

BAR BULLETIN

October 27, 2021 • Volume 60, No. 20



Cottonwood by Wendy Wilkerson

www.wlwilkerson.com/

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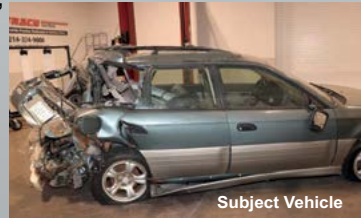
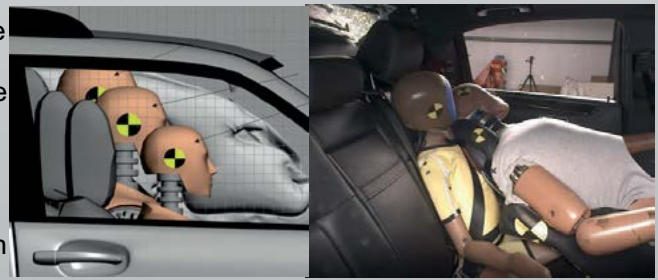
Upcoming Programming from the
CENTER FOR LEGAL EDUCATION

CRASHWORTHINESS:

We Didn't Invent the Word;
We DEFINED it.



Every vehicle accident case you handle has the potential to be on one of the 235 racks or in one of our six inspection bays at the firm's Forensic Research Facility. We continually study vehicle safety through the use of engineering, biomechanics, physics and innovation.



If you have any questions about a potential case, please call us. There may be vehicle safety system defects that caused your clients catastrophic injury or death.



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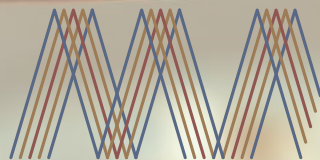
214-324-9000



Montgomery & Andrews, P.A. is pleased to announce that **Shelly L. Dalrymple** has joined the firm as a shareholder. Ms. Dalrymple's practice focuses on complex litigation and dispute resolution in the areas of water, environment, utilities, products liability, corporate fraud, and employment law. She has significant experience in multi-district litigation and class actions and has represented clients before federal and state courts and administrative agencies.

Ms. Dalrymple spent fifteen years in private practice in Oklahoma representing corporations in the health care, oil and gas, utilities, pharmaceutical, automotive, and manufacturing sectors. In 2007 she relocated to India to serve as an executive officer and head of litigation in an international legal services corporation, where she provided litigation and corporate law advice and services to Fortune 100 corporations and Am Law 100 law firms. After five years in India, Ms. Dalrymple moved to Mexico where she continued serving American and international law firms in a corporate capacity.

After moving to The Land of Enchantment, in 2017 Ms. Dalrymple joined the Litigation and Adjudication Program of the New Mexico Office of the State Engineer and then the New Mexico Interstate Stream Commission, where her primary responsibility was lead agency counsel in New Mexico's interstate water litigation in the United States Supreme Court.



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JACKSON LOMAN STANFORD DOWNEY & STEVENS-BLOCK

Jackson Loman Stanford Downey & Stevens-Block, P.C. is pleased to announce the addition of two new Associate Attorneys to its firm. Join us in welcoming Dyea Reynolds and Kara Shair-Rosenfield to our team of dedicated attorneys.



DYEA REYNOLDS joins Jackson Loman Stanford Downey & Stevens-Block as an associate attorney after graduating *magna cum laude* from The University of New Mexico School of Law in May 2021. As a law student, Dyea acted as a teaching assistant to Ted Occhialino and George Bach, and also served as a Student Articles Editor for the New Mexico Law Review. The opportunity to practice law has been a life-long dream for Dyea. She looks forward to working closely with clients to resolve complex legal issues.

KARA SHAIR-ROSENFELD joins Jackson Loman Stanford Downey & Stevens-Block following five years of clerking in New Mexico's state and federal courts. After earning her J.D., *summa cum laude*, from the University of New Mexico School of Law in 2016, Kara clerked for the Honorable J. Miles Hanisee of the New Mexico Court of Appeals. In 2019, she joined the chambers of the Honorable Kirtan Khalsa, and most recently had the pleasure of clerking for the Honorable James A. Parker. She has developed an intimate understanding of and a deep appreciation for the judicial decision-making process. Kara is excited to begin her career practicing law and looks forward to drawing upon her years of experience in the courts to serve Jackson Loman's clients.



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Meetings

October

27
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

28
Trial Practice Section Board
Noon, State Bar Center

29
Immigration Law Section Board
Noon, teleconference

November

2
Health Law Section Board
9 a.m., teleconference

3
Employment and Labor Law Section Board
Noon, teleconference

9
Appellate Practice Section Board
Noon, teleconference

Workshops and Legal Clinics

October

27
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

November

3
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6022

December

1
Divorce Options Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6022

8
Consumer Debt/Bankruptcy Workshop
6-8 p.m., Video Conference
For more details and to register, call 505-797-6094

About Cover Image and Artist: Wendy Wilkerson paints with gouache on paper, or with soft pastel on paper. Wilkerson takes her own reference photos from the local area, and highlights the natural light and emotion within the images.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

U. S. District Court for the District of New Mexico Proposed Amendments to Local Rules of Criminal Procedure

Proposed amendments to the Local Rules of Criminal Procedure of the U.S. District Court for the District of New Mexico are being considered. A "red-lined" version (with the addition of rule 44.2 Self-Representation and proposed amendments to Attachment 1: Standard Discovery Order) and a clean version of these proposed amendments are posted on the Court's website at www.nmd.uscourts.gov. Members of the Bar may submit comments by email to clerkofcourt@nmd.uscourts.gov or by mail to U.S. District Court, Clerk's Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: Cynthia Gonzales, no later than Oct. 30.

Ninth Judicial District Court Judicial Appointment and Notice of Mass Reassignment

Governor Michelle Lujan Grisham has announced the appointment of Benjamin S. Cross of Clovis to fill the vacancy in Division I of the Ninth Judicial District Court. Effective Oct. 1, a mass reassignment of cases will occur. All cases previously assigned to District Judge Matthew E. Chandler, Division I, will be reassigned to District Judge Benjamin S. Cross, Divi-

Professionalism Tip

With respect to my clients:

I will work to achieve lawful objectives in all other matters, as expeditiously and economically as possible.

sion I. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Oct. 27 to challenge or excuse the judge pursuant to Rules 1-088.1 and 5-106.

STATE BAR NEWS Board of Bar Commissioners Appointment to Client Protection Fund Commission

The Board of Bar Commissioners will make one appointment to the Client Protection Fund Commission for a three-year term. To be eligible, you must be an active status member of the State Bar with a principal office in New Mexico. Members who would like to serve on the Commission should send a letter of interest and brief resume by Nov. 17 to bbc@sbnm.org.

Appointments of Commissioners to Vacancies Seventh and Thirteenth Judicial Districts and the Eleventh Judicial District

No nomination petitions were received for two positions in the Seventh and Thirteenth Judicial Districts and one position in the Eleventh Judicial District, so the Board of Bar Commissioners will need to make appointments to those districts. The term will commence Jan. 1, 2022, and expire Dec. 31, 2022. Active status members with a principal place of practice (address of record) in the Judicial Districts with vacancies are eligible to apply. The 2022 Board of Bar Commissioners meetings are scheduled for: Feb. 25, May 20-21 (Las Cruces, in conjunction with a board retreat and member district event), August 11 (Hyatt Regency Tamaya Resort, in conjunction with the State Bar Annual Meeting), Oct. 21, and Dec. 7. Members interested in serving on the Board should submit a letter of interest and resume to bbc@sbnm.org by close of business on Nov. 24.

COVID-19 Pandemic Updates

The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing

COVID-19 coronavirus situation. Visit <https://www.sbnm.org/covid> for a compilation of resources from national and local health agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the coronavirus situation, please email Executive Director Richard Spinello at rspinello@sbnm.org.

New Mexico Judges and Lawyers Assistance Program Defenders in Recovery

Defenders in Recovery meets every Wednesday night at 5:30 p.m. The first Wednesday of the month is an AA meeting and discussion. The second is a NA meeting and discussion. The third is a book study, including the AA Big Book, additional AA and NA literature including the Blue Book, Living Clean, 12x12 and more. The fourth Wednesday features a recovery speaker and monthly birthday celebration. These meetings are open to all who seek recovery. We are a group of defenders supporting each other, sharing in each other's recovery. We are an anonymous group and not affiliated with any agency or business. Anonymity is the foundation of all of our traditions. Who we see in this meeting, what we say in this meeting, stays in this meeting. For the meeting link, send an email to defendersinrecovery@gmail.com or call Jen at 575-288-7958.

Employee Assistance Program

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: FOUR FREE counseling sessions per issue, per year. This EAP service is designed to support you and your direct family members by offering free, confidential counseling services. Check out the MyStress Tools which is an online suite of stress management and resilience-building resources. Visit www.sbnm.org/EAP or call 866-254-3555. All resources are available to members, their

families, and their staff. Every call is completely confidential and free.

Monday Night Attorney Support Group

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

NMJLAP Committee Meetings

The NMJLAP Committee will meet at 10 a.m. on Jan. 8, April 2, and July 9, 2022. The NMJLAP 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. Over the years the NMJLAP 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 Judges and Lawyers Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

N.M. Well-Being Committee Upcoming Meeting

The next meeting of the N.M. Well-Being Committee is 1 p.m. at Nov. 30. The 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.

Well-Being In Action Podcast

Look for the latest installments of the Well-Being in Action Podcast! Lawyering by Video, Part 2, will release on Oct. 27, and Compassion Fatigue, Part 2, will release on Nov. 10. Listen online at www.sbnm.org/WellBeingPodcast or on Apple Podcasts and Spotify.

Public Law Section 2021 Award Recipients

The Public Law Section would like to congratulate this year's recipients of the Public Lawyer of the Year Award: Sally Malave and Jon Boller. Save the date for a ceremony honoring the recipients of this prestigious award at 4 p.m. on Nov. 5 at the Santa Fe Roundhouse. Details to join virtually or attend in person will be announced soon.

UNM SCHOOL OF LAW Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at UNMLawLibref@gmail.com or voice-mail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: <https://libguides.law.unm.edu/limitedops>.

— *Featured* —

Member Benefit



The Solutions Group

Take advantage of a free employee assistance program, a service offered by the New Mexico Judges and Lawyers Assistance Program in cooperation with The Solutions Group. Get help and support for yourself, your family and your employees. Services include up to four FREE counseling sessions/issue/year for any behavioral health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other free services include management consultation, stress management education, critical incident stress debriefing, substance use disorder assessments, video counseling and 24/7 call center. Providers are located throughout the state.

**To access this service call
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and identify with NMJLAP.
All calls are confidential.**

Lawyering by video



By Sean FitzPatrick

Thick padded bulletproof vests on security guards. The buzz of a metal detector as a belt buckle sets off the alarm. The sound of heeled dress shoes clack, clack, clacking on the hard courthouse floor. Ding, the elevator up to the courtroom floor. Is that my opposing counsel waiting outside the Courtroom? Entering the courtroom with hushed voice so as not to disturb the hearing in progress. The panic of suddenly remembering to check the cellphone to make sure it is silenced. The strike of the gavel. May I proceed? These sights and sounds are part of what makes being a lawyer feel real to me. But lately, these things have been absent from the experiences of lawyers in New Mexico and around the country.

In February, Richard Cravens wrote an article on lawyering by video and we talked about what that meant in a podcast shortly after. It was in large part theoretical: I hadn't tried a case during COVID. But from Feb. 8-11 in Clayton, N.M. I was about to get a lesson in what it meant to try a case during COVID.

Even though there are ups and downs, I am a trial junkie by nature. The feeling of being in trial is what feels like being a lawyer for me. Reminding the venire that something as important as a jury trial can bring everyone together during a pandemic for a common goal of justice. Standing up to make an opening and closing statement while looking each juror in the eyes to convey my message. The adrenaline of impeaching a witness on the stand live, in front of the jury. The trial in February felt real. And my clients had their day in Court, literally.

But even so, I would have rather done the case via video. Muffled voices through masks. Limited facial expressions. No conferring with co-counsel except through notes. Clients having to sit in the gallery, awkwardly trying to pass a note across the bar while maintaining six feet. But what really crystalized it for me: A juror asking the specific question after trial: "Why couldn't we have done this through video? At least we could have seen everyone's face".

As recalcitrant as the legal profession (and its lawyers) are to change, it is probably time to step into the modern era, if pandemic restrictions are going to continue to exist. I can't help but think about *The Matrix* when thinking

about lawyering by video. "If real is what you can feel, smell, taste and see, then 'real' is simply electrical signals interpreted by your brain." - Morpheus, *The Matrix*. Has being a lawyer during the pandemic become a simulacrum of the real thing? "Phoning it in" is a derogatory term after all. But with more than 700,000 American lives ended because of a global pandemic, and no end in sight, maybe it is time to *dial it in* which oddly enough has the opposite connotation. And that is what lawyering by video, if done right, has the ability to do.

A screen in every jurors hand? Why not? They are already used to obtaining information that way. Both parties used an ELMO (which we used at this trial). But wouldn't it have been better to "push" it to individual tablets rather than the TV screen? There were jurors all the way in the back of the courtroom after all. Then, if admitted, automatically save the exhibit to each device. Because during COVID, having to compile, print, tabulate and distribute binders for each juror was difficult (and expensive since printer ink is one of the most expensive substances in the world, more so than human blood). There were no requests to approach the jury since they jury was scattered throughout the courtroom. The jurors had to squint. Don't get me started on all the interesting things that happen when you *force* people to engage in simple facial movements. (like the studies on when you make a person bite a pen, they become happier because it triggers the same muscles as smiling). What feeling does squinting invoke?

But I will get started on what I perceive the biggest pandemic problem related to lawyering by video: seeing a person's face. For better or for worse, people believe things about other people just by looking at their faces. Are they credible? Are they hostile? People knowingly and unknowingly give information away in their own facial expressions while listening. I am no expert in body language or facial expressions. There are countless books on the subject including sub fields like chronemics (study of communicative role of time in nonverbal behavior), proxemics (study of space between people and role in communication), haptics (role of touch in communication) paralinguistics (how something is said rather than what is said), and many more. That is a lot of extra information that might be lost via video, but definitely lost when wearing a mask.

But what about the argument that all this extra information is not actually information, but noise? In Malcom Gladwell's book, *Talking to Strangers*, he points out a study titled "Human Decisions and Machine Predictions" by on Kleinberg, Himabindu Lakkaraju, Jure Leskovec, Jens Ludwig and Sendhil Mullainathan, in the *Quarterly Journal*

of Economics, Oxford University Press, Vol. 133(1) which examined bail decisions made by a judge versus what a computer algorithm would have done. When judges make decisions about bail, they have different sources of "information": the Defendants record; argument from defense and prosecution; and the visual evidence of how the defendant looks including race ethnicity and gender. The AI algorithm only knew the current crime, prior history and age. The result? The computer handily beat the judges at predicting those who would reoffend, and accurately predicting those who did not. According to the study, using the algorithm could reduce crime "up to 24.7% with no change in jailing rates, or jailing rate reductions up to 41.9% with no increase in crime rates". And that is all without seeing the Defendant's face. But if you want proof that being able to identify a person's face is important, ask Robert Julian-Borchak Williams who was wrongfully arrested due to faulty facial recognition algorithm. <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>.

The legal profession might take a page out of the medical profession in striking a balance. Doctors don't need to open a patient up completely and expose them to infection like they used to. Laparoscopic surgery using the assistance



Clayton Courthouse

of a computer and camera decrease recovery times for patients. Why cant a zoom deposition be seen as a surgical deposition? You get in, depose someone in another state, and get out making it home in time for dinner. Given current facemask restrictions, wouldn't it be better to see the witnesses face during the deposition than be in person masked up? Wouldn't it be better

to instantly pull up credible documents for impeachment or to refresh a recollection? "I cant recall how many lanes there were on that road". Pull up google maps and share screen. Mr. Green can you see there are four lanes here? "I don't remember if it was raining that day". Pull up the National Weather Service Website. "Ms. Jones, can you see that it was sunny and clear that day?"

The trick is being able to do these things in the heat of the moment without hiccups or stalls. I embrace bitterly the idea that a lawyer's ability to argue a case may become dependent upon their ability to use computers. Shouldn't it be about story telling and argument? That is what makes me feel like a lawyer, and ultimately feeling like a lawyer makes me happy. But it sure is nice to not have to drive to the courthouse, fight traffic, try to find a parking spot, pay the meter, go through security, and worry whether you brought the exhibits to hand to opposing counsel and the judge. And to be honest, the legal profession has been computer dependent for some time now. So for now, I am practicing up in depositions and at hearings because I am one of those people who likes to see people's faces. Given the choice again, trial by video or in person, I think being able to see everyone's face may have been the better alternative, even if it doesn't feel as real.

Resource Shared by Mr. Fitzpatrick:

BlueJeans — Not Only for Casual Fridays Anymore

https://www.americanbar.org/groups/family_law/publications/newsletter/committee-corner/2020-2021/lpm-bluejeans/

Sean FitzPatrick is a graduate of UNM School of Law and is a sole practitioner at his firm FitzPatrick Law, LLC which he started in 2016. FitzPatrick's current practice area is civil litigation focusing on injury and insurance law in Albuquerque, NM. FitzPatrick worked as a prosecutor in Farmington, NM litigating a variety of felony and misdemeanor cases for a few years after law school. Outside of work, you can find FitzPatrick running, biking, or participating in other 'type 2' fun activities with his wife Eva and their son Liam.

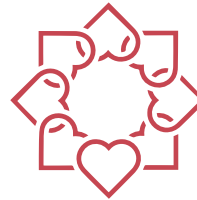


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Judges and Lawyers
Assistance Program



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All calls are **CONFIDENTIAL**.

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**NEW MEXICO RENTERS,
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The state of New Mexico will grant **\$170M of federal aid to New Mexicans for rental and utility assistance** to households experiencing financial hardship due to the COVID-19 outbreak.

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Rent, utility bills (electric and gas), water and sewer, trash removal, and other expenses related to housing costs such as hotel/motel costs.

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Jay F. Stein and James C. Brockmann of Stein & Brockmann, P.A. have been named to Best Lawyers in America in the field of water law for 2022. Stein was named a “Lawyer of the Year.”



Amanda E. Cvinar has joined Sutin, Thayer & Browne as an associate attorney. A member of the Firm’s commercial group, she practices in the areas of business and corporate law, IP, mergers and acquisitions, estate planning, renewable energy development and public finance, where she drafts loan and due diligence documents. She served as a legal extern to the Public Regulation Commission and

as a law clerk in the Attorney General’s Office. She also clerked at Sutin, where she assisted clients with forming, governing, and selling their businesses and with trademark applications to the USPTO. Cvinar earned her J.D. from the University of New Mexico School of Law.

Hope Eckert has recently opened **Creative Mediations**, a nationwide mediation firm specializing in bringing legal expertise, emotional intelligence, creativity, and optimism to the mediation process. Previously, she served as Circuit Mediator for the 10th Circuit Court of Appeals and as New Mexico State and Metropolitan Court Settlement Facilitator. She also has experience and training in social service and counseling.



Justin L. Greene has joined Sutin, Thayer & Browne as an associate attorney in the Firm’s litigation group. He practices primarily in the areas of employment and commercial litigation. Greene was a law clerk for FOX Sports, Alexander Morrison + Fehr, and Employee Justice Legal Group, all in Los Angeles, while a law student. During his clerkships, his work related to employment-related litigation such

as discrimination, harassment, wrongful termination, and wage-and-hour claims. Before entering law school, he worked as a legal assistant and paralegal at law firms in Colorado and California. Greene received his J.D. from the University of Southern California Gould School of Law with certificates in Business Law and Media & Entertainment Law.



Christine L. Lucero has joined Sutin, Thayer & Browne as a paralegal in the firm’s litigation group where her focus is in civil and commercial litigation and employment law. She has been working in the legal profession as a legal assistant and paralegal for 25 years. Lucero earned her Associate of Applied Sciences in Legal Assistant Studies from Albuquerque Technical Vocation Institute, now CNM, in 1996.

The Rodey Law Firm has achieved top ranking in *Chambers USA—America’s Leading Lawyers for Business—2020*. Rodey received *Chambers’* highest ranking in the following areas of law: Corporate/Commercial; Labor and Employment; Litigation: General Commercial; and Real Estate. *Chambers* bases its rankings on technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment, and other qualities most valued by the client. *Chambers* honored these Rodey lawyers with its highest designation of “Leaders in Their Field” based on their experience and expertise: **Mark K. Adams**: environment, natural resources and regulated industries, water law; **Rick Beitler**: litigation: medical malpractice and insurance defense; **Perry E. Bendickson III**: corporate/commercial; **David P. Buchholtz**: corporate/commercial; **David W. Bunting**: litigation: general commercial; **Jeffrey Croasdell**: litigation: general commercial; **Nelson Franse**: litigation: general commercial; medical malpractice and insurance defense; **Catherine T. Goldberg**: real estate; **Scott D. Gordon**: labor and employment; **Bruce Hall**: litigation: general commercial; **Justin A. Horwitz**: corporate/commercial; **Jeffrey L. Lowry**: labor and employment; **Donald B. Monnheimer**: corporate/commercial; **Sunny J. Nixon**: environment, natural resources and regulated industries: water law; **Edward Ricco**: litigation: general commercial; **Debra E. Ramirez**: real estate, **John P. Salazar**: real estate; **Andrew G. Schultz**: litigation: general commercial; **Charles A. Seibert**: real estate; **Tracy Sprouls**: corporate/commercial: tax; **Thomas L. Stahl**: labor and employment; and **Charles J. Vigil**: labor and employment.

Michael L. Danoff passed away unexpectedly at age 73 at his home on Sept. 15. Mike was born in 1947 and raised in Albuquerque. After graduating from Highland High School, class of 1965, he attended the University of Arizona on a track scholarship and was active in ROTC. Mike proudly served as an officer in the U.S. Army and attended law school at the University of New Mexico. He graduated law school in 1972 and shortly thereafter opened a private civil litigation practice, Michael Danoff and Associates, and served as an esteemed attorney in Albuquerque for over 49 years. Mike was a lifelong fan and supporter of lobo athletics and coached youth basketball for more than 25 years. Mike had many passions outside of work and was an avid swimmer, golfer and loved spending time with his wife Margo going to concerts, sporting events, cruises, and spending time in his favorite city Las Vegas. He always looked forward to his annual golf trip to Pebble Beach, C.A., with his sons and spending time with his granddaughter Thea. His most prized possession was time with family and friends. Mike was proud board member of the Great Southwest Track and Field Association and New Mexico Bowl and served as a previous board member of Congregation Albert and was regional Youth Group Advisor. He is preceded by his parents, Hyman and Bertha Danoff of Albuquerque. Mike is survived by his wife of 52 years, Margo (Kawin) Danoff and his three sons: Troy Danoff and Celeste Peterson of Phoenix; Brett and Lesli Danoff of Albuquerque; Ryan, Amy and Thea Danoff of Albuquerque; and his brother Robert, Eve Danoff and their family of Paradise Valley, A.Z.



It is with deep sorrow that we relay the sudden passing of **Sean Patrick Thomas** on Aug. 5. Sean was born in California but spent most of his youth in New Mexico before entering the U.S. Navy at 17. He served on the USS Guadalcanal off the coast of Lebanon in the early 1980s. After leaving the Navy in his early twenties, Sean was a bit of a renaissance man—he painted houses, finished his education,

taught elementary school, coached track, became a husband and father, and eventually attended the University of New Mexico School of Law. Sean's friendly nature and love of food (and beer) landed him the role of social director for the law school. Speaking of Sean's love of food, he was able to find the absolute best restaurants in any city he went to. Not the "finest", just the places with the best damn food. Sean moved his family to California in the late 1990s where he rediscovered his love for the ocean. He was an avid sportsman who enjoyed surfing, golf, pickleball, soccer, and really, just about anything that allowed him to be in the outdoors, kicking around with friends. He loved music, IPA, dogs, a good burger, and his three daughters, more than anything in the world. He was the kind of friend everybody wants—fiercely loyal and tons of fun. If you were lucky enough to know him, your life was better for it. Rest in peace, beloved Sean. In lieu of flowers, the family requests that you take a moment to watch the beautiful sunset, breathe the ocean air, and think of Sean. He'd have loved that.

Susan Carrie Shier Martz Wayland passed away on Sept. 2. A tiny powerhouse from the beginning, Susan Carrie Shier was born to Sarah "Sally" Jane von Pohek and Eugene "Gene" William Shier in Chicago, Illinois on Dec. 13, 1938. She weighed 3.5 lbs. Sally and Gene divorced when she was 3, and Sally married Edwin P. Martz. Together Sally and Ed gave Susan three siblings - a sister, Carolyn, and two brothers, Larry and Jon. As a child, she survived typhoid fever, roseola, and polio, and moved to many places including China Lake (California) and Alamogordo (New Mexico), where she graduated as valedictorian of her high school. She earned a BS in Math and a Masters in German from University of Arizona in Tucson, where she met her husband of 60 years, James Robert "Bob" Wayland, Jr. Together, they had two girls, Sarah and Jennifer. As Bob pursued his Ph.D., post-doc, and professorship in physics, the family moved from Tucson, to Silver Spring, MD, College Station, TX, and finally landed in Albuquerque. When her daughters were in elementary and middle school, Susan started law school at the University of New Mexico. She wanted to use the law to change the world. She was on the law review and graduated at the top of her class, all while keeping the house and her family going. Susan was a lawyer for many years, first practicing family law, and then contract law at Sandia National Labs. Her strong moral and ethical sense made her a very good defender of the underdog. She loved to serve the communities important to her, and sat on the Board of Directors for Sandia Laboratories Federal Credit Union, Deer Lake Association in the Sangre de Cristo mountains, and for a timeshare in Flagstaff Arizona. Her thoughtfulness extended to her friends and family who knew how deeply she cared for them. She loved to laugh, and sometimes would laugh until she couldn't breathe getting her to that state was always a goal for us. When Susan retired, she had more time to pursue her passions reading, sewing, cooking, scrapbooking, gardening, and travel until her dementia demanded 24/7 care. If you were to visit her in memory care, she would introduce you to every single person that walked by. To the end, she was polite, engaged and interested, even though she couldn't understand why she was there and what was happening. Her life was not easy, but she was surrounded by friends and family that loved her. She will be missed. Susan is survived by her husband of 60 years, Bob Wayland, daughter Sarah Wayland, son-in-law Alan Thompson, grandsons Justin Wayland and Oliver Thompson, daughter Jennifer Wayland, son-in-law Matthew Dailey, granddaughters Katherine Dailey and Lillian Dailey.

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective October 1, 2021

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A-1-CA-38952	State v. J McWhorter	Reverse/Remand	09/29/2021
A-1-CA-38952	State v. J McWhorter	Reverse/Remand	09/30/2021
A-1-CA-38967	State v. C Castaneda	Reverse/Remand	09/30/2021
A-1-CA-37797	D W v. B C	Reverse/Remand	10/01/2021
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UNPUBLISHED OPINIONS

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A-1-CA-37145	State v. M Padilla	Affirm/Vacate/Remand	09/30/2021
A-1-CA-37646	T Williams v. City of Santa Fe	Affirm	09/30/2021
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A-1-CA-38571	B Langarcia v. J Balderama	Affirm/Vacate/Remand	09/30/2021
A-1-CA-38422	State v. A Lozoya-Hernandez	Affirm	10/01/2021

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Legal Education

October

- 27 **Recent Developments in International Trade Law: Opportunities for New Mexico's Indian Country**
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 28 **Pay Equity and Gender: Women and Fair Pay in the Workplace**
3.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org
- 28-31 **Mediation Training**
30.0 G, 2.0 EP
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UNM School of Law
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- 29 **Ethics of Identifying Your Client: It's Not Always Easy**
1.0 EP
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- 29 **7th Annual Diversity and Inclusion Symposium**
4.0 G
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November

- 2 **The O.J. Simpson Trial: Attorney Blunders, Bungles and Bloopers – PLUS Amazing PowerPoint Trial Tips**
3.0 G
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- 2-3 **2021 Business Law Institute**
5.0 G, 1.0 EP
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- 4 **Copyright + Art: Told Through Colorful Stories and Original Artwork**
2.0 G
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- 4 **2021 Annual Indian Law Institute: Continuing to Advance the Profession in Times of Uncertainty**
4.0 G, 2.0 EP
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- 4-7 **Mediation Training**
30.0 G, 2.0 EP
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lawschool.unm.edu/cle/upcoming.html
- 5 **JLAP Well Talks: "What a Healthy Lawyer Looks Like"**
2.0 EP
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- 5 **Ethics in Discovery Practice**
1.0 EP
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- 5 **60 Tips, Tricks, Apps & Websites in 60 Minutes**
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- 5 **JLAP Well Talks: "What a Healthy Lawyer Looks Like"**
2.0 EP
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Center for Legal Education of NMSBF
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- 5 **The Question Spectrum Workshop**
6.5 G
In Person
Michael L. Stout Law
mlstoutlaw.com/the-question-spectrum/
- 8 **So How 'Bout We All Zoom, Zoom, Zooma, Zoom?: Ethical and Best Practices for a Virtual Practice in 2021 and Beyond**
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November

- | | | |
|---|---|--|
| <p>9 How To Make Cross-Examination An Open Book Exam at Trial and at In-Person or Online Depositions
1.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>16 Strategies and Techniques for Rural Community Organizing and Legal Advocacy
1.5 G
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Center for Legal Education of NMSBF
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3.5 G
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>9 Family Law Update PANEL
1.0 G
Live Webinar
Albuquerque Bar Association
dchavez@vancechavez.com</p> | <p>16 Environmental Liability in Commercial Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
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1.0 G
Teleseminar
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| <p>10 Trust and Estate Planning for Retirement Plans - IRAs, 401(k)s, and More
1.0 G
Teleseminar
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| <p>15 Sketching Competing Solutions in Access to Justice
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Live Webinar
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1.0 G
Teleseminar
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1.0 EP
Live Webinar
Center for Legal Education of NMSBF
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December

- | | | |
|---|--|--|
| <p>1 Business Torts: How Transactions Spawn Litigation, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Live Webinar
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1.0 EP
Live Webinar
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| <p>2 Business Torts: How Transactions Spawn Litigation, Part 2
1.0 G
Teleseminar
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Teleseminar
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| <p>3 Ethics of Joint Representations: Keeping Secrets & Telling Tales
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Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-012
No: S-1-SC-38173 (filed July 14, 2020)

ANASTACIA GOLDEN MORPER,
CHUCK HASFORD, PAM HASFORD,
LLOYD PETERSON, and DIANE PETERSON,
Petitioners-Appellants,

v.

MAGGIE TOULOUSE OLIVER,
in her capacity as the Secretary of State,
Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
BRYAN BIEDSCHEID, District Judge

Released for Publication September 8, 2020.

SaucedoChavez, P.C.
CHRISTOPHER T. SAUCEDO
Albuquerque, NM
for Petitioners

New Mexico Office of the Secretary
of State
TONYA NOONAN HERRING
Santa Fe, NM
for Respondent

Opinion

David K. Thomson, Justice.

{1} Anastacia Golden Morper sought preprimary designation as a candidate for the office of United States Representative from New Mexico's Third Congressional District at the 2020 Republican Party Pre-Primary Convention. Under the New Mexico Election Code, NMSA 1978, §§ 1-1-1 to 1-26-6 (1969, amended through 2019), a candidate seeking "preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy" with the Secretary of State (Secretary). NMSA 1978, § 1-8-33(B) (2008). For congressional candidates, those nominating petitions must contain a minimum number of signatures "equal to at least two percent of the total vote of the candidate's party in the . . . congressional district" or "seventy-seven voters," whichever is greater. *Id.* Morper filed forty-nine nominating petitions, along with her declaration of candidacy. To be certified as a candidate, Morper was required to obtain at least 463 valid signatures. The Secretary is obligated to "certify . . . candidates for office of United States representative . . . who have filed their declarations of candidacy by convention designation and have

otherwise complied with the requirements of the Primary Elections Law." NMSA 1978, § 1-8-39.1(A) (1993). In this case, the Secretary invalidated forty-four of Morper's nominating petitions because those petitions omitted the heading "2020 PRIMARY NOMINATING PETITION," which the Secretary deemed to be critical information required by law. By extension, the Secretary invalidated the signatures on those forty-four nominating petitions. In doing so, the Secretary invalidated over seven hundred signatures, leaving only forty-three signatures on the five nominating petitions the Secretary did not invalidate. The Secretary informed Morper that she had not received the "minimum number of signatures required" to be "qualified as a candidate" for the preprimary convention. Morper appealed the Secretary's decision to the district court. The district court upheld the Secretary's decision concluding that "the Secretary of State has the right to reject . . . nominating petitions that were not on the form prescribed by law." Morper appealed to this Court consistent with NMSA 1978, Section 1-8-26(E) (2019).

{2} This case requires us to construe the sections of the Election Code that govern the form of nominating petitions. In addition, we must construe the limits on

the Secretary's discretion to invalidate nomination petitions that are not in the exact form published by her office. *See* NMSA 1978, § 1-1-7.2 (2019) ("Petitions; nominations; signatures to be counted"); NMSA 1978, § 1-1-26 (2019) ("Petitions; nominations; requirements before signed by voters; invalidated petitions"); NMSA 1978, § 1-8-30 (2011) ("Primary Election Law; declaration of candidacy; nominating petition; filing and form"); NMSA 1978, § 1-2-1(C) (2017) ("Secretary of state; chief election officer; rules").

{3} After reviewing the pleadings, we issued an order reversing the judgment of the district court and ordering the district court to vacate its order and direct the Secretary to certify Morper's candidacy. We issue this written opinion to provide guidance on the Secretary's authority to prescribe and require a particular form to be used for nominating petitions.

I. BACKGROUND

{4} As required by law, in October 2019, the Secretary posted a sample nominating petition form (Secretary's Form) on the Secretary's website and published the Secretary's Form in the 2020 Primary Election Candidate Guide (Election Guide). *See* § 1-8-30(D) ("In October of odd-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.").

{5} The Legislature has provided the statutory nominating petition form (Legislature's Form). Section 1-8-30(C). The Secretary's Form differs from the Legislature's Form in that it adds "2020 PRIMARY" to the heading "NOMINATING PETITION," adds the version number "**Rev. 2019 NMSA 1978, § 1-8-30**" at the bottom of the page, and provides the date of "June 2, 2020," in the otherwise-blank, underlined space intended for the date of the primary election to which the petitions apply.

{6} Only five of the forty-nine nominating petitions Morper filed with her declaration of candidacy included the heading from the Secretary's Form. Morper does not dispute that forty-four nominating petitions omitted the heading "2020 PRIMARY NOMINATING PETITION." Those forty-four nominating petitions did not appear to deviate from the Secretary's Form in any other respect.

{7} The Secretary determined that those forty-four petitions were invalid because they lacked the proper heading, and therefore the Secretary did not count any of the signatures on those petitions. The

Secretary informed Morper that she “did not qualify as a candidate” because Morper failed to submit “the minimum number of signatures required.”

{8} Morper challenged the Secretary’s decision by filing a petition in district court. See § 1-8-26(E) (“If a person is notified . . . that the person is not qualified to be a candidate, the person may challenge that decision by filing a petition with the district court.”) Four individuals who signed a nominating petition for Morper joined as petitioners in her challenge in the district court and argued that the Secretary’s determination denied them the right to exercise their “First Amendment petition rights.”

{9} Petitioners argued that the Secretary was not authorized to invalidate Morper’s nominating petitions and by extension the signatures thereon simply because the petition did not include the heading “2020 PRIMARY NOMINATING PETITION.” Petitioners asserted that Section 1-8-30 prescribes the form of the nominating petition, which does not contain the heading on the Secretary’s Form. Petitioners maintained that Morper’s nominating petitions conformed to Section 1-8-30(C) and therefore that the signatures on the forty-four invalidated petitions should have been counted. The validity of the signatures was not contested in the district court, and therefore we presume the signatures on the forty-four petitions at issue were valid. See § 1-1-7.2 (C), (D) (“A signature shall be counted on a nominating petition unless there is evidence presented” that invalidates the signature). {10} The Secretary responded by asserting that she is “bound by the Legislature’s express mandate as to the form of the nominating petition.” The Secretary further argued that she is granted the authority to prescribe the form of the nominating petition pursuant to her authority to approve the “forms [and] procedures” to “be used in any election.” See § 1-2-1(C). At the hearing before the district court, the Secretary’s Bureau of Elections Director (Elections Director) asserted that the Secretary would not accept any nominating petition that deviated in any way from the Secretary’s Form because the Secretary was “charged with prescribing the form.” When questioned about why the heading “2020 PRIMARY NOMINATING PETITION” was critical, the Elections Director stated that it was the

only mechanism that we have to ensure that the voters have all of the information that they need

and that they have an awareness of what they are signing, and it is also the only way that we can ensure that candidates are not circulating these petitions ahead of the statutory time frame they are allowed to.

The Elections Director maintained that the heading ensured that candidates did not start collecting signatures prior to October 1, 2019. This date is critical because it guarantees that the Election Code is consistently applied and that no candidate had an “unfair advantage.” The Secretary maintains that the form prescribed by law is the Secretary’s Form, not the form prescribed by Section 1-8-30(C), and that the Secretary has no discretion to accept a nominating petition that deviates in any way from the Secretary’s Form.

{11} The district court determined that the Secretary “has the authority to promulgate the ‘form prescribed by law’ pursuant to Section 1-2-1(C) which states: No form or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state.” Subsequently, the district court determined that the Secretary “has the right to reject and properly rejected the 44 nominating petitions that were not on the form prescribed by law.” For the reasons that follow, we reverse.

II. ANALYSIS

A. Statutory Construction and the Standard of Review

{12} In reviewing the district court order, we must determine requirements on the form of nominating petitions under the Election Code and limits on the Secretary’s statutory authority to approve forms and procedures used in elections—both issues of statutory construction that we review de novo. *Marbob Energy Corp. v. N.M. Oil Conservation Comm’n*, 2009-NMSC-013, ¶¶ 5-7, 146 N.M. 24, 206 P.3d 135.

{13} We have long held that, although “[w]e will not construe election laws so liberally as to allow a candidate to receive a ballot position to which [s]he is not entitled, . . . we are also committed to examine most carefully[] and rather unsympathetically any challenge to a voter’s right to participate in an election.” *Simmons v. McDaniel*, 1984-NMSC-049, ¶ 15, 101 N.M. 260, 680 P.2d 977 (internal quotation marks and citation omitted). The voter’s right to participate includes the nominating process, and “every precaution must be taken to protect the right of New Mexico citizens to vote for the candidate of their choice.” *Charley v. Johnson*, 2010-

NMSC-024, ¶¶ 10-11, 148 N.M. 246, 233 P.3d 775 (per curiam).

{14} The Secretary must ensure that the nominating process takes place in accordance with the laws enacted by the Legislature. However, the Secretary cannot impose greater requirements on the process than those imposed by the Legislature. See, e.g., *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶¶ 42, 45, 438 P.3d 343 (holding that the Legislature did not authorize the Secretary to institute a “straight-ticket” option when it authorized the Secretary to prescribe the “form of the ballot”). We do not suggest that the Secretary’s goal of consistency and minimizing any unfair advantage is unreasonable; regardless, we must determine whether the mechanism the Secretary used in this instance was based on authority granted by the Legislature.¹

B. The Secretary May Not Reject an Otherwise-Valid Nominating Petition Solely Based on Omission from the Heading of a Term Not Required by Statute

{15} “The form of the nominating petition is prescribed by [statute].” *Charley*, 2010-NMSC-024, ¶ 25. Section 1-8-30(C) provides:

The nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

NOMINATING PETITION

I, the undersigned, a registered voter of New Mexico, and a member of the _____ party, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on _____, and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____

¹Because our construction of the Election Code is dispositive, we do not reach the constitutional argument concerning the First Amendment, which was advanced by four individual nominees. See *Allen v. LeMaster*, 2012-NMSC-001, ¶ 28, 267 P.3d 806 (“It is an enduring principle of constitutional jurisprudence that courts will avoid deciding constitutional questions unless required to do so.” (internal quotation marks and citation omitted)).

(usual signature) _____
 (name printed as registered) _____
 (address as registered) _____
 (city or zip code) _____
 2. _____
 (usual signature) _____
 (name printed as registered) _____
 (address as registered) _____
 (city or zip code) _____

(internal quotation marks omitted).

{16} It is crucial to note that the content of the legislative form described above incorporates all the information about the candidate that the Legislature specifies, “shall be listed in the appropriate space at the top of a nominating petition before the petition has been signed by a voter[.]” Section 1-1-26(A). Specifically, Section 1-1-26(A) requires that a nominating petition list

- (1) the candidate’s name as it appears on the candidate’s certificate of registration;
- (2) the address where the candidate resides;
- (3) the office sought by the candidate;
- (4) if the office sought is a districted office . . . the district . . . of the office sought; . . . and
- (6) if the office sought will be nominated at a political party primary, the party affiliation of voters permitted to sign the petition.

{17} While Subsection A enumerates the information that is required on the form, Subsection B advises of the consequences of failing to provide that information:

With or without a showing of fraud or a reasonable opportunity for fraud, a nominating petition page, including all signatures on the petition page, shall be invalid if any of the information required by Subsection A of this section is not listed on the petition before the petition page is signed by a voter or if any of the required informa-

tion is subsequently changed in any way.

Section 1-1-26(B). Significantly, Subsection A does not include a heading or specify the text “2020 PRIMARY NOMINATING PETITION” among the requirements for the petition page. Thus, Subsection B does not invalidate a petition that does not contain such information. Nonetheless, the Secretary determined that she would not accept any nominating petitions that did not have the heading “2020 PRIMARY NOMINATING PETITION.” We conclude that this was improper.

{18} We agree with the Secretary’s contention that the Legislature obligated the Secretary to publish “a sample of a nominating petition form” in “October of odd-numbered years[.]” Section 1-8-30(D) (emphasis added). And the Legislature granted the Secretary the authority to approve “forms [and] procedures” for elections. See § 1-2-1(C) (“No forms or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state.”). Publishing an approved sample nominating petition form makes common sense, provides a measure of uniformity, and relieves the potential administrative burden of approving disparate, individual forms created and submitted by multiple potential candidates.

{19} Fulfilling her duty under Section 1-8-30(D) and exercising her authority under Section 1-2-1(C), the Secretary posted on her website and published in the Election Guide an approved sample nominating petition form in October 2019. The Secretary’s Form contains all the required information enumerated in Section 1-1-26(A) and prescribed by Section 1-8-30(C). Although Section 1-2-1(B) (1) obligates the Secretary to “obtain and maintain uniformity in the application, operation and interpretation of the Election Code,” we are concerned that the Secretary’s determination in this case, although done in pursuit of the laudable goal of uniformity, elevates uniformity over “protect[ing] the right of New Mexico citizens to vote for the candidate of their choice.” *Charley*, 2010-NMSC-024, ¶ 11.

{20} The consideration crucial to determining whether a nominating petition is invalid under the Election Code is whether a voter was apprised of all the information required by Section 1126(A) prior to sign-

ing the petition. See § 1-1-26(B) (providing that “if any of the information required by Subsection A of this section is not listed on the petition before the petition page is signed by a voter or if any of the required information is subsequently changed in any way[.]” the petition is invalid). The Secretary did not dispute that every nominating petition that Morper filed contained all of the information required by Section 1-1-26(A) prior to the time the voters signed the petitions. And although the Elections Director expressed concern that the voters needed to be informed and aware of what they were signing, that concern was adequately addressed because all of Morper’s petitions, including the forty-four invalidated petitions, contained the introductory paragraph prescribed in Section 1-8-30(C).

{21} The Elections Director asserted that requiring the additional information in the heading “2020 PRIMARY NOMINATING PETITION” is necessary because “it is . . . the only way that we can ensure that candidates are not circulating these petitions ahead of the statutory time frame.” The Secretary argues on appeal that this requirement is crucial because it guarantees the consistent application of the Election Code and prevents some candidates from otherwise obtaining an “unfair advantage” by “gathering petition signatures in advance of the statutory mandated date, which is October 1, 2019.” Assuming that the mandated date is a requirement supported by statute, the requirement was met in the instance of the Morper petitions.²

{22} Again, except for the omission of the heading in some petitions, all of Morper’s nominating petitions are identical in substance and form to both Section 1-8-30(C) and the Secretary’s Form. All of Morper’s petitions contain two pieces of information to assure the filing officer that the form Morper used was the one the Secretary published in October 2019 and thus that the petitions, including the invalidated petitions, were not circulated in advance. First, the Secretary’s Form is fillable, meaning that the candidate must insert the required information into the underlined, blank spaces. Significantly, the Secretary’s Form inserts the date “June 2, 2020,” as the date of the primary election. In this way, the Secretary’s Form does not allow a candidate to alter the date of the applicable primary election, and all of the

²The Secretary argues that it is statutorily prohibited for a candidate to gather petition signatures prior to October 1 of the year preceding an election. Our review of the Election Code did not confirm such a mandate. Ostensibly, the Secretary derived this statutory mandate from combining her authority to approve forms and procedures under Section 1-2-1(C) and her obligation under Section 1-8-30(D) to publish a sample nominating petition in October, justifying its creation as a mechanism to ensure “uniformity in the application [and] operation . . . of the Election Code.” See § 1-2-1(B)(1). Whether there is a statutorily mandated date is not an issue in this case. Therefore, we do not address it or whether the Legislature has properly delegated authority to the Secretary to promulgate a regulation concerning a date prior to which nominating petitions may not be circulated. However, we note that the Legislature, not the Secretary, has “plenary authority over elections.” *Unite N.M.*, 2019-NMSC-009, ¶ 6.

nominating petitions that Morper filed are identical to the Secretary's Form in this respect.

{23} Second, it is also significant that the Secretary's Form includes the version number "*Rev. 2019 NMSA 1978, § 1-8-30*" in the lower left corner under the last signature line. All of the nominating petitions that Morper filed are identical to the Secretary's Form in this respect. This version number indicates that the Secretary's Form was revised in 2019 (a year in which there was no general election), immediately preceding the election at issue, the 2020 election. Thus, even without the heading "2020 PRIMARY NOMINATING PETITION," the nominating petitions filed by Morper contain assurances that she did not obtain an unfair advantage by collecting nominating signatures early.

{24} Although the forty-four invalidated nominating petitions omit the heading, the substance of the invalidated nominating petitions conforms with the form prescribed by Section 1-8-30(C) and therefore meets the requirements of the Election Code. *See* § 1-1-7.2(C) ("A signature shall be counted on a nominating petition unless there is evidence presented that the petition does not provide the information required by the nominating petition for each person signing."); *see also* § 1-1-26(A) ("The following information shall be listed in the appropriate space at the top of a nominating petition before the petition has been signed by a voter: . . ."); NMSA

1978, § 1-8-32(B) (1979) (establishing that it is a misdemeanor to "knowingly circulate, present or offer to present for the signature of another person a nominating petition that does not clearly show on the face of the petition" the information required by Section 1-1-26(A)(1)-(3)). Considering what is at stake, the omission of the heading should not be fatal to the candidate's nomination when, as here, the petition has given the voters signing the petition all the statutorily-required information.

{25} We appreciate that the reviewing official at the Secretary's office may have been required to give the nominating petitions that Morper filed more than a cursory glance to ascertain that the petitions were in the form that Section 1-8-30(C) prescribes, contained the information that Section 1-1-26(A) requires, and were identical to the Secretary's Form except for the omitted heading. However, this additional attention does not justify the Secretary's argument that allowing her to invalidate any form that omitted the heading that she approved—regardless of whether the remainder of the form is identical to the Secretary's Form—protects the integrity and fairness of the elective franchise.

{26} "States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997). Notwithstanding

this interest, the Secretary's determination invalidated the nominating petitions in this case and thereby prevented the counting of ostensibly more than seven hundred signatures of New Mexico citizens, each signature representing a valid nomination of a candidate for elective office. We must analyze the Secretary's action with a skeptical eye in order "to protect the right of New Mexico citizens to vote for the candidate of their choice." *Charley*, 2010-NMSC-024, ¶ 11. Considering the relevant portions of the Election Code, we conclude that the Legislature did not delegate the power to invalidate nominating petitions that conform with Section 1-8-30(C) when it empowered the Secretary to approve the forms and procedures for elections.

III. CONCLUSION

{27} For the foregoing reasons, we conclude that Morper's name be included on the Republican primary ballot for the office of United States Representative from New Mexico's Third Congressional District.

{28} **IT IS SO ORDERED.**
DAVID K. THOMSON, Justice

WE CONCUR:
JUDITH K. NAKAMURA, Chief Justice
BARBARA J. VIGIL, Justice
MICHAEL E. VIGIL, Justice
C. SHANNON BACON, Justice

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-013
No: S-1-SC-37094 (filed July 14, 2020)

ANDREW JONES,
Plaintiff-Petitioner,
v.

CITY OF ALBUQUERQUE
POLICE DEPARTMENT and
DEPARTMENT OF PUBLIC
SAFETY OF THE STATE OF
NEW MEXICO,
Defendants-Respondents.

ORIGINAL PROCEEDING ON CERTIORARI
DENISE BARELA-SHEPHERD, District Judge

Released for Publication September 8, 2020.

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Opinion

Barbara J. Vigil, Justice.

{1} This case requires us to examine NMSA 1978, Section 14-2-1(A)(4) (2011, amended 2019),¹ a provision of the Inspection of Public Records Act (IPRA) that creates an exception from inspection for certain law enforcement records. Relying on the plain language of Section 14-2-1(A)(4), we conclude that Section 14-2-1(A)(4) does not create a blanket exception from inspection for law enforcement records relating to an ongoing criminal investigation.

{2} Plaintiff Andrew Jones (Jones) appeals the order of the district court that granted summary judgment to the Department of Public Safety (DPS), thereby dismissing Jones's IPRA enforcement action. Jones argues that the district court misconstrued Section 14-2-1(A)(4) and incorrectly allowed DPS to withhold requested public records solely because the records related to an ongoing criminal investigation. Jones further argues that the Court of Appeals was incorrect to hold that he acquiesced to the district court's interpretation of Section 14-2-1(A)(4), was incorrect to hold that his lawsuit was moot, and wrongly dismissed his appeal.

{3} We conclude that Jones is correct. We reverse the Court of Appeals. We reverse the district court's grant of summary judgment to DPS, concluding that the district court's interpretation of Section 14-2-1(A)(4) was overbroad and contrary to the plain language of the statute. That misinterpretation also led the district court to incorrectly deny summary judgment to Jones at an earlier point in the case. Accordingly, we reverse that judgment as well.

I. BACKGROUND

{4} James Boyd was shot and killed by Albuquerque Police Department officers on March 16, 2014. On April 8, 2014, Mr. Boyd's brother Andrew Jones sent a written request to DPS pursuant to IPRA for various records relating to the shooting. DPS responded fourteen days later, agreeing to produce a primary incident report, the personnel records of one of the officers involved, and one subpoena. DPS denied production of all other pertinent records in its possession.

{5} DPS denied production of the requested records for two reasons. First, and primarily, DPS grounded its refusal to produce the requested records in Section 14-2-1(A)(4), which exempts from the general IPRA disclosure requirement "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime." DPS explained that the Federal Bureau of Investigation (FBI) was investigating the shooting, and asserted that "release of the requested information pose[d] a demonstrable and serious threat to [that] ongoing criminal investigation." Second, DPS relied on NMSA 1978, Section 29-3-3 (1979). DPS stated that Section 29-3-3 imposed a duty to cooperate with the FBI and that the FBI "specifically requested that DPS not publicly release evidence related to [its] investigation in order to maintain the integrity of its investigation." DPS stated that the requested records would be released "when the release of such records no longer jeopardize[d] the law enforcement investigation."

{6} Jones filed suit in district court pursuant to IPRA, claiming that DPS "made no attempt or effort to make non-exempt information, documents or material evidence available for Plaintiff's review, nor indicate how the records requested fall within the cited exemption." Jones sought production of the requested records, attorney fees, and costs, among other relief. {7} Jones subsequently moved for sum-

¹Section 14-2-1 was amended in 2019. The provision corresponding to Section 14-2-1(A)(4) is now found at NMSA 1978, Section 14-2-1(D) (2019). Although equivalent in purpose, the provisions are not identical. For clarity, in this opinion we cite the 2011 version of Section 14-2-1.

mary judgment, contending that IPRA required disclosure of the requested records under the undisputed material facts. Jones argued that neither of the reasons offered by DPS—that there was an ongoing criminal investigation and that the FBI asked DPS to withhold the records—was legally sufficient to justify its refusal to produce the requested records.

{8} First, Jones argued that, even if the district court accepted DPS's contention that production of the records would pose "a demonstrable and serious threat to an ongoing criminal investigation," the IPRA exception cited by DPS—§ 14-2-1(A)(4)—was not satisfied. Nor, argued Jones, could DPS rely on the FBI's request that DPS withhold information related to the investigation, despite DPS's statutory duty "to cooperate" with federal law enforcement agencies. The duty to cooperate, stated Jones, does not imply that the requirements of IPRA must give way. Jones further pointed out that the FBI only requested that DPS withhold records if the delayed production was in accord with the IPRA exception from disclosure for certain law enforcement records, § 14-2-1(A)(4).

{9} In response to Jones's motion, DPS offered a broad interpretation of Section 14-2-1(A)(4) and marshalled evidence directed to meet that standard. DPS argued that, in enacting Section 14-2-1(A)(4), "the Legislature . . . intended for records pertaining to . . . ongoing investigations [to] remain sealed until the investigation is complete." DPS additionally stated that the requested records referenced an officer who was "the likely target of the FBI investigation[.]" which would implicate the aspect of Section 14-2-1(A)(4) that exempts records that reveal individuals accused but not charged with a crime.

{10} DPS attached two documents to support its contention that it was entitled to withhold the requested records: an affidavit from the DPS cabinet secretary and a letter from the FBI. Both documents indicated that there was, indeed, an ongoing criminal investigation. DPS argued that whether there was an ongoing criminal investigation was a disputed issue of material fact. The documents also indicate that the FBI requested that DPS delay disclosure of related materials in order to maintain the integrity of the investigation, if possible under IPRA.

{11} After a hearing, the district court denied Jones's summary judgment motion. The district court found that whether there

was an ongoing criminal investigation was both material and disputed.² It further found that the requested records were exempt from disclosure pursuant to Section 14-2-1(A)(4). In addition to denying summary judgment to Jones, the district court went further. It ordered that if the investigation remained ongoing by January 15, 2015: (1) DPS would be required to "produce a privilege log to [Jones]" providing a description of the withheld documents and the basis for denying production; (2) Jones would have an opportunity to challenge the privilege log; and (3) DPS would be required to "produce the requested records to the district court" to facilitate review of any challenges by Jones.

{12} DPS moved for summary judgment on April 15, 2015. DPS stated that it produced the records requested by Jones on January 14, 2015, subsequent to the completion of the FBI investigation. It further stated that the district court had already ruled that the (by then produced) records had been properly withheld pursuant to Section 14-2-1(A)(4). Thus, according to DPS, "enforcement [was] no longer available to [Jones]" and summary judgment was appropriate. In response, Jones did not deny that the records were provided in accordance with the procedure devised by the district court, but renewed his argument that DPS's initial refusal to produce the requested records was unlawful and that DPS construed Section 14-2-1(A)(4) too broadly.

{13} The district court granted DPS's summary judgment motion, concluding that there were no remaining issues of material fact and DPS was entitled to judgment as a matter of law. It was undisputed that DPS produced the requested records in accordance with the prior ruling of the district court, so inspection of the records was no longer at issue. The district court concluded that Jones could not be entitled to an award of attorney fees because the requested records were exempt from disclosure pursuant to Section 14-2-1(A)(4). To determine that the records were exempt from disclosure, the district court explicitly relied on its earlier order denying summary judgment to Jones, which so found.

{14} Jones appealed the district court's summary judgment order to the Court of Appeals. Over a dissent, the Court of Appeals affirmed by memorandum opinion. *Jones v. Albuquerque Police Dep't*, No. A-1-CA-35120, mem. op. (May 10, 2018)

(nonprecedential). The Court of Appeals declined to reach Jones's argument that the district court was incorrect to find that the requested records were exempt from production under Section 14-2-1(A)(4). *Jones*, No. A-1-CA-35120, mem. op. ¶¶ 9, 13-14. The Court of Appeals offered two different reasons to affirm the district court. *Id.* ¶¶ 8-9. First, it held that because Jones did not object to the district court's order denying Jones's summary judgment motion, Jones acquiesced and failed to preserve any argument against the order. *Id.* ¶¶ 9, 14. This included Jones's argument that the requested records were wrongly withheld. *Id.* Second, the Court of Appeals held that the case was moot. *Id.* ¶ 15. The Court of Appeals seemed to reason that Jones no longer had an action for injunctive relief because Jones received the requested records, and could no longer succeed in an action for attorney fees because (1) the records were produced in accordance with the order of the district court, and (2) Jones could no longer challenge that the records were originally withheld in violation of IPRA. *Id.*

{15} Jones filed a petition for a writ of certiorari, which we granted.

II. DISCUSSION

A. Standard of Review

{16} Summary judgment is a drastic remedy that is disfavored in New Mexico courts. *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 8, 148 N.M. 713, 242 P.3d 280 (citing *Pharmaseal Labs., Inc. v. Goffe*, 1977-NMSC-071, ¶ 9, 90 N.M. 753, 568 P.2d 589). "Summary judgment is appropriate in the absence of any genuine issues of material fact and where the movant is entitled to judgment as a matter of law." *Cahn v. Berryman*, 2018-NMSC-002, ¶ 12, 408 P.3d 1012 (internal quotation marks and citation omitted). Orders granting or denying summary judgment are reviewed de novo. *United Nuclear Corp. v. Allstate Ins. Co.*, 2012-NMSC-032, ¶ 9, 285 P.3d 644. "In reviewing an order on summary judgment, we examine the whole record on review, considering the facts in a light most favorable to the nonmoving party and drawing all reasonable inferences in support of a trial on the merits." *Cahn*, 2018-NMSC-002, ¶ 12 (internal quotation marks and citation omitted).

{17} "To the extent we must construe the applicable statutes, our review is de novo." *Romero v. Lovelace Health Sys., Inc.*, 2020-NMSC-001, ¶ 11, 455 P.3d 851. "We examine the plain language of the

²It is unclear to us why the district court found that there was dispute about whether there was an ongoing criminal investigation. Jones agreed there was an ongoing criminal investigation and disputed only whether the ongoing investigation was material: "We have admitted there's an ongoing investigation. . . . Of course there's an ongoing federal investigation. That doesn't matter. That doesn't shield [DPS] from having to [produce] public records." In any case, whether the record can support the finding of the district court on this point is not critical to our review.

statute as well as the context in which it was promulgated, including the history of the statute and the object and purpose of the Legislature sought to accomplish.” *State v. Armijo*, 2016-NMSC-021, ¶ 20, 375 P.3d 415 (brackets omitted) (internal quotation marks and citation omitted). We adhere to the plain meaning rule, which “requires that we give statutes effect as written without room for construction unless the language is doubtful or ambiguous or an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, in which case we construe the statute according to its obvious spirit or reason.” *Id.* (brackets and ellipsis omitted) (internal quotation marks and citation omitted). This case involves IPRA. “We construe IPRA in light of its purpose and interpret it to mean what the Legislature intended it to mean[] and to accomplish the ends sought to be accomplished by it.” *Faber v. King*, 2015-NMSC-015, ¶ 8, 348 P.3d 173 (internal quotation marks and citation omitted).

B. The IPRA Framework as It Pertains to This Case

{18} As declared by our Legislature, the purpose of IPRA “is to ensure . . . that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” NMSA 1978, 14-2-5 (1993); see also *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 12, 283 P.3d 853 (“IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve.” (internal quotation marks and citation omitted)). Accordingly, the general rule is that public records are subject to inspection upon request. See § 14-2-1(A) (“Every person has a right to inspect public records[.]”); NMSA 1978, § 14-2-8 (2009) (setting out the procedures for making an IPRA request); *Republican Party of N.M.*, 2012-NMSC-026, ¶ 12 (“The citizen’s right to know is the rule and secrecy is the exception.” (internal quotation marks and citation omitted)).

{19} The Legislature has limited this general rule by providing seven specific exceptions and one “catch-all” exception to the right to inspect public records. See § 14-2-1(A)(1)-(8); *Republican Party of N.M.*, 2012-NMSC-026, ¶ 13 (referring to Section 14-2-1(A)(1)-(7) as specific exceptions and Section 14-2-1(A)(8) as a “catch-all” exception). Central to this case is Section 14-2-1(A)(4), which provides a specific exception for

law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records

include . . . inactive matters or closed investigations to the extent that they contain the information listed in this paragraph.

Also pertinent is Section 14-2-1(A)(8), the “catch-all” exception. Section 14-2-1(A)(8) provides an exception from inspection under IPRA “as otherwise provided by law.” This Court has construed “as otherwise provided by law” to refer only to statutory or regulatory bars to disclosure, or privileges that are grounded in the constitution or adopted by this Court. *Republican Party of N.M.*, 2012-NMSC-026, ¶¶ 13, 16. In sum, our courts “should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution.” *Id.* ¶ 16.

{20} The related goals of prompt and scrupulous compliance with IPRA are ingrained within the Act. See *Faber*, 2015-NMSC-015, ¶ 29 (considering the structure, history, and purpose of IPRA and concluding that distinct statutory provisions encourage prompt compliance and deter wrongful denials). For example, inspection of records pursuant to a written request shall be permitted “as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request.” Section 14-2-8(D). When there is both exempt and nonexempt information contained in requested public records, the exempt and nonexempt information “shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.” NMSA 1978, § 14-2-9(A) (2013). Several enforcement mechanisms provide remedies for noncompliance with IPRA. See *Faber*, 2015-NMSC-015, ¶ 12 (“[NMSA 1978,] Sections 14-2-11 [(1993)] and 14-2-12 [(1993)] create separate remedies depending on the stage of the IPRA request.”). This case implicates Section 14-2-12, which provides, inter alia, that a person whose written request has been denied may bring a lawsuit to enforce IPRA and, if successful in such a court action, shall be entitled to “damages, costs and reasonable attorneys’ fees.”

{21} Below, we first address the two reasons that the Court of Appeals dismissed Jones’s appeal, concluding that the appeal was wrongly dismissed. We then proceed to address the district court’s interpretation of Section 14-2-1(A)(4), and its rulings on the summary judgment motions of DPS and Jones. We conclude that the district court’s interpretation of Section 14-2-1(A)(4) was overbroad, which led the district court to improperly grant summary judgment to DPS and improperly deny summary judgment to Jones.

C. Jones Did Not Acquiesce to the Order Denying Jones’s Summary Judgment Motion

{22} Jones challenges the Court of Appeals’ conclusion that he could not appeal the ruling of the district court that Section 14-2-1(A)(4) exempted the requested records from inspection. Contrary to the holding of the Court of Appeals, Jones argues that he did not “acquiesce” to the order denying him summary judgment by failing to object to the district court’s supplementary production procedures prescribed in that order by the district court.

{23} The order denying Jones’s motion for summary judgment was interlocutory and nonfinal. See *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 14, 113 N.M. 231, 824 P.2d 1033 (“The general rule in New Mexico . . . is that an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” (internal quotation marks and citation omitted)); see also *Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) (stating, in the context of federal law, that “[o]rordinarily, orders denying summary judgment do not qualify as final decisions subject to appeal” and “are by their terms interlocutory” (internal quotation marks and citation omitted)). Such an order is generally not immediately appealable. See *Handmaker v. Henney*, 1999-NMSC-043, ¶ 7, 128 N.M. 328, 992 P.2d 879 (“As a general matter, this Court’s appellate jurisdiction is limited to review of any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action, or any final order after entry of judgment which affects substantial rights.” (internal quotation marks and citation omitted)) (citing NMSA 1978, § 39-3-2 (1966)); *Doe v. Leach*, 1999-NMCA-117, ¶ 12, 128 N.M. 28, 988 P.2d 1252 (“In an ordinary lawsuit, denial of a motion for summary judgment is not appealable[.]”).

{24} As both parties note, Jones could have applied for discretionary remedies such as interlocutory review or reconsideration in response to the district court’s order denying summary judgment. See, e.g., NMSA 1978, § 39-3-4 (1999) (providing for interlocutory appeals from district court in civil cases under limited circumstances); Rule 12-203 NMRA (same). However, as a matter of civil procedure, we are not aware of any authority requiring him to have done so to preserve the issues addressed therein. Nor do our applicable principles favor such a requirement. See *Principal Mut. Life Ins. Co. v. Straus*, 1993-NMSC-058, ¶ 12, 116 N.M. 412, 863 P.2d 447 (“There is a strong policy in New Mexico of disfavoring piecemeal appeals

and of avoiding fragmentation in the adjudication of related legal or factual issues.” (citation omitted)); *Kelly Inn No. 102, Inc.*, 1992-NMSC-005, ¶ 27 (“New Mexico has [a] strong policy that courts should facilitate, rather than hinder, the right to appeal.” (citing *Govich v. North American Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94)). We decline to conclude that it was mandatory in this case for Jones to apply for discretionary remedies from a nonfinal, interlocutory, ruling in order to preserve his argument that the requested records were improperly withheld.

{25} We are also unpersuaded that, by acquiescence, Jones lost his argument that the records were wrongly withheld. Jones’s position was that DPS failed to comply with IPRA when it denied inspection of the requested records in the first place. That position was considered and rejected by the district court when it addressed Jones’s motion for summary judgment. In our view, the fact that Jones did not specifically object to the additional records production procedure devised by the district court while it clearly rejected Jones’s position does not indicate Jones’s acquiescence.

{26} The three cases cited by the Court of Appeals on this point do not convince us otherwise. See *Jones*, No. A-1-CA-35120, mem. op. ¶ 12 (citing *N.M. Selling Co. v. Crescendo Corp.*, 1964-NMSC-180, 74 N.M. 409, 394 P.2d 260; *Quintana v. Quintana*, 1941-NMSC-038, 45 N.M. 429, 115 P.2d 1011; *Chase v. Contractors’ Equipment & Supply Co., Inc.*, 1983-NMCA-058, 100 N.M. 39, 665 P.2d 301). These cases are about failures to preserve error, generally, not acquiescence as a distinct concept. See, e.g., *Chase*, 1983-NMCA-058, ¶ 15 (declining to consider two issues because the issues were first raised on appeal). In fact, two of the three cases make no mention of the term “acquiescence.” See *N.M. Selling Co.*, 1964-NMSC-180, ¶¶ 5-7; *Chase*, 1983-NMCA-058, ¶¶ 12-15. We conclude that Jones did not acquiesce to the order denying summary judgment; instead, we conclude that Jones invoked a ruling by the district court on whether the records were properly withheld. See *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 9, 147 N.M. 512, 226 P.3d 611 (“To preserve a question for review it must appear that a ruling or decision by the district court was fairly invoked[.]” (internal quotation marks and citation omitted)).

{27} DPS offers an alternative reason that the Court of Appeals was correct not to reach Jones’s substantive arguments. See *State v. Vargas*, 2008-NMSC-019, ¶ 8, 143 N.M. 692, 181 P.3d 684 (“Under the right for any reason doctrine, we may affirm the district court’s order on grounds not relied upon by the district court if those

grounds do not require us to look beyond the factual allegations that were raised and considered below.” (internal quotation marks and citation omitted)). DPS notes that Jones’s notice of appeal referenced the district court’s order granting summary judgment to DPS but did not reference the earlier order denying summary judgment to Jones that directly addressed Jones’s substantive argument. See Rule 12-202(C) NMRA (“A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.”). DPS seems to conclude that, as a consequence, Jones lost his opportunity to appeal the initial ruling on DPS’s refusal to provide the requested records.

{28} We are not persuaded. The district court’s order granting summary judgment to DPS explicitly relied on its earlier order ruling that DPS complied with IPRA and, furthermore, Jones opposed DPS’s motion for summary judgment by renewing his earlier argument that DPS withheld the requested records in violation of IPRA. This is sufficient to infer that Jones intended to challenge the conclusions of the order denying Jones’s motion for summary judgment and to avoid prejudice to DPS. See *Govich*, 1991-NMSC-061, ¶ 13 (“The policies in this state, and the purpose of [Rule 12-202], are vindicated if the intent to appeal a specific judgment fairly can be inferred from the notice of appeal and if the appellee is not prejudiced by any mistake.”); Rule 12-312(C) NMRA (“An appeal filed within the time limits provided in these rules shall not be dismissed for technical violations of Rule 12-202 which do not affect the substantive rights of the parties.”).

{29} In sum, we conclude that Jones did not acquiesce to the order denying his summary judgment motion but instead preserved his argument that DPS withheld the requested public records in violation of IPRA.

D. This Case Is Not Moot

{30} “When no actual controversy exists for which a ruling by the court will grant relief, an appeal is moot[.]” *Republican Party of N.M.*, 2012-NMSC-026, ¶ 10. “As a general rule, this Court does not decide moot cases.” *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008. However, we recognize two exceptions to this rule: “cases which present issues of substantial public interest, and cases which are capable of repetition yet evade review.” *Republican Party of N.M.*, 2012-NMSC-026, ¶ 10 (internal quotation marks and citation omitted).

{31} The Court of Appeals held that this case was moot, seemingly *sua sponte*. *Jones*, No. A-1-CA-35120, mem. op. ¶ 15. Although the Court of Appeals was not

perfectly clear in its treatment of the mootness issue, its conclusion that the case was moot appears to rest on the following: (1) by the time of DPS’s motion for summary judgment, Jones had received the records he requested; (2) Jones did not argue that DPS failed to comply with the records production procedure devised by the district court; and (3) its determination that Jones could no longer challenge the finding of the district court that DPS lawfully withheld the requested records. *Id.* ¶¶ 14-15. From this, the Court of Appeals held that the controversy over injunctive relief to obtain the records was moot because Jones accepted the requested records without objection. *Id.* ¶ 15. It also held that the controversy over attorney fees was moot because, even though Jones eventually acquired the withheld records, he could not succeed in his action to enforce IPRA. *Id.*

{32} We agree with the Court of Appeals that there was no remaining controversy over inspection of the requested records. After all, Jones obtained the requested records. But mootness was not the correct lens through which to analyze Jones’s claim for attorney fees. We explain.

{33} Unlike the requested records—which Jones received—Jones had not received the attorney fees he requested as relief under Section 14-2-12(D), and he still sought them during the proceedings on DPS’s motion for summary judgment. Thus, there remained an active controversy over attorney fees. However, under the Court of Appeals’ holding that Jones could no longer challenge the district court’s finding that the records were lawfully withheld, the Court of Appeals concluded that Jones was not entitled to attorney fees. See Section 14-2-12(D) (requiring a “successful” IPRA enforcement action for an award of attorney fees). In essence, the Court of Appeals determined not that Jones’s claim for attorney fees was moot but that Jones was not entitled to attorney fees as a matter of law.

{34} We disagree with that conclusion. We have already determined that the Court of Appeals incorrectly denied Jones the opportunity to challenge the finding of the district court that the requested records were withheld in accordance with IPRA. Thus, we do not agree that Jones could not as a matter of law succeed in his IPRA enforcement action. We therefore conclude that the Court of Appeals incorrectly determined that this case should be dismissed because it is moot.

E. DPS Did Not Demonstrate That It Withheld the Requested Records in Accordance with IPRA; as a Result, Summary Judgment Should Have Been Granted to Jones, Not DPS

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1-4:15 p.m.
\$147 Standard Fee

OCTOBER 29*Teleseminar:***Ethics of Identifying Your Client: It's Not Always Easy**

1.0 EP
11 a.m.–Noon
\$79 Standard Fee

*Webinar:***7th Annual Symposium on Diversity & Inclusion**

4.0 G
12:30–4:45 p.m.
\$196 Standard Fee

NOVEMBER 2*Webinar:***The O.J. Simpson Trial: Attorney Blunders, Bungles and Bloopers—PLUS Amazing PowerPoint Trial Tips**

3.0 G
11 a.m.–2:15 p.m.
\$179 Standard Fee

NOVEMBER 2–3*Webinar:***2021 Business Law Institute**

5.0 G. 1.0 EP
9 a.m.–12:15 p.m.
\$282 Standard Fee

NOVEMBER 4*In-Person and Webcast:***2021 Annual Indian Law Institute**

4.0 G. 2.0 EP
9 a.m.–5 p.m.
\$282 Standard Fee

*Webinar:***Copyright + Art: Told Through Colorful Stories and Original Artwork**

2.0 G
11 a.m.–1 p.m.
\$139 Standard Fee

NOVEMBER 5*Webinar:***JLAP Well Talks - “What a Healthy Lawyer Looks Like”**

2.0 EP
9–11 a.m.
\$98 Standard Fee

*Teleseminar:***Ethics in Discovery Practice**

1.0 EP
11 a.m.–Noon
\$79 Standard Fee

*Webinar:***60 Tips, Tricks, Apps & Websites in 60 Minutes**

1.0 G
Noon–1 p.m.
\$49 Standard Fee

NOVEMBER 8*Webinar:***So How ‘Bout We All Zoom, Zoom, Zooma, Zoom?: Ethical and Best Practices for a Virtual Practice in 2021 and Beyond**

1.0 EP
4–5 p.m.
\$49 Standard Fee

NOVEMBER 9*Webinar:***How to Make Cross-Examination An Open Book Exam at Trial and at In-Person or Online Depositions**

1.5 G
11 a.m.–12:30 p.m.
\$129 Standard Fee

NOVEMBER 10*Teleseminar:***Trust and Estate Planning for Retirement Plans - IRAs, 401(k)s, and More**

1.0 EP
11 a.m.–Noon
\$79 Standard Fee

NOVEMBER 11*Teleseminar:***Lawyer Ethics and Texting**

1.0 EP
11 a.m.–Noon
\$79 Standard Fee

NOVEMBER 16*Teleseminar:***Environmental Liability
in Commercial Real Estate
Transactions**1.0 G
11 a.m.-Noon
\$79 Standard Fee*Webinar:***Strategies and Techniques
for Rural Community
Organizing and Legal
Advocacy**1.5 G
1-2:30 p.m.
\$74 Standard Fee**NOVEMBER 17***Teleseminar:***Lawyer Ethics When Storing
Files in the Cloud**1.0 EP
11 a.m.-Noon
\$79 Standard Fee**NOVEMBER 19***Webinar:***2021 Animal Law Institute**3.5 G
8:45 a.m.-12:30 p.m.
\$172 Standard Fee**NOVEMBER 22***Teleseminar:***Equity & Diversity in Law
Practice: Best Practices for
Law Firms**1.0 EP
11 a.m.-Noon
\$79 Standard Fee**NOVEMBER 23***Teleseminar:***Going Over: Employment
Law Issues When a Key
Employee Leaves for a
Competitor**1.0 G
11 a.m.-Noon
\$79 Standard Fee**NOVEMBER 30***Webinar:***Me Too: Sexism, Bias, and
Sexual Misconduct in the
Legal Profession**1.0 EP
11 a.m. - Noon
\$89 Standard Fee*Teleseminar:***Ethics for Transactional
Lawyers**1.0 EP
11 a.m.-Noon
\$79 Standard Fee**DECEMBER 1***Teleseminar:***Business Torts: How
Transactions Spawn
Litigation, Part 1**1.0 G
11 a.m.-Noon
\$79 Standard Fee**DECEMBER 2***Teleseminar:***Business Torts: How
Transactions Spawn
Litigation, Part 2**1.0 G
11 a.m.-Noon
\$79 Standard Fee**DECEMBER 3***Teleseminar:***Ethics of Joint
Representations: Keeping
Secrets & Telling Tales**1.0 EP
11 a.m.-Noon
\$79 Standard Fee**DECEMBER 6***Webinar:***Basics of Trust Accounting:
How to Comply with
Disciplinary Board Rule 17-
204**1.0 EP
1:30-2:30 p.m.
\$55 Standard Fee**DECEMBER 9***Teleseminar:***Drafting Property
Management Agreements**1.0 G
11 a.m.-Noon
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11 a.m.-Noon
\$79 Standard Fee**DECEMBER 13***Webinar:***Basics of Trust Accounting:
How to Comply with
Disciplinary Board Rule
17-204**1.0 EP
1:30-2:30 p.m.
\$55 Standard Fee

DECEMBER 14*In-Person and Webcast:***Gain the Edge! Negotiation Strategies for Lawyers**

5.0 G, 1.0 EP

9 a.m. - 4:30 p.m.

\$282 Standard Fee

DECEMBER 16*Teleseminar:***Letters of Intent in Real Estate Transactions**

1.0 G

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 17*Teleseminar:***Trust & Estate Planning for Client Privacy in a Public World**

1.0 G

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 20*Teleseminar:***Ethics and Conflicts with Clients, Part 1**

1.0 EP

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 21*Teleseminar:***Ethics and Conflicts with Clients, Part 2**

1.0 EP

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 22*Teleseminar:***Talking About Wealth Transfer Plans: Practical Strategies to Avoid Disputes Among Beneficiaries (1.0 G)**

1.0 G

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 27*Webinar:***REPLAY: Minimizing Cultural Errors in Professional Practice (2020)**

1.5 EP

12 noon-1:30 p.m.

\$74 Standard Fee

DECEMBER 28*In-Person and Webcast:***Ethics Lessons from a Jersey Guy with Stuart Teicher**

2.5 EP, 0.5 G

8:30-11:45 a.m.

\$147 Standard Fee

*In-Person and Webcast:***An Afternoon of Legal Writing with Stuart Teicher**

3.0 G

1-4:15 p.m.

\$147 Standard Fee

*Teleseminar:***2021 Ethics Update, Part 1**

1.0 EP

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 29*Webinar:***REPLAY: Revealing Unconscious Prejudice: How You Can Benefit (2020)**

2.0 EP

9-11 a.m.

\$98 Standard Fee

*Teleseminar:***2021 Ethics Update, Part 2**

1.0 EP

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 30*Teleseminar:***2021 Ethics in Civil Litigation Update, Part 1**

1.0 EP

11 a.m.-Noon

\$79 Standard Fee

DECEMBER 31*Teleseminar:***2021 Ethics in Civil Litigation Update, Part 2**

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{35} In response to DPS's summary judgment motion, Jones did not dispute that there were no genuine issues of material fact. Instead, he renewed his argument that, as a matter of law, the records were improperly withheld in the first place. In Jones's view, this precluded summary judgment because he would be entitled to attorney fees and costs for his IPRA enforcement action. The district court disagreed that the records had been improperly withheld. For that finding, the district court relied explicitly on its earlier order that the requested records "were exempt from disclosure pursuant to Section 14-2-1(A)(4)." And in that earlier order on Jones's summary judgment motion, the district court found that an ongoing criminal investigation would exempt the requested records from inspection pursuant to Section 14-2-1(A)(4).

{36} Thus, both summary judgment motions turn on the same legal issue: whether the district court correctly construed Section 14-2-1(A)(4) as a broad exception from inspection for law enforcement records relating to an ongoing criminal investigation. We turn now to address that question, and then examine the district court's summary judgment rulings in light of our conclusion.

1. The district court misconstrued

Section 14-2-1(A)(4)

{37} Nowhere does the plain language of Section 14-2-1(A)(4) exempt from IPRA inspection requirements all law enforcement records relating to an ongoing criminal investigation. See *Faber*, 2015-NMSC-015, ¶ 9 ("In discerning the Legislature's intent, . . . we look first to the plain language of the statute[.]" (brackets omitted) (internal quotation marks and citation omitted)). Rather, the plain language of Section 14-2-1(A)(4) indicates that the Legislature was not concerned with the stage of the investigation as such: "[L]aw enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime" are exempt, even if the law enforcement records relate to "inactive matters or closed investigations to the extent that [the law enforcement records] contain the information listed in this paragraph[.]" *Id.* (emphasis added). Contrary to the conclusion of the district

court, the plain language of Section 14-2-1(A)(4) indicates that the ongoing FBI investigation was not, of itself, material to whether the requested records could be withheld pursuant to Section 14-2-1(A)(4).

{38} Instead of focusing on whether there was an ongoing investigation, our Legislature was concerned with the specific content of the records. Only "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime" are exempt from the general IPRA inspection requirement under Section 14-2-1(A)(4). This is very different than the standard that DPS argued for, which was fixed on whether there was an ongoing investigation. Although the specific standard applied by the district court is not perfectly clear, the district court certainly did not apply the plain language of Section 14-2-1(A)(4). Instead, it seems to have required only that the requested records relate to an ongoing criminal investigation, or perhaps that inspection of the records would "interfere" with an ongoing investigation. Either standard is untethered from the plain language of Section 14-2-1(A)(4) and overbroad. See *Lion's Gate Water v. D'Antonio*, 2009-NMSC-057, ¶ 23, 147 N.M. 523, 226 P.3d 622 ("The primary indicator of the Legislature's intent is the plain language of the statute.").

{39} Examining Section 14-2-1(A)(4) in relation to Section 14-2-9(A) further dissuades us from adopting the view of the district court. See *Bishop v. Evangelical Good Samaritan Soc'y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361 ("We also consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect."). Section 14-2-9(A) provides that requested law enforcement records containing both exempt and nonexempt information cannot be withheld in toto. Rather, Section 14-2-9(A) provides that when requested public records contain a mix of exempt and nonexempt information, the "exempt and nonexempt [information] . . . shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection." Read together, the plain language of Sections 14-2-1(A) and

14-2-9(A) provide that DPS was required to review the requested law enforcement records, separate information that did not "reveal confidential sources, methods, information or individuals accused but not charged with a crime" from that which did, and provide the nonexempt information for inspection within fifteen days.³ See § 14-2-8(D) ("A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request."). By contrast, and incorrectly, the district court allowed DPS to broadly withhold law enforcement records in toto because there was an ongoing criminal investigation.

{40} In sum, we conclude that the interpretation of the district court was overbroad and incongruent with the plain language of Section 14-2-1(A)(4). See *Dunn v. Brandt*, 2019-NMCA-061, ¶ 10, 450 P.3d 398 ("[T]he exceptions to IPRA's mandate of disclosure are narrowly drawn[.]").

2. Summary judgment was improperly granted to DPS and improperly denied to Jones

{41} The district court granted summary judgment to DPS because, inter alia, it determined that the records in this case were properly withheld pursuant to Section 14-2-1(A)(4) and therefore Jones could not be successful in his enforcement action. The evidence the district court relied on to establish that the records were properly withheld pursuant to Section 14-2-1(A)(4) was its earlier order denying summary judgment to Jones. Accordingly, we turn now to examine that earlier order, in particular to determine whether the district court was correct to find that the records were exempt from inspection pursuant to Section 14-2-1(A)(4).

{42} In response to Jones's summary judgment motion, DPS produced evidence directed only at its broad interpretation of Section 14-2-1(A)(4). DPS attached to its response one affidavit and one letter, both of which primarily established that there was an ongoing law enforcement investigation. DPS did not present evidence that any of the specific records that it refused to produce "reveal[ed] confidential sources, methods, information or individuals accused but not charged with a crime."⁴

³Section 14-2-1(D) (2019)—which is the amended version of Section 14-2-1(A)(4)—amplifies the requirements of Section 14-2-9(A). Section 14-2-1(D) specifically exempts only those "portions" of law enforcement records that meet certain criteria (which have been revised from the 2011 version). (Emphasis added.)

⁴Although DPS did at certain points argue that the requested records would reveal the identity of a person accused but not charged with a crime, it did not present evidence to that effect that the district court could have relied on. See *V.P. Clarence Co. v. Colgate*, 1993-NMSC-022, ¶ 2, 115 N.M. 471, 853 P.2d 722 ("[T]he briefs and arguments of counsel are not evidence upon which a trial court can rely in a summary judgment proceeding."); see also *Juneau v. Intel Corp.*, 2006-NMSC-002, ¶ 15, 139 N.M. 12, 127 P.3d 548 ("On summary judgment, the non-movant . . . must demonstrate genuine issues of material fact by way of sworn affidavits, depositions, and similar evidence.").

Section 14-2-1(A)(4). Nor did DPS present any evidence that it reviewed the requested records to separate the exempt from nonexempt information, or that it provided any nonexempt information existing within records containing exempt information, as required pursuant to Section 14-2-9(A). For these reasons, we conclude that the district court was incorrect to determine that the requested records were exempt from inspection pursuant to Section 14-2-1(A)(4).

{43} DPS offers three additional arguments that it acted in accordance with the law when it denied inspection of the records requested by Jones, each of which is unpersuasive. See *Vargas*, 2008-NMSC-019, ¶ 8 (explaining the right for any reason doctrine). First, DPS contends that it had a statutory duty pursuant to Section 29-3-3 to withhold the requested records once the FBI asked it to do so. Section 29-3-3 does indeed establish a duty to cooperate with federal law enforcement agencies such as the FBI.⁵ We need not address the contours of that duty in this case because, as established by the letter attached to DPS's summary judgment response, the FBI asked only that DPS withhold information to the extent possible under IPRA. Given that the FBI subordinated its request to the requirements of IPRA, we conclude that Section 29-3-3 cannot justify DPS's refusal to produce the requested records in this case.

{44} Second, DPS seems to contend that the records were properly withheld pursuant to the "catch-all" exception from inspection, Section 14-2-1(A)(8). Section 14-2-1(A)(8) provides that public records are exempt from inspection under IPRA "as otherwise provided by law." DPS argues that this statute "creates an exception from disclosure from any source that has the force and effect of law[.]" that the order of the district court denying summary judgment to Jones "carried the force and effect of law[.]" and therefore DPS acted in accordance with IPRA when it withheld the requested records because it followed the order of the district court. We are not persuaded. This Court has already interpreted the "catch-all" provision, and district court orders do not fall within any of the "otherwise provided by law" categories. See *Republican Party of N.M.*, 2012-NMSC-026, ¶¶ 13,16 (including within the "catch-all" exception statutory or regulatory bars to disclosure, constitutionally mandated privileges, and privileges established by our rules of evi-

dence). We reject the argument of DPS that the order of the district court qualifies as an exception "otherwise provided by law" as defined in Section 14-2-1(A)(8).

{45} Third, DPS argues that *Estate of Romero v. City of Santa Fe*, 2006-NMSC-028, 139 N.M. 671, 137 P.3d 611, supports the district court's broad interpretation of Section 14-2-1(A)(4). In *Estate of Romero*, this Court recognized an "immunity from discovery for some police investigative materials in civil litigation" grounded in the "public policy concern" expressed by our Legislature in enacting Section 14-2-1(A)(4). *Estate of Romero*, 2006-NMSC-028, ¶¶ 17-19. Quoting *Estate of Romero*, DPS maintains that "[w]ithin IPRA the [L]egislature has expressed its intent to protect from disclosure police investigatory materials in an on-going criminal investigation." *Id.* ¶ 17. However, as noted in *Estate of Romero*, the protection from disclosure is not absolute. See *id.* ¶ 19 (stating that the immunity from discovery for law enforcement materials in the context of discovery "is not absolute"). With Section 14-2-1(A)(4), our Legislature addressed the public policy concerns related to IPRA requests for law enforcement records, and the language in Section 14-2-1(A)(4) specifically defines what information in law enforcement records can be withheld from inspection. See *Estate of Romero*, 2006-NMSC-028, ¶ 17 ("[T]he legislature describes the public policies of the state through statutes."); see also § 14-2-1(A)(4) (confining the exception for law enforcement records to "records that reveal confidential sources, methods, information or individuals accused but not charged with a crime"). *Estate of Romero* does not justify going beyond the plain language of Section 14-2-1(A)(4).

{46} For the reasons above, we hold that summary judgment was improperly granted to DPS. And, for the reasons below, we hold that summary judgment was improperly denied to Jones.

{47} Our appellate courts generally will not reopen denials of summary judgment after a final judgment on the merits. *Beaudry v. Farmers Ins. Exch.*, 2018-NMSC-012, ¶ 9, 412 P.3d 1100. However, where "a motion for summary judgment is based solely on a purely legal issue which cannot be submitted to the trier of fact, . . . the resolution of which is not dependent on evidence submitted to the trier of fact, the issue should be reviewable on appeal from the judgment." *Id.* (omission in original) (internal quotation marks and citation

omitted). Such is the situation here. Following the denial of Jones's summary judgment motion, there was no trial that further developed the facts and resulted in a judgment. Instead, DPS filed a summary judgment motion that turned on the same legal issue as the order denying summary judgment to Jones, and in fact relied upon that order. Thus, the summary judgment motions in this case are akin to counter-motions for summary judgment that turn on the same legal issue. Accordingly, we will review the order denying summary judgment to Jones. See *Int'l Ass'n of Firefighters v. City of Carlsbad*, 2009-NMCA-097, ¶ 22, 147 N.M. 6, 216 P.3d 256 ("When the district court acts on counter-motions for summary judgment based on a common legal issue, [our appellate courts] may reverse both the grant of one motion and the denial of the other and award judgment on the previously denied motion").

{48} Jones established a prima facie case for summary judgment. As a matter of law, public records are generally subject to inspection within fifteen days after written request unless the records meet one of the established IPRA exceptions. See § 14-2-8(D) (providing that inspection pursuant to a written request shall be permitted "as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request"); *Republican Party of N.M.*, 2012-NMSC-026, ¶¶ 12, 13, 16 (stating that the right to inspect public records is limited only by the exceptions created by the Legislature); *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 35, 90 N.M. 790, 568 P.2d 1236 ("The burden is upon the custodian to justify why the records sought to be examined should not be furnished."), *overruled on other grounds by Republican Party*, 2012-NMSC-026, ¶¶ 14-16. No question was raised in this case about whether the requested records met the definition of public records or about the validity of Jones's written request.

{49} Thus, the burden fell on DPS to demonstrate that one of the IPRA exceptions from inspection covered the withheld records. See *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 16, 416 P.3d 264 ("If the moving party establishes a prima facie case, the burden shifts to the non-movant to demonstrate the existence of specific evidentiary facts which would require trial on the merits." (internal quotation marks and citation omitted)). Our earlier analysis demonstrates that DPS did not present any competent evidence that established a genuine issue of material fact as to whether

⁵Section 29-3-3 provides: It shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States.

DPS lawfully denied inspection of the requested records. Rather, the only evidence presented by DPS was directed at an overbroad standard for Section 14-2-1(A)(4) that we have rejected as inconsistent with the plain language of the statute. Accordingly, we reverse the district court's denial of summary judgment to Jones.

CONCLUSION

{50} For the reasons stated, we reverse the Court of Appeals, the decision of the district court granting summary judgment to DPS, and the decision of the district court denying summary judgment to Jones. We remand for further proceedings.

{51} **IT IS SO ORDERED.**
BARBARA J. VIGIL, Justice

WE CONCUR:
JUDITH K. NAKAMURA, Chief Justice
C. SHANNON BACON, Justice
DAVID K. THOMSON, Justice
DONNA J. MOWRER, Judge
Sitting by designation

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2020-NMSC-014
No: S-1-SC-37373 (filed August 3, 2020)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JAYCOB MICHAEL PRICE,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
CINDY LEOS, District Judge

Released for Publication September 8, 2020.

HECTOR H. BALDERAS,
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Assistant Attorney General
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BENNETT J. BAUR,
Public Defender
KIMBERLY M. CHAVEZ COOK,
Appellate Defender
Santa Fe, NM
for Appellee

Opinion

Michael E. Vigil, Justice.

{1} The district court suppressed records that police officers obtained from Defendant Jaycob Michael Price's cell phone provider pursuant to a search warrant. Under the authority of the search warrant, the officers obtained (1) subscriber information consisting of Defendant's name, date of birth, social security number, and address, (2) cell-site location information (CSLI), and (3) a list of calls and text messages to and from Defendant's cell phone (call/text records). The district court ruled that the affidavit for the search warrant (Affidavit) established probable cause to obtain Defendant's subscriber information but failed to establish probable cause for the CSLI and call/text records, and ordered suppression of the CSLI and call/text records. *See* Rule 5-211(A)(4) NMRA (2012, amended 2017) ("A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant."). The State appeals as permitted by both statute and procedural rule. NMSA 1978, § 39-3-3(B)(2) (1972); Rule 12-201(A)(1)(a) NMRA. Jurisdiction properly lies with this Court because Defendant is charged with first-degree felony murder. *See State v. Smallwood*, 2007-NMSC-005, ¶ 11, 141 N.M. 178, 152 P.3d 821 (concluding "that the legislature

intended for [this Court] to have jurisdiction over interlocutory appeals in situations where a defendant may possibly be sentenced to life imprisonment or death"). We affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Affidavit for the Search Warrant
{2} The Affidavit states that on April 2, 2013, at approximately 11:53 p.m., two officers were dispatched to the parking lot of an apartment complex in reference to a shooting. Upon arriving, they made contact with two women at the scene, Margarita and Linda, who were standing next to a sport utility vehicle (SUV). Julio Apodaca (Victim) was lying on the ground next to the SUV and bleeding from his head. Rescue personnel were immediately dispatched to take Victim to the hospital. Margarita told one of the officers that Victim, whom she identified as her brother-in-law, had called her and asked to borrow money. Margarita agreed and told Victim to come to her apartment, where she gave him \$100. Victim then left Margarita's apartment for an unknown destination.

{3} About thirty minutes after Victim left the apartment, Margarita and Linda went to get cigarettes, and while they were walking through the parking lot Margarita saw Victim's SUV. As she approached the SUV, Margarita saw Victim sitting in the driver's seat, bleeding from his head. Margarita

immediately called 911, and she and Linda performed CPR as instructed until the officers arrived. Victim was taken to the hospital where he was pronounced dead, apparently as a result of a gunshot wound to his head.

{4} Uniformed officers secured the SUV and the surrounding area, and homicide detectives arrived to investigate. At approximately 4:11 a.m. on April 3, 2013, a detective obtained a search warrant to search the SUV. Pursuant to this search warrant, Victim's cell phone was seized from the SUV, and upon physically examining the cell phone detectives discovered that one of the numbers (505-702-4250) was among both the "dialed" and the "received" calls but was not listed as a "contact" in the cell phone. In handwriting the Affidavit adds that the "dialed" and "received" calls to and from 505-702-4250 were placed between the time when Margarita had last seen Victim and when she discovered him in the SUV an interval of approximately thirty minutes.

{5} A detective phoned 505-702-4250, and when no one answered, the detective hung up without leaving a message. The Affidavit recites that the identity of this person is "crucial" to the investigation and asks that a search warrant be issued to the provider of cell phone number 505-702-4250 (Sprint/Nextel Communications) for the subscriber information and for CSLI and call/text records for the April 1 to April 5, 2013, period. The record proper does not disclose precisely which CSLI and call/text records police obtained pursuant to the search warrant because the record proper on appeal does not include the search warrant's return and inventory. *See* Rule 9-214 NMRA ("Search warrant") (including the "RETURN AND INVENTORY" form with the form prescribed for authorization of a search warrant). However, at the hearing on the motion to suppress the cell phone records, the district court asked counsel what was obtained pursuant to the search warrant and learned that the records obtained were Defendant's subscriber information and CSLI and call/text records as we have described.

B. Proceedings in the District Court

{6} Information provided in the Affidavit and obtained from further investigation tied Defendant to the number. Defendant was indicted on several charges, including first-degree felony murder of Victim.

{7} Defendant filed a motion to suppress the cell phone records obtained under the search warrant. Defendant argued that the Affidavit failed to establish probable cause for the cell phone records because "[t]he only fact in the affidavit related to the

telephone number (505) 702-4250 is that it was dialed and received by [Victim's] phone." Defendant asserted that this did not amount to substantial evidence of probable cause because "otherwise the police would be able to seize the cell phone records of every single person that called, or was called, by a victim." In response, the State asserted that the Affidavit established probable cause for the district court to issue the search warrant.

{8} Following a hearing, the district court issued a written order partially granting the motion to suppress. The district court determined that the Affidavit "lacked sufficient detail to establish probable cause for the scope of this search" because "[o]ther than noting that the calls were made to and from the listed phone number, this is no nexus between 505-7[02]-4250 and this crime." The district court's order stated that "there is no indication within the four corners of the warrant as to when . . . [Victim] called [Margarita], there is no indication when he arrived at her apartment, how long he stayed at the apartment or when he received the money and ultimately left." The district court's order repeated, "Other than noting that the calls were made to and from the listed phone number, this is no nexus between 505-7[02]-4250 and this crime." The district court therefore concluded, "Allowing the search beyond the basic identifying information as to the subscriber of this phone number is overly broad, intrusive and not supported by probable cause." Accordingly, the district court granted the motion to suppress as to the CSLI and call/text records and denied the motion to suppress as to the subscriber information.

II. DISCUSSION

A. *Carpenter v. United States*

{9} In *Carpenter v. United States*, ___ U.S. ___, 138 S. Ct. 2206, 2221, 2223 (2018), the United States Supreme Court held that the Fourth Amendment to the United States Constitution requires a search warrant supported by probable cause to obtain CSLI records from a cell phone provider.¹ As described in *Carpenter*, CSLI is information collected and stored by wireless carriers "for their own business purposes." *Id.* at 2212. CSLI consists of "a time-stamped record" created each time a cell phone connects to the radio antennas of a wireless carrier's network. *Id.* at 2211. These radio antennas are called "cell sites."

Id. "Cell sites typically have several directional antennas that divide the covered area into sectors." *Id.* Most cell phones connect to the antennas of the nearest cell sites "several times a minute whenever their signal is on, even if the owner is not using one of the phone's features." *Id.* The CSLI supports "mapping" of the approximate locations of a cell phone over time by "triangulation" of the locations of the antennas of cell sites with which the cell phone has simultaneously connected. *Id.* at 2217, 2219. See *State v. Carrillo*, 2017-NMSC-023, ¶ 34, 399 P.3d 367 (describing how a cell phone operates by continually sending signals to and collecting signals from cell towers throughout the cell network).

{10} This mapping of a cell phone's locations in a period of time "provides an all-encompassing record of the holder's whereabouts." *Carpenter*, 138 S. Ct. at 2217. "A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *Id.* at 2218. Thus, CSLI data "provides an intimate window into a person's life, revealing not only his particular movements, but through them, his familial, political, professional, religious, and sexual associations." *Id.* at 2217 (internal quotation marks and citation omitted). Because "individuals have a reasonable expectation of privacy in the whole of their physical movements[.]" intrusion into that private sphere, the United States Supreme Court held, qualifies as a search under the Fourth Amendment and requires a warrant supported by probable cause. *Id.* at 2213, 2217; see *Katz v. United States*, 389 U.S. 347, 351, 357 (1967) (holding that "the Fourth amendment protects people, not places" and that when an individual "seeks to preserve [something] as private" and this expectation of privacy is "constitutionally protected," official intrusion into that privacy is a search that requires a warrant supported by probable cause).

B. Standard of Review

The search warrant was issued by a district court judge who determined that there was probable cause to believe there would be evidence of a crime in Defendant's cell phone records. The issuing judge's determination of probable cause was then reviewed by a different district court judge

who presided over the criminal case, and the order of the reviewing district court is now before us. As we explain next, the standard for reviewing the determination of probable cause made by an issuing judge is the same, whether the review is pursuant to a motion to suppress or on appeal. We now review the issuing judge's determination of probable cause using the same standard the reviewing district court judge was obligated to use.

{12} *State v. Williamson*, 2009-NMSC-039, ¶ 17, 146 N.M. 488, 212 P.3d 376, pointed out that under the federal standard of review, an issuing court's determination of probable cause under the Fourth Amendment is entitled to "great deference" by a reviewing court. Applying this deference, the federal standard for reviewing an issuing court's determination of probable cause is whether the issuing court had a substantial basis for concluding that the search would uncover evidence of wrongdoing. *Id.* If a substantial basis exists, the reviewing court affirms the issuing court's finding of probable cause. *Id.* ¶ 29. *Williamson* also recognized that certain prior New Mexico opinions applied a de novo standard for reviewing an issuing court's determination of probable cause. *Id.* In expressly disavowing these opinions, the *Williamson* Court aligned New Mexico with the federal standard, holding that a "reviewing court must determine whether the affidavit as a whole, and the reasonable inferences that may be drawn therefrom, provide a substantial basis for determining that there is probable cause to believe that a search will uncover evidence of wrongdoing." *Id.* In ruling on the motion to suppress in this case, the district court was required to apply this standard to the issuing court's finding of probable cause. Likewise, our inquiry focuses on the issuing court's finding of probable cause and not the district court's conclusion when it ruled on the motion to suppress. *State v. Evans*, 2009-NMSC-027, ¶ 12, 146 N.M. 319, 210 P.3d 216; see *State v. Trujillo*, 2011-NMSC-040, ¶ 19, 150 N.M. 721, 266 P.3d 1 ("[U]nder a deferential standard the reviewing judge does not substitute his or her judgment for that of the issuing judge.").

{13} "[T]he substantial basis standard of review is more deferential than the de novo review applied to questions of law, but less deferential than the substantial evidence

¹Under the New Mexico Electronic Communications Privacy Act, NMSA 1978, §§ 10-16F-1 to -4 (2019, as amended through 2020), "the search and seizure of electronic information" must "comply with all New Mexico and federal laws, including laws prohibiting, limiting or imposing additional requirements on the use of search warrants," § 10-16F-3(D)(3). Applicable provisions allow "retention of electronic communication information" seized if "there is probable cause to believe that the information constitutes criminal evidence." See §§ 10-16F-3(D), (H)(2) (2019). Current amendments to Section 10-16F-3 "plac[ing] additional requirements on government entities when obtaining warrants for the search and seizure of electronic information," see § 10-16F-3 annot. to the 2020 amendment (effective March 4, 2020), were not in effect when the search warrant issued in this case. We express no opinion on what impact, if any, the statutes and the current amendments might have on the result reached in this case.

standard applied to questions of fact.” *Williamson*, 2009-NMSC-039, ¶ 30. “[T]he substantial basis standard is not tantamount to rubber-stamping the decision of the issuing court and does not preclude the reviewing court from conducting a meaningful analysis of whether the search warrant was supported by probable cause.” *Id.* When “the factual basis for the warrant is sufficiently detailed in the search warrant affidavit and the issuing court has found probable cause, the reviewing courts should not invalidate the warrant by interpreting the affidavit in a hyper-technical, rather than a commonsense, manner.” *Id.* (brackets omitted) (internal quotation marks and citation omitted). The deferential substantial basis standard of review established in *Williamson* continues to govern our review of an issuing court’s finding of probable cause. See *State v. Gurule*, 2013-NMSC-025, ¶¶ 16-17, 303 P.3d 838; *State v. Haidle*, 2012-NMSC-033, ¶ 10, 285 P.3d 668.

C. Probable Cause

{14} The constitutional validity of a search warrant, under the Fourth Amendment as well as Article II, Section 10 of the New Mexico Constitution, depends on whether the affidavit for search warrant demonstrates that there is probable cause to believe that a crime is occurring or that seizable evidence of a crime exists at a particular location. *Williamson*, 2009-NMSC-039, ¶ 14.

Probable cause exists when there are reasonable grounds to believe that an offense has been or is being committed in the place to be searched. Probable cause is not subject to bright line, hard-and-fast rules, but is a fact-based determination made on a case-by-case basis. The degree of proof necessary to establish probable cause for the issuance of a search warrant is more than a suspicion or possibility but less than a certainty of proof. When ruling on probable cause, we deal only in the realm of reasonable possibilities, and look to the totality of the circumstances to determine if probable cause is present.

Id. ¶ 31 (internal quotation marks and citations omitted) (quoting *State v. Nyce*, 2006-NMSC-026, ¶ 10, 139 N.M. 647, 137 P.3d 587, *disavowed on other grounds by Williamson*, 2009-NMSC-039, ¶ 29). In other words, “before a valid search warrant may issue, the affidavit must show: (1) that the items sought to be seized are evidence of a crime; and (2) that the criminal evidence sought is located at the place to be searched.” *Evans*, 2009-NMSC-027, ¶ 11 (internal quotation marks and citation omitted).

{15} In our review of an affidavit for probable cause, we cannot consider “[a]ny information that was not provided to the issuing judge at the time the search warrant affidavit and warrant were presented[.]” *State v. Sabeerin*, 2014-NMCA-110, ¶ 13, 336 P.3d 990. This requires our review to focus on “the information contained in the four corners of the affidavit.” *Gurule*, 2013-NMSC-025, ¶ 17.

D. Analysis

{16} We now apply the deferential standard of review to determine whether the Affidavit as a whole, and the reasonable inferences that may be drawn therefrom, provided a substantial basis for the issuing judge to determine there was probable cause to believe that (1) the cell phone subscriber information, (2) the CSLI, and (3) the call/text records contained evidence of a crime. We begin with the CSLI which, as we have discussed, requires a search warrant for police to obtain from a cell phone provider. See *Carpenter*, 138 S. Ct. at 2221.

{17} Defendant argues that facts necessary to establish probable cause to obtain his CSLI were missing from the Affidavit. Defendant contends that the Affidavit contains no facts establishing (1) that the calls between Defendant’s cell phone and Victim’s cell phone actually connected and for how long, (2) whether there was communication between Defendant and Victim prior to the night he died, (3) whether Victim generally saved contacts in his phone, (4) whether law enforcement tried more than once to contact Defendant, and (5) whether there were calls to or from other numbers during the thirty-minute window. Defendant argues further that the critical issue is whether Defendant and Victim actually spoke, not whether calls were dialed and received between them. We are not persuaded.

{18} The district court’s determination and Defendant’s argument that the calls demonstrated no nexus to the crime other than the fact that Victim’s phone logged calls made to and from the listed number are both erroneous. Police discovered Victim’s cell phone during an authorized search and manually inspected the cell phone. They found a number, not saved in Victim’s cell phone contacts, for both a “dialed” call and a “received” call made within thirty minutes before Victim’s death. When police attempted to contact Defendant’s cell phone number, nobody answered. The other information supporting a finding of probable cause included that Victim had contacted Margarita late at night to borrow money, went to her apartment to obtain the money, and was shot in the apartment’s parking lot within thirty minutes after leaving Margarita’s apartment. “We have never said that police must establish every link in the inferential chain

that leads to probable cause. Rather, all that is required is that police make a showing that permits ‘more than a suspicion or possibility but less than a certainty of proof.’” *Evans*, 2009-NMSC-027, ¶ 22 (citation omitted). The calls linked to the cell phone number of the unknown subscriber were relevant to Victim’s shooting.

{19} CSLI is the record of the locations of a cell phone over time. Probable cause to believe that a crime has been committed will “often exist simultaneously” with probable cause to believe that there is evidence at the place to be searched. *Id.* ¶ 24. When this is not the case, “[t]he fundamental inquiry is whether there is probable cause to believe there will be evidence of a crime *at a particular location* [i.e., *place*].” *Id.* ¶ 25 (emphasis in original). Here, the *place* to be searched is within the record of cell phone locations held by the cell phone provider, which include where the cell phone was located at the time of the calls between Defendant’s cell phone and Victim’s. A fair inference from the Affidavit is that Victim left Margarita’s apartment late at night, after borrowing money from her, and went to his SUV in the apartment parking lot where he had conversations with an unknown person before he was shot in the head. The period of time between leaving the apartment and the shooting was no longer than thirty minutes. Although the acts just described appear to be ordinary, noncriminal activities, when viewed in the context of the surrounding circumstances, they amount to more than “mere suspicion” that evidence of the crime was located in the CSLI. See *Haidle*, 2012-NMSC-033, ¶ 30 (“Mere suspicion about ordinary, non-criminal activities, regardless of an officer’s qualifications and experience, does not satisfy probable cause.” (internal quotation marks and citation omitted)).

{20} We conclude that the totality of the circumstances described in the Affidavit establishes reasonable grounds for the judge issuing the search warrant to find probable cause that the unknown person talking to Victim was in the vicinity of the parking lot when the conversations took place before Victim was shot. The CSLI included evidence of that person’s location during the relevant time frame. Therefore, while this is a close case, we affirm the issuing judge’s finding of probable cause as to the CSLI. Under our deferential standard of review, whether we would have viewed the Affidavit differently makes no difference. *Gurule*, 2013-NMSC-025, ¶ 17. The issue before us is whether the Affidavit provided “a substantial basis to support a finding of probable cause” by the judge issuing the search warrant. *Id.* ¶ 16 (internal quotation marks and citation omitted). We conclude that it did.

{21} We assume, but do not decide, that probable cause was required to obtain both subscriber information for Defendant as the owner of the cell phone and call/text records listing calls and texts made from Defendant's cell phone. *But see United States v. Clenney*, 631 F.3d 658, 666 (4th Cir. 2011) (concluding that obtaining basic subscriber information, such as the name and address of the customer and cell phone call logs, does not require a search warrant); *United States v. Streett*, 363 F. Supp.3d 1212, 1308-09 (D.N.M. 2018) (concluding that *Carpenter* does not apply to "subscriber information," which provides no insight into the subscriber's movements and "fits neatly under existing Supreme Court and Tenth Circuit precedent under the third-party doctrine" that a person has no expectation of privacy concerning information the person has voluntarily given to a third party).

{22} We further conclude that the nexus between the crime and Defendant's cell phone subscriber information and call/text

records is clearly set forth in the Affidavit. A fair inference is that the owner of a cell phone is usually the person using it. Under our deferential standard of review, the Affidavit establishes probable cause to identify the owner, therefore identifying who called Victim shortly before he was shot. Likewise, the Affidavit establishes probable cause to believe that records showing other calls or text messages between Defendant's phone and Victim's phone contained evidence of the crime. We therefore conclude that the Affidavit provided probable cause for the judge issuing the search warrant to believe that records revealing the identity of the owner and logging Defendant's other conversations or text messages with Victim (excluding content) contained evidence of the crime.

{23} For the foregoing reasons we hold that the district court correctly concluded that the Affidavit as a whole, together with reasonable inferences to be drawn therefrom, provided the issuing judge with a substantial basis for determining

that there was probable cause to believe that Defendant's subscriber information contained evidence of a crime. We hold that the district court erred in ruling that there was no probable cause to obtain Defendant's CSLI and call/text records.

III. CONCLUSION

{24} We affirm in part and reverse in part the order of the district court partially granting Defendant's motion to suppress the cell phone records. We remand the case to the district court for further proceedings in accordance with this opinion.

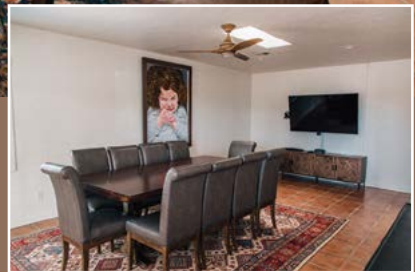
{25} **IT IS SO ORDERED.**
MICHAEL E. VIGIL, Chief Justice

WE CONCUR:
BARBARA J. VIGIL, Justice
JUDITH K. NAKAMURA, Justice
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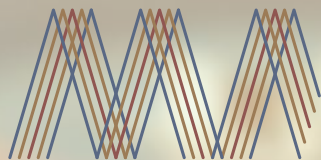




Montgomery & Andrews, P.A. is pleased to announce that **Kristen Burby** has joined the firm as an associate. Ms. Burby practices in the areas of administrative and regulatory law, natural resources law and environmental law. Her environmental and natural resources law work includes air quality permitting and compliance work, discharge permitting and general facility environmental compliance work. Prior to law school, Ms. Burby worked as an environmental consultant in the pharmaceutical manufacturing and energy transmission fields before moving to become the Environmental, Health and Safety Manager at a New Jersey refinery. During law school Ms. Burby continued to work in environmental consulting in addition to working as an Intellectual Property Intern for Sandia National Labs and clerking with Montgomery & Andrews, P.A.



Montgomery & Andrews, P.A. is pleased to announce that **Troy Lawton** has joined the firm as an associate. A fourth-generation New Mexican, Troy Lawton joined the firm as an associate in 2021. Troy graduated from the University of New Mexico School of Law. During law school, his course of study focused on federal taxation law, business law, and legal writing. Prior to law school, he spent much of his time at his local family-owned business and seeks to use his legal career in furthering the success of New Mexico businesses.



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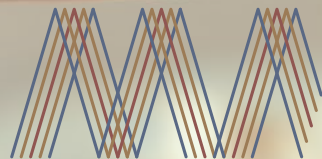
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Montgomery & Andrews, P.A. is pleased to announce that **Matthew J. Armijo** has joined the firm as an associate. Mr. Armijo's practice is focused on complex litigation of matters in the areas of environmental law, commercial disputes, products defects, construction defects, oil and gas litigation, and personal injury. Prior to joining the firm, Mr. Armijo gained experience in the areas of construction accidents, industrial accidents, dram shop litigation, and trucking accidents. Mr. Armijo graduated cum laude from the SMU Dedman School of Law, and he is licensed to practice in New Mexico and Texas.



Montgomery & Andrews, P.A. is pleased to announce that **Christopher Pommier** has joined the firm as an associate. During law school his course of study focused on health law and federal Indian law. Prior to joining the firm, Mr. Pommier clerked for the Honorable Judge Jennifer Attrep of the New Mexico Court of Appeals from 2019 to 2021. In addition, as a Staff Attorney with the Legislative Counsel Service, Mr. Pommier drafted legislation in the areas of public health, disability and insurance law. Prior to law school, Mr. Pommier worked as a paralegal, supporting attorneys in the areas of business immigration, family law and civil litigation.



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We are pleased to announce that Carlos J. Padilla has joined Cuddy & McCarthy, LLP as our newest Associate. His experience covers a wide variety of practice areas including real property law, administrative law, public records law, personal injury, and general civil litigation. We are thrilled to have him as part of our team.

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Positions

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Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 8 years experience). Practice areas include insurance defense, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pretrial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé to john@kienzlelaw.com.

Entry Level and Experienced Trial Attorneys

The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Experienced Trial Attorney

The Ninth Judicial District Attorney's Office is seeking an experienced trial attorney for our Clovis office. Come join an office that is offering jury trial experience. In addition, we offer in depth mentoring and an excellent work environment. Salary commensurate with experience between \$75k-90k per year. Send resume and references to Steve North, snorth@da.state.nm.us.

Experienced Prosecutor

The 13th Judicial District Attorney's Office has created a new position. We are looking for an experienced prosecutor who is self-motivated, can handle a smaller but complex case load covering different types of felony's with little to no supervision. This position will carry cases in all three of our district offices so travel will be required. This position can be based in the county office of choice (Belen, Bernalillo or Grants). Schedule will be flexible but dependent upon scheduled court hearings. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us for an application.

Attorneys

Madison, Mroz, Steinman, Kenny & Olexy, P.A., an AV-rated civil litigation firm, seeks two attorneys, one with zero to three years' experience, and one with four to six years' experience, to join our practice. We offer a collegial environment with mentorship and opportunity to grow within the profession. Salary is competitive and commensurate with experience, along with excellent benefits. All inquiries are kept confidential. Please forward CVs to: Hiring Director, P.O. Box 25467, Albuquerque, NM 87102.

Associate Lawyer - Litigation

Sutin, Thayer & Browne is looking to hire a full-time associate with 2-8 years' experience for our Litigation Group. The successful candidate must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Send letter of interest, resume, and writing sample to sor@sutinfirm.com.

Full-time Associate Attorney

Davis & Gilchrist, PC, is an AV-rated boutique litigation and trial law firm focused on healthcare False Claims Act cases, physician privilege suspension cases, government whistleblowers, general employment, and legal malpractice cases, is seeking a full time associate attorney to help with brief writing, discovery, depositions, and trials. We offer a work-life balanced approach to the practice of law. We do not have billable hour requirements. We do not track vacation or sick leave. We do require that our lawyers do excellent work in a timely fashion for our clients. We are looking for someone with 1-5 years of litigation experience, including taking and defending depositions, drafting and answering discovery, solid research and writing skills, ability to go with the flow, and a sense of humor. We offer a competitive salary with the potential for performance-based bonuses, health insurance, and a 401K plan. Learn more about us at www.davisgilchristlaw.com. Send resume and writing sample to lawfirm@davisgilchristlaw.com.

Associate General Counsel

This in-house counsel position in Albuquerque is responsible for providing legal knowledge, counsel, and advice in areas of major focus for Blue Cross and Blue Shield of New Mexico such as provider network, health care management, sales and marketing, and/or regulatory rate, form and compliance plan filings. With very limited supervision, the position will be responsible for various legal projects and issues which may include providing in-depth legal drafting, advice/counsel and support for negotiations and contracting with health care providers, utilization management activities, negotiations and contracting with insured and self-funded employer groups, and/or responses to, and appropriate resolution of, regulator filing or other concerns. This position will contribute to strategic direction and will handle complex legal matters and large projects. Apply to <https://bit.ly/2WpkWYG>. **JOB REQUIREMENTS:** Juris Doctor degree from ABA-accredited law school; License to practice law in New Mexico or willing and able to become licensed soon after hire; At least 8 years' experience as an attorney-at-law; Excellent analytical, drafting, and problem-solving skills; Commitment to furnishing high quality and solutions-oriented legal services; Self-starter who thrives in fast-paced legal practice; Business and strategic acumen and commitment to business partnering; Clear and concise verbal and written communication skills; Interpersonal, negotiation, and diplomacy skills. **PREFERRED JOB REQUIREMENTS:** 3+ years' recent experience in health care law and/or health insurance law; Experience furnishing legal support for health insurer operations; Experience working with health insurance regulators.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is an aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm seeking an extremely hardworking and diligent associate attorney with great academic credentials. This is a terrific opportunity for the right lawyer, if you are interested in a long term future with this firm. Up to 3-5 years of experience is preferred. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Managing City Attorney

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the Property and Finance Division. The work includes management, oversight and development of Assistant City Attorneys, paralegals and staff. Other duties include but are not limited to: contract drafting, review, analysis, and negotiations; drafting ordinances; regulatory law; Inspection of Public Records Act; procurement; public works and construction law; real property; municipal finance; risk management; advising City Council, boards and commissions; intergovernmental agreements; dispute resolution; municipal ordinance enforcement; condemnation; and civil litigation. Attention to timelines, detail and strong writing skills are essential. Five (5)+ years' experience including (1)+ years of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico, in good standing. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Hobbs offices. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). There is also an opening for a prosecutor with at least 2 years of Trial Experience for a HIDTA Attorney position in the Roswell office, with starting salary of (\$ 70,000.00) Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to 5thDA@da.state.nm.us.

Staff Attorney

LOCATION: Farmington, New Mexico, another DNA location or Remote. DNA-People's Legal Services is a non-profit law firm providing high quality legal services to persons living in poverty on the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of Northern Arizona, Northwest New Mexico, and Southern Utah. DNA is seeking to hire a Staff Attorney for our NM Victims of Crime Act (VOCA) Grant. The Staff Attorney must be a graduate of an accredited law school and a member of the New Mexico, Arizona, or Utah bar association, or if licensed in another jurisdiction, able to gain admission to one of these jurisdictions within one year by motion or reciprocity. Must have strong oral and written communication skills; the ability to travel and work throughout the DNA service area; competence in working with diverse individuals and communities, especially with Native Americans, persons of color, and other marginalized communities; and a commitment to providing legal services to the poor. The position is based in Farmington, New Mexico; however, requests to work remotely or at another DNA location will be considered. Please contact DNA Human Resources for additional information including a job description and a complete listing of minimum job qualifications. We provide excellent benefits, including full health insurance, dental and vision, generous paid holidays, vacation, and sick leave. Please send employment application found at <https://dnalegalservices.org/>, resume, cover letter, and other application materials to HResources@dnalegalservices.org or fax to 928.871.5036.

Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 37 states, is currently seeking an experienced litigation attorney for an immediate opening in its offices in Albuquerque and Santa Fe, NM. 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 significant 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 indicating which office(s) you are interested in to Hamilton Hinton at hhinton@cordelllaw.com

Pueblo of Isleta General Counsel

The Pueblo of Isleta seeks applicants for the position of General Counsel. The person hired for this position will be in charge of overseeing the staffing and functioning of the Pueblo's in-house counsel office and advising the Pueblo's Tribal Council, Governor, Department Directors, Boards, Commissions and Business Enterprises on a wide variety of matters. The General Counsel shall work with the Pueblo's outside counsel, as authorized/directed by the Council or Governor. The work of the Pueblo's in-house counsel office includes: drafting and/or reviewing leases, contracts, intergovernmental agreements, grant agreements, codes, policies, regulations and Council resolutions; handling or advising on litigation and administrative proceedings, including personnel/employment matters; advising on and/or handling land, environmental and water-related issues; and generally providing general advice and counsel on day-to-day matters. A minimum of 5 years of relevant legal experience is required and applicants must be a member, in good standing, of the New Mexico Bar or the bar of another state with the ability to become a member of the New Mexico Bar within 8 months. The salary range for this position, depending on qualifications and experience, is \$140,000 – \$200,000, plus a very generous benefits package, including health insurance, PTO and retirement.

Pueblo of Isleta Associate General Counsel

The Pueblo of Isleta seeks applicants for the position of Associate General Counsel. This person shall assist the Pueblo's General Counsel in advising the Pueblo's Tribal Council, Governor, Department Directors, Boards, Commissions and Business Enterprises on a wide variety of matters. The Associate General Counsel shall work under the supervision of the Pueblo's General Counsel. The work of the Pueblo's in-house counsel office includes: drafting and/or reviewing leases, contracts, intergovernmental agreements, grant agreements, codes, policies, regulations and Council resolutions; handling or advising on litigation and administrative proceedings, including personnel/employment matters; advising on and/or handling land, environmental and water-related issues; and generally providing general advice and counsel on day-to-day matters. A minimum of 2 – 5 years of relevant legal experience is preferred, but recent law school graduates with excellent academic records will be considered. The salary range for this position, depending on qualifications and experience, is \$100,000 – \$140,000, plus a very generous benefits package, including health insurance, PTO and retirement.

Senior Employee Relations Specialist – IRC90392

The Los Alamos National Laboratory Human Resources – Employee Relations department is seeking an Employee Relations Specialist to provide reliable guidance to all levels of employees and management on employee relations matters and policies, while adhering to related employment law and LANL policy. You will provide training, conduct investigations, write reports of workplace misconduct, and consult with both managers and employees on employee relations issues. With approximately 9,000 diverse workers, Employee Relations administration at LANL is as challenging as it is interesting. This position requires a bachelor's degree and a minimum of 12 years of related experience or an equivalent combination. Post-graduate work in human resources or law would be an asset. Requirements include extensive knowledge of employee relations best practices and procedures and legal requirements affecting employee relations administration, including Title VII of the Civil Rights Act, the ADA and FMLA. Apply online at: www.lanl.gov/jobs. Los Alamos National Laboratory is an EO employer – Veterans/Disabled and other protected categories. Qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, disability or protected veteran status.

Associate Attorney

Hatcher Law Group, P.A. seeks an Associate Attorney with four-plus years of legal experience for our downtown Santa Fe office. We are looking for an individual motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and benefit package. Send your cover letter, resume and a writing sample via email to juliez@hatcherlawgroupnm.com.

Trial Attorney

Trial Attorney wanted for immediate employment with the Ninth Judicial District Attorney's Office, which includes Curry and Roosevelt counties. Employment will be based primarily in Curry County (Clovis). Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Email resume, cover letter, and references to: Steve North, snorth@da.state.nm.us.

Associate Attorneys

Mynatt Martínez Springer P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking two associate attorneys to join our team. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, and government representation. Applicants with 0-5 years of experience will be considered for full-time employment. If it is the right fit, the firm will also consider applications for part-time employment from attorneys with more than 5 years of experience. Associates are a critical component of the firm's practice and are required to conduct legal research; provide legal analysis; advise clients; draft legal reviews, pleadings, and motions; propound and review pretrial discovery; and prepare for, attend, and participate in client meetings, depositions, administrative and judicial hearings, civil jury trials, and appeals. Successful candidates must have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. The firm will consider applicants who desire to work remotely. Offers of employment will include salary commensurate with experience and a generous benefits package. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@mmslawpc.com.

Eleventh Judicial District Attorney's Office, Div II

The Eleventh Judicial District Attorney's Office, Division II, Gallup, New Mexico is seeking qualified applicants for Trial Attorney. The Trial Attorney position requires advanced knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure, trial skills, computer skills, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations. Applicants must hold a New Mexico State Bar license preferred. The McKinley County District Attorney's Office provides a supportive and collegial work environment. Salary is negotiable. Submit a letter of interest and resume to District Attorney Bernadine Martin, Office of the District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us. Position will remain opened until filled.

Associate Attorney

Katz Herdman MacGillivray & Fullerton in Santa Fe seeks an associate attorney with an interest in family law and civil litigation. Our boutique practice also includes real estate, water law, estate planning, business, and construction. Send your resume, statement of interest, transcript and writing sample to ctc@santafelawgroup.com. All levels considered, with ideal candidates having 1-3 years of practice experience.

Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney - APD Compliance; Assistant City Attorney - Office of Civil Rights; Assistant City Attorney - Environmental Health; Assistant City Attorney - Employment/Labor. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

New Mexico Court of Appeals Law Clerk and Senior Law Clerk in Albuquerque

Newly appointed Court of Appeals Judge Katherine A. Wray is accepting applications for two law clerk positions to begin as soon as possible. Law clerks work closely with their judge to write opinions and resolve cases involving all areas of the law. Outstanding legal research and writing skills are necessary. The Court of Appeals has two types of law clerk positions: "regular" and "senior." The regular law clerk position requires one year of experience performing legal research, analysis and writing while employed or as a student and law school graduation by the time you begin employment. Current annual salary for regular law clerk is \$62,167. Senior law clerk positions require four years of experience in the practice of law or as an appellate law clerk and a New Mexico law license. Current annual salary for senior law clerk is \$70,260. Applicants may apply for either position. Please send resume, cover letter, writing sample and law school transcript to: Anna Box, Court Manager, coaamb@nmcourts.gov, 2211 Tucker Ave, Albuquerque, NM 87106.

Supreme Court of New Mexico Attorney – Administrative Counselor to the Chief Justice

Come work with us in the historic Supreme Court Building in Santa Fe! The Supreme Court is accepting applications for an attorney who will support the Chief Justice in the oversight and management of the Chief's administrative responsibilities and in the performance of the Chief's statutory duties. The attorney will manage the internal and external communications, public information, and public appearances of the Chief Justice. The attorney will also advise the Chief Justice and the judiciary on administrative and policy matters, provide reports and analyses, and draft memoranda. The attorney will work collaboratively with judges, court personnel, the Administrative Office of the Courts, state and national organizations, public and private organizations, the news media, and the general public to effectively plan, organize, and implement policy, procedures, special projects, events, and initiatives at the direction of the Chief Justice. For a detailed description of the job qualifications, duties, and application requirements, please visit the Careers webpage on the New Mexico Judiciary's website at <https://www.nmcourts.gov/careers/>

Full-time and Part-time Attorney

Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, Real Estate and Civil Litigation. If you are looking for meaningful professional opportunities that provide a healthy balance between your personal and work life, JGA is a great choice. If you are seeking an attorney position at a firm that is committed to your standard of living, and professional development, JGA can provide excellent upward mobile opportunities commensurate with your hopes and ideals. As we are committed to your health, safety, and security during the current health crisis, our offices are fully integrated with cloud based resources and remote access is available during the current Corona Virus Pandemic. Office space and conference facilities are also available at our Albuquerque and Santa Fe Offices. Our ideal candidate must be able to thrive in dynamic team based environment, be highly organized/reliable, possess good judgement/people/communication skills, and have consistent time management abilities. Compensation DOE. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

Associate Attorney

Chapman and Priest, P.C. seeks Associate Attorney to assist with increasing litigation case load. Candidates should have 2-10 years civil defense litigation experience, good research and writing skills, as well as excellent oral speaking ability. Candidate must be self-starter and have excellent organizational and time management skills. Trial experience a plus. Please send resume, references, writing sample and salary requirements to cassidyolguin@cplawnm.com.

Associate Attorney

Riley, Shane & Keller, P.A., an AV-rated Albuquerque defense firm formed in 1982, seeks an associate attorney for an appellate/research writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position is full-time with a virtual work setting and flexible schedule. We offer an excellent salary, benefits and pension package. Please submit a resume, references and writing samples to our Office Manager by fax, (505) 883-4362 or mvelasquez@rsk-law.com.

Sourcing Analyst – PNM Resources, Inc. 6087225

The Sourcing Analyst supports the sourcing and procurement processes for goods and services. Negotiates contracts and manages supplier relationships. Gathers, analyzes, and prepares recommendations on sourcing strategies, practices, and procedures, including but not limited to continuous process improvements. Bachelor's degree in a related field with one to two years of related experience, or equivalent combination of education and or experience related to the discipline. This is a series post the successful candidate hired will be based on education and years of experience. To apply go to www.pnm.com/careers and read the full job description, register, upload a resume answer all posting questions. Deadline is no later than October 31, 2021. PNM Resources and affiliates are Equal Opportunity/Affirmative Action employers. Women, minorities, disabled individuals and veterans are encouraged to apply.

Legal Assistant

Legal Assistant for litigation defense law firm. Looking for relevant experience, knowledge of e-filing in State & Federal courts, strong organizational skills, cooperative attitude & attention to detail. Full time, salary DOE, great benefits incl. health, dental & life ins. & 401K match. Please e-mail resume to kayserk@civerolo.com.

Receptionist/Legal Assistant

Cuddy & McCarthy, LLP, a leading New Mexico law firm, has an excellent opportunity for a receptionist/legal assistant in our Albuquerque office. If you're a motivated, detail-oriented person who enjoys a positive work environment, then join our team at Cuddy & McCarthy! We are looking for a receptionist/legal assistant to cover a range of duties, which include: running the operations at the front desk, answering phones, providing administrative support to attorneys, interaction with clients, organization of client documents in paper and electronic files, drafting and filing of legal documents, and managing attorney calendars and deadlines. Requirements for this position are: 2 or more years' experience as a receptionist, legal secretary or legal assistant, proficient in Outlook calendaring, excellent communication and client services skills, editing and proofreading skills, strong organizational and document assembly skills. Cuddy & McCarthy offers a competitive compensation and benefits package. Please forward your resume to our Executive Director at: agarcia@cuddymccarthy.com.

Legal Secretary/Assistant

Small Albuquerque office of a national Indian law firm seeks experienced legal secretary/assistant, full or part-time. Must be highly organized, professional, detail-oriented, proficient writer and have excellent computer skills. Highly competitive salary, DOE and excellent benefits. Send cover letter and resume to: sjones@abqsonosky.com.

Legal Assistant

Rodey's Santa Fe office is accepting resumes for a legal assistant position. Candidate must have excellent organizational skills; demonstrate initiative, resourcefulness, and flexibility, be detail-oriented and able to work in a fast-paced, multi-task legal environment with ability to assess priorities. Responsible for calendaring all deadlines. Must have a high school diploma, or equivalent, and a minimum of three (3) years' experience as a legal assistant, proficient with Microsoft Office products and have excellent typing skills. Paralegal skills a plus. Firm offers comprehensive benefits package and competitive salary. Please send resume to jobs@rodey.com with "Legal Assistant - Santa Fe" in the subject line, or mail to Human Resources Manager, PO Box 1888, Albuquerque, NM 87103.

Public Finance Paralegal

Sutin, Thayer & Browne is looking to hire a full-time Public Finance Paralegal. Please visit our website for full job description, <https://sutinfirm.com/our-firm/careers/>. Competitive salary and full benefits package. Send resume to sor@sutinfirm.com.

Communications Coordinator

The State Bar of New Mexico seeks applications for a full time Communications Coordinator to assist with the production of our print and digital publications, media relations efforts, copyediting, and creation of marketing materials. Successful applicants will have superb communications skills, high attention to detail, copyediting skills, and a working knowledge of Adobe InDesign. Experience with other Adobe Creative Cloud programs, media relations experience, and spokesperson experience a plus. \$16-\$18 per hour, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter, resume and two writing samples to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

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 \$20.69 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$21.71 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Paralegal/Legal Assistant

Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be friendly, honest, highly motivated, well organized, detail oriented, proficient with computers and possess excellent verbal and written skills. Duties include requesting & reviewing medical records, send out Letter of Protection & Letter of Representation, opening claims with insurance companies and preparing demand packages as well as meeting with clients. We are searching for an exceptional individual with top level skills. We offer a retirement plan funded by the firm, health insurance, paid vacation, and sick leave. Salary and bonuses are commensurate with experience. Please submit your cover letter and resume to personalinjury2905@gmail.com

Legal Assistant

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

Paralegal

Hatcher Law Group, PA seeks a Paralegal with three plus years civil litigation experience (i.e. insurance defense, workers compensation, employment and civil rights) for our downtown Santa Fe office. We are looking for a motivated individual who is well organized, detail oriented and a team player. A paralegal certificate is required. Proficiency in Word, Microsoft 365, Westlaw and Adobe Pro. Salary contingent upon experience, plus benefit package. Send your cover letter and resume via email to juliez@hatcherlawgroupnm.com

Service

Forensic Genealogist

Certified, experienced genealogist: find heirs, analyze DNA tests, research land grants & more. www.marypenner.com, 505-321-1353.

Miscellaneous

Search for Will

Seeking information concerning the Will of Sharon A Jones and of Sam P Jones, Placitas, NM. Contact Richard Gale 307-689-3736

For Sale - NM Statutes Annotated

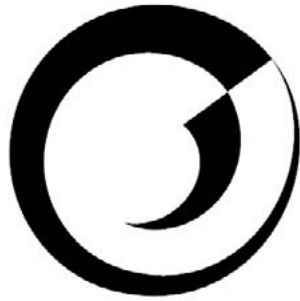
West's NM Statutes Annotated- Supplemented to 2019. \$300 or best offer. You pick up. 575-644-5165.

Want To Purchase

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

Moving Sale

Office Furniture for sale, desks, file cabinets, shelves, conference room tables, chairs, décor, and binderteks. Please contact Desiree O'Cleireachain, Office Manager at 505-888-4357 or by email at dmo@carterlawfirm.com for details.



ALB

PAIN MANAGEMENT & SPINE CARE

www.albpainclinic.com

ALB Pain Management & Spine Care (APMSC) is dedicated to the diagnosis and treatment of pain conditions related to an automobile accident. APMSC specializes in interventional pain medicine and neurology. Our providers are dedicated to restoring the health and comfort of our patients. Our mission is to provide the best evidence-based treatment options in an environment where patients will experience first-class medical care with compassionate staff.

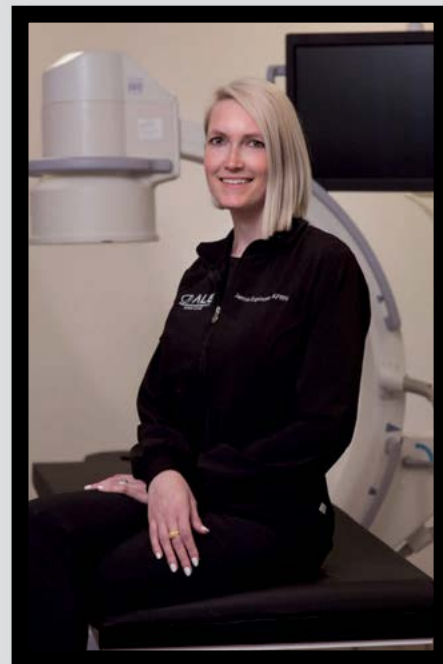
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Albuquerque, NM 87109**



Aldo F. Berti, MD

Board Certified in Pain Medicine & Neurology



Jamie Espinosa, APRN

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