position of Division Director for Environmental Protection, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references.

**IPRA Attorney Lead
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Full-Time; Open until the position is filled. Job Description: The New Mexico Office of the Attorney General (the Office) seeks a dynamic and experienced individual to join our team as the lead attorney for fulfilling Inspection of Public Records Act (IPRA) requests. The lead IPRA Attorney is responsible for overseeing and managing legal matters related to IPRA requests to the Office. Their primary focus is the timely, efficient, and effective processing of requests to inspect public records. The IPRA Lead Attorney works closely with the Special Counsel for the Attorney General, Deputy Attorney General for Civil Affairs, and Director of Government Counsel & Accountability and collaborates with attorneys and legal professionals throughout the Office. Responsibilities: Oversee and manage IPRA request fulfillment, including working with other attorneys, developing case strategies, and representing the New Mexico Office of the Attorney General in court or administrative proceedings; Provide legal counsel and guidance on IPRA laws, regulations, and policies to the Office; Collaborate with other government agencies, community groups, and stakeholders to address IPRA and government transparency issues effectively; Develop and implement internal trainings to build institutional awareness about IPRA and government transparency; Assist in the development and implementation of policies and regulations aimed at IPRA law and government transparency; Engage in public policy discussions, testifying before legislative bodies, and promoting legislation or regulations that develop the legal framework impacting public records in New Mexico. Qualifications: Juris Doctor (JD) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire

a limited law license; Minimum of four (4) years of experience in the practice of law. Preferred qualification of 6 years of experience in litigation, with a demonstrated experience processing IPRA requests and 3 years of management experience preferred; Strong knowledge of IPRA law, and other relevant legal areas; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders; Demonstrated commitment to public service law; Application Instructions: To apply for the position of IPRA Attorney Lead, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references. The New Mexico Office of the Attorney General is committed to recruiting the highest quality candidates who embody its institutional values of: Integrity - a commitment to honesty, ethical behavior, and transparency in all actions and decisions; Excellence - the highest level of professionalism and expertise in all aspects of our work, and; Service - a strong dedication to serving the public interest and prioritizing the well-being of the community - especially the interests of those least capable of defending themselves. The New Mexico Office of the Attorney General is an equal opportunity employer, and encourages applicants from all backgrounds to apply. For more information, please visit www.nmag.gov.

Contracts Administrator

Presbyterian Healthcare Services is seeking an experienced, self-directed detail-oriented Contracts Administrator to join the Legal Services Contract Team. The ideal candidate will be comfortable working in a fast-paced environment, managing multiple complex projects (often with short deadlines), negotiating and drafting complex contracts, work well independently and as part of a team, and bring passion and creativity to the workplace. Please apply directly at: <https://careers-phs.icims.com/jobs/37838/contracts-administrator---legal-services/job?mode=view>

8th Judicial District Attorney's Office Trial, Senior Trial, and Deputy District Attorney (Taos/Colfax/ Union Counties)

The 8th Judicial District Attorney Office is accepting applications for a full-time Trial Attorney, a Senior Trial Attorney, and a Deputy District Attorney. Requirements: Trial Attorney (TA): Attorney licensed to practice law in New Mexico plus a minimum of two (2) years relevant prosecution experience. Senior Trial Attorney (STA): Attorney licensed to practice law in New Mexico plus a minimum of five (5) years relevant prosecution experience. Deputy District Attorney (DDA): Attorney licensed to practice law in New Mexico plus a minimum of eight (8) years relevant prosecution experience and someone who is contemplated to be a career prosecutor capable of providing management for an office division or bureau. Work performed: Applicant (STA/DDA) will prosecute all cases, including high level and high-profile cases as experience allows, applicants should possess expertise in one or more areas of criminal prosecution; lead special prosecutions assigned by the District Attorney; supervise and mentor other attorneys and staff. Applicant (DDA) may lead a division/bureau and handle cases as well as administrative duties and supervision and may act on behalf of the District Attorney as directed. Salary for entry level (TA) will begin at \$75,000 and be based upon experience, position applied for, and the current District Attorney Personnel and Compensation Plan. Please submit resumes/letters of interest to Victoria Bransford, District Office Manager by mail to 105 Albright Street Suite L, Taos, NM 87571 or by email to vbransford@da.state.nm.us continuous recruitment through December 31, 2023.

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. For best consideration, apply by 1/15/2024: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/27703?c=unm>

Associate General Counsel for IP & Data Security Los Alamos National Laboratory Los Alamos, New Mexico

Los Alamos National Laboratory (LANL) is a multidisciplinary research institution engaged in science and engineering on behalf of national security. The Office of General Counsel (OGC) of Triad National Security LLC is seeking an Associate General Counsel who will be responsible for managing the OGC Intellectual Property and Data Security Group at Los Alamos National Laboratory. Responsibilities: Provide legal advice and counsel to management and employees regarding the legal aspects and consequences of proposed transactions and courses of action; Lead a group of senior and junior IP/patent attorneys, a technology transfer agreements attorney, privacy officer, senior data security attorney and IP paralegal support staff; Oversee the IP docket/budgets and manage outside counsel engaged in the protection of IP assets, such as patent filing and prosecution, trademark and copyright; Identify legal risks and develop courses of actions to help clients appropriately manage legal risks and ensure proper execution of the Laboratory's mission, which may require participation in negotiations with outside persons and entities who may be in a contractual or adversarial relationship with the Laboratory; Build and maintain relationships with the Laboratory's Chief Information Officer, Technology Transfer Function, the Feynman Center for Innovation, as well as relationships with external stakeholders; Assist the OGC IP group in providing advice and counsel concerning the full spectrum of technology related agreements; Draft memoranda of law, legal opinions, policy and other documents related to intellectual property matters. Qualifications: Law Degree from an ABA accredited law school; Active bar membership in good standing (any U.S. jurisdiction); 15+ years of relevant experience after initial bar admittance; Active registration with the U.S. Patent and Trademark Office; Demonstrated oral, written and interpersonal communication and negotiation skills; Ability to acquire and maintain a DOE "Q" level security clearance. Preferred Qualifications: 5+ years of experience directly managing/leading attorneys and other legal staff; Familiarity with DOE/NNSA policies, procedures and orders pertaining to the protection of intellectual property, technology transfer, classification and national security (10 CFR 1045 or Executive Order 13526), privacy and data protection; Experience with NIST cybersecurity standards, guidelines and best practices; Familiarity with software technologies and applications used in a tech savvy legal office and technology transfer function; Demonstrated experience in building trusted client relationships and a proactive approach to legal practice including engaging in preventive law activities; Experience managing patent dockets and associated budgets;

Experience in IP litigation/disputes including strategy development; Experience managing or overseeing a Privacy Program. We Are Delivering Scientific Excellence. Los Alamos National Laboratory is more than a place to work. It is a catalyst for discovery, innovation and achievement. It's one of the reasons we attract world-class talent who contribute greatly to our outstanding culture. Professional development, work/life balance and a diverse and inclusive team foster lasting career satisfaction. Our onsite cafeterias and medical, fitness and breastfeeding facilities, education assistance and generous compensation and benefits reflect our commitment to providing our people with all they need for personal and professional growth. Northern New Mexico offers an abundance of wildlife, culture and adventures, including hiking trails and nearby ski resorts. Learn why Los Alamos has been rated #3 in the Best Counties to Live in the USA. Apply now: <https://lanl.jobs/search/jobdetails/associate-general-counsel-for-ip-data-security-patent-attorney-manager-4/c0f0da2d-deb8-4bb9-871a-f96800790cb8> lanl.jobs, search IRC125640. Los Alamos National Laboratory is an equal opportunity employer and supports a diverse and inclusive workforce. All employment practices are based on qualification and merit, without regard to race, color, national origin, ancestry, religion, age, sex, gender identity, sexual orientation or preference, marital status or spousal affiliation, physical or mental disability, medical conditions, pregnancy, status as a protected veteran, genetic information, or citizenship within the limits imposed by federal laws and regulations. The Laboratory is also committed to making our workplace accessible to individuals with disabilities and will provide reasonable accommodations, upon request, for individuals to participate in the application and hiring process. To request such an accommodation, please send an email to applyhelp@lanl.gov or call 1-505-665-4444 option 1.

New Mexico Legal Aid - Current Staff Attorney job openings:

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. NMLA has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. Staff Attorney Positions: Generalist - Silver City, NM; (2) Disaster Relief, Northern NM; Medical Legal Partnership, Santa Fe, NM; LGBTQ - Safe To Be You. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

Civil Litigation Attorney

Description: Rodey, Dickason, Sloan, Akin & Robb, P.A. is currently seeking attorneys with 2 or more years of Civil Litigation experience to work in our Albuquerque office. Qualifications: Ideal candidate must have strong academic credentials, excellent references, solid writing skills, deposition experience, hearing experience, and must be licensed in New Mexico. Experience in professional liability, medical negligence or personal injury is preferred. Candidates should possess the desire to work as a team, to mature their legal skills, and to represent their clients well. Rodey offers comprehensive benefits package, including health, dental and vision; professional development and multifaceted mentoring program; FSA and HSA plan option(s); 401K plan/employer match; group life and long-term disability insurance; employee assistance program; wireless phone/services stipend. We are excited about our opportunity to partner with qualified candidates looking to advance their legal career. For consideration, please include a cover letter, resume, law school transcript and writing sample and submit via email to Ali Dyer, Human Resources Director at: jobs@rodey.com with "Litigation Attorney" in the subject line. All inquiries will be kept confidential. Rodey is an Equal Opportunity Employer. Rodey Law Firm is not accepting unsolicited resumes from search firms for this position.

Contract Prosecutor

The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for a Contract Prosecutor to assist in the prosecution of criminal misdemeanor cases, felony cases and conflict of interest cases. The Contract Prosecutor position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; the ability to draft legal documents and to research/analyze information and situations and the ability to work effectively with other criminal justice agencies and Law Enforcement. This position is open to all attorneys who have knowledge in criminal law and who are in good standing with the New Mexico Bar. Limited License is okay. Salary will result in a contractual agreement between the contract prosecutor and the District Attorney. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us.

New Mexico Legal Aid – Current Job Opportunities

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. NMLA has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. Paralegal Positions: Paralegal - Housing Stability and Veteran's, Flexible NMLA Location; Paralegal - Housing Stability, Albuquerque; Paralegal - LGBTQ+ legal access program, Safe To Be You - Flexible NMLA. Legal Secretary: Low Income Tax Clinic – General, Albuquerque, NM. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

Attorneys

The Third Judicial District Attorney's Office in Las Cruces is seeking Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys. You will enjoy the convenience of working in a metropolitan area while gaining valuable trial experience alongside experienced Attorney's. Please see the full position descriptions on our website <http://donaanacountyda.com/>. Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us

Experienced Litigation Paralegal

Tired of billable hours? The Law Offices of Erika E. Anderson is looking for an experienced litigation paralegal for a very busy and fast-paced firm of four (4) attorneys. The candidate must be highly motivated and well organized, pay close attention to detail, be willing to take on multiple responsibilities, and be highly skilled when it comes to both computer software and written communication. Tasks will include, but are not limited to, filing pleadings in State and Federal Court; drafting simple motions; drafting, answering, and responding to discovery; subrogation negotiations; and communicating with opposing counsel and the Court. This is a wonderful opportunity to join an incredible team that works hard and is rewarded for hard work! The position offers a great working environment, benefits, and a competitive salary. If interested, please send a resume to erika@eandersonlaw.com.

City of Albuquerque Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$25.54 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$26.80 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Administrative Support Coordinator

The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Administrative Support Coordinator. The successful applicant will provide administrative and logistical support for the activities, programs and events of State Bar committees, practice sections, and divisions and coordinate implementation of other State Bar/Bar Foundation programs and events. \$17-\$20/hour, depending on experience and qualifications. Generous benefits package included. This position qualifies for partial telecommuting. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.



Paralegal

Established law firm seeks experienced paralegal. Must have ability to multi-task heavy state and federal court workload including calendaring, drafting pleadings and discovery, and direct client contact and follow-up. Word, WordPerfect, Outlook and Adobe expertise required, as well as excellent proofreading skills. Bachelor's degree a plus. Competitive salary and excellent benefits offered. Resumes should be submitted to csalazar@wwwlaw.us. Qualified applicants only, please.

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@rileynmlaw.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

Office Space

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One-half of 2-lawyer, 1,200 sq. ft. law office available for rent (2015 Mountain Rd NW). Includes exclusive partner office, space for two legal assistants, and 50% use of common area including conference room and parking. \$800 per month, plus ½ of electricity and gas. Call or email Jason Kent: 505-553-1307 or jkent@nmlex.com.

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