

BAR BULLETIN

DIGITAL ISSUE

February 28, 2024 • Volume 63, No. 2-D



Mother Tree, by Elizabeth Murray (see page 5)

elizabethmurray.com

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SPECIAL INSERT
New Mexico State Bar
FOUNDATION
2024 Board of Directors



New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



FEBRUARY 28

Key Frameworks and Foundations in Equity in Justice Work
1.0 EIJ (Equity in Justice)
Noon–1 p.m.
Webinar

The Alec Baldwin Shooting: Homicide or Accident
1.0 G
11 a.m.–Noon
Webinar

Service Level Agreements in Technology Contracting
1.0 G
11 a.m.–Noon
Teleseminar

FEBRUARY 29

Why Female Attorneys Get Paid Less: What's Gender Bias Got to Do With It
1.0 EIJ (Equity in Justice)
11 a.m.–Noon
Webinar

MARCH 1

Ready, Set, Go: Recent Changes to the New Mexico Child Support Guidelines
1.0 G
Noon–1 p.m.
Webinar and In-Person

Elimination of Bias – Combating Age Bias in the Legal Field
1.0 EIJ (Equity in Justice)
11 a.m.–Noon
Webinar

MARCH 5

Take Ethical Security Precautions with Email: When and How to Encrypt
1.0 EP
11 a.m.–Noon
Webinar

MARCH 7

Why Female Attorneys Get Paid Less: What's Gender Bias Got to Do With it
1.0 EIJ (Equity in Justice)
11 a.m.–Noon
Webinar

MARCH 8

Don't Get Caught: A Deep-Dive into the Corporate Transparency Act
1.0 G
Noon–1 p.m.
Webinar

MARCH 12

Maxims, Monarchy and Sir Thomas More
2.5 EP
11 a.m.–1:30 p.m.
Webinar

MARCH 20

REPLAY: Pac-Man, Tails, Prior Acts, Claims Made – Ugh, What Does it all Mean? What You Need to Know About Professional Liability Insurance
1.0 EP
Noon–1 p.m.
Webinar

MARCH 27

"Would You Mind Making Some Copies?": Recent Research in Gender Bias
1.0 EIJ (Equity in Justice)
Noon–1 p.m.
Webinar

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The Cap on Self-Study Credits is Lifted: Now all 12 required MCLE credits may be Self-Study, Virtual or In-Person credits. There is no longer a 4.0-credit cap on Self-Study courses; however, only pre-approved Self-Study courses are allowed. For more details, read Rule 18-204(C) NMRA.



For Center for Legal Education pre-approved Self-Study courses, visit our On-Demand/Self-Study library at:
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Section, Division and Committee Meetings

| Section, Committee, Division | March | April | Time, Format |
|------------------------------|-------|-------|-------------------------------|
| Animal Law | 13 | N/A | 12:30 p.m., Zoom |
| Appellate | 5 | 2 | Noon, Zoom |
| Bankruptcy | 12 | 9 | Noon, Bankruptcy Court & Zoom |
| Business Law | 12 | 9 | 11 a.m., Zoom |
| Cannabis Law | 8 | 12 | 9 a.m. Zoom |
| Children's Law | 18 | 15 | Noon, Zoom |
| Elder Law | 1 | 5 | Noon, Zoom |
| Employment and Labor Law | 6 | 3 | 12:30 p.m., Zoom |
| Family Law | 15 | 19 | 9 a.m., Zoom |
| Health Law | 5 | 2 | 9 a.m., Zoom |
| Immigration Law | 29 | 26 | Noon, Zoom |
| Indian Law | 15 | N/A | Noon, Zoom |
| Intellectual Property Law | 26 | 23 | Noon, Zoom |
| NREEL | 26 | 23 | Noon, Zoom |
| Prosecutors | 8 | N/A | Noon, Zoom |

About Cover Image and Artist: Elizabeth Murray is a painter, photographer, author, gardening expert and creativity workshop teacher in Monterey, California. She is well known for cultivating Monet's gardens in Giverny, France, photographing them for 35 years and writing award winning books that include *Passion: Ideas, Inspiration & Insights from the Painter's Gardens*. Her photographic series *Giverny Now: Photographs by Elizabeth Murray* traveled to major U.S. museums concurrent with the multi-year Monet exhibition *Monet - Late Paintings of Giverny From the Musee Marmottan*. Her watercolor and oil paintings have been in solo and group exhibitions in galleries and are in many private and corporate collections.

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://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

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

N.M. Administrative Office of the Courts

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>.

Second Judicial District Court Judicial Nominating Commission Announcement of Candidates

The Second Judicial District Court Judicial Nominating Commission convened at 8:30 a.m. (MT) on Feb. 12 at the State Bar Center located at 5121 Masthead St NE, Albuquerque, N.M. 87109, and completed its evaluation of the four applicants to fill the vacancy on the Second Judicial District Court due to the retirement of Judge Benjamin Chavez, effective Jan. 20. The Commission recommends the following candidates to Gov. Michelle Lujan Grisham: Rosemary **Cosgrove-Aguilar**, **Diana Garcia** and **Andrea Gunderson**.

Professionalism Tip

With respect to other judges:

I will endeavor to work with other judges to foster a spirit of cooperation and collegiality.

Third Judicial District Court Notice of Mass Reassignment of Cases

Effective Feb. 17 in Dona Ana County, all pending cases currently assigned to Division IV or Division 4 will be reassigned to the Honorable Rebecca Duffin. New and reopened DM and DV cases will be assigned 40% to the Honorable Robert Lara, 40% to the Honorable Rebecca Duffin and 20% to the Honorable Grace Duran. 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.

Third Judicial District Court Judicial Nominating Commission

Announcement of Candidates

The Third Judicial District Court Judicial Nominating Commission convened on Jan. 12 at the Third Judicial District Court and completed its evaluation of the four applicants to fill the vacancy on the Third Judicial District Court due to the resignation of the Honorable Judge Mark Standridge, effective on Dec. 15, 2023. The candidates for the vacancy include **Rebecca Duffin**, **Isabel Jerabek** and **Jeanne Quintero**.

Tenth Judicial District Court Announcement of Vacancy

A vacancy on the Tenth Judicial District Court exists as of Feb. 3 due to the retirement of the Honorable Judge Albert J. Mitchell, Jr., effective Feb. 2. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information about election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Camille Carey, Chair of the Tenth Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article

VI, Section 14 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Feb. 15 at 5 p.m. (MT). Applications received after that time will not be considered. The Tenth Judicial District Court Judicial Nominating Commission will convene at 9:30 a.m. (MT) on Feb. 28 to interview applicants at the Tenth Judicial District Court located at 300 S. 3rd Street, Tucumcari, N.M. 88401. The Committee meeting is open to the public and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard.

Bernalillo County Metropolitan Court Bench Trials in Civil Cases Now In-Person

Bench Trials in civil cases scheduled in the Metropolitan Court on or after Feb. 19 will now be held in-person at the Courthouse, 401 Lomas Blvd NW, Albuquerque, N.M., 87102, unless otherwise ordered by the judge.

STATE BAR NEWS Access to Justice Fund Grant Commission

2024-25 ATJ Fund Grant Cycle Now Accepting Applications

The State Bar of New Mexico ATJ Fund Grant Commission solicits grant applications from qualified civil legal service providers for the provision of civil legal services to low-income New Mexicans. The deadline for proposals is April 1, 2024. The Request for Proposals can be found at <https://www.sbnm.org/Leadership/Commissions/Access-to-Justice-Fund-Grant-Commission>.

New Mexico Board of Bar Examiners

New Rule

On Dec. 31, 2023, a new rule was established that requires all in-house attorneys have some form of New Mexico licensure. A new in-house counsel application was established and can be found at Rule 15-308 NMRA. All attorneys acting as in-house counsel who do not hold a license to practice law in the State of New Mexico will have one year, or until Dec. 31, 2024, to become licensed by filing an application with the New Mexico Board of Bar Examiners.

Judicial Standards Commission

Proposed Amendment

The Judicial Standards Commission is recommending the proposed amendment to its rules as summarized below. To comment on the proposed amendment before it is submitted for publication, you may submit your comments electronically at forfilingnmjsc@nmjsc.org. Your comments must be received on or before March 28.

The proposed rule amendment summarized below can be viewed in its entirety at the Judicial Standards Commission website: www.nmjsc.org

RULE 2(D)(1). DEFINITIONS

“Third party complaint.” A complaint, in substantially the form authorized by the Commission, made by a person or legal entity which is not a member of the Commission or an employee of the Commission.

Subcommittee on Judicial Nominations

Proposed Changes to the Rules Governing Judicial Nominating Commissions

The Subcommittee on Judicial Nominations of the New Mexico Supreme Court’s Equity and Justice Commission proposed changes to the Rules Governing New Mexico Judicial Nominating. These proposed changes were discussed by the following entities:

- Appellate Nominating Commission
- Bernalillo Metropolitan Court Nominating Commission
- Second Judicial District Court Nominating Commission
- Third Judicial District Court Nominating Commission
- Eighth Judicial District Court Nominating Commission
- Ninth Judicial District Court Nominating Commission
- Eleventh Judicial District Court Nominating Commission
- Twelfth Judicial District Court Nominating Commission
- Thirteenth Judicial District Court Nominating Commission

Each of these bodies subsequently voted unanimously to approve the proposed changes.

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>.

— *Featured* —

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NM LAP Committee Meetings

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

New Mexico Well-Being Committee Meetings

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico’s Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee’s goal to examine and create initiatives centered on wellness. The Well-Being Committee will meet the following dates

at 3:00 p.m. (MT) in 2024: March 26, May 28, July 30, Sept. 24 and Nov 26. Email Tenessa Eakins at Tenessa.Eakins@sbnm.org.

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.

OTHER NEWS New Mexico Department of Justice Rebranding from "Office of the Attorney General"

The Office of the Attorney General is rebranding as the New Mexico Department of Justice (NMSA 1978 Section 8-5-1). For more information about the New Mexico Department of Justice and its operations, visit www.nmdoj.gov.

A Message From
New Mexico State Bar
FOUNDATION
President Gerald G. Dixon:

Upholding the Mission of the Bar Foundation



Dear friends and colleagues,

As I begin my term as President of the New Mexico State Bar Foundation (“Bar Foundation”), I want to acknowledge the Bar Foundation’s outstanding accomplishments under my predecessor and friend, Judge Carl J. Butkus, who served two consecutive terms from 2022 through 2023. The Foundation Board, in conjunction with the Board of Bar Commissioners, continued developing a more independent governance structure for the Bar Foundation. In addition, it took action to advance its initial Strategic Plan, which includes a new development program and expanded public service through the new Modest Means Helpline.

There is one Bar Foundation program in particular which I would like to highlight. The Modest Means Helpline (MMH) began providing services in the Fall of 2022 with two full-time attorneys. In October 2022, the month of its inception, MMH received nearly 300 calls with the number of calls increasing each month since. Last year, MMH received 15,805 calls in total. Due to the incredible need, the MMH has now expanded to eight staff members, including 4.75 attorneys. The MMH assists New Mexican residents with incomes below 500% of the federal poverty guidelines. The MMH can assist in civil legal matters, including but not limited to, domestic relations (divorce, child custody, kinship guardianship, domestic violence), landlord/tenant, small business issues, consumer, and probate. The MMH refers cases that it cannot handle to attorneys on a pro bono basis. Please contact the MMH to be a volunteer. I promise that if you accept just one case per year, you will provide an important service to someone in need and you will find the experience to be personally gratifying.

I look forward to working with the Foundation Board and the incredible staff at the Bar Foundation to advance the legal community’s commitment to serving the legal profession and people of New Mexico. Through member donations, fundraising and educational programs, the Bar Foundation provides and promotes access to legal services for underserved New Mexicans. The Bar Foundation also supports public service, education, and diversity, as well as promoting organizations whose purpose is consistent with its mission.

Although I am quite proud of the Bar Foundation’s work, there are still ways we can do more. As part of the Strategic Plan, the Bar Foundation engaged Simons Consulting Group to build our new fundraising/ development program. I look forward to our ongoing efforts to elevate the Bar Foundation’s public visibility and raise awareness to our membership.

I feel honored to lead the Bar Foundation this year. I ask for your support in fulfilling the Bar Foundation’s mission to provide civil legal services to people who, for whatever reason, are unable to afford the cost for those services. Please feel free to contact me at any time if you have any questions or ideas about how the Bar Foundation can be of service.

Enthusiastically,

A handwritten signature in black ink that reads "Gerald G. Dixon". The signature is fluid and cursive.

Gerald G. Dixon, President
New Mexico State Bar Foundation

2024-25 ATJ FUND GRANT CYCLE NOW ACCEPTING APPLICATIONS

The **State Bar of New Mexico ATJ Fund Grant Commission** solicits grant applications from qualified civil legal service providers for the provision of civil legal services to low-income New Mexicans.

The deadline for proposals is April 1, 2024. The Request for Proposals can be found at <https://www.sbnm.org/Leadership/Commissions/Access-to-Justice-Fund-Grant-Commission>.



Send in your articles!

Have your authored work read by over **8,000** attorneys, judges and other legal professionals when you send in articles for the *Bar Bulletin*! The *Bar Bulletin* is not only a place for information—it's a place for discourse and a hub for sharing your ideas on the legal topics of the day and beyond!

For information on how to submit articles and guidelines for submissions, please visit www.sbnm.org/News-Publications/Bar-Bulletin/Submit-An-Article.



We look forward to publishing your articles and compositions!

Rules/Orders

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

From the New Mexico Supreme Court

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of GLEN L. HOUSTON, ESQ.

DISCIPLINARY NO. 2023-05-4550

**An Attorney Licensed to Practice Law before the Courts of the
State of New Mexico**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline (“Agreement”) which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

You have been licensed to practice law before the courts of the State of New Mexico since 1955. On June 29, 2017, you entered your appearance on behalf of RT, who on March 9, 2017 had filed a pro se complaint in state district court concerning real property (“Property Lawsuit”). On June 20, 2017, RT paid you \$5,000.00 as a retainer.

On September 11, 2017, RT died. Under the terms of his Will, JF is the sole beneficiary to RT’s estate. On September 13, 2017, you filed an Application for Informal Probate and for Informal Appointment of Personal Representative on behalf of JF (“Probate Case”). On September 18, 2017, the Court in the Probate Case informally appointed JF as the Personal Representative of the Estate of RT. On September 20, 2017, you filed a Motion to Substitute Plaintiff in the Property Lawsuit on behalf of JF; on June 25, 2018, the motion was granted. You did not prepare a representation agreement for JF.

On April 25, 2018, the Property Lawsuit was dismissed for lack of prosecution. On April 27, 2018, you filed a Motion to Reinstate in the Property Lawsuit. On June 25, 2018, the Court reinstated the Property Lawsuit.

On June 27, 2018, you filed an Amended Complaint for Quiet Title and Forceable Entry and Detainer in the Property Lawsuit. On August 14, 2018, you filed in the Probate Case a Notice of Status, in which you alerted the Court to the Property Lawsuit and that it would have to be resolved before JF could file a Petition for Order of Complete Settlement of Estate by Personal Representative.

You filed five more notices of status in the Probate Case, with the sixth filed on May 5, 2021, notifying the Court of the pending Property Lawsuit and asking the Court to keep the Probate Case open.

On November 19, 2021, the Court in the Probate Case filed a Notice of Intent to Enter an Administrative Order of Dismissal. You took no action. On January 20, 2022, the Court in the Probate Case filed its Administrative Order of Dismissal, dismissing the case without prejudice. You failed to inform JF of the dismissal of the Probate Case.

On or about March 30, 2020, the attorney in the Property Lawsuit for two of the defendants (the Joneses) died. On July 14, 2021, the Court gave the Joneses 45 days—until late August 2021—to find a new attorney. The 45 days passed with no new attorney on behalf of the Jones. Yet, you took no action.

On January 28, 2022, the Court again dismissed the Property Lawsuit without prejudice. The Disposition Order for Lack of Prosecution provided that any party could move for reinstatement within 30 days. You failed to move for reinstatement.

On or about March 3, 2022, another defendant’s attorney in the Property Lawsuit died.

During the week March 6, 2022, JF called your office to check on the status of the case; you told JF about the attorneys’ deaths but you did not tell JF that the Property Lawsuit had been dismissed. JF later learned of the dismissal of the Property Lawsuit by looking at the case in New Mexico Courts Case Lookup; JF learned of the dismissal of the Probate Case from disciplinary counsel after JF filed her disciplinary complaint.

On March 10, 2023—after the disciplinary complaint was submitted—you filed a Motion to Reinstate in the Property Lawsuit, in which you attributed your inaction to the two attorneys’ deaths and to a tragedy your legal assistant experienced. The Court has not acted on the Motion.

You exhausted both the \$5,000.00 retainer that RT paid on June 20, 2017, and JF’s subsequent payments in the total amount of \$3,814.85. You records indicated a balance owed of \$4,577.87. However, as part of the Agreement, you refunded to RT’s Estate the \$5000.00 retainer and to JF \$3,814.85, and you zeroed out the balance purportedly owed.

Your conduct violated the following Rules of Professional Conduct: Rule 16-101, by failing to represent a client competently; Rule 16-103, by failing to represent a client diligently; Rule 16-104(A), by failing to communicate with your client; Rule 16-105(A), by charging an unreasonable fee; Rule 16-105(B), by not preparing a representation agreement with your client; and Rule 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

You have a prior disciplinary offense, including lack of diligence and lack of client communication. See *In re Houston*, 1999-NMSC-032, 127 N.M. 582, 985 P.2d 752.

Under the Agreement, beginning on October 23, 2023, the date the Disciplinary Board Panel approved the Agreement, you are on supervised probation pursuant to Rule 17-206(B)(2) NMRA, for one year. During that time, you will meet monthly with a supervising attorney who shall report monthly in writing to the Office of Disciplinary Counsel regarding your law office management, level of cooperation, case management and any other information the supervising attorney deems pertinent. Also under the Agreement, you shall pay the supervising attorney’s monthly invoices submitted for his or her fees.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin. You also must pay costs incurred in this disciplinary proceeding.

Dated January 19, 2024
The Disciplinary Board of the
New Mexico Supreme Court

By
Vickie R. Wilcox, Esq.
Board Chair

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of DAVID PARDO, ESQ.

DISCIPLINARY NO. 2023-07-4554

An Attorney Licensed to Practice Law Before the Courts of the
State of New Mexico

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a *Conditional Agreement Admitting the Allegations and Consent to Discipline*, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

The facts in this matter are straightforward. You represented yourself pro se in James Murtagh, M.D. v. David Pardo, et al, C.D.Cal. 2:15-cv-05204 PSG-FFM.

On or about July 10, 2023, you self-reported misconduct stating,

This is to inform you that I, David Pardo, made a false statement in a sworn deposition in April 2017 in the matter of James Murtagh, MD, vs. David Pardo (C.D. Cal.) Specifically, when asked whether I changed any settings in SKYPE relative to my communications with a Mr. Clark Baker, I answered, "I don't believe so, no." The truth is that I reset the default retention period to either none or the lowest setting. I did this to prevent Dr. Murtagh from abusing the information therein, distorting the contents beyond all recognition, and continuing to harass and vex his opponents as he is wont to do.

I accept all responsibility that arises out of this disclosure, including license revocation. Please be advised, however, that I will not stand in your way should you choose to revoke my license, having lost faith in the law and administration of justice long ago.

When asked if you were aware you were making a misstatement at the time it was made, you responded, "Yes."

This conduct violated the following provisions of the Rules of Professional Conduct:

- a. 16-303(A)(1), by making a false statement of fact;
- b. 16-304(B), by falsifying evidence;
- c. 16-804(C), by engaging in conduct involving dishonest, deceit and misrepresentation; and/or
- d. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

It is notable that this disciplinary matter came to the attention of the Office of Disciplinary Counsel due to your own self-report of misconduct. Initially, however, you were unable to assure disciplinary counsel that you would not repeat your misconduct. In fact, you stated that if the situation warranted it, you could not be sure you would not repeat your decision to be dishonest. At the hearing on this matter, you acknowledged with great sincerity that you had engaged in self-reflection and did not believe that there were ever exceptions to the requirement of honesty for members of the bar. Had you come to that realization sooner, it is unlikely you would have received formal discipline.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin. You also must pay costs incurred in this disciplinary proceeding.

DATE: January 19, 2024

Dated January 19, 2024
The Disciplinary Board of the
New Mexico Supreme Court

By
Vickie R. Wilcox, Esq.
Disciplinary Board Chair

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of GREGORY M. TUCKER, ESQ.

DISCIPLINARY NO. 2023-05-4549

An Attorney Licensed to Practice Law before the Courts of the State of New Mexico

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline which was approved by a Hearing Committee and a Disciplinary Board Panel.

You admit having violated the following Rules of Professional Conduct:

- 16-404(A), by using means that have no substantial purpose other than to embarrass a third person;
- 16-804(D), by engaging in conduct that is prejudicial to the administration of justice; and
- 16-804(E), by implying an ability to influence improperly a government official.

You have been a licensed attorney since 1999 with no disciplinary history. Despite your 24 years of experience you engaged in intentional, offensive, and unprofessional conduct in two separate matters. The Supreme Court of New Mexico stated in *In re Ortiz*, 2013-NMSC-027 ¶2, “Our legal professional must vigilantly strive to maintain the confidence of the public and to earn a reputation as a profession that pursues justice without personal attacks and unnecessary expense.” Despite this ruling of the Supreme Court in one matter you made statements in e-mails to opposing counsel such as:

- “Alright, Charles. Remember these words... ‘good luck’ I promise you[,] you will wish you knew.”
- “I’m curious, is this your first case? What? Look, you walked into something way out of your league. Please catch up and do the right thing. If I have to prove it once again, I’m ready. Ridiculous.”
- Alright. Enough is enough. Charles, enjoy the adventure. Wow.”

You then e-mailed the Judge’s TCAA stating,

- Don’t ever tell me how to do my job again. If the court doesn’t have jurisdiction and it’s the wrong venue, the court doesn’t have the authority under any [expletive] statute. Are you serious, or this some kind of joke?
- Jurisdiction and venue is where a contract is signed and/or where performance of that contract takes place. Not where someone happens to move. That’s the first day in civil procedure in law school. For Christ sake. Please don’t force me to request sanctions. I’m a nice guy, but I will not tolerate this kind of stuff anymore. Give me another statute and lame argument and watch what happens.

You continued to send e-mails to the TCAA and opposing counsel making more inappropriate comments. Your actions prompted the Court sua sponte to file an Order to Show Cause and Notice of Hearing In-Person. At the hearing you acknowledged the e-mails sent but stated that the e-mails directed to the Court were inadvertently sent and should have only been directed to opposing counsel. At the same hearing you told the Court, referencing the sitting Governor, “I know you were appointed by Michelle; she’s a friend of mine.”

In a separate matter a case agent went to the home of your paralegal not knowing that the woman who answered the door or her husband were affiliated with you in any way. The case agent was seeking information from your paralegal’s husband who was not at home. Your paralegal reported to you feeling intimidated and you assert you were quite emotional on the paralegal’s behalf. At a hearing you acknowledged that you sent a series of texts to the case agent (to which he did not respond) following his visit to your paralegal’s home saying:

10:00 am – For a man who Carrie’s (sic) a gun on your hip, your (sic) such a big coward you can’t have a conversation? Look, I’m a nice guy, or your worst nightmare. Choose your own adventure.

10:01 am – I didn’t even (sic) to the point. I had a question. Last person to hang up on me was a 13 year old girl when I was in junior high.

10:08 am – Was trying to figure out why you are after [my client] so much. I’m trying to resolve this issue. If there is something I don’t know, man the [expletive] up and tell me.

10:47 am – I haven’t met you. I’m in the government. If you [expletive] ever do what you did to my staff again, I’m dead serious, get ready for a category 5 nightmare. You want to talk, my address is... Bring more than your mouth or you (sic) Glock. It will take much more than that.

5:57 pm – Okay, I’ll just have you persecuted. It’s recorded, idiot. You didn’t know who you’re [expletive] with. Government corruption is just my game. Good luck. You’re on the witness list and I WILL subpoena you.

At the same hearing you also stated when referring to the incident between the case agent and your paralegal, “I don’t know what’s going on and what they’re trying to accomplish. But I want to put this on the record, because if they do that again, someone’s going to federal prison. Promise.”

Your opposing counsel informed the Court that you told her you were “going to humiliate” her, she would “regret the day [she] was born” and she would “rue the day [she] brought this case.” The Judge in this matter sua sponte issued a Proposed Order to Show Cause, and asked your opposing counsel to file a Motion in Support of Order to Show Cause. A hearing was held January 5, 2023, and you acknowledged you said that if your opposing counsel took the case “in front of a jury, I’m not just going to beat you, I’m going to humiliate you.” You also said, “I made that phone call. And I will not apologize for it. And so if you want to fine me, or whatever you want to do, I don’t care, because this is [expletive].”

Your conduct, albeit not as extreme, mirrors that in *In re Ortiz*. As in *In re Ortiz*, 2013-NMSC-027 ¶4 these comments did nothing other than to “aggravate[] and inflame[] the tone of the litigation.” Your frustration was apparent, but your comments did nothing but cast you in a poor light.

In both matters rather than focusing on the issue before each court – your improper statements in the underlying matters – you outlined your past professional achievements in what seemed to be an effort to minimize your actions. You did this again in your initial response to the Office of Disciplinary Counsel. In *In re Salazar* the Supreme Court has stated, “A lawyer’s self-proclaimed excellence is not a mitigating factor we consider when dispensing appropriate discipline...” 2019-NMSC-010 ¶44. While you may have had a successful career, this does not absolve you of the responsibilities contained within the Rules of Professional Conduct.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This formal reprimand will be filed with the Supreme Court in accordance with 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin.

Dated January 19, 2024
The Disciplinary Board of the
New Mexico Supreme Court

By
Vickie R. Wilcox, Esq.
Disciplinary Board Chair

REPORT BY DISCIPLINARY COUNSEL

DISCIPLINARY QUARTERLY REPORT

Reporting Period: October 1, 2023 – December 31, 2023

Final Decisions

Final Decisions of the NM Supreme Court 2

In the Matter of Jason Haubenreiser, (No. S-1-SC-40024). The New Mexico Supreme Court entered an order permanently disbarring the Respondent pursuant to Rule 17-206(A)(1) and Rule 17-210(B) NMRA, effective October 20, 2023.

In the Matter of Angela DeLorme-Gaines, (No. S-1-SC-39834). The New Mexico Supreme Court entered an order permanently disbarring the Respondent pursuant to Rule 17-206(A)(1) NMRA, effective November 14, 2023.

Summary Suspensions

Total number of attorneys summarily suspended 0
 Total number of attorneys summarily suspended (reciprocal) 0

Indefinite Suspensions

Total number of attorneys indefinitely suspended 1

Administrative Suspensions

Total number of attorneys administratively suspended 1

Disability Inactive Status

Total number of attorneys removed from disability inactive states 1

Charges Filed

Charges were filed against an attorney for allegedly failing to provide compete representation to a client, by failing to act with reasonable diligence and promptness in the representation, engaging in a conflict of interest, knowingly disobeying an obligation under the rules of a tribunal and/or engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to represent the client competently, failing to represent the client

diligently, failing to communicate with the client, failing to expedite litigation, failing to cooperate in the disciplinary process, and by engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for failing to represent a client competently, by failing to fully inform the client of the status of the matter, and by engaging in conduct prejudicial to the administration of justice.

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 0

Reciprocal Discipline

Total number of reciprocal discipline filed 1

Reinstatement from Probation

Petitions for reinstatement filed 0
 Reinstatement Orders 1

Public Censure

Public Censure 1

Formal Reprimands

Total number of attorneys formally reprimanded 0

Informal Admonitions

Total number of attorneys admonished 2

Letters of Caution

Total number of attorneys cautioned 5

Attorneys were cautioned for the following conduct: (1) meritless claims; (1) conflict of interest, (1) prosecutorial misconduct; (1) disruption of a tribunal; (2) lack of diligence, (1) excessive or improper fees, (1) lack of competence, (1) failure to communicate. (1) unauthorized practice of law.

Complaints Received

| <i>Allegations</i> | <i>No. of Complaints</i> |
|--------------------------------------|--------------------------|
| Trust Account Violations | 1 |
| Conflict of Interest | 1 |
| Neglect and/or Incompetence | 43 |
| Misrepresentation or Fraud | 0 |
| Improper Withdrawal..... | 0 |
| Fees..... | 8 |
| Improper Communications..... | 6 |
| Prosecutorial Misconduct..... | 6 |
| Advertising Violations..... | 0 |
| Improper Statements about Judge..... | 3 |
| Improper Means..... | 4 |
| UPL | 0 |
| Improper Trial Publicity..... | 0 |

| | |
|---|------|
| Lack of Fairness to Opposing Party/Counsel..... | 15 |
| Contact with Represented Party..... | 0 |
| Meritless Claims or Defenses..... | 0 |
| Lack of Diligence..... | 4 |
| Breach of Client Confidence..... | 2 |
| Other..... | 54 |
| *Total number of complaints received..... | 147* |

*Denotes total number of complaints received through 12/31/2023. May differ from the total number reflected in allegations due to reporting timing.

Rule 15-308 - In-house counsel limited license method

Effective 12/31/2023

A. Description. As further specified in this rule, an applicant may apply for a limited license permitting that applicant to practice law as in-house counsel in New Mexico under this method of licensure.

B. Application deadlines. An application for a license under this rule may be submitted at any time. Any attorney practicing as in-house counsel without a license to practice law shall have one year from the date this rule is effective to file an application with the board.

C. Qualifications. An applicant for a license under this rule shall provide proof that the applicant meets the qualifications set forth in Rule 15-202 NMRA, and has received passing scores on all examinations described in Rule 15-501(A) NMRA. In addition, the applicant must:

- (1) have been admitted to practice law in at least one (1) state and be currently an active member in good standing in that state;
- (2) be employed by a corporation, company, partnership, association, or other non-governmental business entity with a place of business in New Mexico;
- (3) submit a certificate from an officer, director, or the general counsel of the applicant's employer verifying the applicant is presently and exclusively employed as in-house counsel for that employer;
- (4) have never been denied a license to practice law in any state based on the applicant's character and fitness;
- (5) have not, within the five (5) years preceding application under this rule, taken and failed the examination of the minimum competence to practice law in New Mexico, as described in Article 5 of these rules;
- (6) not be, nor have ever been, admitted to the practice of law in New Mexico, unless the applicant had voluntarily withdrawn or resigned from membership in the State Bar of New Mexico while in good standing;
- (7) have not been previously denied licensure in any state;
- (8) have not previously engaged in the unauthorized practice of law in any state;
- (9) at the time of submitting the application have never been disbarred or suspended from the practice of law in another state; and
- (10) establish that if the applicant resigned or voluntarily withdrew from the practice of law in another state, that when the resignation or withdrawal occurred, the applicant was in good standing in that state.

D. Character and fitness. The board shall make a determination about the character and fitness of an applicant as set forth in Rule 15-205 NMRA for any applicant who has submitted an application for a license under this rule. An applicant shall pay any fees and costs associated with evaluating the applicant's character and fitness.

E. Procedure for issuance. On the board's receipt from an applicant of (a) a completed application for a license under this rule, (b) the required fees and costs, and (c) documents required by Paragraph C, then

- (1) the board shall evaluate the applicant's character and fitness as described in Rule 15-205 NMRA, and
- (2) on the board's determination the applicant has the requisite character and fitness and meets the qualifications, the board shall follow the requirements of Rule 15-207(A) NMRA for recommending issuance of a license to the applicant, and the applicant shall comply with the requirements of Rule 15-207(B) NMRA.

F. Fees and costs. The following fees and costs must be paid by the applicant on submission of the application for a license under this rule, and shall not offset fees and costs required to apply for another method of licensure:

- (1) Application fee. An application fee according to a published schedule of application fees promulgated by the board and approved by the Supreme Court, and
- (2) Investigation costs. Investigation costs according to the schedule of passthrough costs promulgated by the board as described in Rule 15-204(B) NMRA.

G. Specific ongoing requirements. An applicant approved for a license under this rule shall comply with the requirements of Rule 15-206 NMRA and Rule 15-207 NMRA, and shall annually submit a certificate described in Subparagraph (C)(3), above.

H. Limitations.

- (1) A person practicing law under a license issued under this rule may only:
 - (a) provide advice or legal services exclusively to the employer named in the application submitted for this method of licensure;
 - (b) provide legal advice to the directors, officers, employees, and agents of the business organization with respect to the employer's business affairs;
 - (c) negotiate and document matters for the business organization;
 - (d) represent the employer in its dealings with any New Mexico court, administrative agency or commission; and
 - (e) provide pro bono legal services in New Mexico under

Rules/Orders

From the New Mexico Supreme Court

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

the auspices of organized legal aid societies, Supreme Court, or bar association projects, or under the supervision of an attorney licensed to practice law in New Mexico who is also working on the pro bono representation.

(2) A person practicing law under a license issued under this rule may not:

- (a) represent or give advice to any shareholder, owner, partner, officer, employee, or other agent with respect to any personal matter or transaction;
- (b) offer legal services or advice to any third party having dealings with the attorney's employer; or
- (c) offer legal services or advice to the public.

I. Expiration.

(1) A license issued under this rule shall expire on the earlier of:

- (a) the licensee's cessation of employment with the employer identified in the application, unless the licensee has:
 - (i) been issued a license to practice law under another method of licensure described in these rules;
 - (ii) already accepted employment with a qualified business; and
 - (iii) notified the board of the change in employment; or
- (b) the licensee being issued a license to practice law under another method of licensure described in these rules.

(2) On expiration of a license issued under this rule, the board shall notify the Supreme Court that the in-house counsel license has expired and whether the attorney has been issued a license under another method of licensure. The Supreme Court shall then summarily order that the attorney may no longer practice law under that limited license.

(3) An attorney whose in-house counsel license has expired, and who resides or maintains a residence within this state, shall not be admitted to the practice of law for a particular case under the pro hac vice rules approved by the Supreme Court.

J. Suspension. A license issued under this rule is subject to suspension as described in the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

K. Revocation. A license issued under this rule is subject to revocation as described in Rule 15- 201(F) NMRA and the Rules Governing Discipline, Rules 17-101 to -316 NMRA.
N.M. R. Bar Adm. 15-308

Adopted by Supreme Court Order No. S-1-RCR-2023-00036, effective 12/31/2023.

Committee commentary. - *See Rule 16-505 NMRA regarding the unauthorized practice of law.*



Opportunities for Pro Bono Service CALENDAR

March

- | | | |
|--|---|---|
| <p>1 Law-La-Palooza In-Person New Mexico Legal Aid bit.ly/NMLALegalFairSignUp Location: Albuquerque</p> | <p>6 Citizenship & Residency Workshop In-Person New Mexico Immigrant Law Center www.nmilc.org/citizenship Location: El Centro de Igualdad y Derechos</p> | <p>7 Economic Justice Workshop In-Person/Remote New Mexico Immigrant Law Center www.nmilc.org/economic-justice Location: NMILC</p> |
| <p>8 Legal Fair In-Person New Mexico Legal Aid bit.ly/NMLALegalFairSignUp Location: Roswell</p> | <p>14 Asylum Initial Application and Work Permit Pro Se Clinic In-Person New Mexico Immigrant Law Center New Mexico Legal Aid www.nmilc.org/asylum Location: Announced prior to clinic</p> | <p>20 Citizenship & Residency Workshop In-Person New Mexico Immigrant Law Center www.nmilc.org/citizenship Location: El Centro de Igualdad y Derechos</p> |

If you would like to volunteer for pro bono service at one of the above events, please contact the hosting agency.



Resources for the Public CALENDAR

March

- | | | |
|--|---|---|
| <p>1 Law-La-Palooza In-Person New Mexico Legal Aid bit.ly/NMLALegalFairSignUp Location: Albuquerque</p> | <p>6 Citizenship & Residency Workshop In-Person New Mexico Immigrant Law Center www.nmilc.org/citizenship Location: El Centro de Igualdad y Derechos</p> | <p>7 Economic Justice Workshop In-Person/Remote New Mexico Immigrant Law Center www.nmilc.org/economic-justice Location: NMILC</p> |
| <p>8 Legal Fair In-Person New Mexico Legal Aid bit.ly/NMLALegalFairSignUp Location: Roswell</p> | <p>14 Asylum Initial Application and Work Permit Pro Se Clinic In-Person New Mexico Immigrant Law Center New Mexico Legal Aid www.nmilc.org/asylum Location: Announced prior to clinic</p> | <p>16 Legal Resources for the Elderly Workshop Virtual State Bar of New Mexico Call 505-797-6005 or 1-800-876-6657 to register Location: Virtual</p> |

Listings in the *Bar Bulletin* Pro Bono & Volunteer Opportunities Calendar are gathered from civil legal service organization submissions and from information pertaining to the New Mexico State Bar Foundation's upcoming events. All pro bono and volunteer opportunities conducted by civil legal service organizations can be listed free of charge. Send submissions to probono@sbnm.org. Include the opportunity's title, location/format, date, provider and registration instructions.

Advance Opinions

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

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-031

No: S-1-SC-38996 (filed October 12, 2023)

**STATE ex rel. JACOB R. CANDELARIA, in his capacity as STATE SENATOR,
and GREGORY BACA, in his capacity as STATE SENATOR,**

Petitioners,
and

**K. JOSEPH CERVANTES, in his capacity as STATE SENATOR,
DANIEL IVEY-SOTO, in his capacity as STATE SENATOR, GEORGE
K. MUÑOZ, in his capacity as STATE SENATOR,
and GERALD ORTIZ Y PINO, in his capacity as STATE SENATOR,**

Intervenors-Petitioners,

v.

MICHELLE LUJAN GRISHAM, in her capacity as GOVERNOR,

Respondent,
and

TIM EICHENBERG, in his capacity as STATE TREASURER,

Real Party in Interest.

ORIGINAL PROCEEDING

Candelaria Law
Jacob R. Candelaria
Albuquerque, NM

Baca Law Offices
Gregory Baca
Las Lunas, NM
for Petitioners

K. Joseph Cervantes
Las Cruces, NM
Daniel A. Ivey-Soto
Albuquerque, NM

George K. Muñoz
Gallup, NM
Gerald Ortiz y Pino
Albuquerque, NM

Intervenors-Petitioners, pro se

Office of the Governor
Holly Agajanian,
Chief General Counsel
Kyle P. Duffy,

Associate General Counsel
Maria S. Dudley,
Associate General Counsel
Santa Fe, NM

for Respondent

L. Helen Bennett, P.C.
Linda Helen Bennett
Albuquerque, NM

for Real Party in Interest

OPINION

VARGAS, Justice.

{1} The federal government, through the American Rescue Plan Act of 2021, provided approximately \$1.75 billion in

COVID-19-related financial assistance to New Mexico. This case presents a separation of powers question concerning whether the legislative or executive branch controls the funds. Consistent with our writ of mandamus issued November 18, 2021, we conclude that the authority lies with the Legislature.

I. BACKGROUND

{2} In response to the challenges posed by the COVID-19 pandemic, the President signed the American Rescue Plan Act of 2021 (ARPA) into law. Pub. L. No. 117-2, 135 Stat. 4 (codified as amended in scattered sections of the U.S.C.). Among other things, this law established the Coronavirus State Fiscal Recovery Fund. 42 U.S.C. § 802; Coronavirus State & Loc. Fiscal Recovery Funds, *Interim Final Rule*, 86 Fed. Reg. 26786-87 (May 17, 2021) (codified as amended at 31 C.F.R. pt. 35). The funds “are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses.” 86 Fed. Reg. at 26787.

{3} Of the \$350 billion in COVID-related financial assistance provided to eligible recipients, *id.* at 26816, New Mexico received approximately \$1.75 billion in ARPA funds. The Legislature attempted to appropriate the ARPA funds through the General Appropriation Act of 2021, 2021 N.M. Laws, ch. 137, §§ 1-15. In response, Governor Michelle Lujan Grisham vetoed the portions that related to ARPA funds, “asserting that the Legislature . . . lack[ed] the authority to direct the Executive’s administration of federal funds.”

{4} Prior to the commencement of this proceeding, the Governor spent approximately \$600 million of the \$1.75 billion in ARPA funds received by New Mexico, leaving approximately \$1.08 billion to be distributed. Petitioners State Senators Jacob R. Candelaria and Gregory Baca filed suit against the Governor, seeking a writ of mandamus prohibiting her from expending any additional ARPA funds. Petitioners also requested a stay prohibiting the Governor and any official under her control from “transferring, encumbering, committing, expending or appropriating” any additional ARPA funds for the duration of these proceedings. Petitioners limit their request for a writ to the remaining \$1.08 billion in ARPA funds and do not request relief related to the \$600 million previously spent by the Governor. We denied the request for a stay and requested responses from the Governor and from Tim Eichenberg, New Mexico State Treasurer and real party in interest in this proceeding. We also allowed the intervention of four additional state senators. Following oral argument, we issued a prohibitory writ of mandamus and an order providing that the Governor and State Treasurer “shall not transfer, encumber, commit, expend, or appropriate any additional [ARPA] funds

... absent legislative appropriation.” This opinion explains the basis for that order.

II. DISCUSSION

{5} Before reaching the merits of Petitioners’ claims, we first consider two preliminary matters: (1) whether Petitioners have standing and (2) whether a writ of mandamus is the proper form of relief.

A. Standing

{6} Petitioners assert that they have standing on two separate grounds. First, they contend that the dispute between the legislative and executive branches of government confers standing as a matter of great public importance. Next, Petitioners assert that standing is proper by virtue of their positions as members of the state senate.

{7} We need not reach the question of Petitioners’ standing based on their membership in the state senate, as we conclude that this case presents a matter of great public importance. This Court has long recognized that we may, in our discretion, “grant standing to private parties to vindicate the public interest in cases presenting issues of great public importance.” *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, ¶ 7, 86 N.M. 359, 524 P.2d 975. Matters of “great public importance” are those that involve “clear threats to the essential nature of state government guaranteed to New Mexico citizens under their Constitution—a government in which the three distinct departments, legislative, executive, and judicial, remain within the bounds of their constitutional powers.” *State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 21, 128 N.M. 154, 990 P.2d 1277 (ellipsis, internal quotation marks, and citation omitted). In this instance, Petitioners’ claims require us to decide the bounds of the constitutional powers of the legislative and executive branches to spend federal funds. Such separation of powers claims present matters of great public concern conferring standing on Petitioners. See *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 15, 120 N.M. 562, 904 P.2d 11 (concluding the claim “that the Governor has exercised the state legislature’s authority” is a matter of “great public interest and importance” conferring standing (internal quotation marks and citation omitted)); *N.M. Bldg. & Constr. Trades Council v. Dean*, 2015-NMSC-023, ¶ 7, 353 P.3d 1212 (“The balance and maintenance of governmental

power is of great public concern.” (internal quotation marks and citation omitted)).

B. Mandamus

{8} Having determined that Petitioners have standing, we next consider whether a writ of mandamus is the proper method of relief. “Mandamus may be used either to compel the performance of an affirmative act where the duty to perform the act is clearly enjoined by law, or it may be used in a prohibitory manner to prohibit unconstitutional official action.” *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 23, 487 P.3d 815 (ellipsis, internal quotation marks, and citation omitted). It is well-established that “[w]e have . . . original jurisdiction in mandamus in instances where a petitioner [seeks] to restrain one branch of government from unduly encroaching or interfering with the authority of another branch in violation of Article III, Section 1 of our state constitution.” *Unite New Mexico v. Oliver*, 2019-NMSC-009, ¶ 2, 438 P.3d 343 (internal quotation marks and citation omitted); see also *Riddle*, 2021-NMSC-018, ¶ 23 (“Mandamus is often utilized to restrain one branch of government from encroaching on the powers reserved to another branch.”). This case presents precisely such an instance. Petitioners ask us to issue a prohibitory writ restraining the Governor from encroaching on the authority of the legislative branch to appropriate money under Article IV, Section 30 of the New Mexico Constitution, which provides that “money shall be paid out of the treasury only upon appropriations made by the legislature.” Therefore, mandamus is proper.

C. ARPA Is Broad with Few Limitations

{9} ARPA provides four broad eligible uses of federal funds provided to the states: (A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (B) to respond to workers performing essential work during the COVID-19 public health emer-

gency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

42 U.S.C. § 802(c)(1)(A)-(D).¹

{10} All four categories allow state governments broad discretion to determine how ARPA funds should be used. Indeed, the revenue loss provision is particularly flexible because this category allows governments to replenish their general funds as a result of a “reduction in revenue of such State . . . government due to the COVID-19 public health emergency.” Section 802(c)(1)(C). If used to offset a reduction in revenue due to COVID-19, the limitations on the state are minimal, prohibiting only the use of the funds to offset tax cuts or to add to pension funds. Section 802(c)(2)(A)-(B). Further, because ARPA does not limit the percentage of funds that may be allocated to a certain category, a state retains the discretion to deposit the entirety of the awarded funds into a single category.² The broad discretion that states are given to determine how ARPA funds are used is also evidenced by the lack of any guidance or requirements governing the process by which states allocate these funds.

{11} The accompanying federal regulations reinforce that ARPA funds can be used broadly, setting out dozens of examples of eligible uses within the statutorily defined categories. See generally 31 C.F.R. § 35.6 (2021). For example, Category (b), Public Health Emergency or Its Negative Economic Impacts, lists twelve subcategories and twenty-two sub-subcategories

¹ Unless otherwise specified, all references to 42 U.S.C. § 802 are to the 2021 version of ARPA in effect at the time we issued our writ of mandamus and accompanying order. After we issued the prohibitory writ in November 2021, Congress amended Section 802 to provide additional flexibility by adding an additional use category aimed at “provid[ing] emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs.” Section 802(c)(1)(E) (2022).

² We recognize that the 2022 amendment to ARPA Section 802 categories imposed minimal limitations on the percentage of funds that may be allocated to infrastructure projects, while other categories remain free from limitations. Compare § 802(c)(5)(C)(i)(1)(aa)-(bb) (2022) (limiting the amount of funding to be used on infrastructure projects to the greater of “\$10,000,000; and . . . 30 percent of such payment”), with § 802(c)(1)(A)-(B) (2022) (providing no limitation on the allocation of funds under these categories). This structure provides recipients with broad discretion to deposit all or significant portions of the awarded funds into a single category

of permissible uses. 31 C.F.R. § 35.6(b) (2021).³ Importantly, the regulations are silent as to how the funds shall be distributed among the categories, subcategories, and sub-subcategories, thereby leaving significant discretion to each recipient.

{12} The Interim Final Rule issued by the Secretary of the Treasury, which provides additional guidance to assist in the implementation of ARPA, reiterates the federal government's intention to give broad discretion to the states to use ARPA funds. The Interim Final Rule explains that "recipients have considerable flexibility to use [ARPA funds] to address the diverse needs of their communities." *Interim Final Rule*, 86 Fed. Reg. at 26806. For example, the Interim Rule addressing the category of public health and economic impacts "provides flexibility for recipients to use payments . . . for programs or services that are not identified on these non-exclusive lists but that fall under the terms of [ARPA] by responding to the COVID-19 public health emergency or its negative economic impacts." *Id.* at 26788 (emphasis added).⁴ The broad nature of the statute and the accompanying rules leaves to the states the responsibility to decide how best to use the ARPA funds.

D. Separation of Powers

{13} The flexible and broad nature of the funds raises the separation of powers question before us today. To answer this question, we consider the constitutionally defined powers of our legislative and executive branches, evaluating in particular whether the ARPA funds are more properly administered by the Governor or appropriated by the Legislature. Article III, Section 1 of the New Mexico Constitution provides:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise

expressly directed or permitted.

Article IV, Section 30 of the New Mexico Constitution reserves the power to appropriate to the Legislature, requiring that "money shall be paid out of the treasury only upon appropriations made by the legislature." Article IV, Section 30 draws no distinction between state and federal funds. The Governor, by contrast, is empowered to "take care that the laws be faithfully executed." N.M. Const. art. V, § 4; *see also State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 22, 125 N.M. 343, 961 P.2d 768 ("A governor's proper role is the execution of the laws.").

{14} Notwithstanding the specific powers reserved to the legislative and executive branches by our Constitution, we have recognized that "the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function," as "the absolute separation of governmental functions is neither desirable nor realistic." *Clark*, 1995-NMSC-048, ¶ 32 (internal quotation marks and citation omitted). Total compartmentalization and separation of functions between the executive and legislative branches would result in a state of dysfunction. *See id.* Even giving due weight to such overlap, however, "we have not been reluctant to intervene when one branch of government unduly interfere[s] with or encroach[es] on the authority or within the province of a coordinate branch of government." *Id.* (internal quotation marks and citation omitted). Our approach is one of practicality and common sense, which recognizes that "[a]lthough the executive, legislative, and judicial powers [set out in our Constitution] are not hermetically sealed, they are nonetheless functionally identifiable one from another." *Id.* ¶ 33 (internal quotation marks and citation omitted).

{15} In this instance, we must determine whether the Governor's authority to spend the ARPA funds is a permissible overlap under the separation of powers doctrine, or whether such an act would improperly infringe on the authority vested in the Legislature. *See id.* ¶ 34 ("The Governor may not exercise power that as a matter of state constitutional law infringes on the power

properly belonging to the legislature."). To answer this question, we must determine "whether the Governor's action disrupts the proper balance between the executive and legislative branches." *Id.* Our assessment necessarily

focuses on the extent to which the action by one branch prevents another branch from accomplishing its constitutionally assigned functions. Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of [the Legislature].

Id. ¶ 34 (brackets and internal quotation marks omitted) (quoting *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 443 (1977)). "One mark of undue disruption would be an attempt to foreclose legislative action in areas where legislative authority is undisputed." *Id.* This approach strikes the appropriate balance between the coordinate branches of government, while giving the required "effect to Article III, Section 1." *Id.* ¶ 32.

{16} Petitioners contend that the Governor improperly encroached on the authority of the Legislature because the ARPA funds were "made available to the state generally," and Congress did not designate them "for any specific state program or state agency." Because Congress did not specifically designate the funds, Petitioners argue, the ARPA funds are public money subject to legislative appropriation under Article IV, Section 30. The Governor responds that *Sego*, 1974-NMSC-059, established a categorical rule that the Legislature does not have authority to appropriate federal funds in any circumstance. She further asserts that because the funds are in a "suspense account" for funds that have not yet been earned pursuant to NMSA 1978, Section 6-10-3(C) (2011), they are not "in the state treasury" and are therefore beyond the reach of the appropriation requirement of Article IV, Section 30. Alternatively, she invites the Court to conclude that she retains control over the funds under a

³ As with ARPA, the federal government subsequently amended the federal regulations. The amended version of the regulations is equally as broad and therefore does not alter our conclusion. *See* 31 C.F.R. § 35.6(b)(3)(i)(A)-(D) (2022) (listing four subcategories of eligible uses to address public health impacts, each of which include an extensive list of eligible uses ranging from contact tracing to payroll expenses related to community policing strategies, reductions in gun violence, and "investing in technology and equipment"); *id.* § 35.6(b)(3)(ii)(A)-(E) (encompassing five categories and seventeen expansive subcategories of negative economic impacts for which ARPA funds can be used).

⁴ The Final Rule, promulgated by the Department of Treasury after we issued our prohibitory writ of mandamus and order, provides even greater flexibility. 87 Fed. Reg. 4338 (Jan. 27, 2022) (codified at 31 C.F.R. pt. 35). In general, it "provides broader flexibility and greater simplicity" beyond the flexibility provided within the Interim Rule. *Id.* at 4339. For example, "the final rule provides a broader set of enumerated eligible uses." *Id.* Such uses include "making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities." *Id.* Moreover, even if a recipient uses ARPA funds in a manner that is beyond what is specifically enumerated, such use is permitted so long as the recipient satisfies a standard process set out in the Final Rule. *Id.* at 4339-40.

case-by-case approach developed by the Colorado Supreme Court.

{17} For the reasons outlined below, we do not agree that this Court's holding in *Sego*, 1974-NMSC-059, answers the question presented by this case. Nor are we persuaded that the type or location of the account where the ARPA funds have been deposited is dispositive of the right to allocate those funds. Finally, we decline the Governor's invitation to adopt a bright-line rule that all federal funds fall outside the purview of the Legislature's power to appropriate. Instead, we adopt a more nuanced case-by-case approach that considers the amount of discretion left to the states to determine how best to expend federal funds.

E. *Sego* and *Carruthers*

{18} Relying on *Sego*, 1974-NMSC-059, and *State ex rel. Coll v. Carruthers*, 1988-NMSC-057, 107 N.M. 439, 759 P.2d 1380, the Governor contends this Court has already concluded that federal funds received by the State are properly administered by the executive branch, rather than appropriated by the Legislature. Those cases, while informative, do not control the result of this proceeding. Further, our holding today does not have any bearing on the validity of either *Sego* or *Carruthers*.

{19} In *Sego*, we focused on the constitutional mandate giving boards of regents "control and management" of the state's higher educational institutions, art. XII, § 13, and the Legislature's encroachment on that authority by trying to appropriate and control the expenditure of funds granted or given to those institutions from sources other than the state. 1974-NMSC-059, ¶¶ 42-44, 51. The dispute did not involve a claim by the Governor that he had the power to administer those funds. William Sego, a state senator, sought a writ of mandamus commanding the Governor and other executive branch officials to "treat as nullities certain vetoes attempted by the Governor" of legislation purporting to appropriate federal funds to institutions of higher education in New Mexico. *Id.* ¶¶ 1, 9, 41-51. Among the vetoes challenged by Sego was a veto of legislation giving the department of finance and administration authority to temporarily use excess funds appropriated to institutions of higher education, which included, among other things, federal funds and "funds in the form of scholarships, gifts, donations, private endowments or other gratuities received from an outside source." *Id.* ¶ 41. To determine whether the Legislature was acting within the scope of its power, we considered "the authority of the Legislature to appropriate and control non-state funds available to these educational

institutions." *Id.* ¶ 45. Relying on Article XII, Section 13 of the New Mexico Constitution, we explained that the "powers of control and management of each of these [affected] institutions is vested in a Board of Regents," which supported our holding that the Legislature "has no power to appropriate and thereby endeavor to control the manner and extent of the use or expenditure of Federal funds made available to our institutions of higher learning."⁵ *Id.* ¶¶ 49-51. Instead, the Court concluded, "Control over the expenditure of these funds rests with the Federal government and the Boards of Regents of the respective institutions." *Id.* ¶ 51. The *Sego* Court did not consider the Governor's authority to administer federal funds, as it was not at issue in that case and it does not control the outcome of this proceeding.

{20} In reaching its conclusion, *Sego* quoted with approval the Supreme Court of Colorado's opinion in *MacManus v. Love*, 499 P.2d 609 (Colo. 1972), which "held 'that federal contributions are not the subject of the appropriative power of the legislature' and the Legislature's attempt to do so was . . . void as an infringement upon the executive function of administration." *Sego*, 1974-NMSC-059, ¶ 50. The Governor argues that our approval of the statement in *MacManus* supports the conclusion that this Court intended to create a categorical ruling that all federal funds are subject to administration by the executive and not appropriation by the Legislature. Rather than announcing a categorical rule in *Sego*, however, we specifically concluded that Article XII, Section 13 controlled the manner in which the funds were spent and that the control over the funds at issue in that case "rest[ed] with the Federal government and the Boards of Regents of the respective institutions." *Sego*, 1974-NMSC-059, ¶ 51. *MacManus* was quoted to support our conclusion in *Sego* that the New Mexico Constitution provided a specific mandate that boards of regents, and not the Legislature, were authorized to direct federal funds received by institutions of higher learning. *See id.* ¶¶ 48-51. It did not establish a categorical rule regarding appropriation of federal funds. And, rather than give the Governor exclusive control over the funds at issue in *Sego*, as she requests in this proceeding, we concluded that those funds were subject to the state constitutional mandate set out in Article XII, Section 13, giving control and management to the board of regents of each institution of higher learning. *Id.*

{21} Furthermore, in the half-century since *MacManus* was decided, Colorado case law has evolved. Although the Supreme Court of Colorado has acknowl-

edged that it stated "rather broadly [in *MacManus*] that federal contributions are not subject to appropriations by the legislature," it now recognizes that federal funds can be subject to the legislative appropriation process. *See In re Interrogatories Submitted by Gen. Assembly on House Bill 04-1098*, 88 P.3d 1196, 1203 (Colo. 2004) (rejecting the broad holding in *MacManus* that federal funds are not subject to legislative appropriation because "some funds deriving from the federal government are more akin to state moneys, and therefore subject to legislative appropriation"). Having examined the development of its own case law, Colorado has adopted a case-by-case approach focused on the nature of the specific grant or appropriation before the court.

{22} We therefore decline the Governor's invitation to interpret this Court's holding in *Sego* as a broad categorical rule that all federal funds are beyond legislative appropriation. *Sego* did not consider expenditure of federal funds generally but only those funds "made available to our institutions of higher learning," 1974-NMSC-059, ¶ 51, and we will not rely on *Sego* for a proposition that it did not consider. *See Dominguez v. State*, 2015-NMSC-014, ¶ 16, 348 P.3d 183 ("The general rule is that cases are not authority for propositions not considered." (brackets, internal quotation marks, and citation omitted)).

{23} *Carruthers*, likewise, does not support the Governor's view that the Legislature does not have authority to appropriate federal funds no matter the circumstance. The Governor argues that, because we did not clarify in *Carruthers* that our holding in *Sego* "was limited to institutions of higher learning," we "strongly implied" that *Sego* created a categorical rule prohibiting legislative appropriation of *all* federal funds. As an initial matter, we disagree that *Sego* required clarification. In *Sego*, 1974-NMSC-059, ¶ 48, we expressly stated that "[a]s to the authority of the Legislature to appropriate non-state funds available to the institutions of higher learning, we are of the opinion that the Legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation." Thus, our limitation of *Sego* to "non-state funds available to the institutions of higher learning," *id.*, as opposed to *all* nonstate funds was clear.

{24} Turning to *Carruthers*, the Legislature in that case appropriated funds through the General Appropriation Act of 1988, and the Governor vetoed several portions of the legislation. 1988-NMSC-057, ¶ 2. As relevant here, one portion of the legislation at issue in *Carruthers* appropriated certain funds, which included fed-

⁵ Since *Sego*, Article XII, Section 13 has been amended multiple times and this does not affect our analysis.

eral funds, for data processing services. *Id.* ¶ 23. Although the Governor in *Carruthers* supported his veto with some general reasoning that the Legislature cannot appropriate federal funds, he did not attempt to veto the Legislature's appropriation of federal funding. *Id.* ¶¶ 23-24 (explaining that the Governor's objection was to the Legislature's mandate that the funds be used to purchase a *specific system* from a *specific contractor*). Instead, *Carruthers* confirms that *Sego* addressed the New Mexico Constitution's particular mandate that authorizes boards of regents, not the Legislature, to direct federal funds received by institutions of higher learning. *Id.* Therefore, the veto presented to this Court did not attempt to prohibit the Legislature from appropriating any federal funds but instead prohibited the Legislature from directing the specific system and specific contractor to be used. *See id.*

{25} To hold that the Legislature lacks the authority to appropriate federal funds under any circumstance would contradict *Carruthers*, where we relied on *Sego* to explain that "the legislature 'has the power, and perhaps the duty, in appropriating State monies to consider the availability of Federal funds for certain purposes.'" *Carruthers*, 1988-NMSC-057, ¶ 23 (quoting *Sego*, 1974-NMSC-059, ¶ 51). Instead, this Court's explanation in *Carruthers* aligns with our view that *Sego* focused on the notion that the New Mexico Constitution provided a specific mandate that authorized boards of regents, and not the Legislature, to direct federal funds received by institutions of higher learning, rather than to establish a categorical rule regarding appropriation of federal funds. *See id.* This reading is consistent with the remainder of *Carruthers* where we stated that "[w]ith few exceptions, money shall be paid out of the public treasury only upon appropriations made by the legislature." *Id.* ¶ 5. Because the power to appropriate rests with the Legislature, the Governor retains "only a negative power to disapprove; it is not the power to enact or create new legislation." *Id.* ¶ 6.

{26} The Court in *Carruthers* took issue with the Legislature placing improper conditions on appropriations when it "limited the expenditure of appropriated funds to a specific system and a specific contractor," thereby eliminating the Governor's discretion to exercise his executive management function. *Id.* ¶ 24. ("We have previously observed . . . that conditions and restrictions on appropriations which reserve to the legislature 'powers of close supervision' over the executive function are not looked upon with favor." (citation omitted)). The Legislature's conduct in this regard fell outside the confines of "its traditional oversight and appropriation

functions" because it left the Governor without discretion to exercise his management of the funds. *Id.* But we did not hold that the Legislature is without authority to appropriate federal funds no matter the circumstance. Indeed, the Legislature's appropriation of federal funds in *Carruthers* remained intact. *See id.* ¶ 23 (retaining the Legislature's appropriation of federal funds even after the veto struck the provision placing specific contractor and system conditions on the appropriation). This close examination of *Carruthers* cuts against the Governor's assertion that *Carruthers* created a bright-line rule precluding legislative appropriation of federal funds under any circumstances. Further, we decline to adopt an approach that would categorically exclude the Legislature from ever appropriating federal funds. Because neither *Sego* nor *Carruthers* answers the question before us today, we look to the text of our Constitution and relevant statutes.

F. Constitutional and Statutory Framework to Appropriate and Administer Money in the State's Possession

{27} Our statutes and Constitution set forth the process for handling money received on behalf of the state. Section 6-10-3 provides that "[a]ll public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source . . . shall be paid into the state treasury." And, "except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature." N.M. Const. art. IV, § 30. The Legislature, however, has recognized that on occasion state officials receive funds that are not currently and may never become public money. The Legislature established a process to account for and administer funds on such occasions where those funds are not yet property of the state. Section 6-10-3(C) provides that every official or person in charge of any state agency receiving any money . . . which money has not yet been earned so as to become the absolute property of the state, shall deliver or remit to the state treasury . . . which money shall be deposited in a suspense account to the credit of the proper official, person, board or bureau in charge of any state agency so receiving the money.

"All unearned moneys deposited in a suspense account with the state treasurer . . . shall, as soon as the same shall become the absolute property of the state of New Mexico, be transferred out of said suspense account to the proper fund." NMSA 1978, § 6-10-41 (1977).

{28} Petitioners contend that the ARPA funds are subject to legislative appropriation because they are located within the state treasury. In response, the Governor contends that the funds fall outside the legislative appropriation requirement because they are located in a suspense account within the treasury and are subject to conditions, including repayment if misused, such that the funds are not the absolute property of the state. As explained later in further detail, we disagree that the fund's location within the treasury—whether within a suspense account or the general fund—is dispositive or even relevant. However, we agree that the limitations imposed on a state as a condition for receiving such funds from the federal government are relevant. Conditions imposed by the federal government that specify how funds are to be used do not require legislative appropriation and allow the executive branch to simply execute the law by adhering to a federally pre-established purpose. By contrast, federal funds provided with a broad or discretionary purpose such that they can be put to a variety of uses must be appropriated by the Legislature. Because our Constitution and statutory scheme do not appear to create a distinction between funds that are received from the federal government and funds that are generated by the state, we look to approaches adopted in other states to assist us in our examination of what factors or conditions ultimately determine which branch of government controls the funds.

G. Other States

{29} Other states have addressed similar separation of power questions by considering the nature and purpose of the federal funds at issue. In determining "whether certain moneys fall under the powers of the legislative or executive branch," Colorado primarily examines "whether those moneys constitute general state funds or custodial funds." *In re Interrogatories*, 88 P.3d at 1200. This examination involves distinguish[ing] between funds akin to state moneys, which allow the state broad flexibility in determining how such funds should be used, and therefore become part of the state's general fund, and custodial funds, which are to be used only in the manner specified and for the purposes designated by the federal government.

Id. at 1202.

{30} Under this approach, Colorado has established that noncustodial funds are subject to legislative appropriation, while custodial funds "fall outside the scope of legislative authority and instead are subject to executive control." *Id.* at 1202-03. "[W]hen evaluating whether certain moneys constitute custodial funds," Colorado

considers all circumstances regarding the funds, including “the source of the funds, the degree of flexibility afforded to the state as to the process by which the funds should be allocated, and the degree of flexibility afforded to the state as to the funds’ ultimate purposes.” *Id.* at 1202.

{31} Oklahoma, like Colorado, distinguishes between custodial and non-custodial funds when presented with a separation of powers issue. *See Application of State ex rel. Dep’t of Transp.*, 1982 OK 36, ¶ 10, 646 P.2d 605, 609-10. However, Oklahoma does not specifically rely on enumerated factors in assessing whether a fund will be custodial, instead focusing on whether the federal funds are held in trust for a specific purpose. *See id.* In applying this principle to grant-in-aid programs, the Supreme Court of Oklahoma noted that “[f]ederal money deposited in the state treasury pursuant to some grant-in-aid program is held in trust for a specific purpose. Like other custodial funds, it retains its original legal character. The legislature wields no authority over such funds.” *Id.* (footnote omitted). When these federal deposits take place, the Legislature “may not subvert congressional policy by diverting the money to another purpose.” *Id.*

{32} The Massachusetts high court likewise recognizes that only certain federal funds fall outside the Legislature’s power to appropriate. In assessing whether federal funds are subject to appropriation or are merely held in trust, Massachusetts focuses on whether the federal funds “are received by State officers or agencies subject to the condition that they be used only for objects specified by Federal statutes or regulations.” *Op. of the Justices to the Senate*, 378 N.E.2d 433, 436 (Mass. 1978). When the funds are received with specific conditions attached, “the money is impressed with a trust and is not subject to appropriation by the Legislature.” *Id.* In that circumstance, “[t]he recipient of such funds has no choice but to comply with the requirements imposed by Federal law.” *Id.* The court explained, however, that not all funds received from the federal government would be held in trust. *Id.* Instead, “[f]ederal reimbursements may be made to a State without conditions imposed as to expenditure.” *Id.* When this occurs, the “money would be subject to the legislative power of appropriation.” *Id.*

{33} We glean from these cases that the answer to the separation of powers question lies in a case-by-case examination of the amount of discretion that the federal government affords to state recipients in spending federal funds. When the funds come with specific conditions attached, the executive branch is merely administering the funds consistent with the requirements established by the federal government, and

no legislative appropriation is required. If a state retains wide discretion, then such funds must be appropriated—a function constitutionally reserved for the Legislature.

H. The ARPA Funds Are Subject to Legislative Appropriation

{34} Today, we adopt a totality of the circumstances approach to determine whether the legislative or executive branch has the power to spend ARPA funds. The amount of discretion the federal government left to New Mexico in allocating the ARPA funds compels us to conclude that they are subject to legislative appropriation. We base our conclusion on the language of ARPA, which includes broad categories bestowing vast discretion on state recipients, as well as federal regulations and rules reinforcing such flexibility through numerous categories and subcategories covering a wide array of eligible uses, even allowing recipients to allocate funds to programs or services that are not explicitly enumerated as long as they “meet the objectives” of the statute. U.S. Dept. of the Treasury, *2021 Interim Final Rule: Frequently Asked Questions*, Section 2.3 (2023), <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf> (last visited October 3, 2023). We reiterated in *State ex rel. Smith v. Martinez* that the “New Mexico Constitution vests the power to appropriate money *exclusively* with the Legislature,” and that “a law making an appropriation must ‘distinctly specify the sum appropriated and the object to which it is to be applied.’” 2011-NMSC-043, ¶ 4, 150 N.M. 703, 265 P.3d 1276 (emphasis added) (citing N.M. Const. art. IV, § 16; quoting N.M. Const. art. IV, § 30). The Governor, on the other hand, retains the power to “approve or disapprove any part or parts, item or items, of any bill appropriating money” *Id.* (quoting N.M. Const. art. IV, § 22).

{35} The number of eligible uses contained within ARPA is simply too broad to allow the executive to administer or execute the funds without infringing on the Legislature’s constitutional duty to appropriate. This broad flexibility embedded within ARPA is evidence of significant discretion, such that the Governor, if she were to control these funds, would not be able to allocate the funds through the mere “execution” of the laws. *See* N.M. Const. art. V, § 4 (empowering the Governor to execute the law). Instead, the Governor would be required to exercise the Legislature’s constitutional prerogative to assess “how, when, and for what purpose” the ARPA funds would be used. *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, ¶ 14, 120 N.M. 820, 907 P.2d 1001 (internal quotation marks and citation omitted) (“The Legislature must exercise its exclusive

power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government.” (internal quotation marks and citation omitted)).

{36} For example, even if we focused solely on the first eligible use category—Public Health/Negative Economic Impacts—the Governor would need to choose between twelve subcategories and twenty-two sub-subcategories of permissible uses within that broad category. 31 C.F.R. § 35.6(b) (2021). Alternatively, the Governor could forego funding that category at all, instead focusing on the premium pay or revenue loss categories. Or, at her discretion, the Governor could use ARPA funds “for programs or services *that are not identified on these non-exclusive lists* but that fall under the terms of [ARPA] by responding to the COVID-19 public health emergency or its negative economic impacts.” *Interim Final Rule*, 86 Fed. Reg. at 26788 (emphasis added).

{37} If the Governor were to unilaterally control how ARPA funds are spent, she would exceed her power to execute the laws and infringe on the Legislature’s appropriation power—a power that is constitutionally vested in the legislative branch by Article IV, Section 30. *Clark*, 1995-NMSC-048, ¶ 34 (“The Governor may not exercise power that as a matter of state constitutional law infringes on the power properly belonging to the legislature.”). Just as the Legislature did not have the authority to infringe on the “executive management function” in *Carruthers*, 1988-NMSC-057, ¶ 24, so, too, the executive does not have the authority to intrude on the Legislature’s exclusive authority to appropriate funds. This is a proper balance of power between the coordinate branches of government.

{38} If the executive was allowed to unilaterally spend the ARPA funds absent prior appropriation, it would “disrupt[] the proper balance between the executive and legislative branches” because it is indisputable that the power to appropriate money falls exclusively within the purview of the legislative branch. *Clark*, 1995-NMSC-048, ¶ 34 (“One mark of undue disruption [of the proper balance between the executive and legislative branches] would be an attempt to foreclose legislative action in [an area] where legislative authority is undisputed.”); *Smith*, 2011-NMSC-043, ¶ 4 (explaining that our Constitution vests appropriation power with the Legislature). We cannot allow such an unconstitutional infringement on the legislative branch of government.

I. Suspense Funds

{39} In an attempt to avoid such infringement, the Governor contends that the ARPA funds are “properly held in a suspense account pursuant to” Sections

6-10-3(C) and 6-10-41 because the funds “ha[ve] not yet been earned so as to become absolute property of the state.” The Governor reasons that because the funds are held in suspense, they “do not implicate Article IV, Section 30’s appropriation requirement because they fall outside of the state treasury.” The Governor submitted an affidavit from the Secretary for the New Mexico Department of Finance and Administration (DFA), who affirmed that the ARPA funds are in a suspense account. She also affirmed that she is responsible for the DFA’s exercise of its statutory authority to make disbursements from accounts maintained by the Treasurer’s office, including from those funds held in suspense accounts. According to her affidavit, the ARPA funds were deposited into suspense accounts, coded as “unearned revenue,” and treated as liabilities instead of assets for audit purposes.

{40} Upon close examination, we conclude that Section 6-10-3 is an accounting provision that does not remove the ARPA funds from the treasury or impact the constitutional separation of powers analysis that we must engage in when we are assessing whether it is the legislative or the executive branch that controls the funds at issue. For this reason, we decline to allow coding procedures for auditing or

accounting purposes to subvert or determine the branch of government authorized to appropriate funds when our Constitution explicitly provides that “money shall be paid out of the treasury only upon appropriations made by the legislature.” N.M. Const. art. IV, § 30.

J. Funds Held in Suspense Accounts Become the Property of the State Before They Are Spent

{41} Even assuming that the use of a suspense account should control which branch of government has the power to spend the ARPA funds, at oral argument the Governor advanced that the ARPA funds are not earned until the funds are “spent, reported, and approved by the federal government.” Counsel for the Governor argued, “If [the funds are] unearned, [the funds] should not be in the state treasury and therefore [are not] subject to appropriation pursuant to Article IV, Section 30.”

{42} We are unconvinced. Once state moneys are “earned so as to become the absolute property of the state” under Section 6-10-3(C), the moneys shall “be transferred out of said suspense account to the proper fund.” Section 6-10-41. Fundamentally, a suspense account is a temporary holding account where the funds are placed while a decision is being made

as to their classification. *See Black’s Law Dictionary*, 24 (11th ed. 2019) (defining a *suspense account* as a “temporary record used in bookkeeping to track receipts and disbursements of an uncertain nature until they are identified and posted in the appropriate ledgers and journals”). If the predicate has been satisfied, the funds must, by statute, be transferred into “the proper fund.” Section 6-10-41. Therefore, the Governor’s argument that the ARPA funds are not earned until they are spent is unpersuasive because the funds must be transferred from the suspense account into the proper fund before they are spent—not after.

III. CONCLUSION

{43} For the foregoing reasons, we hold that the ARPA funds are subject to legislative appropriation and so have granted a prohibitory writ of mandamus that Governor Michelle Lujan Grisham and State Treasurer Tim Eichenberg shall not “transfer, encumber, commit, expend, or appropriate any additional [ARPA] funds . . . absent legislative appropriation.”

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

JULIE J. VARGAS, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

BRIANA H. ZAMORA, Justice

FORMAL OPINION

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Filing Date: 12/21/2023

No. A-1-CA-39609

GABRIELA MARTIN,

Worker-Appellant,

v.

NEW MEXICO MUTUAL CASUALTY

COMPANY, Self-Insured c/o INTEGRION GROUP,

Employer/Insurer-Appellee.

APPEAL FROM THE

WORKERS' COMPENSATION ADMINISTRATION

Anthony Couture, Workers' Compensation Judge

Pizzonia Law, LLC

Lydia Pizzonia

Albuquerque, NM

for Appellant

Barry J. Berenberg, Senior Counsel

Albuquerque, NM

for Appellee

► Introduction of Opinion

Gabriela Martin (Worker) appeals from a compensation order entered pursuant to the Workers' Compensation Act (the Act), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2017). The Workers' Compensation Judge (WCJ) determined that Worker was not entitled to temporary total disability (TTD) benefits or permanent partial disability (PPD) modifier benefits because Worker was terminated from her employment for misconduct unrelated to her workplace injury. The core dispute in this case concerns the meaning of "misconduct," as that term is used in Section 52-1-25.1(D)(3) (TTD benefits) and Section 52-1-26(D)(4) (PPD modifier benefits). Specifically, we are called on to address whether the term "misconduct" in those sections is to be given its plain, ordinary meaning, or whether, as Worker requests, it should be construed in favor of workers to mean "willful misconduct," as is required in the unemployment compensation context. We hold that, for purposes of Sections 52-1-25.1(D)(3) and 52-1-26(D)(4), "misconduct" is to be given its plain, ordinary meaning: "improper behavior." Because we reject Worker's request to adopt a definition of misconduct more favorable to her, and because Worker's remaining arguments are predicated on us adopting such a definition, we affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Shammara H. Henderson, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39609>

FORMAL OPINION

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

Filing Date: 12/28/2023

No. A-1-CA-39674

**CITY OF ALBUQUERQUE,
a New Mexico municipal corporation,**

Plaintiff-Appellant,

v.

**TECOLOTE RESOURCES, INC.; KELLY'S
LEGACY, LLC; SHERI I. BOVINO, Trustee of THE
BURDEN CHILDREN'S TRUST DATED DECEMBER
17, 1986; TECOLOTE X-KMARTII, LLC; BOKF, NA
d/b/a BANK OF ALBUQUERQUE; COUNTY OF
BERNALILLO; NEW MEXICO TAXATION
& REVENUE DEPARTMENT; and
UNKNOWN OWNERS OR CLAIMANTS OF THE
PROPERTY INVOLVED,**
Defendants-Appellees.

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

Erin B. O'Connell, District Court Judge

Stiff, Garcia & Associates, LLC

John S. Stiff

Edward F. Snow

Albuquerque, NM

Esteban A. Aguilar Jr., City Attorney

John DuBois, Assistant City Attorney

Adam P. Leuschel, Assistant City Attorney

Albuquerque, NM

for Appellant

Stelzner, Winter, Warburton, Flores & Dawes, P.A.

Dan Gershon

Albuquerque, NM

for Appellees

► Introduction of Opinion

In this partial takings case, the City of Albuquerque appeals from a judgment entered by the district court based on a jury verdict of \$712,000 as just compensation for the City's taking of part of a lot owned by Tecolote Resources, Incorporated. See N.M. Const. art. II, § 20 ("Private property shall not be taken or damaged for public use without just compensation."). The verdict included a stipulated amount of \$69,350 to compensate Tecolote for the value of the land taken, plus an additional amount to compensate Tecolote for impairment of its access to the part of the lot that remained Tecolote's after the taking. Whether Tecolote should be compensated for impaired access has been the key issue throughout this litigation, and on appeal the City raises three claims of instructional error related to that issue. Specifically, the City contends that (1) the jury was not properly instructed regarding the causal connection between the taking and the claimed damages; (2) the jury should have received an instruction based on UJI 13-719 NMRA because New Mexico law only allows damages for impaired access caused by a partial taking if the impairment is unreasonable; and (3) the jury should have been instructed on Tecolote's duty to mitigate its damages to its right of access. **View full PDF online.**

Zachary A. Ives, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39674-1>

FORMAL OPINION

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

Filing Date: 1/9/2024

No. A-1-CA-39739

DRIVETIME CAR SALES COMPANY, LLC,

Protestant-Appellant,

v.

**NEW MEXICO TAXATION & REVENUE
DEPARTMENT,**

Respondent-Appellee.

**APPEAL FROM THE
ADMINISTRATIVE HEARINGS OFFICE**

Ignacio V. Gallegos, Hearing Officer

Akerman LLP
David V. Jones
San Antonio, TX
Peter O. Larsen
Jacksonville, FL

for Appellant

Raúl Torrez, Attorney General
Peter Breen, Special Assistant Attorney General
Santa Fe, NM

for Appellee

► Introduction of Opinion

Protestant Drivetime Car Sales Company, LLC (Taxpayer) appeals the denial of its protest seeking a refund from the New Mexico Taxation and Revenue Department (the Department) of excise tax payments made pursuant to the New Mexico Motor Vehicle Excise Tax Act (the Act), NMSA 1978, §§ 7-14-1 to -11 (1988, as amended through 2023). This appeal involves a matter of first impression as to the interpretation of Section 7-14-3 of the Act and presents the question of whether a business, such as Taxpayer, is entitled to a refund of excise taxes paid in relation to used vehicles that are purchased via retail installment contracts and subsequently returned to the business by the purchaser. For the reasons that follow, we affirm.

J. Miles Hanisee, 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-39739>

New Mexico State Bar
FOUNDATION
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New Mexico
State Bar Foundation

2024 Officers



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JERRY DIXON is a shareholder at Dixon•Scholl•Carrillo•P.A. and practices in the areas of professional malpractice defense, licensing, commercial and construction litigation and real estate. He is a frequent speaker to professionals on ethics, professional liability and risk management issues. Jerry is admitted to practice law in Colorado and New Mexico. He attended Texas Tech University (BBA 1977, JD 1981). Jerry was President of the Albuquerque Bar Association in 1994 and the State Bar of New Mexico in 2019. He has served as a Trustee for the Texas Tech School of Law Foundation since 2005. Jerry was named Outstanding Attorney of the Year by the Albuquerque Bar Association in 2014 and received the 2014 Distinguished Service Award from Texas Tech School of Law. He provides pro bono services through New Mexico Christian Legal Aid. Jerry was a Visiting Professor of Law in 2012 at the University of National and World Economy in Sofia, Bulgaria and in 2015 at South-West University in Blagoevgrad, Bulgaria.



Stefanie K. Davis
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STEFANIE K. DAVIS is the Deputy General Counsel for Administrative Law and Regulatory Practice and Ethics Officer in the Office of Legal Affairs (OLA) at the Legal Services Corporation (LSC). Her portfolio includes supervising OLA's regulatory drafting and statutory interpretation practice, managing OLA's Graduate Law Fellow and internal training programs, and coordinating the work of LSC's Opioid and Veterans Task Forces. She is the author of the first-ever chapter on access to justice in the recently published ABA Guide to Federal Agency Adjudication (3rd ed.) and a regular speaker on both access to justice and the opioid epidemic. She joined LSC in 2013 from the Office of the General Counsel at the U.S. Department of Health and Human Services. She began her legal career at the Washington Legal Clinic for the Homeless in Washington, DC.

Ms. Davis is licensed to practice law in New Mexico, the District of Columbia, and Maryland. She is a 2002 graduate of Georgetown University Law Center and a 1997 graduate, magna cum laude, of the University of New Mexico. She was born and raised in Gallup and now lives in Albuquerque with her husband, six-year-old son, and Akita dog.



Elizabeth J. Travis
Secretary-Treasurer
Commissioner Director
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ELIZABETH J. TRAVIS is a deputy general counsel with the New Mexico Department of Transportation, serving as counsel for the Department's construction, operations and finance organizations, a practice which includes construction, environmental, procurement and contract law. Prior to working for the State, Travis served as an assistant county attorney for Santa Fe County. Travis also serves on the Supreme Court's Disciplinary Committee and on the State Bar Ethics Advisory Committee. She is an active member of the ABA, participating in the public contract law section and the construction industry forum. Travis is licensed to practice in state and federal court in New Mexico and California.



Hon. Carl J. Butkus
Immediate Past President
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RETIRED JUDGE CARL J. BUTKUS is a graduate of the University of Pennsylvania (1971) and the Gonzaga U. School of Law (1977). He was appointed District Judge in the Second Judicial District in 2005 and retired at the end of 2020. He was selected as the 2015 State District Court Judge of the Year by the New Mexico Chapter of the American Board of Trial Advocates. Prior to that, he was in the private practice of law state-wide from 1978-2005. From 1977-78, he was law clerk to Hon. William R. Hendley of the Court of Appeals of New Mexico. Among other things, he has been Chair of the New Mexico Supreme Court Rules of Civil Procedure Committee, President of the H. Vearle Payne Inn of Court, Member of the State Bar Civil Justice Reform Committee and State Bar Liason to the Federal Judicial Conference.

Commissioner Directors



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ALLISON H. BLOCK-CHAVEZ is partner and attorney at Aldridge, Hammar & Wexler, PA, in Albuquerque, where her law practice focuses on fiduciary services, adult guardianships and conservatorships, estate planning, and probate matters, real estate, and creditors' rights. Allison previously served as the Chair of the Young Lawyers Division of the State Bar of New Mexico and as the young lawyer delegate to the ABA House of Delegates. She graduated from the University of New Mexico School of Law and served as the judicial law clerk for Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. In her spare time, Allison and her husband Mo try to keep up with their twin toddlers.



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ROSENDA CHAVEZ-LARA serves as a staff attorney for the New Mexico Office of Guardianship. Mrs. Chavez-Lara's previous practice focused on representing children and their families in Abuse & Neglect cases and Domestic Relations matters. Additionally, she has worked for the U.S. Attorney's Office for the Western District of Texas. Mrs. Chavez-Lara volunteered with the Personal Protection Office/End the Violent Encounters (EVE) Inc., in Lansing, Michigan. Prior to attending law school, she managed the US-Mexico Foundation for Science (FUMEC) in Washington. D.C. When not in the courtroom, she volunteers with the Southern New Mexico Bar Association.



MITCHELL L. MENDER is a founding partner of The Law Offices of Larsen and Mender P.C., located in Clovis, N.M. His practice focuses primarily on criminal law, family law, and personal injury. Mitch is a graduate of Brigham Young University. He graduated from Vermont Law School in their accelerated Juris Doctorate program. He started his career as a prosecutor with the Ninth Judicial District Attorney’s Office, where he was awarded prosecutor of the year for the District in 2018 and 2019. Subsequently, he worked at the New Mexico Law Offices of the Public Defender where he represented indigent clients. Additionally, he sits on the Board of Directors for the Hartley House, the local domestic violence shelter. He and his wife, Robyn, enjoy traveling and spending time with their three children.

Mitchell L. Mender

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LUCY H. SINKULAR is a shareholder at Atkinson & Kelsey, P.A., in Albuquerque, where she limits her practice to family law matters. Admitted in 1994, Lucy comes from a family of lawyers and loves the law. Lucy is passionate about New Mexicans’ access to justice and maintains an active pro bono case load in addition to her regular practice. Lucy’s immediate family includes her husband Scott who is a scientist at NNSA, their daughter who is finishing graduate studies and their son who is an auditor in Denver. Lucy is also “mom” to one very spoiled pandemic puppy, Labrador retriever and his older sister, the rescued greyhound/Lab mix. Lucy serves as the Senior Warden for her Episcopal Church in Albuquerque. When not practicing law or volunteering for the Bar, Lucy can frequently be found with her husband pursuing outdoor hobbies of camping, running, cycling and hiking.

Lucy H. Sinkular

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At-large Director (Public Member)



STEPHANIE WAGNER is the AVP of Business Development for Nusenda Credit Union. She oversees a team of eight team members that focus on providing free financial education, financial tools and resources, and support to businesses and organizations throughout New Mexico. Stephanie’s background is in Communications, Business Development and she has worked in the non-profit sector for over 15 years. Stephanie’s relationship with the State Bar of New Mexico began in 2016 when she was the Director of Development and oversaw all fundraising efforts. She has continued to be part of the Bar Foundation’s board and continues to have strong relationships with the legal community. Stephanie enjoys spending time with her husband Mike and six-year-old daughter Emma.

Stephanie Wagner

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FORMAL OPINION

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

Filing Date: 1/16/2024

No. A-1-CA-40561

CARL J. BUTKUS,
Plaintiff-Appellant,

v.

**PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION; PUBLIC EMPLOYEES
RETIREMENT BOARD; and their members in
their official capacities, FRANCIS PAGE;
STEPHEN J. NEEL; PAULA FISHER; DIANA
ROSALES-ORTIZ; CLAUDIA ARMIJO; JOHN
MELIA; LAWRENCE L. DAVIS; SHIRLEY M. RAGIN;
ROBERTO RAMIREZ; LORETTA
NARANJO-LOPEZ; MAGGIE
TOULOUSE OLIVER; and TIM EICHENBERG,**
Defendants-Appellees.

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

Maria Sanchez-Gagne, District Court Judge

Giddens & Gatton Law, P.C.
George Dave Giddens
Albuquerque, NM

Carl J. Butkus
Albuquerque, NM

for Appellant

NM Local Government Law, LLC
Charles Rennick
Albuquerque, NM

for Appellees

► Introduction of Opinion

This case—certified to this Court by the district court—requires this Court to interpret the Judicial Retirement Act (JRA), NMSA 1978, §§ 10-12B-1 to -19 (1992, as amended through 2023), and resolve a single question about retirement benefits for a group of judges and justices who initially became members of the Judicial Retirement Fund (the Fund) after June 30, 2005, but on or before June 30, 2014. Plaintiff Carl Butkus, a retired district court judge, argues the Public Employees Retirement Board (the Board) miscalculated his pension when it determined that “years of service” in Section 10-12B-9(C)(1) refers to a member’s years of service between June 30, 2005 and June 30, 2014, instead of the retiree’s full tenure as a judge or justice in the two pronged calculation required by Section 10-12B-9(C). For the reasons set forth below, we affirm.

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

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-40561>

FORMAL OPINION

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

Filing Date: 1/17/2024

No. A-1-CA-40287

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ROSS SANDERS,

Defendant-Appellant.

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

John P. Sugg, 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

Kimberly Chavez Cook,

Assistant Appellate Defender

Santa Fe, NM

for Appellant

► Introduction of Opinion

The opinion filed on December 20, 2023, is hereby withdrawn, and this opinion is substituted in its place. Defendant Ross Sanders appeals his conviction for possession of a controlled substance (methamphetamine), contrary to NMSA 1978, Section 30-31-23(E) (2019, amended 2021). Defendant argues on appeal that the district court erred in denying his motion to suppress under Article II, Section 10 of the New Mexico Constitution based on this Court's recent opinion in *State v. Jim*, 2022-NMCA-022, 508 P.3d 937, which was decided after the district court denied Defendant's motion to suppress but before entry of Defendant's judgment and sentence. Alternatively, Defendant argues that his counsel was ineffective for failing to challenge the underlying arrest in a motion to suppress. For the reasons set forth below, we reverse and remand.

Jacqueline R. Medina, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40287>

FORMAL 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: 1/22/2024

No. A-1-CA-39871

**RICHARD VANHORN, SR., as Parent
and Next Friend of Richard Vanhorn, JR.,**
Plaintiff-Appellant,

v.

**CARLSBAD MUNICIPAL SCHOOL DISTRICT and
CARLSBAD MUNICIPAL SCHOOL BOARD,**
Defendants-Appellees.

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

Eileen P. Riordan, District Court Judge

Ragsdale Law Firm
Luke W. Ragsdale
Kay C. Jenkins
Roswell, NM

for Appellant

German Burnette & Associates, LLC
Jason M. Burnette
Alexander W. Tucker
Albuquerque, NM

for Appellees

► Introduction of Opinion

In this case, we consider whether the personal injury claim brought by Richard Vanhorn Sr., as next friend of his minor child Richard Jr. (Child) (collectively, Plaintiffs), against Carlsbad Municipal School District and Carlsbad Municipal School Board (collectively, Defendants) falls under the waiver of immunity (the building waiver) found in the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -27 (1976, amended 2020). The district court granted Defendants' motion for summary judgment which argued that Plaintiffs' "claims amount to a claim of negligent supervision, for which there is no [TCA] waiver." Plaintiffs argue that Defendants' failure to follow school policy created a dangerous condition in the operation of the school and caused Child's injury, and therefore Section 41-4-6 waived Defendants' immunity. We agree with Plaintiffs and therefore reverse.

Kristina Bogardus, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39871>

FORMAL OPINION

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

Filing Date: 1/23/2024

No. A-1-CA-40119

**IN THE MATTER OF THE ESTATE
OF GEORGE D. KUCHAN, Deceased,
JOHN KUCHAN, Personal Representative of the
ESTATE OF GEORGE D. KUCHAN,**
Petitioner-Appellant/Cross-Appellee,
v.

**CHARLES NIXON, Personal Representative
of the ESTATE OF MURLENE KUCHAN,**
Respondent-Appellee/Cross-Appellant.

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

Melissa A. Kennelly, District Court Judge

Atler Law Firm, P.C.
Timothy J. Atler
Jazmine J. Johnston
Albuquerque, NM

Pottow Law, LLC
Michael T. Pottow
Santa Fe, NM

for Appellant

Alsup Law Office
Gary D. Alsup
Clayton, NM

for Appellee

► Introduction of Opinion

Petitioner John Kuchan—as the personal representative of the Estate of George D. Kuchan (the Estate)—appeals and Respondent Charles Nixon—as the personal representative of the Estate of Murlene Kuchan—cross-appeals from a district court order granting in part and denying in part Respondent’s motion for partial summary judgment concerning the distribution of the Estate after trial and entry of the final judgment. Petitioner argues on appeal that the district court erred by failing to apply the doctrine of judicial estoppel to Respondent’s claim that a portion of the property in the Estate—the West Tract—was community property. Respondent argues on cross-appeal that the district court erred by denying Respondent’s claims of family allowance under NMSA 1978, Section 45-2-402 (1995); and personal property allowance under NMSA 1978, Section 45-2-403 (2011) against the Estate. {2} We hold that the district court did not abuse its discretion when it rejected Petitioner’s claim of judicial estoppel because Respondent did not successfully assume the West Tract was community property. **View full PDF online.**

Jacqueline R. Medina, Judge

WE CONCUR:

Kristina Bogardus, Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40119>

FORMAL OPINION

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

Filing Date: 1/29/2024

No. A-1-CA-40083

JARROD LOWREY,
Plaintiff-Appellant,

v.

SINFY CASTILLO and JAVIER ARGUETA,
Defendants-Appellees.

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

Nancy J. Franchini, District Court Judge

Jarrold Lowrey
Rio Rancho, NM

Pro Se Appellant

Jackson Loman Stanford Downey
& Stevens-Block, P.C.

Eric Loman
Albuquerque, NM

for Appellees

► Introduction of Opinion

Plaintiff Jarrod Lowrey appeals pro se the district court's dismissal of the complaint brought against Defendants Sinfy Castillo, a probation officer, and Javier Argueta, Defendant Castillo's supervisor (collectively, Defendants), both employed by the Bernalillo County Metropolitan Court (the Metro court). The complaint asserted unspecified causes of action relating to Defendants' alleged misconduct in the supervision of a participant in a domestic violence early intervention program (EIP Participant), which is a Metro court treatment program. Defendants moved to dismiss Plaintiff's complaint based on Rule 1-012(B)(6) NMRA. The district court granted the motion and determined in part that Defendants were protected by quasi-judicial immunity. We conclude that the alleged misconduct arose from Defendants' activities that were performed as an arm of the Metro court and their services supervising the Metro court treatment program participants were integral to the judicial process; quasi-judicial immunity permits Defendants to perform that judicial function without fear of civil liability and sufficient procedural safeguards protect against potential misconduct; and Defendants acted within the scope of their quasi-judicial function. We therefore affirm.

Katherine A. Wray, Judge
WE CONCUR:
Zachary A. Ives, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40083>

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: 12/20/2023

No. A-1-CA-39950

**CHRISTOPHER ARMENDAREZ, SHAYENNE
ARMENDAREZ, ANGELICA ARMENDAREZ,
ANTHONY ARMENDAREZ, and
ASHTON ARMENDAREZ,**

Plaintiffs-Appellants,

v.

**HYUNDAI HEAVY INDUSTRIES COMPANY, LTD;
HYUNDAI CONSTRUCTION, EQUIPMENT
AMERICAS, INC.; HYUNDAI CONSTRUCTION
EQUIPMENT COMPANY, LTD;
and CISCO EQUIPMENT NM SALES, LLC,**
Defendants-Appellees.

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

Maria Sanchez-Gagne, District Court Judge

Robert L. Collins & Associates
Robert L. Collins
Houston, TX

Scherr Law Firm PLLC
Maxey M. Scherr
El Paso, TX

for Appellants

Lorenz Law
Alice T. Lorenz
Albuquerque, NM

McCoy Leavitt Laskey LLC
H. Brook Laskey
Stephanie K. Demers
Albuquerque, NM

for Appellees

► Introduction of Opinion

Plaintiffs appeal from the district court's orders excluding evidence at trial and denying their motion for a new trial. For the reasons that follow, we affirm the rulings of the district court and determine there was no cumulative error.

Megan P. Duffy, Judge
WE CONCUR:
Kristina Bogardus, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39950>

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: 12/21/2023

No. A-1-CA-39921

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

PAUL A. CASARES,

Defendant-Appellant.

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

Lisa B. Riley, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Michael J. Thomas, Assistant Attorney General

Erica Schiff, 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**

Following a jury trial, Defendant Paul A. Casares was convicted of aggravated battery with a deadly weapon (firearm), contrary to NMSA 1978, Section 30-3-5(C) (1969); conspiracy to commit aggravated battery with a deadly weapon (firearm), contrary to NMSA 1978, Section 30-28-2 (1979); and possession of a firearm by a felon, contrary to NMSA 1978, Section 30-7-16(A) (2019, amended 2022). On appeal, Defendant argues that the admission of propensity evidence related to his possible involvement in other shootings warranted a mistrial. For the following reasons, we reverse.

Gerald E. Baca, Judge

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39921>

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: 1/4/2024

No. A-1-CA-39364

DAVID S. PETERSON,

Plaintiff-Appellant,

v.

**SANDRA DIETZ, AMY LOVERIDGE, RICKY
MADRID, MARK J. NUNLEY, and NEW MEXICO**

PAROLE BOARD,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY
Benjamin Chavez, District Court Judge

Business Law Southwest LLC
Donald F. Kochersberger III
Alicia M. McConnell
Albuquerque, NM

for Appellant

Narvaez Law Firm, P.A.
Henry F. Narvaez
Albuquerque, NM

Garcia Law Group, LLC
Bryan C. Garcia
Rodney L. Gabaldon
Jade P. Delfin
Albuquerque, NM

for Appellees

► Introduction of Opinion

Plaintiff David S. Peterson filed a pro se “Complaint for Damages and Declaratory Judgment and Decree” against Defendants Sandra Dietz, Amy Loveridge, Ricky Madrid, Mark J. Nunley, and the New Mexico Parole Board. Plaintiff appeals from the “Order Granting Defendants’ Motion to Dismiss the Complaint for Damages and Declaratory Judgment and Decree.” On appeal, Plaintiff contends that the district court erred by: (1) dismissing his claim on the grounds that New Mexico’s parole statutes and regulations do not create a liberty interest in parole release or in a parole hearing, and therefore no due process protections are required; (2) failing to consider Plaintiff’s claim that the New Mexico Constitution confers due process rights in connection with parole release or a parole hearing; (3) dismissing Plaintiff’s claim that the Parole Board failed to comply with the requirements imposed by New Mexico’s statutes and administrative code in conducting his parole hearing and that Plaintiff is therefore entitled to declaratory and injunctive relief; (4) failing to address Plaintiff’s claim that the Parole Board was required to comply with the legal residuum rule at his parole hearing; and (5) failing to adjudicate Plaintiff’s claim for relief under the New Mexico Declaratory Judgment Act. **View full PDF online.**

Gerald E. Baca, Judge

WE CONCUR:

Zachary A. Ives, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39364>

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: 1/8/2024

No. A-1-CA-40586

MELISSA VIGIL,

Plaintiff-Appellant,

v.

CENTURY BANK,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Francis J. Mathew, District Court Judge

Osteen & Harrison, PLC

Lincoln Combs

Phoenix, AZ

Cohen & Malad, LLP

Lynn A. Toops

Lisa M. La Fornara

Arend J. Abel

Indianapolis, IN

Branstetter, Stranch & Jennings, PLLC

J. Gerard Stranch, IV

Martin F. Schubert

Nashville, TN

Johnson Firm

Christopher D. Jennings

Little Rock, AR

for Appellant

Jennings Haug Keleher McLeod LLP

Gary J. Van Luchene, Et al.

Albuquerque, NM

for Appellee

► Introduction of Opinion

Plaintiff Melissa Vigil appeals the dismissal of an amended class action petition (the amended complaint) brought against Defendant Century Bank (the Bank), which alleged multiple claims relating to the assessment of overdraft and return item fees charged against Plaintiff's deposit account for debit card and certain electronic payments. Attached to the amended complaint were four agreements between the Bank and the account holder, Plaintiff, to which we refer collectively as the Agreements and individually as the 2016 Account Agreement, the 2019 Account Agreement, the 2014 Bounce Protection Disclosure, and the 2019 Bounce Protection Disclosure. The district court dismissed Plaintiff's amended complaint after finding that (1) the Agreements unambiguously permitted the Bank to charge the challenged fees in the manner that the fees were charged; (2) Plaintiff's claims were precluded because Plaintiff did not report errors or problems within the time specified in the Agreements; and (3) Plaintiff pleaded no misrepresentations or a causal connection to support a violation of the New Mexico Unfair Practices Act (the UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). We affirm in part and reverse in part.

Katherine A. Wray, 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-40586>

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: 1/9/2024

No. A-1-CA-39540

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ANTONIO RODRIGUEZ,

Defendant-Appellant.

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

Michelle Castillo-Dowler,
Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Walter Hart, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

Mark A. Peralta-Silva, Assistant Appellate Defender
Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Following a bench trial, Antonio Rodriguez (Defendant) was found guilty of driving while under the influence of liquor or drugs (DUI), contrary to NMSA 1978, Section 66-8-102(B) (2016), driving the wrong way (one-way roadways), contrary to NMSA 1978, Section 66-7-316 (2003), and failure to register or title a vehicle as required, contrary to NMSA 1978, Section 66-3-1 (2018, amended 2023). On appeal, Defendant argues that (1) the metropolitan court erred in denying his motion to suppress statements Defendant made following his arrest because he was given insufficient Miranda warnings; and (2) that insufficient evidence supports Defendant's conviction for DUI based on marijuana use. For the reasons that follow, we affirm.

Gerald. E. Baca, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Jane. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39540>

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: 1/9/2024

No. A-1-CA-38594

SUZANNE BURNS,

Plaintiff-Appellant,

v.

PRESBYTERIAN HEALTHCARE SERVICES

and NAVJEET KAUR, M.D.,

Defendants-Appellees.

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

Joshua A. Allison, District Court Judge

Fine Law Firm
Mark Fine
Albuquerque, NM

for Appellant

Hinkle Shanor LLP
Kathleen Wilson
Hari-Amrit Khalsa
Albuquerque, NM

for Appellee Presbyterian Healthcare Services

Madison, Mroz, Steinman, Kenny & Olexy, P.A.
M. Eliza Stewart
Jacqueline A. Olexy
Albuquerque, NM

for Appellee Navjeet Kaur, M.D.

► Introduction of Opinion

Plaintiff Suzanne Burns appeals the district court's order granting summary judgment in favor of Defendants Presbyterian Health Services and Navjeet Kaur, M.D. Plaintiff alleges that Defendants' negligence during the immediate post-operative period following a surgery they performed on her caused medical complications resulting in injury. On appeal, Plaintiff sets forth the following arguments: (1) the district court abused its discretion in striking an untimely affidavit (Affidavit) written by her expert on medical causation, Dr. Walid Arnaout, because such a sanction resulted in dismissal of her case via summary judgment; and (2) even in the absence of the Affidavit, the district court improperly granted summary judgment in favor of Defendants. Because the district court acted within its discretion to strike Plaintiff's tardy expert Affidavit and properly determined Plaintiff produced no expert testimony on medical causation as required by New Mexico case law, we affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38594>

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: 1/9/2024

No. A-1-CA-40342

THELONIKA MCCOLLUM,

Petitioner-Appellant,

v.

JASON SHOBERG,

Respondent-Appellee.

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

Robert Lara, District Court Judge

Thelonika McCollum
Santa Fe, NM

Pro Se Appellant

McElhinney Law Firm LLC
C.J. McElhinney
Las Cruces, NM

for Appellee

► Introduction of Opinion

Thelonika McCollum (Mother) appeals from a district court order granting Jason Shoberg (Father) a modified period of custody as a temporary amendment to the parties' joint custody agreement. We affirm.

Megan P. Duffy, 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-40342>

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: 1/10/2024

No. A-1-CA-39505

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JOEY PATRICK CONNELL,

Defendant-Appellant.

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

Christina P. Argyres, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Erica Schiff, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Mark A. Peralta-Silva, Assistant Appellate Defender

Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Joey Connell appeals his convictions for second degree murder, contrary to NMSA 1978, Section 30-2-1(B) (1994) and tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003). Defendant argues that (1) the district court erred in denying his motion for mistrial, and (2) his trial counsel provided ineffective assistance. For the following reasons, we affirm. Because this is an unpublished memorandum opinion written solely for the benefit of the parties, see *State v. Gonzales*, 1990-NMCA-040, ¶ 48, 110 N.M. 218, 794 P.2d 361, and the parties are familiar with the factual and procedural background of this case, we omit a background section and leave the discussion of the facts for our analysis of the issues.

Kristina Bogardus, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39505>

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: 1/17/2024

No. A-1-CA-38756

SARAH WORKS, Deceased,

Plaintiff-Appellant,

v.

GREGG VANCE FALICK and FALLICKLAW, LTD.,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Matthew J. Wilson, District Court Judge

Trent A. Howell

Santa Fe, NM

for Appellant

Dixon•Scholl•Carrillo•P.A.

Gerald G. Dixon

James C. Wilkey

Albuquerque, NM

for Appellees

FallickLaw, Ltd.

Gregg Vance Fallick

Taos, NM

for Appellee FallickLaw, Ltd.

► **Introduction of Opinion**

Plaintiff, the Estate of Sarah Works, challenges the district court's dismissal of Plaintiff's claims and its entry of judgment in favor of Gregg Vance Fallick and FallickLaw, Ltd. (collectively, Defendants) on their attorney charging lien. The district court disposed of the case in this manner on two independent bases: discovery sanctions and the merits of the parties' respective claims. We affirm on the basis of the discovery sanctions, and we therefore do not reach Plaintiff's claims of error regarding the merits.

Zachary A. Ives, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38756>

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: 1/23/2024

No. A-1-CA-40238

CHARLOTTE RIVERA and LAWRENCE WATSON,

Plaintiffs-Appellees,

v.

JULIAN VIVIAN GONZALES

and YOLANDA GONZALES,

Defendants-Appellants.

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

Maria Sanchez-Gagne, District Court Judge

Atler Law Firm, P.C.

Timothy J. Atler

Jazmine J. Johnston

Albuquerque, NM

Graeser & McQueen
Christopher L. Graeser
Santa Fe, NM

for Appellees

Bridget Jacober
Santa Fe, NM

for Appellants

► Introduction of Opinion

This case concerns a property dispute between parties who are cotenants of a parcel situated between their properties. Below, the district court granted Plaintiffs Charlotte Rivera and Lawrence Watson's motion for summary judgment on their claim of wrongful ejectment by Defendants Julian and Yolanda Gonzales. See NMSA 1978, § 42-4-2 (1907) (stating that an "action for ejectment will lie for the recovery of the possession . . . of any real estate, where the party suing has been wrongfully ousted from the possession thereof, and the possession wrongfully detained"). On appeal, Defendants assert that their affirmative defense of laches precluded summary judgment on Plaintiffs' claim for wrongful ejectment. We affirm.

Megan P. Duffy, Judge

WE CONCUR:

Zachary A. Ives, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40238>

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: 1/23/2024

No. A-1-CA-40373

**SHERIFF MANNY GONZALES, on his own behalf
and in his capacity as a candidate for Mayor of
Albuquerque,**

Plaintiff-Appellant/Cross-Appellee,

v.

**ETHAN WATSON, in his individual capacity and
his official capacity as Albuquerque City Clerk
and the CITY OF ALBUQUERQUE, including
its CITY CLERK'S OFFICE,**

Defendants-Appellees/Cross-Appellants.

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

James Lawrence Sanchez, District Court Judge,
Sitting by Designation

Harrison, Hart & Davis, LLC
Carter B. Harrison IV
Daniel J. Gallegos
Albuquerque, NM

for Appellant

Peifer, Hanson, Mullins & Baker, P.A.
Mark T. Baker
Matt M. Beck
Matthew E. Jackson
Albuquerque, NM

for Appellees

► Introduction of Opinion

We are presented with the second of two appeals in an ongoing legal saga between then Bernalillo County Sheriff Manny Gonzales III (Sheriff Gonzales), and Defendants Ethan Watson (the City Clerk) and the City of Albuquerque (the City). See *Gonzales v. Watson* (Gonzales I), ___-NMCA-___, ___ P.3d ___ (A-1-CA-39971, Jan. 23, 2024). In this case, the second appeal, Defendants argue on cross-appeal that the district court (1) erred in concluding issue preclusion applied to this case based on the first case between the parties (the Due Process case); (2) abused its discretion in applying issue preclusion; and (3) erred in awarding Sheriff Gonzales all his claimed fees despite only partially prevailing. Sheriff Gonzales argues that the district court erred when it (1) determined that the legal fees in the Due Process case were not recoverable as damages; (2) did not award damages for his lost days of fundraising; and (3) dismissed his N.M. Constitution Bill of Rights and Inspection of Public Records claims. **View full PDF online.**

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

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-40373>

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: 1/25/2024

No. A-1-CA-40273

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JONATHAN KELLY,

Defendant-Appellant.

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

Mary Marlowe Sommer, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Charles J. Gutierrez, Assistant Attorney General

Albuquerque, NM

for Appellee

Justine Fox-Young, P.C.

Justine Fox-Young

Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Jonathan Kelly appeals the jury's conviction for voluntary manslaughter, contrary to NMSA 1978, Section 30-2-3(A) (1994), and argues that the State did not prove beyond a reasonable doubt that Defendant did not act in self-defense. Applying well-established standards of review, we conclude that sufficient evidence supported Defendant's conviction and affirm. *See State v. Montoya*, 2015-NMSC-010, ¶¶ 52-53, 345 P.3d 1056.

Katherine A. Wray, 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-40273>

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: 1/29/2024

No. A-1-CA-38868

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

GALE EDWARD ELDRIDGE,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF SAN JUAN COUNTY**

Robert A. Aragon, District Judge

Raul Torres, Attorney General

Maris Veidemanis, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Nina Lalevic, Assistant Appellate Defender
Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Having granted Defendant's motion for re-hearing and considered the State's response, we withdraw the opinion filed September 21, 2023, and substitute the following in its place. Defendant entered into a conditional plea agreement wherein he pleaded guilty to criminal sexual contact of a minor in the third degree (child under 13), contrary to NMSA 1978, Section 30-9-13(C)(1) (2003), but reserved his right to appeal his motion to suppress and his motion to dismiss. On appeal, Defendant argues that (1) his Fifth Amendment rights were violated because the officers failed to read him his Miranda warnings, (2) the officers coerced his incriminating statement, (3) the twenty-nine-month delay in resolving this case violated his right to a speedy trial, and (4) the district court erred in denying his speedy trial motion without holding an evidentiary hearing. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Concluding that the district court erred in failing to provide Defendant an evidentiary hearing on his speedy trial motion, we reverse and remand so that Defendant may have a hearing on this issue. Otherwise, we affirm.

Gerald E. Baca, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38868-1>

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: 1/29/2024

No. A-1-CA-40165

RICKY JOE JUAREZ, Et al.

Plaintiffs-Appellants,

v.

SECURUS TECHNOLOGIES, LLC;

and NEW MEXICO CORRECTIONS DEPARTMENT,

Defendants-Appellees,

and

JERRY ROARK; JAMES BREWSTER;

GREG MARCANTEL; and NEW MEXICO GENERAL

SERVICES DEPARTMENT, in substitution for

TRAVIS DUTTON-LEYBA

Defendants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Matthew J. Wilson, District Court Judge

David S. Peterson, et al.

Clayton, NM

Pro Se Appellant Representative

o/b/o All Pro Se Appellants

Cuddy & McCarthy, LLP

Patricia Salazar Ives

Santa Fe, NM

Norton Rose Rulbright US, LLP

Barton W. Cox

Lara Kakish

Dallas, TX

Peter Siegal

Washington, DC

for Appellee Securus Technologies, LLC

► Introduction of Opinion

Plaintiff David S. Peterson appeals pro se on behalf of all but two of the more than 500 Plaintiffs who participated in the proceedings in the district court (Plaintiffs). Plaintiffs alleged that an amendment (the Amendment) to a contract between Securus Technologies, LLC (Securus) and the New Mexico Corrections Department (NMCD) to provide inmate calling services (the Securus Contract) wrongfully resulted in a higher per-minute rate for calls. On appeal, Plaintiffs raise multiple issues relating to pretrial and evidentiary rulings, as well as the district court's verdict in favor of Defendants Securus and NMCD (collectively, Defendants). After considering each of Plaintiffs' issues, we find no error and affirm.

Katherine A. Wray, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

J. Miles Hanisee, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40165>

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: 1/30/2024

No. A-1-CA-40473

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

PHILLIP JONES,

Defendant-Appellant.

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

Richard M. Jacquez, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Jonathan D. Gardner, 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 was charged with one count of failure to register as a sex offender, contrary to NMSA 1978, Section 29-11A-5 (2007), based on a prior conviction in the State of Louisiana for indecent behavior with juveniles. Defendant filed a motion to dismiss, arguing that the elements of the Louisiana offense are not precisely the same as the elements of any New Mexico sex offense, and the State had not provided any information concerning the conduct underlying the Louisiana conviction. After a hearing, the district court denied Defendant's motion. We reverse based on the State's failure to establish that Defendant's Louisiana conviction is equivalent to an offense that would require Defendant to register as a sex offender in New Mexico.

Megan P. Duffy, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40473>

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: 1/30/2024

No. A-1-CA-40003

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

DANNY MUNOZ,

Defendant-Appellant.

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

Thomas F. Stewart, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Walter Hart, Assistant Attorney General

Albuquerque, NM

for Appellee

Patrick J. Martinez & Associates

Patrick J. Martinez

Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Danny Munoz appeals the jury's convictions for possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(A) (2019, amended 2021), and tampering with evidence, contrary to NSMA 1978, Section 30-22-5 (2003), as well as the district court's imposition of a habitual offender enhancement under NMSA 1978, Section 31-18-17(B) (2003). Specifically, Defendant contends that (1) he was improperly detained; (2) the district court improperly denied a "for cause" challenge to a potential juror; (3) the jury selection procedure was fundamentally unfair; (4) evidence and testimony was improperly limited; and (5) the evidence did not support the habitual offender enhancement. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Kristina Bogardus, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40003>

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: 1/30/2024

No. A-1-CA-40314

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

BOBBY DIRICKSON,

Defendant-Appellant.

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

Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General

Maris Veidemanis, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kimberly Chavez Cook,
Assistant Appellate Defender
Santa Fe, NM

for Appellant

► **Introduction of Opinion**

A jury convicted Defendant Bobby Dirickson of possession of a controlled substance (methamphetamine), contrary to NMSA 1978, Section 30-31-23(A), (F) (2019, amended 2021). Defendant argues on appeal that the district court abused its discretion by finding that Defendant “opened the door” and consequently, admitted evidence that had previously been excluded as a discovery sanction. We reverse and remand.

Jacqueline R. Medina, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

J. Miles Hanisee, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40314>

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: 1/30/2024

No. A-1-CA-40132

**MARGETTE WEBSTER a/k/a
MARGARET WEBSTER, as named in judgment;
and DAVID WEBSTER,**
Plaintiffs-Appellees,

v.

**EMMA R. SERNA, Individually and as Trustee
of the MIKE R. SERNA IRREVOCABLE LIVING
TRUST DATED NOVEMBER 17, 2016;
and MIKE R. SERNA,**
Defendants-Appellants.

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

Benjamin Chavez, District Court Judge

Askew & White, LLC
Charles Lakins
Daniel A. White
Albuquerque, NM

for Appellees

Emma R. Serna
Mike R. Serna
Albuquerque, NM

Pro Se Appellants

► **Introduction of Opinion**

Plaintiffs Margette Webster and David Webster sued Emma Serna and Mike Serna in the present litigation (Case No. D-202-CV-2019-04800), seeking to enforce—via foreclosure on real property—a judgment that had been entered in the underlying litigation (Case Nos. D-202-CV-2007-00641 and D-202-CV-2007-09594). In the present litigation, the district court entered summary judgment against the Sernas, allowing the Websters to foreclose on 10812 Olympic Street Northwest in Albuquerque, New Mexico. Defendants appeal, raising various claims of error. Unpersuaded, we affirm.

Zachary A. Ives, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40132>

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: 1/31/2024

No. A-1-CA-40188

CARL A. LUCERO,
Worker-Appellant,

v.

STATE OF NEW MEXICO
and NEW MEXICO RISK MANAGEMENT,
Employer/Insurer-Appellees

**APPEAL FROM THE WORKERS' COMPENSATION
ADMINISTRATION**

Leonard J. Padilla, Hearing Officer

Gerald A. Hanrahan
Albuquerque

for Appellant

Miller Stratvert, P. A.
Max A. Jones
Riley L. Norris
Albuquerque, NM

for Appellees

► **Introduction of Opinion**

The opinion filed on January 3, 2024, is hereby withdrawn, and this opinion is substituted in its place, following Respondent-Appellant's timely motion for rehearing, which this Court has denied. Carl A. Lucero (Worker) appeals two orders--a compensation order and an order on motion for reconsideration--entered by a Workers' Compensation Judge (WCJ) resolving contested issues and awarding Worker workers' compensation benefits for impairments arising from a 2018 work-related injury. Worker argues that the compensation order is void because it was entered over thirty days after his formal hearing in violation of NMSA 1978, Section 52-5-7(B) (1993). Alternatively, Worker challenges: (1) the Whole Person Impairment (WPI) rating found by the WCJ; (2) the WCJ's findings concerning Worker's residual physical capacity; (3) the WCJ's decision that Worker made the initial selection of a health care provider (HCP); (4) the WCJ's denial of benefits for what Worker claims are scheduled injuries to his knees and ankles; and (5) the WCJ's denial of reimbursement for medical cannabis. Not persuaded that the WCJ erred, we affirm.

Jane B. Yohalem, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40188-1>

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: 1/31/2024

No. A-1-CA-40333

CARLA VALENTINE,

Plaintiff-Appellant,

v.

DR. LAURA HEISCH

and HIGH MESA DENTAL ARTS,

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT
OF LOS ALAMOS COUNTY**

Jason Lidyard, District Court Judge

Heather Burke
Santa Fe, NM

for Appellant

Sommer Udall Law Firm, P.A.
Jack N. Hardwick
Santa Fe, NM

for Appellees

► **Introduction of Opinion**

Plaintiff Carla Valentine filed a lawsuit against her former employer, Defendants Dr. Laura Heisch and High Mesa Dental Arts, for unlawful discrimination under the New Mexico Human Rights Act (NMHRA), NMSA 1978, Sections 28-1-1 to -14 (1969, as amended through 2023). The jury returned a defense verdict. On appeal, Plaintiff argues that (1) the uniform jury instruction for NMHRA disability discrimination claims, UJI 13-2307C NMRA, is erroneous and improper; (2) the district court erred in various discovery rulings; and (3) the district court erred in denying Plaintiff's motions for sanctions against Defendants. We affirm.

Megan P. Duffy, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40333>

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: 2/1/2024

No. A-1-CA-39767

LYDIA ALFARO,
Petitioner-Appellee,

v.

TRANSITO DIAZ,
Respondent-Appellant.

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

Allen R. Smith, District Court Judge

Lauren Law, LLC
Lauren L. Barela
Los Lunas, NM

for Appellee

Law Office of Augustine M. Rodriguez, LLC
Augustine M. Rodriguez
Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Respondent Transito Diaz (Father) appeals the district court's divorce decree that incorporated a marital settlement agreement, a stipulated parenting plan and child support obligation between Father and Petitioner Lydia Alfaro (Mother), and a warranty deed and quitclaim deed conveying real estate from Father to Mother. Father argues that the district court erred because (1) the translations provided by the certified interpreter during the hearing, where the parties agreed to the division of property and custody were inaccurate; (2) Father's agreement to the division of property and custody was not knowing and voluntary; (3) the agreements were unconscionable because they were unfair and unjust; and (4) the parties should have gone to trial and the district court should have ruled on Plaintiff's motion for summary judgment. We affirm.

Michael D. Bustamante, Judge, retired,
Sitting by designation
WE CONCUR:
Kristina Bogardus, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39767>



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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 – Civil Litigation

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. Experience relevant to civil litigation is preferred. Excellent legal writing, research, and verbal communication skills, required. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to imb@sutinfirm.com.

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial 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 Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 35 states, is currently seeking an experienced litigation attorney for an immediate opening in its Albuquerque, NM office. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers a \$50K signing bonus, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter to Hamilton Hinton@hinton@cordelllaw.com

Entry Level and Experienced Attorneys

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced attorneys. Positions available in Sandoval, Valencia, and Cibola Counties. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. The 13th Judicial District offers flex schedules in a family friendly environment. Competitive salary starting @ 83,000+ depending on experience. Contact Krissy Fajardo @ kfajardo@da.state.nm.us or visit our website for an application @ <https://www.13th.nmdas.com/> Apply as soon as possible. These positions fill fast!

Lateral Partner/ Senior Associate Attorney

Cavin & Ingram, P.A., a growing boutique natural resources and energy firm, is currently seeking one or more lateral partner(s) or senior associate(s) with 5 to 15 years' experience in business, commercial, energy and/or real estate litigation or transactions. The ideal litigation candidate would be able to bring some existing clients, while stepping in to lead existing firm litigation matters and building the practice they want. The ideal transactional candidate would be able to transition their experience into drafting energy-related transactional opinions and documents. The candidate(s) must be licensed, or willing to become licensed, in the state of New Mexico, and have excellent legal writing, research, and verbal communication skills. Come join our collaborative, flexible, and relaxed work environment. To be considered for this opportunity, please email your resume to smorgan@cilawnm.com.

New Mexico Medical Board Prosecutor Position

DESCRIPTION: The New Mexico Medical Board (Board) is the state agency responsible for the regulation over 10,000 licensees including medical doctors (physicians), physician assistants, anesthesiologist assistants, genetic counselors, polysomnographic technologists, naturopaths and naprapaths. The New Mexico Medical Board is accepting applications to fill the position of Prosecutor. This is an exempt, full-time position based in Santa Fe, NM. This position is responsible for prosecuting physicians and other licensees primarily for violation of the Medical Practices Act specific to unprofessional or dishonorable conduct and/or the Impaired Healthcare Provider Act. The Prosecutor will review most complaints with Board Investigators, will issue recommendations for settlement and will handle adjudications as well as some appeals. Most hearings are held in Santa Fe although they can be held anywhere in the State. The successful candidate will have a strong knowledge of regulatory processes, to include the licensing, disciplining and ensuring compliance of medical professional rules and regulations; and must have a strong knowledge of the state and federal laws/regulations applicable to the medical profession. In addition, the successful candidate must have the ability to provide strong and ethical prosecutorial representation for the Board; possess strong communication, interpersonal and legal skills; exercise sound judgment; and appropriately advise the Board's staff on matters related to the disciplinary processes as it related to the regulation of the medical profession in New Mexico. QUALIFICATIONS: Educational requirements: NM Juris Doctorate. Experience Requirements: 5 or more years of litigation experience. Special emphasis on knowledge of the medical regulation, medical standard of care cases, and/or other professional licensure subject to the ULA is preferred but not mandatory. APPLICATION PROCESS: In order to be considered for this position, qualified candidates should send a resume, CV and cover letter to: Amanda Quintana, Interim Executive Director, New Mexico Medical Board, 2055 S. Pacheco Street, Building 400, Santa Fe, NM 87505; Phone: (505) 476-7220; Email: AmandaL.Quintana@nmmmb.nm.gov

Request For Proposal – Child in need of services and ICWA Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual attorney practicing in NM to provide legal services in cases involving child neglect or abuse and to represent the Pueblo in state cases subject to the Indian Child Welfare Act (ICWA). Reply by March 6, 2024 for first-round selection. RFP details at: www.lagunapueblo-nsn.gov/resources/rfp-rfq/

Assistant Federal Public Defender – Trial Attorneys for Las Cruces, NM

The Federal Public Defender for the District of New Mexico is seeking experienced Assistant Federal Public Defender-Trial Attorneys in the Las Cruces office. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney. Three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. Positions are full-time with comprehensive benefits including: Health, Vision, Dental and Life Insurance, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$72,553 to \$189,771 determined by experience, qualifications, and budgetary constraints. For more information about our office, please visit <https://nm.fd.org/>. In one PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference in the subject line 2024-02. Closing date is 03/04/2024.

Executive Director

The Public Employee Labor Relations Board is now seeking applications from parties interested in serving as its Executive Director. Details on the duties, qualifications, pay and benefits may be found at: <https://www.pelrb.nm.gov/wp-content/uploads/2024/01/PELRB-Job-Posting-2024-01-30.pdf>

Attorney

The Carrillo Law Firm, P.C., located in Las Cruces, NM, is seeking an Attorney to join the firm. The firm handles complex litigation as well as day-to-day legal matters from government and private clients. Applicant must have a current license to practice law in New Mexico, and possess strong legal research and writing skills, have a positive attitude, strong work ethic, and desire to learn. We offer competitive benefits to include health insurance, profit sharing plan, and an excellent work environment. Please send letter of interest, resume, references, and writing sample via email to deena@carrillolaw.org. All responses are kept confidential.

Attorney Associate

The Third Judicial District Court in Las Cruces is accepting applications for a permanent, full-time Attorney Associate. Requirements include admission to the NM State Bar plus a minimum of three years experience in the practice of applicable law, or as a law clerk. Under general direction, as assigned by a judge or supervising attorney, review cases, analyze legal issues, perform legal research and writing, and make recommendations concerning the work of the Court. For a detailed job description, requirements and application/resume procedure please refer to <https://www.nmcourts.gov/careers.aspx> or contact Briggett Becerra, HR Administrator Senior at 575-528-8310. Open until filled.

Assistant Attorney Generals

The New Mexico Department of Justice is committed to recruiting high quality assistant attorney generals who are passionate about serving the citizens of New Mexico. There are opportunities in the following divisions: Civil Rights, Consumer Protection, Environmental Protection, Special Prosecutions, Criminal Appeals, Civil Appeals, Government Litigation and Government Counsel and Accountability. The New Mexico Department of Justice 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. If you have questions, please reach out to Dean Woulard at dwoulard@nmag.gov.

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 attorneys provide a broad range of legal services to the City and represent it in legal proceedings in court and before state, federal and administrative bodies. 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 an attorney to enforce traffic violations, bring code enforcement actions, and serve as counsel to the planning department and other various City departments; Real Property: The City is seeking an attorney to represent it 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 and condemnation actions; Employment/Labor: The City is seeking an attorney to represent it in litigation related to employment and labor law in New Mexico State and Federal Courts, before the City of Albuquerque Personnel Board, and before the City of Albuquerque Labor Board; Utilities/PRC: The City is seeking an attorney to represent it in matters regarding franchise and right of way agreements, public utilities, broadband and telecommunications, and will appear before the Public Regulation Commission ("PRC"); City Clerk General Counsel: The City is seeking an attorney to be general counsel for the City Clerk's Office. Responsibilities include advising on a broad range of IPRA and OMA issues, contract review, and other duties as assigned; Air Quality: The City is seeking an attorney to serve as general counsel to the City's Environmental Health Department ("EHD") regarding Air Quality issues throughout Bernalillo County including at federal and state facilities. Responsibilities include participating in rulemaking and appeals, enforcement actions, and other duties as assigned. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as a 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.

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 in-valuable 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 are in good standing with the bar within or without the State of New Mexico. 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 open until filled.

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 re-search/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.

Experienced Associate Attorney

Mid- size downtown Defense firm looking for Experienced Associate Attorney in Civil Rights, Employment Law, Complex and General Liability. 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

General Counsel

Title: General Counsel; Organization: North Central Regional Transit District; Location: Espanola, New Mexico; Salary: \$122,339 - \$167,470 Annually. About the Job: The North Central Regional Transit District is an award-winning rural transit provider based in beautiful northern New Mexico. We are seeking qualified candidates for the role of General Counsel. At the NCRTD our vision is to be an environmentally conscious, sustainable partner, enhancing the quality of life of the north central New Mexico communities and beyond. This is a great legal career opportunity for someone looking to make a difference for their community. The position offers a Monday through Friday schedule, an impressive benefits package including medical, dental, and vision coverage as well as a generous paid time off plan, tuition reimbursement, a great pension plan and more! Come join our team of dedicated professionals serving our community! Job Description: The General Counsel provides professional counsel to the Board of Directors and District staff on all legal matters impacting the District; ensures compliance with federal and state laws; prepares and reviews legal documents; formulates District policies and regulations; fosters cooperative working relationships among District departments and with intergovernmental, regulatory agencies, and various public and private groups; provides highly responsible and complex professional assistance to the Executive Director and Board of Directors in areas of expertise; and performs related work as required. Qualifications: Any combination of training and experience that would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be: Education: Equivalent to a juris doctorate degree from an accredited college or university. Experience: Seven (7) years of increasingly responsible experience providing legal counsel in a governmental setting. Licenses and Certifications: Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license (Rules 15-301.2 and 15-301.2 NMRA). For more information on limited practice licenses, please visit <http://nmexam.org/limited-license/>. How to Apply: To submit an application please visit our Careers Page at <https://www.governmentjobs.com/careers/NCRTD>. The North Central Regional Transit District is an Equal Opportunity Employer and will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, use of domestic abuse leave or genetic information. The District is also committed to providing proper access to services, facilities, and employment opportunities. We will provide assistance in the recruitment, application and selection process to applicants with disabilities who request such assistance.

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Ninth Judicial District Court - Attorney Senior

The Ninth Judicial District Court is recruiting for a full-time permanent Attorney-Senior position. Location: Curry/Roosevelt Counties. Target Pay: \$57,692 hourly / \$120,000.00 salary. Eligibility for the Attorney-Senior position requires five years of practice plus New Mexico Bar admission. Extensive legal research and writing is required. TO APPLY: Submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, a writing sample of no more than five pages, and proof of education by 5:00PM on March 18, 2024 to: Ninth Judicial District Court, ATTN: Katherine Grubelnik, Human Resources Administrator, 700 N. Main Street, Clovis, NM 88101. Applications may be emailed to: clodkecc@nmcourts.gov.

Deputy Director

You are invited to join the AOC team in the challenging and rewarding work done by the New Mexico Judiciary! The New Mexico Judicial Branch is recruiting for a Deputy Director for the Administrative Office of the Courts (AOC) to oversee statewide judiciary operations. The Deputy Director works closely with the Director under the guidance of the New Mexico Supreme Court to manage all aspects of court operations. AOC responsibilities include oversight of court budgets that exceed \$200 million annually, personnel rules and actions statewide, court services and programs, and technology that include a statewide case management system and electronic filing. Duties include frequent contacts with executive and legislative agencies as well as active involvement with legislative initiatives before and during the annual legislative session. This position would serve as the AOC representative staffed to, and supporting many judicial committees that develop and administer judicial policies. Office locations in Alb. or Santa Fe, NM with occasional statewide travel. For more information or to apply to go to the Judicial Branch web page at www.nmcourts.gov under Career Opportunities. Equal Opportunity Employer

Clerkship - New Mexico Court of Appeals

Judge Gerald E. Baca of the New Mexico Court of Appeals is hiring for a law clerk position to begin immediately for an interim term to end August 30, 2024. This is an exciting opportunity to work closely with the judge to draft opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are required. Please submit a cover letter, resume, unofficial law school and undergraduate transcripts, and a writing sample. To apply and see the full job posting go to: www.nmcourts.gov/careers and click on the Court of Appeals "Law Clerk 1, Appellate Law Clerk 2, or Appellate Law Clerk 3" listing.

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

Experienced Legal Assistant

Modrall Sperling; Leading New Mexico law firm has an excellent opportunity for an experienced legal assistant in one of our business practice groups. In this role, you will provide a broad range of legal assistant services to two or more attorneys in our Santa Fe office. Candidates with experience in public finance, including bond transactions, highly preferred. Key Responsibilities; Provide administrative support to attorneys; Handle communications with clients and others; Organize transactional materials; Draft and file legal documents; Manage attorney calendars; Assist with client billing; Maintain client contacts. Basic Requirements: 2 or more years' experience as a legal secretary, legal assistant, or paralegal in a business practice group; Strong Word, PDF, Outlook, and calendaring skills; Excellent communication and client service skills; Editing and proofreading skills; Strong organizational and document assembly skills. This position requires a legal assistant who is self-motivated, detail-oriented, and able to multi-task and work under pressure. Modrall Sperling offers an outstanding compensation and benefits package. Please forward your resume to Susan Harris: susanh@modrall.com

Legal Services Sought for the New Mexico Health Insurance Exchange

The New Mexico Health Insurance Exchange, also known as beWellnm, is requesting proposals for professional legal services. The selected contractor will be responsible for the interpretation of federal and state laws and regulations relevant to the Exchange, including the New Mexico Health Insurance Exchange Act and the Patient Protection and Affordable Care Act. Services also will include advice and counsel to the Exchange and its Board of Directors regarding contract negotiations, programs and policies, and compliance with applicable state statutes governing public and quasi-governmental entities. A complete copy of the RFP may be may be downloaded from the Exchange website at: <https://bewellnm.com/vendor-employment/> or may be obtained from the Procurement Manager by emailing Proposals@nmhix.com. Proposals must be received by the Exchange no later than 5:00pm on Friday, March 15, 2024 at Proposals@nmhix.com.

Multiple Openings

The Children, Youth and Families Department has multiple openings for Children's Court attorneys with varying levels of experience in Albuquerque, Santa Fe, Roswell, Carlsbad, Clovis, Farmington, and Las Vegas. More details about positions and how to apply are provided on the State Personnel Office website at: <https://www.spo.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. Community Justice Worker – Disaster Relief Project; Managing Attorney – Hobbs, Roswell and Clovis Office; Staff Attorney Positions: (1) Disaster Relief, Northern 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/>

Associate Attorney (Business and Corporate Law)

Sutin, Thayer & Browne APC is looking to hire a full-time Associate Attorney with 0-3 years of experience who has an interest in Business and Corporate Law. Please visit our website at sutinfirm.com for full details.

2024 Bar Bulletin Publishing and Submission Schedule

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

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

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

New Mexico Center on Law and Poverty – Workers’ Rights Attorney

The New Mexico Center on Law and Poverty seeks a full-time attorney to join our Workers’ Rights team, ready to fight to improve pay and conditions for hardworking New Mexicans. This role will provide policy advocacy, community outreach and coalition-building, regulatory comments and administrative advocacy, legal representation, and litigation to support community-organizing campaigns for social and economic change. The work sometimes requires irregular hours and travel to other parts of the state. Required: minimum two years of legal experience; passionate about workers’ rights; excellent research, writing, and advocacy skills; strong leadership skills; ability to develop expertise in complex regulations and policies; Spanish fluency; willingness to travel within the state, and commitment to economic, racial, and gender justice. Apply in confidence by emailing your resume and a cover letter that describes what interests you about the mission of NMCLP to contact@nmpovertylaw.org. We are an equal opportunity employer committed to a healthy, collaborative, and inclusive work environment for a diverse staff. We strongly encourage applications from Black, Native, and indigenous people, people of color, immigrants, LGBTQ+, and New Mexicans and individuals of multiple backgrounds and identities. Learn more at www.nmpovertylaw.org

Firm Administrator/Paralegal

Our long-time Firm Administrator/Paralegal is retiring and we are seeking a replacement. The position involves full-charge bookkeeping (accounts payable, billing, including through insurance carrier audit houses, and accounts receivable). Experience with Timeslips, QuickBooks, Microsoft Office, WordPerfect and Adobe are required. The Firm Administrator also performs basic IT troubleshooting, interacts with accounting, banking and insurance professionals, coordinates with vendors and suppliers of office services, and performs other administrative duties. The Paralegal portion of the position involves light collections work, supporting attorneys in preparing EEOC/HRB and other employment-related agency responses, and occasional support of other paralegals in litigation matters. A commercial transactions and real estate background would be a plus. Knowledge of federal and state court rules is required. The successful applicant must be able to multi-task and have a sense of humor. Our benefits package is extremely generous and includes PTO, health, dental, life and long-term disability insurance, and a 401(k) plan. Anticipated start date would be April 1, 2024 but could be earlier. Serious and qualified applicants only please submit resumes to csalazar@wwwlaw.us.

Court of Appeals - Appellate Paralegal

The New Mexico Court of Appeals seeks an appellate paralegal. The position may be located in either Albuquerque or Santa Fe. As a Court paralegal, you will perform technical analyses, editing, proofreading and formatting of Court opinions. This entails citation checks, ensuring cited cases stand for the stated proposition, and ensuring record citations accurately represent the facts. You will be part of a team that works to issue high quality opinions and orders in a timely fashion. You may also provide administrative support to judges and/or attorneys and draft and docket legal documents. Excellent writing skills, knowledge of legal terminology, and attention to detail are essential. Current annual salary is \$76,302 with generous benefits. To apply and see the full job posting, including educational and experience requirements, go to: www.nmcourts.gov/careers and click on the Court of Appeals “Appellate Paralegal” listing.

Business Manager

The Moses Law Firm has an immediate opening for a full-time Business Manager with at least five years’ experience in an accounting or law firm administration role. If you are seeking a challenging position in a thriving firm, we are looking for you! The firm provides a collegial and collaborative environment from the top down. We are an AV Preeminent® firm serving New Mexico clients for 70 years and the only New Mexico firm invited to be a member of Meritas®, a global alliance of leading independent law firms and the world’s premier legal network. Candidates must have a working knowledge of basic bookkeeping principles, strong computer skills, and the ability to prioritize and perform multiple tasks. Experience with QuickBooks is desirable. The Firm offers a competitive compensation and benefits package. Please send your letter of interest, resume and salary requirement to Lucas N. Frank at lucas@moseslaw.com.

Legal Assistant for Santa Fe Firm

Busy commercial litigation and intellectual property firm seeks full time legal assistant, preferably with experience operating trial software in the courtroom. Candidate will be expected to be reliable, well-organized, take initiative, work well with others, work in a fast-paced environment, and have strong written and oral communication skills. The candidate will support paralegals and attorneys with case management, document management, calendaring, data entry, share responsibility for reception duties, and provide other support as needed. Proficiency in MS Office a must. Knowledge of legal software a plus. Salary commensurate with experience. Email resume w/cover letter and references to nan-cy@bardackeallison.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>.

Legal Secretary

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

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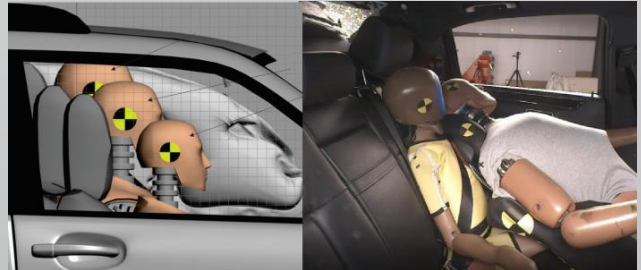
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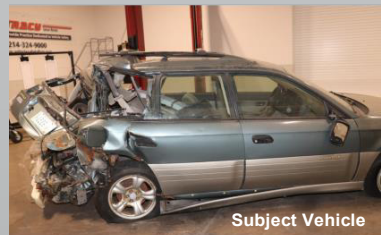


Crashworthiness

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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