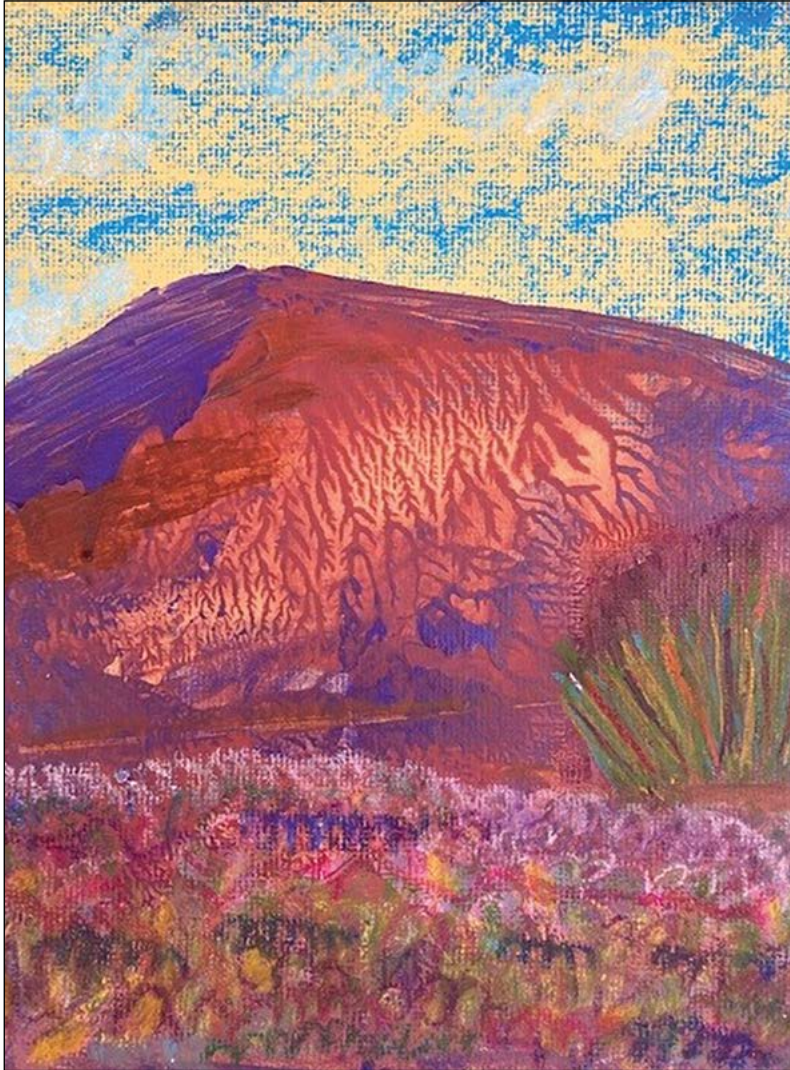


BAR BULLETIN

March 9, 2022 • Volume 61, No. 5



Untitled, by Randall V. Biggers (see page 4)

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—SPECIAL INSERT—
YLD In Brief

CLE PROGRAMMING

from the Center for Legal Education



MARCH 11

Webinar

REPLAY: Sonia Sotomayor and the US Supreme Court Approval Process (2021)

1.0 G

Noon–1 p.m.

\$49 Standard Fee

MARCH 15

Teleseminar

2022 Americans With Disabilities Act Update

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MARCH 17

Webinar

Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204

1.0 EP

Noon–1 p.m.

\$55 Standard Fee

MARCH 18

Webinar

REPLAY: Structural Impediments to Equal Pay (2021)

1.0 G

Noon–1 p.m.

\$49 Standard Fee

MARCH 22

Teleseminar

The Law Of Consignments: How Selling Goods For Others Works

1.0 G

11 a.m.–Noon

\$79 Standard Fee

MARCH 23

In-Person

“Wait, Nobody Told Me There Would Be Math!” Basic Financial Literacy for Lawyers

2.0 G

11 a.m.–1 p.m.

\$98 Standard Fee

MARCH 25

Webinar

How To Stay “Professional” When Videoconferencing: It’s Not As Hard As You Think!

1.0 EP

11 a.m.–Noon

\$89 Standard Fee

MARCH 25

Webinar

REPLAY: #WeToo: Practical Tools for Improving Gender Dynamics in the Practice of Law (2020)

1.0 EP

Noon–1 p.m.

\$49 Standard Fee

MARCH 30

Webinar

“When there are Nine”—Sexual Bias in the Legal Profession

1.0 EP

10–11 a.m.

\$89 Standard Fee

APRIL 6

Webinar

21 Proven Techniques To Control Difficult Witnesses During Cross-Examination at Trial and at Deposition

1.5 G

11 a.m.–12:30 p.m.

\$129 Standard Fee

APRIL 8

In-Person and Webcast

2022 Family Law Spring Institute: Managing High-Conflict Personalities and Cases

6.0 G

8:45 a.m.–4:15 p.m.

\$282 Standard Fee

APRIL 13

Webinar

How Secondary Trauma Affects Attorney Mental Health

1.0 EP

11 a.m.–Noon

\$89 Standard Fee

APRIL 20

Webinar

Legal Malpractice Insurance & Claims Avoidance 101

1.0 EP

11 a.m.–Noon

\$89 Standard Fee

APRIL 28

Webinar

Five Steps to Effective Online Negotiations with Marty Latz

2.0 G

10 a.m.–Noon

\$160 Standard Fee

APRIL 29

Webinar

Identifying Gender Bias: Examining the Roles of Women Attorneys in Hollywood

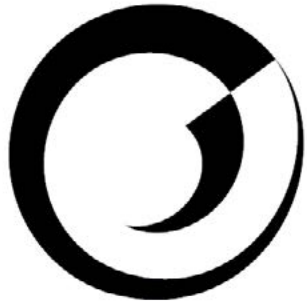
1.0 EP

11 a.m.–Noon

\$89 Standard Fee

*In-person programs subject to current public health guidelines. Should changing guidance make meeting in-person not possible, registrants will be transferred to virtual format or given a refund. All visitors to the State Bar Center are encouraged to read the latest COVID information at the CDC website and take any actions to keep themselves and others comfortable and healthy as we continue to transition out of the pandemic. NOTE: Face masks must be worn at all times in the public areas of the building, regardless of vaccination status.

Register online at www.sbnm.org/CLE or call 505-797-6020



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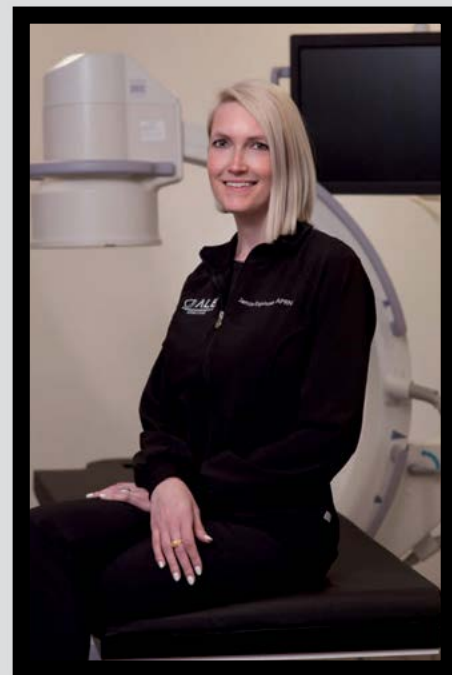
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New Mexico**
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March 9, 2022 • Volume 61, No. 5

www.sbnm.org



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Meetings

March

- 9**
Animal Law Section
noon, teleconference
- 9**
Tax Section
9 a.m., teleconference
- 10**
Children's Law Section
noon, teleconference
- 11**
Cannabis Law Section
9 a.m., teleconference
- 11**
Prosecutors Section
noon, teleconference
- 11**
Committee on Diversity in the Legal Profession
noon, teleconference
- 15**
Solo and Small Firm Section
noon, virtual and State Bar Center
- 17**
Public Law Section
noon, teleconference
- 18**
Family Law Section
9 a.m., teleconference
- 18,**
Immigration Law Section
noon, teleconference

Workshops and Legal Clinics

March

- 15**
LREP: Estate Planning, Probate and Institutional Medicaid Workshop
11 a.m., Zoom
- 23**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

April

- 6**
Divorce Options Workshops
6-8 p.m., virtual
- 27**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

May

- 4**
Divorce Options Workshops
6-8 p.m., virtual
- 25**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

June

- 1**
Divorce Options Workshops
6-8 p.m., virtual

About Cover Image and Artist: Randall V. Biggers was born in Roswell, N.M. He is a retired Peace Corps Volunteer (Afghanistan 1974-1976) and served 21 years in the foreign service. He has been actively painting for the past 10 years. Most of his work is non-objective and the rest is landscapes and collages. For more information, contact Randy at randallbiggersart@gmail.com.

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

Roll of Attorneys : Notice to Attorneys Admitted Between April 2020 and November 2021

The Supreme Court is beginning to schedule attorneys admitted in 2020 and 2021 to sign the Official Roll of Attorneys. On April 1, the Supreme Court will be holding oral argument at the Third Judicial District Court in Las Cruces. In conjunction with oral argument in Las Cruces, representatives from the Supreme Court Clerk's Office will be available for Roll signing on March 31, 2-5 p.m., and April 1, 9 a.m.-noon. Additional dates will be scheduled in Santa Fe and Albuquerque in the future. If you were admitted to the State Bar of New Mexico between April 2020 and November 2021, will be in Las Cruces on March 31 or April 1, 2022, and wish to sign the Roll of Attorneys, send an email, including your phone number, to the Supreme Court Clerk's Office (nmsupremecourtclerk@nmcourts.gov), prior to March 25.

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 1-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Third Judicial District Court Announcement of Additional Applicants

The Third Judicial District Court Judicial Nominating Commission met on Jan. 19 to recommend names to Gov. Michelle Lujan Grisham to fill a vacancy in the Third Judicial District Court that existed as of Jan. 1 due to the retirement of Judge

Professionalism Tip

With respect to my clients:

I will be courteous to and considerate of my client at all times.

Marci Beyer. The Commission considered three applicants and recommended one, Jeanne Quintero, to the Governor. On Jan. 24, the Governor asked the Commission to reconvene to send her the names of additional names people to consider in addition to Ms. Quintero. The Commission solicited additional applications, and three were received in the Judicial Selection Office by the deadline Feb. 11. In addition, the two applicants whose names were not sent to the Governor remain viable and open for consideration by the Commission. While it is not required, both applicants were also given the opportunity to re-interview upon request. Both, Robert Lara and Ramona J. Martinez-Salopek, have chosen to do so. The Commission reconvened on Feb. 24 at the Third Judicial District Court in Las Cruces. The Commission interviewed the following five people (names listed in alphabetical order): **Mickey I.R. Gutierrez, Robert Lara, Ramona J. Martinez-Salopek, Jessica Leigh Streeter and Stephanie Marie Zorie.**

STATE BAR NEWS Equity in Justice Program Have Questions?

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

New Mexico Judges and Lawyers Assistance Program NMJLAP Committee Meetings

The NMJLAP Committee will meet at 10 a.m. on April 2 and July 9. 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. The NMJLAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the le-

gal 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.

The Judicial Wellness Program

The newly established Judicial Wellness Program aids in focusing on the short-term and long-term needs of the New Mexico Judicial Community. The New Mexico Judicial Wellness Program was created to promote health and wellness among New Mexico Judges by creating and facilitating programs (educational or otherwise) and practices that encourage a supportive environment for the restoration and maintenance of overall mental, emotional, physical and spiritual health of judges. As the Judicial Wellness Project Manager, Kelly Shane is a Licensed Professional Clinical Counselor and Certified Clinical Trauma Specialist in Addiction and Crisis Prevention. Shane is highly experienced in working with children, adolescents and adults suffering from anxiety, depression, substance abuse and addiction. Shane also has significant experience working with the Juvenile Drug Court in Sandoval County. In addition to coordinating, teaching and supervising programs in the mental health field, Shane is familiar with the legal field and its' nuances having been raised in a household wherein her father was a trial lawyer for 40 years. Learn more about the program at www.sbnm.org/nmjwp.

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 505.254.3555. All resources are available to members, their families and their staff. Every call is completely confidential and free.

Free Well-Being Webinars

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff and their families. Contact the Solutions Group for resources, education, and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. Sign up for "Echopsychology: How Nature Heals" to learn about a growing body of research that points to the beneficial effects that exposure to the natural world has on health. The next webinar, "Pain and Our Brain" addresses why the brain links pain with emotions? Find out the answers to this and other questions related to the connection between pain and our brains. The final webinar, "Understanding Anxiety and Depression" explores the differentiation between clinical and "normal" depression, while discussing anxiety and the aftereffects of COVID-19 related to depression and anxiety. View all webinars at www.solutionsbiz.com or call 505-254-3555.

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.

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 an 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. 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.

The New Mexico Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness. Upcoming meetings of the Committee are 3 p.m., March 29, May 31 and July 26.

UNM SCHOOL OF LAW Upcoming CLE Courses Collaborative Family Law Spring Offering

This is an intensive one weekend "learn by doing" course offered by the UNM School of Law to members of the legal profession, community members and current upper class law students. training tools include simulations and debriefings, professional demonstrations, videotapes, small and large group discussions and guest speakers. The program will be held April 22-24: 1-5 p.m., Friday; 9a.m.-3 p.m., Saturday; and 9-11:30 a.m., Sunday, at the UNM School of Law, 1117 Stanford Dr NE, Albuquerque. The course is instructed by Kathryn Terry and Jessica Roth. Space is limited. It has been approved for CLE credit (10.0 G, 0.5 EP) and the hcost is \$525. Register at <https://lawschool.unm.edu/cle/upcoming.html>.

Judicial Philosophy: Ethics and Professionalism in Appellate Decision Making

Justice Julie Vargas, Justice Richard Bosson (ret.), Judge Jane Yohalem, Judge Michael Bustamonte (ret.), Judge M. Monica Zamora (ret.) and Chief Appellate Attorney Aletheia Allen will present "Judicial Philosophy: Ethics and Professionalism in Appellate Decision-Making from 10 a.m.-noon, March 25, via Zoom. Judicial philosophy often plays a role in judicial appointments and elections. members of the public ask candidates about their approach to the decision-making and law-making functions of the courts. The panel will delve into the ethical implications and challenges of serving on a court whose

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primary functions are error correction, statutory and regulatory interpretation, determinations of public policy, and development of common law. The cost is \$99. Register at <https://lawschool.unm.edu/cle/upcoming.html>.

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>.

Legal Education

March

- | | | |
|---|---|--|
| <p>11 REPLAY: Sonia Sotomayor and the US Supreme Court Approval Process (2021)
1.0 G
REPLAY Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 REPLAY: Structural Impediments to Equal Pay (2021)
1.0 G
REPLAY Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>25 How To Stay “Professional” When Videoconferencing: It’s Not As Hard As You Think!
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Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>15 2022 Americans With Disabilities Act Update
1.0 G
Teleseminar
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2.0 EP
Virtual
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| <p>17 Basics to Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>25 REPLAY: #WeToo: Practical Tools for Improving Gender Dynamics in the Practice of Law (2020)
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Replay Webinar
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www.sbnm.org</p> | <p>30 “When there are Nine” - Sexual Bias in the Legal Profession
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

April

- | | | |
|--|--|---|
| <p>4 The Law Of Background Checks: What Clients May/May Not “Check”
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>13 How Secondary Trauma Affects Attorney Mental Health
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22-24 Collaborative Family Law
10,0 G, 0.5 EP
In-Person
UNM School of Law
lawschool.unm.edu</p> |
| <p>6 21 Proven Techniques To Control Difficult Witnesses During Cross-Examination at Trial and at Deposition
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Webinar
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1.0 EP
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www.sbnm.org</p> | <p>28 Five Steps to Effective Online Negotiations with Marty Latz
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| <p>8 2022 Family Law Spring Institute Managing High-Conflict Personalities and Cases
6.0 G
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>22 Ethics And New Clients: Inadvertent Clients, Intake, And More
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Identifying Gender Bias: Examining the Roles of Women Attorneys in Hollywood
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

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

Opinions

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

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

Effective February 11, 2022

PUBLISHED OPINIONS

A-1-CA-36501	State v. D Muller	Affirm	02/09/2022
A-1-CA-38616	State v. J Montana	Affirm/Reverse/Remand	02/10/2022
A-1-CA-38641	M Van Buskirk v. City of Raton	Affirm	02/11/2022

UNPUBLISHED OPINIONS

A-1-CA-38315	NM Environment Dep't v. Occupational Health and Safety	Affirm/Reverse	02/07/2022
A-1-CA-39294	State v. V Jimenez	Affirm	02/07/2022
A-1-CA-39384	J Kileen v. T Didio	Affirm	02/07/2022
A-1-CA-39877	CYFD v. Brigitte P.	Affirm	02/07/2022
A-1-CA-37364	LSF9 Master Participation Trust v. J Dickinson	Affirm	02/08/2022
A-1-CA-38475	State v. L Manuelito	Affirm	02/09/2022
A-1-CA-38025	J Sanchez et al v. M Tapia Martinez	Affirm/Reverse/Remand	02/10/2022
A-1-CA-38137	State v. J Young	Affirm	02/10/2022

Effective February 18, 2022

UNPUBLISHED OPINIONS

A-1-CA-38592	K Webb v. Five Star Montebello	Affirm	02/14/2022
A-1-CA-39682	B Sharp v. L Sharp	Affirm	02/14/2022
A-1-CA-39733	State v. R Rodriguez	Affirm	02/14/2022
A-1-CA-37978	Halliburton Energy Service v. Taxation and Revenue Department	Affirm	02/15/2022
A-1-CA-39134	State v. M Bentley	Affirm	02/15/2022
A-1-CA-39028	City of Hobbs v. S Wright, Sr.	Reverse/Remand	02/16/2022
A-1-CA-39163	CYFD v. Paul G	Affirm	02/16/2022
A-1-CA-39125	CYFD v. Leticia Q	Affirm	02/17/2022
A-1-CA-39177	TD Auto Finance LLC v. A Orozco	Affirm	02/17/2022

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

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

NEW MEXICO ACCESS TO JUSTICE COMMISSION

Say Yes – How You Can Help

The New Mexico Access to Justice Commission, as a commission of the New Mexico Supreme Court, sets priorities for civil legal providers around the state, makes recommendations to the Supreme Court to improve court services, and troubleshoots legal service issues statewide as they arise. The ATJ Commission regularly provides information about issues important to civil legal needs in New Mexico in the *Bar Bulletin* to keep members of the bar up-to-date.

Last year, Daniel Chavez¹ found himself in a terrifying position. His adult daughter had unexpectedly died leaving behind her daughter and Daniel's granddaughter, Emily. While Daniel had cared for and parented Emily since she was an infant as a result of his daughter's long-time drug use, he had always had his daughter's permission and a power of attorney to allow him to take care of Emily. Emily's father had been minimally involved with her life, and had a significant history of criminal conduct, including child abuse. After the death of Daniel's daughter, he heard from Emily's father who informed him he was going to take Emily from him because she was his daughter. Emily, now 12 years old, had only known Daniel as her parent and his home was her only home. Daniel was scared and knew he had to do something to protect Emily and to give him legal authority over her...but he did not know what to do.

Through word of mouth and family recommendations, Daniel contacted attorneys, Julio Romero and Mike Hart. "We are not family law attorneys – we do personal injury and civil rights litigation – but this grandfather needed help."

Mike and Julio agreed to help Daniel and entered into a limited scope of representation agreement in which they agreed to represent him for the sole purpose of helping him seek guardianship of Emily. Also, Daniel did not have the means to pay for legal help. Mike and Julio agreed to take the case on pro bono.

As neither Mike nor Julio were experienced family law attorneys, they did what lawyers often do when they are in unfamiliar territory – they found others who do have expertise in this area to get assistance. The lawyers at Pegasus Legal Services for Children were an incredible resource who gave sample pleadings, suggestions, and pointers on the process. Julio explained, "I was a little nervous [going outside of my normal practice]. But at the end of the day, we have to put ourselves in the shoes of people like Daniel Chavez – they are even more nervous and the court process seems really scary. So, my nervousness paled in comparison to Daniel's and it encouraged me to want to step in to help".

Daniel initially contacted Mike and Julio at the beginning of June, 2021. Over the summer, evidence was collected, witness interviews were completed and by the end of September, 2021, after a full contested evidentiary hearing, the Court signed an order granting Daniel permanent Kinship Guardianship over Emily. Within just a few months, Daniel had the legal protection he needed – not just to enroll Emily in school and get her medical treatment, but to give him the ability to have police or CYFD help him should Emily's father ever attempt to take her. For Daniel, this piece of paper signed by a judge enabled Emily to have stability, consistency, and to be free from worry that she would be taken away from the only home she had always known.

"This [legal kinship guardianship] opened up a whole new way of life for my granddaughter." – Daniel Chavez

For Mike and Julio, they were able to resolve a discrete legal matter for Daniel within a relatively short period of time. "It did not feel overwhelming," Julio explained, "because we have the right culture here at the firm." For Mike and Julio, having partners who believe pro bono work is important eased the stress as it became a priority case within the office where other lawyers would have no problem stepping in and covering other matters to ensure the demands of this case were met.

"Working on a case outside of my general practice actually helped with my other cases. In going back to studying and learning a particular statute from the beginning, I gained a different perspective which carried over to the way I thought about and worked on my other cases." – Julio Romero

This pro bono case, despite not ultimately requiring a lot of work and time, became very important to Mike, Julio and their firm. "We spend a lot of our time working on civil rights and personal injury matters and typically are retained after terrible things have already happened. Helping Daniel obtain legal protection for Emily and giving him that legal status made us feel like we were working to prevent a bad thing from happening to this child." According to Mike, with more lawyers providing help like this to children who need safe homes, fewer children are at risk of abuse and neglect.

¹ The names have been changed in this publication to protect the privacy of this family. This publication was published with the permission of the family.

How Can I Help?

1. Sign up with the Volunteer Attorney Program (“VAP”).

This is a program run by New Mexico Legal Aid in partnership with the State Bar of New Mexico and New Mexico’s 13 Judicial District Pro Bono Committees that coordinates private attorneys to volunteer to provide free civil legal services to low-income New Mexicans. Contact the VAP at 1-866-416-1922.

2. Say “yes”.

When you are contacted by a person in need of civil legal services at work or through your community, don’t immediately respond with “I don’t do that kind of law.” Consider whether, with the support of persons who have expertise in this area, this is something that you could do and truly bring some relief to this person. Resources to help you navigate legal issues involving family law, landlord-tenant/housing, public benefits, expungement, unemployment, consumer/bankruptcy, wills/probate, contracts, and immigration can be found at:

<https://www.sbnm.org/For-Public/Other-Legal-Service-Providers>

3. Support Your Partners/Associates.

Create a culture at your office in which pro bono legal assistance is part of the everyday practice at the firm. When the lawyers at your office know that pro bono cases are treated with the same importance as the fee-generating cases, they will better serve our community and will do it well.

“As attorneys, we are given special access to a system that can dramatically improve the lives of people in our community. We have a duty to acknowledge our privilege and use it to help those in need.” – Mike Hart



ASK AMANDA!

Do you have specific questions about equity and inclusion in your workplace or in general?

Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to www.sbnm.org/eij, click on the Ask Amanda link and submit your question.

No question is too big or too small!



State Bar of
New Mexico
Est. 1886

2022 ANNUAL MEETING

Members Said...

“

Need to add something to encourage attendance. Practice group sponsors, type of practice (government attorneys, etc.). Provide something in common for those who are new or attending solo.

”

We Listened...

This year we will be offering:

Practice Law Institutes

- We are proud and excited to be hosting the Public Law and Cannabis Law Section Practice Institutes during the conference. Members of the sections will receive major discount (up to 50% off) in their registration fees.

First Timers Rebate Scholarships

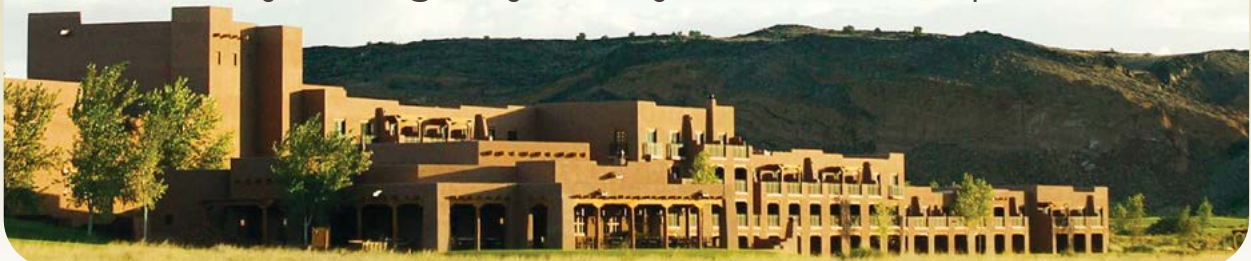
- For the first time ever, we'll be offering rebate scholarships to first time attendees! In order to expand our audience and improve professional development for our members, we will be partnering with specific practice sections and divisions to provide rebate scholarships. Raffle winners will receive a reimbursement for at least half of their registration fees!

Early Bird/Registration Categories

- We will continue to offer other incentives and registration categories (government, young lawyers and paralegals). Early Bird will only be available for the month of April so set your reminders now!

August 11-13, 2022

Hyatt Regency Tamaya Resort and Spa




Do you have federal student loans?



- ▶ In March 2020, the federal government suspended all loan payments and set interest rates to 0% on federal student loans.
- ▶ This federal student loan forbearance ends on **MAY 1, 2022**.

What do I need to do now to get ready to resume payments on my student loans?



- ▶ Update your contact information on both your loan servicer's website and on your StudentAid.gov profile.
- ▶ Check to see if the repayment plan you were enrolled in prior to federal student loan forbearance still meets your needs.
 - ▶ If you were previously enrolled in autopay, you may need to re-enroll.
- ▶ If you are enrolled in an income-driven repayment (IDR) plan and you have had any change in financial or family situation since March of 2020, visit StudentAid.gov to request a recalculation of your payment.
 - ▶ StudentAid.gov has a new Loan Simulator tool help you figure out what payment plan is best for you!
- ▶ Your loan servicer is required to give you a 21-Day advance payment of when your first payment is due – including principal and interest

What if I graduated law school after March 2020 and have not yet made a payment on my student loans?



- ▶ When you graduate or leave school, you typically have a six-month grace period before you are required to start making payments.
- ▶ You should have been assigned a student loan servicer and automatically enrolled in a standard repayment plan.
- ▶ If you are not sure who your servicer is or want to change your repayment plan, you can do so via your StudentAid.gov account.

What if I am working towards Public Service Loan Forgiveness (PSLF)?



- ▶ PSLF is a federal program that forgives student loan debt for borrowers who work full-time for a government or non-profit and have made 120 qualifying payments on their student loans.
- ▶ **The Department of Education recently enacted new rules for the PSLF program.**
 - ▶ Student loan borrowers have until **October 22, 2022** to apply for credit for past payments on loans that would not otherwise qualify for PSLF.
 - ▶ There are two requirements for eligibility for the limited waiver: 1) you must have worked full-time for a qualifying employer while you made the payments and 2) your loans must be consolidated into the Direct Loan program.
 - ▶ Learn more at <https://studentaid.gov/announcements-events/pslf-limited-waiver>.

Questions or Concerns About Your Federal Student Loans?



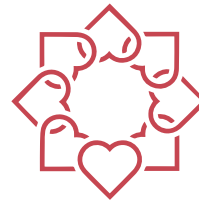
- ▶ The Department of Education has a Federal Student Aid Ombudsman Group available to provide technical assistance for concerns with student loans. Contact the Ombudsman at 1-877-557-2575.
- ▶ For more on budgeting and managing your student loan repayment, visit the NM Young Lawyers Division's Student Loan Debt Resource Page at <https://tinyurl.com/fakm55kk>

**Feeling overwhelmed about the coronavirus?
We can help!**

FREE SERVICE FOR MEMBERS!



State Bar of New Mexico
Judges and Lawyers
Assistance Program



The
Solutions
Group

Employee Assistance Program

*Get help and support for yourself,
your family and your employees.
FREE service offered by NMJLAP.*

Services include up to four **FREE** counseling sessions/issue/year for ANY mental 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, video counseling, and 24X7 call center. Providers are located throughout the state.

To access this service call 866-254-3555 and identify with NMJLAP.
All calls are **CONFIDENTIAL**.

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www.sbnm.org

To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.
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Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
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CLERK'S CERTIFICATE OF LIMITED ADMISSION

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Rules/Orders

From the New Mexico Supreme Court

<http://nmsupremecourt.nmcourts.gov>

NOTICE OF PUBLICATION FOR COMMENT

PROPOSED AMENDMENTS TO SUPREME COURT RULES OF PRACTICE AND PROCEDURE

MARCH 7, 2022

In accordance with the Supreme Court's annual rulemaking process under Rule 23-106.1 NMRA, which includes an annual publication of proposed rule amendments for public comment every spring, the following Supreme Court Committees are proposing to recommend for the Supreme Court's consideration proposed amendments to the rules of practice and procedure summarized below. To view the text of a proposal, you may click on its corresponding proposal number below. To comment on the proposed amendments summarized below before they are submitted to the Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's website at supremecourt.nmcourts.gov/open-for-comment.aspx, by email to nmsupremecourtclerk@nmcourts.gov, by fax to 505-827-4837, or by mail to

Sally A. Paez, Deputy Clerk
New Mexico Supreme Court
P O Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before April 6, 2022, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Board of Bar Commissioners

Proposal 2022-003 - Professional practice program
[New Rule 24-112 NMRA]

The New Mexico Board of Bar Commissioners recommends that the Supreme Court adopt a new rule to establish the Professional Practice Program, which is designed to support best practices and promote compliance with professional obligations by lawyers admitted to practice law in New Mexico.

Children's Court Rules Committee

Proposal 2022-004 - Fostering Connections Act proceedings
[Rules 10-101, 10-103, 10-121, and 10-345; New Rules 10-360, 10-801, and 10-802 NMRA; and new Forms 10-901, 10-902, 10-903, 10-904, 10-905, 10-906, 10-907, and 10-908 NMRA]

On September 28, 2021, the Supreme Court provisionally approved the Children's Court Rules Committee's proposal to adopt rule amendments and new rules and forms for use in proceedings under the Fostering Connections Act. The purpose of the Act, which was passed in 2019 and amended in 2020, is to provide ongoing support and services for young adults who age out of the foster care system without permanency. The rule amendments and new rules and forms took effect on November 12, 2021. The Court seeks public comment on the provisionally adopted rule amendments, new rules, and new forms.

Code of Professional Conduct Committee

Proposal 2022-005 - Practice by foreign lawyers
[Rules 16-505 and 24-106 NMRA]

The Rules of Professional Conduct Committee proposes to amend Rules 16-505 (unauthorized practice of law; multi-jurisdictional practice of law) and 24-106 NMRA (practice by nonadmitted lawyers) so that the rules provide a consistent description of a foreign lawyer. As amended, both rules would describe a foreign lawyer as one who is "authorized to practice law in another United States jurisdiction or before the highest court of record in any country." The proposal would allow limited practice by foreign lawyers who comply with the remainder of the applicable rules.

Domestic Relations Rules Committee

Proposal 2022-006 - Objection to recommendation of special commissioner or hearing officer
[Rules 1-053.1 & 1-053.2 NMRA]

The Domestic Relations Rules Committee proposes amendments to the provisions

governing a party's objection to the recommendations of a domestic violence special commissioner or a domestic relations hearing officer. The amended rules enumerate what must be included in a party's objection and further clarify the district court's process and standard of review when an objection to the recommendations has been raised.

Proposal 2022-007 - Kinship Guardianship Act

[New Rules 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, and 1-156 NMRA; Forms 4A-501, 4A-502, 4A-503, 4A-504, 4A-505, 4A-506, 4A-507, 4A-508, 4A-509, 4A-510, 4A-511, 4A-512, and 4A-513 NMRA; and new Forms 4A-514, 4A-415, 4A-516, and 4A-517 NMRA]

The Domestic Relations Rules Committee proposes that the Court approve new rules, amended forms, and new forms to govern the process for kinship guardianship cases when a child's parent has signed a voluntary placement agreement with CYFD. The proposed amendments correspond to legislative modification of the Kinship Guardianship Act in 2020, which, among other things, provided subsidies for guardians who enter into a guardianship assistance agreement with CYFD. See NMSA 1978, §§ 40-10B-1, -3, -8, -16, -18-21 (2020). The goal of the proposal is to provide guidance for all parties to a guardianship, whether that guardianship is a private agreement between the parent and guardian or whether the guardianship is the result of an agreement between the guardian and CYFD.

Local Rules

Proposal 2022-008 - Local rules for the First Judicial District

[LR1-102, LR1-104, LR1-106, LR1-108, LR1-111, LR1-112, LR1-113, LR1-114; LR1-201, LR1-202, LR1-302, LR1-401, LR1-403, and LR1-404 NMRA; recompiled and amended LR1-116 NMRA; new LR1-117, LR1-406, LR1-407, LR1-408, LR1-409, LR1-410, and LR1-411 NMRA; and new LR1-Form 701, LR1-Form 702, LR1-Form 703, LR1-Form 704A, LR1-Form 704B NMRA]

The First Judicial District Court asks the Supreme Court to approve amendments to the existing Rules of the District Court

of the First Judicial District, and to adopt new local rules and local forms for use in the district.

Rules of Criminal Procedure for State Courts Committee

Proposal 2022-009 - Preliminary examination timing and witness testimony
[Rules 5-201, 5-302, 6-202, and 7-202 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend the rules regarding preliminary examination in the trial courts in several ways. First, the amendments would clarify that the preliminary examination must be concluded and a disposition entered within the time limits of Rules 5-302, 6-202, and 7-202 NMRA. The time limits are calculated from the latest-occurring of several triggering events. The amendments would add a provision to trigger the time limits in a case that has been dismissed and refiled by the prosecutor and would clarify how the revocation or modification of the conditions of release affect the time limits. Second, amendments to Rules 5-302, 6-202, and 7-202 NMRA would permit witnesses to appear by audio-visual communication under “compelling circumstances.” Finally, the proposal would amend Rule 5-201 NMRA and would add committee commentary to Rules 6-202 and 7-202 NMRA to clarify that “[a]ny offenses that are included in the bind-over order but not set forth in the criminal information shall be dismissed without prejudice” by the district court.

Proposal 2022-010 - Evidence at preliminary examination
[New Rule 5-302.1 NMRA; recompiled Rules 5-302.2 and 5-302.3 NMRA, and recompiled and amended Rules 6-202.1 and 7-202.1 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend existing magistrate and metropolitan court Rules 6-608 and 7-608 NMRA to expand the exceptions to the Rules of Evidence that apply to preliminary examinations in limited jurisdiction courts. The committee also proposes to adopt a new Rule 5-302.1 NMRA to create consistent exceptions for preliminary examinations in the district court. Finally, this proposal would recompile the following four rules:

Rules 5-302A and 5-302B as Rules 5-302.2 and 5-302.3 NMRA, and Rules 6-608 and 7-608 NMRA as Rules 6-202.1 and 7-202.1 NMRA.

Proposal 2022-011 - Order on probation violation hearing
[Forms 9-618, 9-619, and 9-620 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to combine three closely related probation violation forms used in the magistrate and municipal courts into a single combined form, Form 9-618 NMRA, entitled Order on Probation Violation Hearing, and to withdraw Forms 9-619 and 9-620 NMRA.

Proposal 2022-012 - Redaction of witness information
[New Rules 5-502.1, 6-504.1, 7-504.1, and 8-504.1 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes the adoption of new rules for district, magistrate, metropolitan and municipal courts that would permit parties to redact from discovery the personal identifier and contact information of witnesses and victims to avoid disclosure of that information to the defendant and the public. If the proposal is adopted, complete, unredacted discovery must still be provided to opposing counsel.

Proposal 2022-013 - Undeliverable summons
[Rules 5-209, 6-205, 7-205, and 8-204 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend the district, magistrate, and metropolitan court rules that address the issuance of summons to avoid a situation where a defendant has not received the summons for the initial appearance and, as a result, is arrested and jailed on a warrant. The amendments would grant the trial court discretion to make exceptions for a defendant’s failure to appear at the initial appearance when a mailed summons has been returned as not delivered. In such a case, the court may direct personal service, issue a no-bond warrant so the defendant may be booked and released on recognizance, or cancel or quash an existing warrant and suspend the bench warrant fee.

Rules of Evidence Committee

Proposal 2022-014 - Pretrial notice; other crimes, wrongs, or acts
[Rule 11-404 NMRA]

The Rules of Evidence Committee proposes amendments to Rule 11-404 NMRA based on a 2020 amendment to Federal Rule of Evidence 404(b). The amendments would clarify the notice requirement for the use of evidence of other crimes, wrongs, or acts in a criminal case. Under the amended rule, the prosecution must provide reasonable notice in writing before trial and “articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose.” The prosecution may give notice in any form during trial if good cause exists to excuse the lack of pretrial notice.

Proposal 2022-015 - Ancient documents
[Rule 11-803 NMRA]

The Rules of Evidence Committee proposes an amendment to Rule 11-803(16) NMRA based on a 2017 amendment to Federal Rule of Evidence 803(16). The proposal would change the definition of ancient document from one “that is at least twenty (20) years old” to one “that was prepared before January 1, 1998.”

Uniform Jury Instructions-Civil Committee

Proposal 2022-016 - Conduct of jurors
[UJI 13-110 NMRA]

The Uniform Jury Instructions - Civil Committee proposes amendments to the introductory instruction given in civil jury trials. The amendments are aimed at improving the jury’s comprehension of permitted conduct during trial. In particular, the amendments would revise the seventh paragraph to be more detailed and explicit in instructing jurors not to use electronic resources, including internet sites and social media, to comment on or obtain information about the parties, witnesses, counsel, or issues in the case.

Proposal 2022-017 - Whistleblower Protection Act

[New UJIs 13-2321, 13-2322, 13-2323, 13-2324, 13-2325, 13-2326, and 13-2327 NMRA]

The Uniform Jury Instructions - Civil Committee proposes the adoption of a set of new jury instructions, a special verdict form, and committee commentary for use in claims under the Whistleblower Protection Act (WPA), NMSA 1978, §§ 10-16C-1 to -4 (2010). The instructions explain the elements of a WPA claim and provide guidance on particular elements that may be disputed in a given case, as well as provide instruction on the statutory affirmative defense, *see* § 10-16C-4.

Uniform Jury Instructions-Criminal Committee

Proposal 2022-018 - Incompetency and insanity

[UJIs 14-5101, 14-5104, 14-6011, 14-6014 NMRA]

The Uniform Jury Instructions - Criminal Committee proposes to update the essential elements of the insanity instruction (UJI 14-5101) and the determination of competency instruction (UJI 14-5104), along with related instructions, to conform to precedent. Specifically, the amendments would align the competency instruction with the Supreme Court's guidance in *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691 (reiterating the test for competency laid out in *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 133 N.M. 246, 923, P.2d 10131), and would update the

insanity instruction to reflect *State v. White*, 1954-NMSC-050, ¶ 10, 58 N.M. 324, 270 P.2d 727 (explaining that “insanity . . . is a true disease of the mind, normally extending over a considerable period of time, as distinguished from a sort of momentary insanity arising from the pressure of circumstances.”).

Proposal 2022-019 - Aggravated fleeing a law enforcement officer

[UJI 14-2217 NMRA]

The Uniform Jury Instructions - Criminal Committee proposes to update the aggravated fleeing instruction in response to the holding of *State v. Vest* that a defendant can be convicted of aggravated fleeing a law enforcement officer if the defendant drives in a dangerous manner while fleeing, regardless of whether there is another person in the vicinity of the police pursuit. 2021-NMSC-020, ¶ 6, 488 P.3d 626. The amendments would modify the second element of the instruction to encompass willful and careless conduct that endangered “or could have endangered the life of another person.” The committee also proposes to expand the commentary to include the Supreme Court’s guidance in *Vest* that the focus of the crime is on the social harm of the defendant’s conduct and not the particular result of that conduct.

Proposal 2022-020 - Escape from jail & inmate release programs

[UJI 14-2221 NMRA; new UJIs 14-2228A, 14-2228B, and 14-2228C NMRA; and withdrawn UJI 14-2228 NMRA]

The Uniform Jury Instructions - Criminal Committee proposes to update the use

notes and commentary of the escape from jail instruction (UJI 14-2221) and to adopt three new instructions specifically addressing escape from a jail release program (UJI 14-2228A), escape from a penitentiary release program (UJI 14-2228B), and escape from a community custody release program (UJI 14-2228C).

Proposal 2022-021 - Falsification of documents

[UJI 14-4402 NMRA]

The Uniform Jury Instructions - Criminal Committee proposes to amend the falsification of documents instruction and commentary to ensure that the jury is instructed on the definition of “material fact.” Under the amended instruction, a “material fact is a fact that is integral to the right to Medicaid payments and that has a natural tendency to influence the Human Services Department to pay for [services].”

Proposal 2022-022 - Failure to appear

[UJI 14-2229 NMRA]

The Uniform Jury Instructions - Criminal Committee proposes to modify the first element of the failure to appear instruction to include the severity of the charges in the underlying proceeding where the defendant failed to appear, in conformance with NMSA 1978, Section 31-3-9 (1999).

The proposed rule amendments summarized above can be viewed in their entirety at the New Mexico Supreme Court website at supremecourt.nmcourts.gov/open-for-comment.aspx.

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-004

No. S-1-SC-37938 (filed November 1, 2021)

STATE OF NEW MEXICO,
Plaintiff-Respondent,,
v.
JULIAN A. MARTINEZ,
Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Robert A. Aragon, District Judge

Released for Publication February 22, 2022.

Bennett J. Baur, Chief Public Defender
Charles Agoos, Assistant Appellate
Defender
Santa Fe, NM

for Petitioner

Hector H. Balderas, Attorney General
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Assistant Attorney General
Santa Fe, NM

for Respondent

OPINION

THOMSON, Justice

{1} In this opinion, we clarify that the return of a jury's guilty verdict does not divest a district court of its inherent authority to determine whether the evidence presented at trial was legally insufficient to support a conviction. We also conclude that the State may appeal such a determination without offending the principles of double jeopardy. We reverse and remand to the Court of Appeals for further proceedings to consider the sufficiency of the evidence.

I. BACKGROUND

{2} The Court of Appeals determined, without actually reviewing the sufficiency of the evidence, that the district court did not have the authority to review the sufficiency of the evidence after it accepted the jury's verdict. *See State v. Martinez*, A-1-CA-37798, mem. op. ¶¶ 1-3 (N.M. Ct. App. Sept. 16, 2019). Therefore, we recount only the facts relevant to whether the district court had authority to rule as it did, which are minimal and, primarily, procedural.

{3} Defendant Julian A. Martinez was charged with committing multiple crimes, including criminal sexual penetration, battery against a household member, and

false imprisonment. At trial, the district court denied Defendant's motion for a directed verdict, determining that there was sufficient evidence presented to submit the questions of guilt on five counts to the jury. The jury returned two guilty verdicts, convicting Defendant of criminal sexual penetration and battery against a household member, and the district court accepted the verdicts. Two days later, on its own motion, the district court vacated both convictions, concluding that the State failed to establish that Defendant was the person who committed the crimes. The State appealed.

{4} The Court of Appeals summarily reversed the district court in a nonprecedential, memorandum opinion, relying almost entirely on language quoted from *State v. Torrez*, 2013-NMSC-034, ¶ 10, 305 P.3d 944: "A district court does not have the authority to override a jury's verdict and enter a verdict different than that handed down by the jury." *Martinez*, A-1-CA-37798, mem. op. ¶¶ 2-3. Defendant petitioned this Court for certiorari review, which we granted. *See* Rule 12-502 NMRA (providing for "review of decisions of the Court of Appeals"). We now determine whether a district court's authority to review the sufficiency of the evidence ends when the jury returns a verdict. We conclude it does not.

II. ANALYSIS

{5} Whether a district court has the authority to determine the evidence was insufficient postverdict is a legal question we review de novo. *See State v. Gonzales*, 2005-NMSC-025, ¶ 21, 138 N.M. 271, 119 P.3d 151 (observing that questions which "require a court to exercise judgment about the values that animate legal principles" or "consider abstract legal doctrines" and "balance competing legal interests" are subject to de novo review (internal quotation marks and citations omitted)); *State v. Frank*, 2002-NMSC-026, ¶10, 132 N.M. 544, 52 P.3d 404 (observing that "matters of law," such as whether a court has the authority to act, are reviewed de novo (internal quotation marks and citation omitted)).

{6} The New Mexico Rules of Criminal Procedure "are intended to provide for the just determination of criminal proceedings [and] shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." Rule 5-101(B) NMRA. These rules are applied with an understanding of a court's "inherent power to see that a [defendant's] fundamental rights are protected in every case" and that "[every] court has the power, in its discretion, to relieve [a defendant of the error] and to see that injustice is not done." *State v. Cunningham*, 2000-NMSC-009, ¶ 12, 128 N.M. 711, 998 P.2d 176 (internal quotation marks and citation omitted). "Because a court's inherent power is at the core of judicial authority, it is the province of this Court to define the contours of that power." *State ex rel. N.M. State Highway and Transp. Dep't v. Baca*, 1995-NMSC-033, ¶ 20, 120 N.M. 1, 896 P.2d 1148.

{7} With this in mind, we conclude that nothing in *Torrez* or the cases upon which the State relies alters a district court's inherent authority to determine that the evidence presented was legally insufficient to sustain a conviction. *See Martinez*, A-1-CA-37798, mem. op. ¶¶ 2-3. This conclusion does not alter, but rather strengthens, two requirements of our Rules of Criminal Procedure: (1) A district court's duty to examine the sufficiency of the evidence prior to submitting a question of guilt to the jury and (2) the prohibition of a district court from invading the fact-finding province of a jury. *See* Rule 5-607(E), (K) NMRA (establishing the "order of trial" and providing that "out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made"); Rule 5-701(A) NMRA ("If the defendant is found guilty, a judgment of guilty shall be rendered. If the defendant has been acquitted, a judgment of not guilty shall be rendered.").

{8} Whether the evidence is sufficient to sustain a verdict is a question that “may and should be raised by the court of its own motion, if necessary to prevent a miscarriage of justice.” *Ansley v. United States*, 135 F.2d 207, 208 (5th Cir. 1943).

A. A Court’s Inherent Authority to Render a Postverdict Decision on the Sufficiency of the Evidence Is Not Limited by New Mexico Precedent

{9} The State maintains that *Torrez* bars the district court’s sufficiency review once the jury has returned a guilty verdict. The State also argues that our Rules of Criminal Procedure as construed by *State v. Davis*, 1982-NMCA-057, 97 N.M. 745, 643 P.2d 614, and *State v. Willyard*, 2019-NMCA-058, 450 P.3d 445, similarly bar such review. We disagree, as the proper application of these cases depends on the procedural context in which they are applied and none of the cases relied upon by the State answer the question raised here. We address each separately.

1. *Torrez*—invasion of the province of the jury

{10} The holding in *Torrez* resulted from a defendant’s second appeal following a second trial. See *Torrez*, 2013-NMSC-034, ¶ 5. “In his first trial, [the d]efendant was charged with first degree murder under two alternative theories: felony murder and depraved mind murder.” *Id.* ¶ 6; see also *NMSA 1978, § 30-2-1(A)* (1994) (establishing three possible theories of first-degree murder: willful, deliberate, and premeditated; felony; or depraved mind). The jury convicted *Torrez* under a general verdict, which meant that it “did not specify whether its verdict was based on felony murder, depraved mind murder, or both.” See *Torrez*, 2013-NMSC-034, ¶ 10. Disregarding the nature of a general verdict, the district court entered a judgment indicating Defendant committed first-degree (felony) murder but did not commit first-degree (depraved mind) murder. *Id.* ¶¶ 6, 10. The propriety and effect of entering a judgment specifying a single alternative theory of conviction after a jury returns a general verdict based on more than one alternative was not raised by either party or addressed as part of the first appeal. See *State v. Torrez*, 2009-NMSC-029, ¶ 1, 146 N.M. 331, 210 P.3d 228 (enumerating the issues raised on appeal). Instead, the convictions were reversed because of wrongly admitted “expert testimony.” *Id.* ¶ 34.

{11} In *Torrez*’s second appeal following retrial, he advanced a double jeopardy claim and argued that he could not be retried for depraved mind murder because the district court’s prior judgment indicated he had been acquitted. *Torrez*, 2013-NMSC-034, ¶ 8. This Court held that a district court cannot select one theory of conviction and acquit a defendant of the alternative theories when a jury renders a general verdict because a district court “[cannot] know under which theory [a defendant is] convicted” and “does not have the authority to override a jury’s verdict and enter a verdict different than that handed down by the jury.” *Id.* ¶¶ 6, 9-10. Thus, the issue in *Torrez* was procedurally and substantively different from the issue in this case. Entering a different verdict in the context presented by *Torrez* invades the province of the jury. *Id.* ¶ 10; see Rule 5-701(A); cf. *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 (providing that it is the province of the jury to determine the credibility of witnesses and the weight of the evidence to arrive at a verdict).

{12} However, in this case, the province of the jury was not invaded. Rather than assessing witness credibility or weighing evidence, the district court considered the evidence supporting the conviction and applied the proper standard to determine the evidence was legally insufficient. See *State v. Galindo*, 2018-NMSC-021, ¶ 12, 415 P.3d 494 (reiterating the applicable appellate standard for reviewing the legal sufficiency of the evidence). Thus, we reject the application or expansion of the holding in *Torrez* to this case. We next address *Davis*, on which *Torrez* relied and which the State argues supports affirming the Court of Appeals.

2. *Davis*—application of Rule 5-607 and Rule 5-701

{13} The State maintains that the Court of Appeals’ decision is supported by *Davis*, which concluded that “[t]he trial court did not comply with its mandatory duty to rule on the sufficiency of the evidence.” 1982-NMCA-057, ¶ 11. The *Davis* Court then summarily applied two procedural rules to affirm the defendant’s conviction. *Id.* ¶¶ 13-15. Like *Torrez*, the application of *Davis* to this case is not justified.

{14} In *Davis*, the district court took a motion for directed verdict under advisement. *Id.* ¶¶ 9-12. After the jury returned a guilty verdict, the district court determined that the defendant’s postverdict motion

“for a judgment of acquittal notwithstanding the verdict . . . was ‘well taken’ and entered a judgment of not guilty.” *Id.* ¶ 1. The *Davis* Court concluded that error resulted because the district court failed to follow Rule of Criminal Procedure 40, the precursor to Rule 5-607, which then governed the order of trial and established a district court’s “mandatory duty to rule on the sufficiency of the evidence” prior to submitting the question of guilt to the jury.¹ *Davis*, 1982-NMCA-057, ¶ 12. The *Davis* Court similarly concluded that Rule of Criminal Procedure 40 did not allow for motions for directed verdict to be taken under advisement. See *Davis*, 1982-NMCA-057, ¶ 14. That conclusion also avoids due process concerns, which could be raised by the failure to comply with the “mandatory duty to rule on the sufficiency of the evidence” prior to submitting the question of guilt to the jury. See *id.* ¶ 10. Massachusetts, for example, has found that a district court violates a “defendant’s right to due process” when it reserves ruling on a motion for directed verdict and then grants the motion after a jury returns a verdict of guilty. *Commonwealth v. Yasin*, 132 N.E.3d 531, 535, 540, 542-543 (Mass. 2019) (“When the judge reserved decision on the defendant’s motion for a directed verdict at the close of the Commonwealth’s case, she deprived the defendant of his right to insist that the Commonwealth prove each element of murder beyond a reasonable doubt before he decided whether to rest or to present a defense.”).

{15} We agree with the *Davis* Court’s interpretation of Rule of Criminal Procedure 40 and Rule of Criminal Procedure 46, now codified as Rule 5-607 and Rule 5-701, respectively,² that a district court may not decline to rule on a motion for directed verdict, submit the question of guilt to the jury, and then simply “enter a judgment of not guilty.” *Davis*, 1982-NMCA-057, ¶¶ 1, 13, 14. This opinion does not disturb the conclusion in *Davis*. When a district court reweighs the evidence, the court violates the rule of criminal procedure that establishes the exclusive province of the jury as fact-finder. See *Davis*, 1982-NMCA-057, ¶ 15 (“The trial court’s noncompliance with Rule of Crim. Proc. 46 requires a reversal of its judgment of not guilty.”); see also Rule 5-701(A). The State wants this Court to expand *Davis* to prohibit a district court from not only reweighing the evidence, but also from making a legal determination on the sufficiency of the evidence.

¹ Rule of Criminal Procedure 40 cited in *Davis*, 1982-NMCA-057, ¶ 14, is virtually identical to the rule as it is now codified. Compare Rule of Crim. Proc. 40(e), (k) (1975) (requiring that “the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made” at the close of the state’s case and prior to instructing the jury at the close of evidence), with Rule 5-607(E), (K) (same).

² “Rule of Crim. Proc. 46 state[d]: If the defendant is found guilty, a judgment of guilty shall be rendered.” *Davis*, 1982-NMCA-057, ¶ 13. This rule is identical to the current rule, which is before this Court in this case. See Rule 5-701(A); see also ¶ 14 n.1, supra.

However, neither *Davis* nor Rule 5-607 nor Rule 701(A) prohibits a court from considering the sufficiency of the evidence after the jury returns a verdict.

{16} It is crucial to note the *Davis* Court was asked and specifically declined to resolve the question we answer today, whether a district court has the inherent authority to review the sufficiency of the evidence after the jury verdict is returned. The *Davis* Court concluded that “it [was] unnecessary to decide whether, apart from the Rules of Criminal Procedure, a judgment notwithstanding the verdict [was] authorized.” 1982-NMCA-057, ¶¶ 5-6.

{17} A court’s inherent authority to examine the sufficiency of the evidence before a case is submitted to the jury and to review the sufficiency of the evidence post-verdict serves and balances two purposes. First, it fulfills a district court’s “mandatory duty to rule on the sufficiency of the evidence”; second, it preserves the state’s right to appeal. See *Davis*, 1982-NMCA-057, ¶ 12 (“The trial court did not comply with its mandatory duty to rule on the sufficiency of the evidence.”); *State v. Baca*, 2015-NMCA-021, ¶ 21, 352 P.3d 1151 (observing that the state loses the right to appeal a district court’s acquittal of a defendant by determining there is insufficient evidence prior to submitting the question of guilt to the jury “even where the determination of insufficiency of evidence results from an erroneous evidentiary ruling”); see also *Yasin*, 132 N.E.3d at 535, 542 (determining that reserving ruling on a motion for directed verdict until after a verdict is rendered violates due process and, if allowed to stand, deprives a state of the right to appeal the issue of sufficiency). Here the district court complied with its mandatory duty and preserved the issue of sufficiency for appeal.

{18} The district court accepted the jury’s verdict and made a legal determination on the sufficiency of the evidence, using the standard applicable on appeal, and importantly, providing its reasoning that the State failed to provide sufficient evidence to identify Defendant as the individual that actually committed the crime. This strikes the proper balance encouraged by our Rules of Criminal Procedure. See Rule 5-101(B). We now turn to the State’s argument that *Willyard* supports affirming the Court of Appeals.

3. *Willyard*—Rule 5-701(A) does not require a mechanical entry of judgment

{19} The State also argues that *Willyard* requires a district court to mechanically enter a jury’s verdict, which fails to acknowledge the circumstances of that case and the specific question presented to the appellate court. For many of the reasons already stated, we disagree.

{20} In *Willyard*, the district court granted a new trial because it determined the defendant was convicted based on insufficient evidence. 2019-NMCA-058, ¶ 5. The Court of Appeals reversed, concluding “that it would be inherently inconsistent to allow a motion for new trial to be granted based on insufficiency of the evidence when that insufficiency bars retrial.” *Id.* ¶ 14; see also *Baca*, 2015-NMCA-021, ¶ 21. The district court’s remedy of granting a new trial in this circumstance is clearly improper because it offends the principles of double jeopardy. *Willyard*, 2019-NMCA-058, ¶ 14; see also *Burks v. United States*, 437 U.S. 1, 1 (1978) (“[T]he Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient.”). “It is settled law that if a conviction is overturned for insufficient evidence, the reversal is treated as an acquittal for double jeopardy purposes.” *State v. Gonzales*, 2013-NMCA-016, ¶ 17, 301 P.3d 380. In contrast to *Willyard*, the district court here did not grant a new trial; it found the evidence legally insufficient and dismissed “[a]ll charges . . . with prejudice” postverdict. The district court acted in conformity with its inherent authority and duty to act in the interest of justice by accepting the jury’s guilty verdict and ruling on the sufficiency of the evidence postverdict.

{21} We also note that the *Willyard* Court, analogous to the *Davis* Court, expressly declined to consider whether a district court’s review of “its rulings on directed verdict motions” or review of the sufficiency of the evidence “after the jury has rendered its verdict” because the defendant did not cite supporting authority. *Willyard*, 2019-NMCA-058, ¶ 20. As we previously explained, Rule 5-701(A) does not require that a district court mechanically enter the jury’s verdict. Instead, it codifies the principle that a district court should not invade the province of the jury by rendering a judgment based on its assessment of witness credibility or otherwise reweighing the evidence presented at trial. Cf. *Garcia*, 2011-NMCA-003, ¶ 5 (providing that it is the province of the jury to determine the credibility of witnesses and the weight of the evidence to arrive at a verdict).

{22} *Willyard* does not apply in this case. The district court here did not attempt to grant a new trial, which would violate the principles of double jeopardy. See *Willyard*, 2019-NMCA-058, ¶ 10. Instead, the district court relied upon its inherent authority to rule on the legal sufficiency of the evidence postverdict. In a close case, this balances a defendant’s right to due process and a court’s duty to ensure justice. Double jeopardy is not offended when reversal on appeal would “merely reinstate the jury’s

verdict.” *United States v. Wilson*, 420 U.S. 332, 344-345 (1975) (“Since reversal on appeal would merely reinstate the jury’s verdict, review of such an order does not offend the policy against multiple prosecution.”). This procedure does not expose a defendant to a retrial after an apparent acquittal, and therefore, complies with double jeopardy protections. See *State v. Aguilar*, 1981-NMCA-027, ¶¶ 5-6, 95 N.M. 578, 624 P.2d 520 (recognizing the state’s right to appeal as “an aggrieved party” under Article VI, Section 2 of the New Mexico Constitution when there is “a disposition contrary to law in a criminal proceeding”).

B. The Rules of Criminal Procedure for State Courts Committee Should Consider Drafting Additional Procedural Rules on Postverdict Judgments of Acquittal

{23} Both Defendant and the State urge this Court to consider the procedural rules of foreign jurisdictions that govern post-verdict judgments of acquittal. Defendant maintains, without supporting authority, that “[e]very single jurisdiction in the United States other than New Mexico allows a trial court to vacate a conviction post-verdict based on a finding of insufficient evidence.” The State argues to the contrary, suggesting that “[t]he majority of jurisdictions either prohibit a [judgment notwithstanding the verdict or] require the defendant to move for one . . .” Both parties cannot be correct.

{24} Regardless, the parties’ broad assertions—that the majority of state and federal statutes and rules support their respective positions—do not sufficiently take into account the interpretation and application of those statutes and rules by the relevant foreign jurisdictions. For example, the State argues that ten states, including North Carolina, require a defendant to file a motion before a court is permitted to consider post-verdict relief, citing, e.g., N.C. Gen. Stat. § 15A-1414 (2021). However, our review of North Carolina law suggests otherwise. The North Carolina Court of Appeals held that “[a] trial judge may set aside a guilty verdict that is contrary to the weight of the evidence pursuant to a motion by the defendant, N.C. Gen. Stat. § 15A-1414(a) (1988), or upon its own motion whenever the defendant is entitled to relief. *Id.* § 15A-1420(d)” *State v. Morgan*, 425 S.E.2d 1, 2 (N.C. Ct. App. 1993). Similarly, our review of case law revealed that federal courts have acknowledged there is a continuing inherent authority, if not a duty, to evaluate the sufficiency of the evidence. See, e.g., *United States v. Broadus*, 664 F. Supp. 592, 598 (D.D.C. 1987) (“[A] trial court, with jurisdiction over a criminal case, has inherent power to evaluate the sufficiency of the evidence supporting conviction at any time while its jurisdiction over the case continues.”



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The Official Newsletter of the
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Message from the YLD Chair

Hello Young Lawyer Division members,

With the pandemic going on for a couple of years now, I'm sure everyone has heard about "these unprecedented times." Slowly, but surely, there appears a light at the end of the tunnel. So, as we all band together to endure these trying times, please remember that the YLD Board is here to help. Programming seems to be returning to in-person events and the YLD Board is committed to hosting public service projects for the broader New Mexico community as well as providing support and programming to our members.

Here's what you can expect over this year:

#Fit2Practice - COVID has limited so many activities these past couple of years, but the YLD is still committed to getting attorneys up on their feet and moving. Recently, we recorded our fun "chair yoga" sessions so that those can be hosted more frequently, helping attendees with relaxation and flexibility. If you're like me and enjoy participating in 5k events, the YLD looks forward to the return of our participating in the Chips and Salsa 5k as well as the Turkey Trot. Whether you like to run alone, or with a socially distanced group, these outdoor events are a great way to get out and get some fresh air.

Wills for Heroes - Despite having to restrict the numbers of volunteer attorneys and first responder served, the YLD has still been able to host our Wills for Heroes events. This year will be no different. While our events look a little different with participants spaced out through various conference rooms and utilizing personal protective equipment, we hope to still provide the first responder community with this valuable and necessary event. Our Wills for Heroes program chairs, Damon Hudson and Laura Unklesbay, have plenty of events scheduled and we are thrilled to be moving forward with this programming.

Summer Fellowship Program - For those that don't know, every year the YLD awards a summer fellowship to a student interning at a non-profit. This is a program that, personally, I am quite fond of as, once upon a time, I was one of the students that the YLD elected to award the fellowship to. As a Division dedicated to public service, the YLD feels strongly about keeping this program alive and looks forward to receiving applications from law students doing their part to advance public service work in the state.

UNMSOL Mentorship & Programs - On January 22, the team was able to have the first in-person Mock Interview program since COVID began. The Committee was thrilled by how many volunteer attorneys showed up for this event, giving their Saturday mornings to help current law students prepare for interviews and sharpen their interviewing skills. There will be more opportunities for volunteers to get involved with the UNMSOL Mentor programming, including this fall when we call for volunteers for our law student mentorship program.

As always, the YLD wants to welcome participation in our programming and thank everyone who has participating over the years. For more information about the YLD and our initiatives, please visit the YLD page on the State Bar website at sbnm.org/Leadership/Divisions/Young-Lawyers.

Please feel free to reach out at any time with comments, concerns, or questions at Jperez2@da.state.nm.us.

Best,
Jessica A. Perez
YLD Chair

Meet the Board



Jessica Perez

Chair

Jessica Perez serves as the Region 5 director and this year's Chair on the New Mexico Young Lawyer's Division. She is a graduate of UNM School of Law and currently works as an assistant district attorney in the 13th Judicial District within the Sandoval County office. There she prosecutes a variety of felony cases, manages the review of expungement, handles extradition cases, as well as handles juvenile delinquency cases involving sex crimes. She is the program chair for the mentorship program with UNM School of Law as well as the Summer Fellowship committee. In her spare time, she enjoys playing video games and scrolling through Pinterest for crochet project ideas.



Damon Hudson

Director-at-Large, Position 1

Damon Hudson recently joined the YLD Board of Directors as a Director-at-Large. He is an associate attorney at The Jones Firm in Santa Fe, NM, practicing primarily in medical malpractice, employment law, labor law, and estate planning. Damon obtained his BBA and MPA from the University of New Mexico, and his law degree from the University of Nebraska-Lincoln. He co-chairs the Wills for Heroes program and the Ask-A-Lawyer Call in Day Program. In his free time, he enjoys woodworking, gardening, reading, hiking, and eating copious amounts of green chile.



Lauren Riley

Director-at-Large, Position 2

Lauren Riley practices family law at Batley Family Law, P.A. in Albuquerque, NM. She practices in all aspects of family law including divorce, custody, child support, kinship-guardianship and divorce modification. Additionally, Lauren drafts and negotiates Prenuptial and Postnuptial Agreements.

Lauren serves as the American Bar Association's Young Lawyers Division District Representative for New Mexico and Arizona. She was appointed to the Director-At-Large, Position 2 in January 2022, and sits on the NMYLD board. Lauren is co-chair of the UNMSOL & Mentorship Programming Committee and is chair of the Mentorship Outreach Committee. Lauren is also chair of the Wesley Kids Early Education Center Board.



Laura Unklesbay

Director-at-Large, Position 3

Laura Unklesbay serves as the Director-at-Large, Position 3. She is a litigation associate at Modrall, Sperling, Roehl, Harris & Sisk, P.A. with a focus in tort claims and employment and labor law. Unklesbay obtained both her undergraduate and law degrees from the University of Arizona, moving to Albuquerque in fall 2018. She co-chairs the Wills for Heroes program and is the YLD liaison for the Employment and Labor Law Board.

Meet the Board



Lindsay Cutler

Director-At-Large, Position 4

Lindsay Cutler works for the New Mexico Center on Law & Poverty as an attorney on the Economic Equity team, where she started as a Fellow focused on payday lending reform in 2017. Lindsay practices consumer and housing law and engages in multifaceted legal work, including litigation, administrative advocacy, and policy reform. Lindsay has been a Board Member of the New Mexico State Bar's Young Lawyers Division since 2019, coordinating the Veterans Civil Justice Clinic and the Fit2Practice subcommittee. Lindsay earned her undergraduate degree from the University of Mary Washington and her juris doctorate from the UCLA School of Law.



Randy Taylor

Director-at-Large, Position 5

Randy Taylor is an Associate in Rodey Law Firm's Albuquerque office. He is a member of the Litigation Department, working primarily with the Products and General Liability Practice Group. Randy's practice includes medical and professional negligence, commercial litigation, and insurance coverage disputes.

Randy graduated in 2016 from UNM School of Law, where he served as the Managing Editor of the New Mexico Law Review and competed on the ABA National Appellate Advocacy Competition moot court team. That team achieved a regional Best Brief Award, and Randy individually won the 2015 Raymond W. Schowers Prize for excellence in constitutional law writing. Following law school, Randy clerked for two years for a United States Magistrate Judge for the District of New Mexico.

Outside of work, Randy enjoys card and board games, trying new breweries and restaurants, and New Mexico's long motorcycle riding season.



Breanna Contreras

Region 2 Director

Breanna Contreras is the Vice President of Legal at Meow Wolf, Inc. where she works to bring the company's goals to fruition through thoughtful legal advice and implementation. Prior to joining Meow Wolf, Inc. as VP of Legal, Breanna was a partner at Bardacke Allison LLP in Santa Fe, New Mexico where she represented a variety of clients in intellectual property, entertainment, employment, and commercial litigation. In the IP and entertainment arenas, she represented a variety of clients in the United States and overseas in brand strategy, IP enforcement, copyright and trademark registration and maintenance, and licensing in the technology, literary, arts, music, film, and fashion industries. Breanna also regularly handled complex commercial and employment disputes on behalf of both plaintiffs and defendants.

Breanna was named a Rising Star by Super Lawyers four years in a row-2018-2021, an accolade reserved to only the top 2.5% of attorneys in the Southwest. She is a proud graduate of UNM Anderson School of Management '10, and Notre Dame Law School '13, where she was privileged to learn from now-Justice Amy Coney Barrett. Breanna is actively involved in her community, and serves on a number of boards, including for the Catholic Foundation of the Archdiocese of Santa Fe, 2021 Chair of the Trial Practice Section of the State Bar of New Mexico, and Regional Director of the State's Young Lawyers Division. She previously taught Legal and Business Issues in the Arts as an adjunct faculty member of the Santa Fe Community College, and served on the Board of the Intellectual Property Law Section of the State Bar of New Mexico.

During law school, Breanna served as the Solicitation Editor of the Notre Dame Journal of Law, Ethics & Public Policy, and as the Vice President of the Hispanic Law Students Association. Before law school, Breanna worked as a bilingual legal assistant at Catholic Charities of Central New Mexico, where she served immigrant survivors of domestic violence in pursuit of non-immigrant legal status.

Meet the Board



Alexander Weber
Region 1 Director

Alexander Weber attended Colorado College for undergrad, where he majored in Environmental Policy and was a member of the varsity soccer team. He then graduated from the Golden Gate School of Law where was awarded a Faculty Merit Scholarship and participated in the Honor Lawyering Program. Alexander then relocated to San Juan County, New Mexico where he served as an Assistant District Attorney for nearly 2 years. Currently, Alexander is the Associate at Patscheck Law PC. His practice areas include criminal defense, general civil, and children's law.



Shasta N. Inman
Past Chair

Shasta N. Inman (she/her) is the Immediate Past Chair of the State Bar of New Mexico Young Lawyers Division. She previously served as a board member and officer to the SBNM Children's Law Section, and a YLD liaison to the Elder Law Section. Shasta was also a liaison to the Children's Court Rules Committee last year, during her YLD-Chair year on the Board of Bar Commissioners.

Nationally, Shasta is the 2021-2022 American Bar Association YLD Assembly Clerk, and the 2021-2023 New Mexico young lawyer delegate to the ABA House of Delegates. She is also a young lawyer liaison to the ABA Commission on Sexual Orientation & Gender Identity, and is a 2021-2022 commissioner with the ABA Commission on Racial & Ethnic Diversity in the Profession.

For her "day job," Shasta is a solo attorney in Albuquerque, working primarily in child welfare, contested custody, kinship guardianships, and adult guardianships in counties throughout Central New Mexico. She earned her law degree and a Master of Arts in Gender & Women's Studies from the University of Arizona, James E. Rogers College of Law, after graduating from the University of Nebraska-Lincoln (Go Big Red!) with a dual-degree Bachelor of Arts in English and Women's & Gender Studies.



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(emphasis added)); *see also* Fed. R. Crim. P. 29(b), (c) (providing that postverdict judgments of acquittal are appropriate when (1) a court reserves its decision on a preverdict motion or (2) a defendant “move[s] for a judgment of acquittal, or renew[s] such a motion” within a specified period). Fortunately, the Court need not look to foreign jurisdictions to delineate the inherent authority of New Mexico courts. *See State ex rel. N.M. State Highway and Transp. Dep’t*, 1995-NMSC-033, ¶ 20. {25} Those critiques aside, having resolved the discrete issue before this Court by determining that a district court has the inherent authority to review the sufficiency of the evidence postverdict, we decline to

undertake an extensive review of the rules in foreign jurisdictions which govern the procedures therein. The Rules of Criminal Procedure of State Courts Committee is better suited to consider, and further develop if necessary, the rules that govern the procedure prior to appeal to ensure the effective and efficient administration of justice. We accordingly refer the matter to the committee for its consideration.

III. CONCLUSION

{26} It is worth reiterating the Fifth Circuit’s statement concerning the inherent authority of any court: “It is true that the question [of the sufficiency of the evidence] may and should be raised by the court of its own motion, if necessary to

prevent a miscarriage of justice.” *Ansley*, 135 F.2d at 208. A district court has the inherent authority to review the sufficiency of the evidence postverdict on its own motion, so long as it retains jurisdiction over the matter.

{27} Based on the foregoing, we reverse the Court of Appeals and remand the matter to the Court of Appeals for further proceedings not inconsistent with this opinion.

{28} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

MICHAEL E. VIGIL, Chief Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-005

No. S-1-SC-36995 (filed November 15, 2021)

PRINCETON PLACE,
Petitioner-Respondent,

v.

NEW MEXICO HUMAN SERVICES DEPARTMENT,
MEDICAL ASSISTANCE DIVISION,
Respondent-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

Sarah M. Singleton, District Judge

Released for Publication February 22, 2022.

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Assisted Living

OPINION

THOMSON, Justice

{1} Federal and New Mexico regulations require the implementation of a preadmission screening and annual resident review program (PASARR)¹ to identify individuals with mental illness

or intellectual disability applying to and residing in Medicaid-certified nursing facilities. See 42 C.F.R. § 483.128(a) (2020)² (noting the two levels of preadmission screenings); 8.312.2.18(B) NMAC³ (specifying purposes of the PASARR screenings). The federal screening requirements were enacted to “ensure that individuals were not being placed

in [nursing facilities] unnecessarily or without adequate supports.” Medicaid Program; Preadmission Screening and Resident Review, 85 Fed. Reg. 9990, 9990 (Feb. 20, 2020). In this case, a young man diagnosed with spina bifida (Applicant) was screened for admission to the Princeton Place (Princeton) nursing facility pursuant to PASARR. See 8.312.2.7(J) NMAC (defining “[n]ursing facility”). We address whether Princeton’s decision not to forward Applicant’s Level I screening for a Level II screening despite his spina bifida diagnosis violates the PASARR regulations.

{2} The New Mexico Human Services Department (HSD) initiated a recoupment action against Princeton to recover the Medicaid funds Princeton received during the time it was allegedly out of compliance with PASARR screening regulations pertaining to Applicant. See 42 C.F.R. § 483.122(b) (2020) (providing that nursing facilities are not eligible to receive Medicaid funding for periods when they are out of compliance with PASARR requirements). The district court upheld the agency recoupment action. HSD now challenges the Court of Appeals reversal of the district court, arguing that (1) the Court of Appeals erred in holding that the New Mexico Department of Health (DOH) PASARR Level I screening form is unenforceable because it was not promulgated pursuant to the State Rules Act, NMSA 1978, §§ 14-4-1 to -11 (1967, as amended through 2017), and (2) the Court of Appeals erred in holding that an applicant must have an indication of mental illness *in addition* to a developmental disability in order to be suspected of having a “related condition” pursuant to 42 C.F.R. § 435.1010 (2020). *Princeton Place v. N.M. Hum. Servs. Dep’t, Med. Assistance Div.*, 2018-NMCA-036, ¶ 35, 419 P.3d 194.

{3} We conclude that Princeton’s argument regarding the enforceability of the DOH Level I screening form and instructions was not preserved for appellate review. Nonetheless, we consider the issue a matter of general public interest and proceed to decide that question on the merits.

¹ The federal regulations use the acronym PASARR. New Mexico regulations use the acronym PASRR. Both acronyms refer to the same preadmission screening and annual resident review process required by the federal Medicaid program. To reduce possible confusion, and because the federal regulations are the root law, this opinion uses the acronym PASARR generally.

² The Code of Federal Regulations is updated annually. Although the screenings at issue occurred when prior versions of the federal regulations were applicable, this opinion cites the most recent version of the regulations when there is not significant difference between the two versions.

³ Although the versions of 8.312.2.18 NMAC applicable to the June 2011 and July 2013 screenings in this case are 8.312.2.18 NMAC (6/18/2010) and 8.312.2.18 NMAC (10/15/2012), respectively, the specific provisions of the current version, 8.312.2.18 NMAC (8/1/2014), do not differ from those of either applicable version.

We first hold that the screening form and instructions are interpretive agency guidance that does not require promulgation pursuant to the State Rules Act and that the Court of Appeals erred when it concluded that Princeton “incorrectly” answering the question in the form and failing to refer Applicant for a Level II screening was the basis for the HSD enforcement action. *See id.* ¶¶ 31-34. Next, we hold that the HSD interpretation of “related condition” under 42 C.F.R. § 435.1010 to include spina bifida, thus requiring a Level II screening in this case, is not arbitrary and capricious, is supported by substantial evidence, and is otherwise consistent with the law. Accordingly, we reverse.

I. BACKGROUND

{4} Before delving into the facts of the case, a discussion of the purpose and procedures of the PASARR program is required.

A. PASARR Requirements

{5} The purpose of the PASARR regulations “is to prevent the placement of individuals with [mental illness] or [intellectual disability⁴] in a nursing facility unless their medical needs clearly indicate that they require the level of care provided by a nursing facility.” Medicare and Medicaid Programs; Preadmission Screening and Annual Resident Review, 57 Fed. Reg. 56450, 56451 (Nov. 30, 1992). To effectuate this purpose, each state receiving federal Medicaid funding must “operate a preadmission screening and annual resident review program” that complies with federal law. 42 C.F.R. § 483.104 (2020). The corresponding regulations, 42 C.F.R. §§ 483.100-483.138 (2020), govern a state’s responsibility for preadmission screening and annual resident review of individuals with mental illness and intellectual disability as defined by federal law. *See* 42 C.F.R. § 483.102.

{6} States with approved plans are eligible to receive Federal Financial Participation (FFP) reimbursement for the costs incurred by nursing facilities that provide services to Medicaid-eligible individuals. *See* 42 U.S.C. § 1396b (2018); 42 C.F.R. § 483.122(a). However, “[w]hen a preadmission screening has not been performed prior to admission or an annual review is not performed timely, in accordance with § 483.114(c), but either is performed at a later date, FFP is available only for services furnished after the screening or review has been performed.” 42 C.F.R. § 483.122(b). As such, nursing facilities must conduct screenings consistent with PASARR regulations as a precondition to receiving Medicaid reimbursement from the state. *See* 42 C.F.R. § 483.122.

B. Level I and Level II Screenings

{7} There are two levels of preadmission screenings under the PASARR regulations, an initial screening (Level I) and a more thorough secondary screening (Level II) that can be triggered depending on the results of the initial screening. 42 C.F.R. § 483.128(a). Level I screenings “must identify all individuals who are suspected of having [a mental illness] or [intellectual disability] as defined in § 483.102.” 42 C.F.R. § 483.128(a); *see also* 8.312.2.18(B) NMAC (providing that in New Mexico, “[a nursing facility] performs the [L]evel I screen which identifies an eligible recipient or member resident who has a mental illness or an intellectual disability”). Individuals are “considered to have intellectual disability” under 42 C.F.R. § 483.102(b)(3) if their condition is “described in the American Association on Intellectual Disability’s Manual on Classification in Intellectual Disability” or they are found to have a “related condition” defined as follows:

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions:

(a) It is attributable to—

(1) Cerebral palsy or epilepsy; or
(2) Any other condition, other than mental illness, found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care.

(2) Understanding and use of language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

42 C.F.R. § 435.1010.

{8} In order to assist nursing facilities with Level I screenings, the DOH provides a

screening form and instructions that reflect PASARR regulatory requirements. At issue here is Question D-5 of the screening form in use at the time of Applicant’s screening, which asks, “Is there any indication [in Applicant] of developmental disability⁵ (a severe, chronic disability that manifested before age 22)?” The instructions accompanying the form provide the following guidance for answering Question D-5: “Any severe, chronic disability (except mental illness) that occurred before age 22 may indicate a developmental disability. Examples include: cerebral palsy, *spina bifida*, quadriplegia before age 22, a seizure disorder that started before age 22 or a severe head injury that occurred before age 22.” (Emphasis added.) A “yes” answer to Question D-5 requires a Level II screening. *See* 8.312.2.18(B) NMAC (“When an eligible recipient or member resident is identified, the [nursing facility] refers him or her to the DOH [developmental disabilities support division] for a PAS[A]RR level II evaluation.”).

{9} The function of a Level II screening is to evaluate and determine whether nursing facility services and specialized services are needed. *See* 42 C.F.R. § 483.128(a); 8.312.2.18(B) NMAC. According to federal and New Mexico regulations, this is a decision that must be made by the state mental health and intellectual disability authority. *See* 42 C.F.R. § 483.106(d); 8.312.2.18(B) NMAC. The regulations also make clear that a state mental health authority may not delegate its responsibility for evaluations and determinations to nursing facilities. 42 C.F.R. § 483.106(e)(iii). In determining the placement of applicants, “the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.” 42 C.F.R. § 483.132(b). In making this determination, the evaluator must rely on medical data, including “(1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); (2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and (3) Functional assessment (activities of daily living).” 42 C.F.R. § 483.132(c). The Level II screening ultimately determines whether an applicant’s “total needs are such that his or her needs can be met in an appropriate community setting” or if a different placement such as inpatient care is necessary. 8.312.2.18(C) NMAC; *see* 42 C.F.R. § 483.132(a).

⁴ The federal government has specifically updated its language to phase out the term mental retardation because it “has negative connotations, has become offensive to many people, and often results in misunderstandings about the nature of the disorder and those who have it.” 78 Fed. Reg. 46499, 46499 (Aug. 1, 2013). Therefore, this opinion will instead use the term intellectual disability unless directly quoting statutory language.

⁵ Although not defined by the regulations, Leslie Swisher, the staff manager for the DOH PASARR Program, testified that “the term developmental disability is used as an umbrella term, which includes” the categories of “intellectual disability [and] related condition.”

C. The Level I Screenings Conducted in This Case

{10} In 2011, Vivian Richer, a licensed practical nurse and admissions coordinator for Princeton, conducted a Level I screening for Applicant, who was born with cervical spina bifida.⁶ Reading from a physician's preadmission records, Ms. Richer testified that although Applicant was able to walk until the age of fifteen, he was bedridden and dependent on a wheelchair for mobility at the time of the Level I screening. He also required assistance with activities of daily living such as dressing, bathing, toileting, hygiene, and ambulation. He performed consistently well in school, attending the University of New Mexico as a political science major for several years. Ms. Richer asserted that Applicant's records did not indicate that he had an intellectual disability.

{11} Ms. Richer performed the Level I screening using the DOH screening form and instructions. Despite identifying that Applicant was diagnosed with spina bifida prior to his twenty-second birthday, Ms. Richer answered "no" to Question D-5. Her justification was that "[t]here was nothing in the record that indicated that [he had an impairment of intellectual functioning similar to those of intellectually disabled persons]." Because she answered "no" to Question D-5, Applicant's screening was not forwarded to DOH for a Level II evaluation.

{12} Two years later, after Applicant was treated at the University of New Mexico Hospital (UNMH), and before he was readmitted to Princeton, UNMH conducted an additional Level I screening. Like Princeton's Level I screening, UNMH also noted Applicant's diagnosis of spina bifida. However, unlike Princeton, UNM forwarded its Level I screening to DOH for a Level II screening. At this point, the HSD Medical Assistance Division (MAD) became aware of the discrepancy between Princeton's original Level I screening and the Level I screening conducted by UNMH and issued a memorandum notice of overpayment seeking recoupment for Medicaid reimbursements. MAD sought reimbursement for payments to Princeton received for care of Applicant to which it was not entitled because Princeton failed to comply with the PASARR regulations, which required it to initiate a Level II screening prior to Applicant's admission. Princeton disputed MAD's assertion that it was required to initiate a Level II screening based on Applicant's Level I screening and challenged the recoupment action through an administrative proceeding, attempting to prove it was entitled to the payments at issue.

See 8.351.2.15 NMAC (allowing that "a provider can request a hearing" if it disagrees with a MAD action to recover overpayment").

D. Recoupment Action

{13} The HSD Fair Hearings Bureau held a hearing on Princeton's opposition to the proposed recoupment. Robert Stevens, Bureau Chief of the Program, Policy, and Integrity Bureau with the MAD, and Leslie Swisher, staff manager for the DOH PASARR program, testified on behalf of HSD. Ms. Richer, as Princeton's admissions coordinator and Level I screener, and Dr. Anne Rose, a forensic and clinical psychologist, testified on behalf of Princeton.

{14} At the hearing, Princeton defended its reasoning for not initiating a Level II screening. Ms. Richer stated that she is "very confident" in her ability to screen for intellectual disabilities and that she marked "no" to Question D-5 "[b]ecause according to the instructions any severe chronic disability that occurred before age 22 may indicate a developmental disability. But in this case the record did not show that it did." Both Ms. Richter and Dr. Rose testified that Applicant's medical record did not indicate that he had a developmental disability.

{15} HSD viewed the purpose of Level I screening more broadly, maintaining that, "[t]he preliminary screen is only for the purpose of identifying a suspected qualifying condition. If the screen indicates the potential existence of a qualifying condition, it is ultimately DOH's responsibility to confirm the fact, assess the severity of the condition and determine whether nursing facility placement is appropriate." DOH argued that a nursing facility conducting a Level I assessment "typically" does not determine whether a related condition is present or not. In DOH's view, as argued in closing by HSD, "spina bifida is clearly identified as a qualifying developmental disability in the PASARR instructions accompanying the Level I screen form, and meets the definition of 'related condition' set forth in 42 C.F.R. § 435.1010." At the conclusion of the hearing, the administrative law judge held that "Princeton had a duty imposed by regulation to report [Applicant]'s condition to the DOH, and they breached this duty." Based on the decision of the administrative law judge, the MAD Director upheld the proposed recoupment against Princeton.

E. Appeals

{16} Princeton appealed the decision of the MAD Director to the district court to decide whether it was "reasonable to

interpret the regulations as requiring that a nursing facility perform and submit a Level I PAS[A]RR screening [to DOH] for an individual with spina bifida when there is no history of limited mental functioning." The district court concluded that, "Princeton Place has failed in its burden to show that [MAD's] interpretation of the regulations was without a rational basis." See Rule 1-074(R) NMRA. The district court further reasoned that because Princeton incorrectly answered "no" to Question D-5, "it follows that it was also incorrect not to send the screening to DOH." The HSD recoupment action was affirmed.

{17} Following an unsuccessful motion for rehearing, Princeton filed a Petition for writ of certiorari with the Court of Appeals. The Court of Appeals granted the writ and assigned the case to the general calendar. The New Mexico Health Care Association and New Mexico Center for Assisted Living (Amici) submitted an amicus brief in support of Princeton. The Amici reframed the argument: "What the case is actually about is an agency's attempt to elevate an instruction appended to a form to the status of a rule and to impose penalties for an alleged violation of a 'rule' when the instruction was never included in any properly promulgated regulation."

{18} The Court of Appeals agreed with the position advanced by the Amici and adopted by Princeton that the DOH PASARR form and instructions do not have the "force and effect of law and cannot serve as the basis for a HSD/MAD enforcement action." *Princeton Place*, 2018-NMCA-036, ¶ 31. In addition, the Court of Appeals concluded that the term "may" contained in the instructions for Question D-5 gave discretion to Level I screeners "to consider whether an individual who presents with a severe, chronic disability, like spina bifida, shows any indication of developmental disability." *Id.* ¶ 33 (internal quotation marks and citation omitted). The Court of Appeals reversed the district court and held that the administrative record demonstrated that Princeton complied with the applicable PASARR regulations. *Id.* ¶¶ 1, 34, 37. HSD appealed, and this Court granted certiorari "on all questions."

II. DISCUSSION

{19} We first address the Court of Appeals conclusion that the DOH PASARR form and instructions did not have the force of law because neither were promulgated pursuant to the State Rules Act. Next, we address the HSD interpretation of the meaning of "related condition," pursuant to 42 C.F.R. § 435.1010, which provided the basis for the recoupment action.

⁶ spina bifida is a medical condition that develops in utero when "the neural . . . tissue that becomes . . . the spinal cord and the brain doesn't form correctly," leading to damage to the spinal cord. This damage may cause a wide range of physical and intellectual disabilities. See generally CDC, What is Spina Bifida?, <https://www.cdc.gov/ncbddd/spinabifida/facts.html> (last visited Oct. 18, 2021).

A. Whether the DOH Form and Instructions Are Agency Interpretive Guidance

{20} The argument that the DOH PASARR form and instructions did not have the force of law and could not serve as the basis for the HSD recoupment action was raised for the first time to the Court of Appeals. While we conclude that it was not properly preserved and therefore not properly considered by the Court of Appeals, we nevertheless proceed to determine the merits of the controversy.

1. The issue was not properly preserved, but the public interest requires that we consider the merits

{21} The Rules of Appellate Procedure provide, “To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.” Rule 12-321(A) NMRA. “The preservation rule is intended to ensure that (1) the district court is timely alerted to claimed errors, (2) opposing parties have a fair opportunity to respond, and (3) a sufficient record is created for appellate review.” *Progressive Cas. Ins. Co. v. Vigil*, 2018-NMSC-014, ¶ 31, 413 P.3d 850. This Court previously outlined a series of exceptions to the “general proscription against an appellate court considering matters not yet raised in the trial court.” *St. Vincent Hosp. v. Salazar*, 1980-NMSC-124, ¶ 8, 95 N.M. 147, 619 P.2d 823. Some of these exceptions are now codified and include those matters that involve “(a) general public interest; (b) plain error; (c) fundamental error; or (d) fundamental rights of a party.” Rule 12-321(B)(2).

{22} The argument regarding the enforceability of the DOH form was not raised at the initial administrative hearing nor in the appeal to the district court. The enforceability of the form was first raised in the Court of Appeals, primarily by the Amici and briefly in Princeton’s brief in chief, which stated that “failure to follow the State[] Rules Act in promulgating [the DOH] PAS[A]RR rules precludes any argument by [HSD] that Princeton Place’s failure to adhere to those rules constitutes a violation of law.” In an attempt to cure the preservation issue, the Amici continue to cite Princeton’s statement of issues in the district court, which asserted that agency “actions were outside the scope of authority of the agency and not in accordance with law.” However, Princeton’s language cited by the Amici is too broad to serve Princeton as the basis for preservation. More importantly, despite their efforts, the “Amic[i] must take the case in this Court as it stands on appeal[] and . . . cannot assume the functions of a party.” *Nall v. Baca*, 1980-NMSC-138, ¶ 10, 95 N.M. 783, 626 P.2d 1280. We therefore hold that Princeton did not preserve the issue for appellate

review. See *Santa Fe Water Res. All., LLC v. D’Antonio*, 2016-NMCA-035, ¶ 8, 369 P.3d 12 (holding that an issue was not properly preserved when “the district court did not have an opportunity to rule on it”).

{23} This Court may exercise its discretion to consider unpreserved issues when such consideration is justified by the existence of exceptional circumstances. See *State v. Harrison*, 2010-NMSC-038, ¶ 12, 140 N.M. 500, 238 P.3d 869 (electing to review an unpreserved error “because of the important public interest”). We conclude the general public interest exception requires our consideration of the merits. Although the general public interest exception “should be used sparingly,” *State v. Pacheco*, 2007-NMSC-009, ¶ 11, 141 N.M. 340, 155 P.3d 745, we invoke it here in order to provide guidance on the interpretation of administrative agency materials that are not promulgated pursuant to the State Rules Act.

2. The DOH form and instructions were not the basis of the violation

{24} Princeton’s argument on appeal that the DOH screening form and instructions have “no efficacy, validity or enforceability” unless adopted pursuant to the State Rules Act is an issue of law that we review de novo. *Bokum Res. Corp. v. N.M. Water Quality Control Comm’n*, 1979-NMSC-090, ¶ 42, 93 N.M. 546, 603 P.2d 285 (noting standards that are not properly promulgated under the State Rules Act “have no efficacy, validity or enforceability”); see *Davis v. Devon Energy Corp.*, 2009-NMSC-048, ¶ 12, 147 N.M. 157, 218 P.3d 75 (explaining that we review questions of law de novo).

{25} The Court of Appeals quotes the HSD response to the Amici in arguing that the DOH screening form and instructions “were intended to interpret the existing New Mexico PASARR statutes and regulations and designed to assist lay people who might have difficulty figuring out if a condition is closely related to intellectual disability,” and thus the form and instructions “were not required to be subject[ed] to full-blown rule promulgation in order to be effective.” *Princeton Place*, 2018-NMCA-036, ¶ 30 (alteration in original) (internal quotation marks omitted). HSD asserts here that the Court of Appeals erred in concluding that the district court decision was based on the enforceability of the DOH form, further asserting that recoupment was warranted “not because Princeton failed to properly fill out a form” but “because Princeton failed to forward for a Level II PAS[A]RR evaluation a person who met the criteria for a suspected related condition under the applicable federal regulations.”

{26} The heart of the question is whether the DOH screening form and instructions are representative of agency

interpretations of the applicable regulations or are independent agency actions requiring promulgation pursuant to the State Rules Act. Stated differently, we must determine whether the DOH form and instructions are interpretive rules or legislative rules. We examine whether the DOH form and instructions “have the force and effect of law” required for an enforcement action, guided by *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99-100 (1995), and *Bokum Resources Corp.*, 1979-NMSC-090, ¶ 42, which the Court of Appeals discussed. See *Princeton Place*, 2018-NMCA-036, ¶ 31. Although we agree with the Court of Appeals that this question turns on the application of *Shalala*, we reach a different conclusion.

{27} We are not aware of any New Mexico case law that discusses the distinction between an interpretive rule and a legislative rule that requires promulgation pursuant to the State Rules Act. We therefore turn to federal administrative law for guidance. “[T]he [Administrative Procedures Act] provides that, unless another statute states otherwise, the notice-and-comment requirement ‘does not apply’ to ‘interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.’” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015) (quoting 5 U.S.C. § 553(b)(A) (2018)). In addition, “[t]he term ‘interpretative rule,’ or ‘interpretive rule,’ is not further defined by the [Administrative Procedures Act], and its precise meaning is the source of much scholarly and judicial debate.” *Perez*, 575 U.S. at 96 (footnote omitted).

{28} Interpretive rules are “issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.” *Shalala*, 514 U.S. at 99 (internal quotation marks and citation omitted). Interpretive rules do not require “notice-and-comment,” which “makes the process of issuing interpretive rules comparatively easier for agencies than issuing legislative rules.” *Perez*, 575 U.S. at 97. However, “that convenience comes at a price: Interpretive rules do not have the force and effect of law and are not accorded that weight in the adjudicatory process.” *Id.* (internal quotation marks and citation omitted). In contrast, “rules issued through [an official] notice-and-comment process are often referred to as legislative rules because they have the force and effect of law.” *Id.* at 96 (internal quotation marks and citation omitted).

{29} “Interpretive rules do not require notice and comment, although . . . they also do not have the force and effect of law and are not accorded that weight in the adjudicatory process.” *Shalala*, 514 U.S. at 99. However, *Shalala* also observes that official promulgation is required where the adopted materials are inconsistent with existing regulations. *Id.* at 100.

(“[Administrative Procedures Act] rule-making would still be required if [the regulatory guidance] adopted a new position inconsistent with any of the [agency]’s existing regulations.”). This Court has previously recognized that concept within our own jurisprudence, holding that “an administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.” *Bd. of Cnty. Comm’rs of San Miguel Cnty. v. Risk Mgmt. Div.*, 1995-NMSC-046, ¶ 22, 120 N.M. 178, 899 P.2d 1132 (internal quotation marks and citation omitted).

{30} The United States Supreme Court reasoned that interpretive rules,

while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) *superseded by statute on other grounds as stated in Bridges v. Empire Scaffold, L.L.C.*, 875 F.3d 222 (5th Cir. 2017). Citing *Skidmore*, one commentator observed that, in general, “interpretive rules have value primarily as a means of communicating to the agency’s staff and affected members of the public the agency’s current views with respect to the proper interpretation of its statutes and legislative rules.” Richard J. Pierce, Jr., *Distinguishing Legislative Rules from Interpretive Rules*, 52 Admin. L. Rev. 547, 552, n.44 (2000).

{31} Sufficient evidence supports the conclusion that Question D-5 represents a DOH interpretation of the related-condition requirement in 42 C.F.R. § 435.1010. The district court concluded that Princeton’s “no” answer to Question D-5 effected a violation of the PASARR regulations, stating, “Because the Court has already determined that Princeton Place incorrectly answered Question 5, it follows that it was also incorrect not to send the screening to DOH.” The Court of Appeals agreed, noting, “Question 5 and its instruction . . . appear to be aimed at screening for ‘related conditions’ to intellectual disability by asking if there is ‘any indication of developmental disability (a severe, chronic disability that manifested before age 22).” *Princeton Place*, 2018-NMCA-036, ¶ 35 (brackets omitted). In its reply brief, HSD specifies that “[t]he relevance of the form is that it is the tool

employed by DOH for use in performing Level I screens and informing DOH of cases where mental illness, intellectual disability, or a related condition is suspected, warranting a Level II evaluation.” HSD further explains that the “[i]nstructions are also included on the form to assist the screener in determining if the applicant has a related condition.”

{32} The DOH screening form and instructions do not contain new requirements of law but rather are representative of the DOH interpretation of existing PASARR regulations. *Cf. Shalala*, 514 U.S. at 100 (observing that a “rulemaking would . . . be required if [the regulatory guidance] adopted a new position inconsistent with . . . the [agency]’s existing regulations”). As such, they do not require official promulgation and also do not carry the full force of law. *See id.* at 99. As explained by HSD, the purpose of these materials is to assist a screener, who is not required to be a medical professional, to comply with PASARR regulations. We further determine that the purpose of the instructions for Question D-5 specifically is to advise the public and screeners regarding the agency’s interpretation of the meaning of “related condition” pursuant to 42 C.F.R. § 435.1010. We agree with the Court of Appeals, when it determined that the DOH PASARR Level I screening form and instructions are interpretive rules, not legislative rules. *See Princeton Place*, 2018-NMCA-036, ¶¶ 30-31. However, as we discuss in the next section, the Court of Appeals erred when it determined Princeton’s failure to initiate a Level II screening could not form a basis to a recoupment action. *See id.* ¶¶ 34, 37.

B. The Meaning of “Related Condition” Pursuant to 42 C.F.R. § 435.1010

{33} We next address Princeton’s challenge to the HSD interpretation of the meaning of “related condition” under 42 C.F.R. § 435.1010.

1. Standard of review

{34} “When reviewing administrative agency decisions courts will begin by looking at two interconnected factors: whether the decision presents a question of law, a question of fact, or some combination of the two; and whether the matter is within the agency’s specialized field of expertise.” *Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n*, 1995-NMSC-062, ¶ 10, 120 N.M. 579, 904 P.2d 28. “The court will confer a heightened degree of deference to legal questions that implicate special agency expertise or the determination of fundamental policies within the scope of the agency’s statutory function.” *Id.* ¶ 11 (internal quotation marks and citation omitted). Whether an administrative decision was in accordance with the law is a question of law, which we review *de novo*. *See Archuleta v. Santa Fe Police Dep’t ex rel.*

City of Santa Fe, 2005-NMSC-006, ¶ 18, 137 N.M. 161, 108 P.3d 1019.

{35} In reviewing an agency decision, a district court must consider

- (1) whether the agency acted fraudulently, arbitrarily, or capriciously;
- (2) whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;
- (3) whether the action of the agency was outside the scope of authority of the agency; or
- (4) whether the action of the agency was otherwise not in accordance with law.

Rule 1-074(R) NMRA. “On appeal, we review the decision of the [agency] under the same standard applicable in the district court.” *In re Termination of Kibbe*, 2000-NMSC-006, ¶ 13, 128 N.M. 629, 996 P.2d 419. Ultimately, we will reverse the agency’s ruling “if the agency unreasonably or unlawfully misinterprets or misapplies the law.” *Archuleta*, 2005-NMSC-006, ¶ 18. “The party challenging [an administrative] decision bears the burden on appeal of showing that the decision is unreasonable, or unlawful.” *Morningstar Water Users Ass’n*, 1995-NMSC-062, ¶ 9 (internal quotation marks and citation omitted).

2. Whether the HSD interpretation of “related condition” pursuant to 42 C.F.R. § 435.1010 was reasonable

{36} This case requires us to assess whether it was reasonable for HSD to interpret the definition of “related condition” pursuant to 42 C.F.R. § 435.1010 to include spina bifida and whether this provision grants discretion to the nursing facility conducting a Level I screening to decline to initiate a Level II screening in accordance with 42 C.F.R. § 483.128. HSD argues that a broad reading of the definition of related condition is consistent with the goal of a Level I screening “to cast as broad a net as possible.” *See* 42 C.F.R. § 483.128(a) (“The [s]tate’s PASARR program must identify all individuals who are *suspected* of having [mental illness or intellectual disability] as defined in § 483.102.” (emphasis added)). Princeton opposes the “HSD[] *per se*, categorical rule that spina bifida always triggers a Level II screening, regardless of the individual’s condition and needs.” Princeton argues that to meet the definition of a related condition in 42 C.F.R. § 435.1010, the condition must “be closely related to Intellectual Disability,” if the “severe, chronic condition . . . does not result in an impairment of general intellectual functioning.” Princeton further argues that a nursing facility has “the discretion to consider whether a particular chronic disability is nevertheless not a related condition.”

{37} We begin with the language of 42 C.F.R. § 435.1010: “Persons with related conditions means individuals who have a severe, chronic disability that meets [four required] conditions.” As to the first required condition, because neither “[c]erebral palsy [n]or epilepsy” is at issue here, the applicable chronic disability must be “attributable to . . . [a]ny other condition, other than mental illness, found to be closely related to Intellectual Disability because th[e] condition results in impairment of general intellectual functioning or adaptive behavior similar to that of [intellectually disabled] persons, and requires treatment or services similar to those required for these persons.” 42 C.F.R. § 435.1010 (emphasis added). The second and third required conditions call for the severe, chronic disability to have “manifested before the person reaches age 22” and to be “likely to continue indefinitely.” *Id.* The fourth required condition calls for “substantial functional limitations in three or more of the following areas of major life activity: (1) Self-care. (2) Understanding and use of language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living.” *Id.*

{38} In New Mexico, individuals are determined to have an intellectual disability if they have: “(1) significantly subaverage general intellectual functioning and (2) deficits in adaptive behavior.”⁷ *State v. Trujillo*, 2009-NMSC-012, ¶ 10, 146 N.M. 14, 206 P.3d 125 (discussing the definition codified at NMSA 1978 § 31-9-1.6(E) (1999)). But 42 C.F.R. § 435.1010 recognizes that an applicant who is not intellectually disabled may nonetheless require care for a related condition under the second disability prong “attributable to . . . impairment of . . . adaptive behavior.” Here, Applicant’s severe, chronic disability “manifested before [Applicant] reache[d] age 22” and “is likely to continue indefinitely.” 42 C.F.R. § 435.1010.

Further, Applicant requires assistance with “[s]elf-care,” a wheelchair for “[m]obility,” and assistance with activities of daily living such that he lacks “[c]apacity for independent living.” *Id.* Applicant therefore meets the definition of a person with a related condition.

{39} We defer to the HSD position that Level I screenings are meant to broadly screen for suspected intellectual disabilities. In light of this purpose and the fact raised multiple times throughout the proceedings that spina bifida may be linked to an intellectual disability, it was reasonable for HSD to interpret the 42 C.F.R. § 435.1010 definition of related condition to include spina bifida. The HSD interpretation is not arbitrary and capricious, is supported by substantial evidence, and is otherwise in accordance with the law. *See* Rule 1-074(R).

{40} We next consider whether Princeton had discretion to decide whether Applicant should receive a Level II screening because it determined that he did not meet the definition of a person with a related condition pursuant to 42 C.F.R. § 435.1010, despite his spina bifida diagnosis. As HSD has pointed out, the regulations do not require a Level I screener to be a medical professional, and Level I screenings do not include an in-person evaluation. Level I screeners rely exclusively on medical records and documentation. Further, perhaps due to the financial incentive for nursing facilities to admit new residents, the regulations specifically forbid delegation to nursing facilities of placement determinations that occur at Level II screenings. *See* 42 C.F.R. § 483.106(e)(iii).

{41} Having accepted that the purpose of the Level I screening is to broadly identify suspected intellectual disabilities, it is reasonable to interpret the PASARR regulations as prohibiting final determinations of whether an intellectual disability is present at Level I because the evaluation may be conducted by a layperson with limited access to medical data. Acceptance of Princeton’s interpretation could allow for crucial medical decisions to be made before a comprehensive evaluation occurs, potentially jeopardizing applicants with nuanced or difficult-to-detect intellectual disabilities and resulting in inappropriate placements. The Court of Appeals erred in holding that Princeton did not violate the law by determining Applicant did not have an intellectual disability and declining to initiate a Level II screening. That determination is the sole province of the state mental health and intellectual disability authority. *See* 42 C.F.R. § 483.106(d).

III. CONCLUSION

{42} Based on the foregoing, we reverse the Court of Appeals and hold that HSD may proceed with its recoupment action against Princeton to recover the Medicaid funding Princeton received during the time it was out of compliance with PASARR regulations.

{43} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

**NANCY J. FRANCHINI, Judge
Sitting by designation**

⁷ Assessing “deficits in adaptive behavior” requires an assessor to “focus on [an individual’s] actual everyday functioning.” For example, “how an individual performed (or failed to perform) tasks in general society, rather than on whether he or she experiences functional limitations in the more regimented [institutional setting].” James W. Ellis et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, 46 Hofstra L. Rev. 1305, 1332-35 (2018) (footnote omitted).



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Jarmie & Rogers, P.C. is hiring a Las Cruces-based attorney to join us in our busy civil litigation practice. Preference will be given to candidates with two (2) or more years of experience in the practice of law. Strong research, legal writing and analytical skills are a must. The position requires excellent oral advocacy abilities; you will be required to argue complex motions in state and federal court. We offer a competitive salary and benefits package, along with significant potential for professional growth. For more information about our firm, please visit our website, www.jarmielaw.com. Please submit resumes to ereeves@jarmielaw.com.

Staff Attorney/ Associate General Counsel

The New Mexico State University (NMSU) seeks a Staff Attorney OR Associate General Counsel. The NMSU office of the University General Counsel provides legal services to both NMSU and the New Mexico Department of Agriculture. This position requires proficient writing skills and good business judgment, along with an ability to work with limited supervision and complex institutional matters. **Staff Attorney:** The New Mexico State University (NMSU) seeks a highly efficient, organized and productive attorney to serve as Assistant General Counsel. The selected candidate will report to the General Counsel and work with other university attorneys, outside counsel and university administrators. Typical tasks for this attorney relate to employment, civil rights, public entity law, academic and student affairs, litigation support, international programs, contracts and other legal issues in higher education. The attorney assists in coordinating the University's responses to subpoenas, public records requests and other regulatory matters. Proficient writing skills and good business judgment are essential. **Associate General Counsel:** The New Mexico State University (NMSU) seeks a highly efficient, organized and productive attorney to serve as Associate General Counsel. The selected candidate will report to the General Counsel and work with other university attorneys, outside counsel and university administrators. This attorney oversees and internally facilitates dispute resolution processes delegated to outside counsel, supports management in enforcement of internal procedures, and provides legal-risk assessments for evaluating performance and personnel actions. The attorney also assists in coordinating public records requests, the University's responses to subpoenas, and other regulatory/compliance matters. Typical matters for this attorney include employment, civil rights, public entity law, academic and student affairs, litigation support, international programs, contracts and other legal issues in higher education. NMSU is an equal opportunity and affirmative action employer. University General Counsel will hire either an Assc General Counsel OR Staff Attorney position depending upon experience and interest. Please reference requisition numbers 2200095S Assc General Counsel and 2200094S Staff Attorney. Interested parties must apply to each posting that they wish to be considered for. NMSU is an equal opportunity and affirmative action employer. All applications must be submitted online. For a complete job announcement and to apply for the positions please visit: 2200094S Staff Attorney - <https://jobs.nmsu.edu/postings/44992> AND 2200095S Assc General Counsel - <https://jobs.nmsu.edu/postings/44995> Deadline to apply is: 03/14/2022

Lawyer for Pro Bono Board of Directors

The Prostate Cancer Support Association of New Mexico, a 501c3 organization in operation for 30 years, is considering adding a lawyer to its pro-bono board of directors. The group's mission is to "to provide men and their families in New Mexico with the most current information about prostate cancer detection and treatment, and to provide emotional support following diagnosis, during treatment, and beyond." If this interests you, please contact us at 505-254-7784. Rod Geer, board chair, or Ann Weinberg, program manager.

Attorneys

Righi Fitch Law Group is a regional law firm that serves the legal needs of the insurance industry, construction industry, businesses and individuals throughout the states of Arizona, Colorado, New Mexico, Utah, & Hawaii. We are growing our team of motivated and skilled attorneys to be a part of our New Mexico office. Ideal candidates will have the following qualifications: 5 plus years experience in civil litigation; Experience handling and litigating complex bodily/personal injury and wrongful death cases; Experience handling construction defect cases a plus, not required; Experience taking both lay and expert depositions; Strong writing skills; Trial experience a plus, not required. Our law firm is dedicated to meeting all of our clients' needs. We are small enough to maintain personal relationships with our clients and offer cost-effective representation, yet we have the staff and resources to handle complex insurance defense, construction, business, and injury cases. Our office is committed to hiring and retaining a diverse workforce. We are proud to be an Equal Opportunity/Affirmative Action Employer, making decisions without regard to race, color, religion, creed, sex, sexual orientation, gender identity, marital status, national origin, age, veteran status, disability, or any other protected class. We offer a great office environment with remote flexibility, competitive salary and benefits package. For consideration please submit resume, writing sample and salary requirements to Leslie LeRoux, Director of Operations, at Righi Fitch Law Group - leslie@righilaw.com.

Attorney

Madison, Mroz, Steinman, Kenny & Olexy, P.A., an AV-rated civil litigation firm, seeks an attorney with five or more 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 87125-5467.

Associate Attorney

Giddens + Gatton Law, P.C., has served New Mexicans since 1997. Our firm practices primarily in bankruptcy law and represents individuals, couples, farmers, business owners and creditors in solving issues related to debt and credit matters. We are focused on providing excellent client service and high-quality legal representation. Giddens + Gatton Law has been recognized by U.S. News & World Report and Best Lawyers as a Best Law Firm for 5 consecutive years. We are also proud to support family-friendly policies in the workplace and have received Gold recognition for three consecutive years in the New Mexico Family Friendly Business Awards program. Our firm operates with these core values: Customer Focus; Accountability; Integrity; Community; Respect. **Position Summary:** An ideal candidate for Associate Attorney has 5-plus years of experience working with bankruptcy law (debtor, as well as creditor rights and representation) and commercial litigation. Experience in commercial real estate law is a plus. **Candidate must:** Have excellent writing and editing skills (writing samples will be required); Be motivated to learn, meet deadlines and work hard; Handle a client caseload independently; Enjoy supervising younger attorneys and support staff; Have the desire to build a portfolio of business. Interested candidates should email a cover letter, resume, references, and writing samples to giddens@giddenslaw.com.

Experienced Tax Attorney

Anthony B. Jeffries, J.D., C.P.A. is a solo practitioner with 47 years experience. Seeking an experienced tax, or tax and business lawyer, as an associate attorney, who may be interested in partnership and ultimately purchasing my lucrative practice. Please send resume and description of tax experience to Anthony B. Jeffries, J.D., C.P.A. , at tony@taxlawyerusa.com. Please send resume instead of calling. All communications will remain confidential. Thanks for your interest.

Attorney

Frazier & Ramirez Law is seeking a New Mexico licensed attorney with 2-5 years' experience in litigation. Experience in family law is not required but would be a bonus. We offer a competitive salary based on experience plus benefits. We are a growing firm looking for the right attorney who will work hard, who has developed excellence as a habit and who shows a willingness to grow with us. Please submit a letter of interest, writing sample and resume to sean@frazierramirezlaw.com. All inquiries will remain confidential.

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.

Lawyer Position

Guebert Gentile & Piazza P.C. seeks an attorney with up to five years' experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Gentile & Piazza P.C., P.O. Box 93880, Albuquerque, NM 87199-3880; advice1@guebertlaw.com. All replies are kept confidential. No telephone calls please.

Family Law Associate Attorney

The Law Office of Jill V. Johnson Vigil LLC., a Las Cruces based family law firm, is seeking an associate attorney. Applicants should have 2-5 years of experience in family law litigation, be client focused, and able to manage a full caseload with minimal oversight. The Law Office of Jill V. Johnson Vigil LLC. offers a comfortable and friendly work environment with benefits and competitive salary commensurate with qualifications and experience. Applicants must be in good standing with NM Bar and willing to relocate to Las Cruces. Spanish speaking is preferred, but not required. If you are ready for the next step in your career, please send your cover letter, resume, writing sample, and three references via email to careers@jvjlw.com before April 29, 2022. Please visit us online at www.jvjlw.com.

Various Attorney Positions

The New Mexico Office of Attorney General is recruiting various attorney positions. The NMOAG is committed to attracting and retaining the best and brightest in the workforce. NMOAG attorneys provide a broad range of legal services for the State of New Mexico. Interested applicants may find listed positions by copying the URL address to the State Personnel website listed below and filter the data to pull all positions for Office of Attorney General. <https://www.spo.state.nm.us/view-job-opportunities-and-apply/applicationguide/>

Attorneys and Paralegals

New Mexico Legal Aid has positions open for both new and experienced attorneys and paralegals in various locations throughout the state. The organization represents low income New Mexico residents in a variety of civil legal matters including housing issues, public benefits, consumer debt relief, and legal issues facing survivors of domestic and sexual violence. NMLA is the home of the successful volunteer attorney program that has drawn on the experiences of the New Mexico bar to assist countless New Mexicans. NMLA's assistance ranges from phone advice all the way up to complex litigation and appeals. NMLA offers a collaborative work environment with excellent benefits, and an opportunity to make a real difference in people's lives. NMLA has paid holidays, generous leave and employer financed benefits. NMLA is unionized. Salary is competitive and based on experience. To learn more about available positions, please visit our website at www.newmexicolegalaid.org

Request For Proposal – Pro Tem Judge

Pueblo of Laguna seeks proposals from any individual licensed attorney to relieve the full-time judge on an as-needed basis when there is conflict of interest or unavailability. The Laguna Pueblo Court presides over criminal and civil cases arising within the Pueblo's jurisdiction. Reply by March 30, 2022. RFP details at: <https://www.lagunapueblo-nsn.gov/resources/rfp-rfq/>

Trial Attorney

1st Judicial District Attorney

The First Judicial District Attorney's Office is seeking an experienced attorney for crimes against children, sexual assault, domestic violence and violent crime in the Santa Fe Office. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

Associate Attorney

Chapman Law, 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@chapmanlawnm.com.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open in Eddy County for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney 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 the HIDTA Attorney position in the Eddy County office, with salary of (\$70,000). Please send resume to Dianna Luce, District Attorney, 100 N. Love Street suite 2, Lovington, NM 88260 or email to 5thDA@da.state.nm.us

Attorney

Conklin, Woodcock & Ziegler, P.C. is seeking a full-time experienced attorney with at least three years litigation experience for an associate position with prospects of becoming a shareholder. We are a well-respected eight-attorney civil defense firm that practices in among other areas: labor and employment, construction, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense and insurance coverage. We are looking for a team player with a solid work record and a strong work ethic. Our firm is AV-rated by Martindale-Hubbell. Excellent pay and benefits. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to: jobs@conklinfirm.com.

Part-time contract Attorney

Small criminal law firm with big criminal defense contract with Public Defender's Office. Mostly virtual but does include some travel. Must have up to date computer with Word, Outlook, Adobe and Media Player. Reliable transportation also required. Cover mostly misdemeanor cases in 3rd, 7th, and 5th but felonies are possible depending on experience. Awesome chance to learn to be in courtroom and gain on the ground experience. Mileage paid at state contract rates. Rates negotiable. Potential for full time. Send resume, letter of interest and minimum three professional or educational references. New attorneys encouraged to apply. Contact Judith Potter at legalassistant2.aegibsonlaw@yahoo.com

Public Regulation Commission Hearing Examiner (Attorney IV, PRC #53612)

Job ID 120627, Santa Fe; Salary \$34.18-\$54.68 Hourly; \$71,084-\$113,734 Annually; Pay Band LL; This position is continuous and will remain open until filled. Hearing Examiners provide independent recommended decisions, including findings of fact and conclusions of law, to the NMPRC Commissioners in adjudicated cases involving the regulation of public utilities, telecommunications carriers and motor carriers. They manage and organize complex, multi-discipline and multi-issue cases; preside over evidentiary hearings; and write recommended decisions, accomplished by reading and analyzing the evidence, and incorporating that evidence and analysis into a recommended decision similar to a court opinion. The work increasingly includes climate change issues, such as the future of coal plants, utilities' acquisitions of renewable energy resources, energy efficiency programs and plans to increase the use of electric vehicles. The ideal candidate will have experience practicing law in areas directly related to public utility regulation; experience as an administrative law judge or hearing officer; educational experience in areas directly related to public utility regulation, such as economics, accounting or engineering; and experience practicing law involving substantial research and writing. Minimum qualifications include a J.D. from an accredited school of law and five years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for a limited practice license (Rules 15-301.1 and 15-301.2 NMRA). For more information on limited practice license please visit <http://nmexam.org/limited-license/>. Substitutions may apply. To apply please visit www.spo.state.nm.us

Attorney – 2-5 Years' Experience

The Law Offices of Erika E. Anderson seeks an attorney with 2-5 years of experience for immediate hire. We are a very busy and fast-paced AV-rated firm that specializes in civil litigation on behalf of Plaintiffs. We also do Estate Planning and Probate litigation. We are looking for an attorney who is highly motivated, well-organized and has excellent legal research and writing skills. The position offers a great working environment, competitive salary, and a generous benefits package. This is a great opportunity to join an incredible team that works hard and is rewarded for hard work! If interested, please send a resume to brittany@eandersonlaw.com.

Request for Letter of Interest

Notice is hereby given that the City of Albuquerque, The Legal Department calls for Proposals for Request For Letters of Interest for Legal Services. Interested parties may secure a copy of the Proposal Packet, by accessing the City's website at <https://www.cabq.gov/legal/documents/rfli-legal-services.pdf>.

City of Albuquerque – Contract Hearing Officer

The City of Albuquerque's Air Quality Program is seeking a qualified attorney to serve as a contract hearing officer for air quality related hearings, including petitions for rulemaking, permit appeals to the local Air Board and requests for public information hearings. This position is an independent contractor, and is not an employee of the City of Albuquerque. Applicant must be admitted to the practice of law by the New Mexico Supreme Court and be an active member of the Bar in good standing. A successful candidate will be an accomplished neutral facilitator, and have strong communication skills, knowledge of the Clean Air Act and air quality rules and regulations. Prior government hearing officer experience is preferred. Please submit a resume to the attention of "Air Quality Hearing Officer Application"; c/o Angela Aragon; Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov.

Full Time Housing Attorney

Senior Citizens' Law Office, a civil legal service organization, is advertising for a full time housing attorney. Please go to SCLO's website: www.sclonm.org and click on the Employment Tab on the top of the home page for the full job advertisement.

Associate Litigation Attorney

Hinkle Shanor LLP is seeking associate attorneys to join their Albuquerque office in 2022! The Albuquerque office of Hinkle Shanor is heavily specialized in medical malpractice defense litigation. Ideal candidates will demonstrate strong academic achievement, polished writing skills, and have 4-5 years of experience. While significant consideration will be given to candidates with prior medical malpractice litigation experience, attorneys with prior litigation experience in any area are encouraged to apply. Interested candidates should submit a resume and cover letter. Highly competitive salary and benefits. All inquiries will be kept confidential. Please email resumes and cover letters to nanderson@hinklelawfirm.com.

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.

Children's Court Attorney II and I Position Job ID: Various

The Children, Youth and Families Department is seeking to fill multiple vacancies in the Legal Team. We are currently filling Children's Court Attorney II and Children's Court Attorney I positions housed in Las Vegas NM, Albuquerque NM, Las Cruces NM, and Alamogordo NM. Salary range for Attorney II is \$60,738-\$97,181 annually and Salary for Attorney I is \$56,035.20-\$89,668.80 depending on experience and qualifications. Incumbents will provide professional legal services for protective services cases (child welfare abuse and neglect matters under the Children's Code) in litigation, counsel, interpretation of law, research, analysis, and mediation. Minimum qualifications for Attorney I: Juris Doctorate from an accredited school of law, be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license and for Attorney II must also have at least two (2) years of experience in the practice of law. Executive Order 2021-046 requires all employees with the State of New Mexico to provide either proof of COVID-19 vaccination or proof of a COVID-19 Viral test every week. Benefits include medical, dental, vision, paid vacation, and a retirement package. For information, please contact: Marisa Salazar (505) 659-8952. To apply for this position, go to www.spo.state.nm.us The State of New Mexico is an EOE.

Multiple Attorneys

Butt Thornton & Baehr PC seeks multiple attorneys with varying levels of legal experience and interests in various areas of civil defense litigation, commercial law, or workers compensation. Visit www.btblaw.com to see the many areas of law practiced at BTB. BTB is in its 63rd year of practice. We seek attorneys who will continue our tradition of excellence, hard work, and commitment to the enjoyment of the profession. Please send letter of interest, resume, and writing samples to Ryan T. Sanders at rtsanders@btblaw.com. All inquiries will be kept confidential.

Immigration Attorney

Catholic Charities in Albuquerque is hiring an attorney specializing in U-visa and VAWA cases. Provides immigration legal services, including representing clients before USCIS. Supervises and trains practice staff, ensuring that they are serving clients in a trauma-informed manner, employing best practices and managing their caseloads effectively. Oversees intake and assessment of potential clients. Participates in committees and working groups addressing the rights of immigrant survivors. Conducts trainings and presentations internally and externally. Qualifications: J.D. degree with admission and in good standing to practice law in any U.S. state or district with the ability to become licensed in New Mexico required. Must have strong leadership and communication skills, and demonstrate a commitment to public interest work. Minimum of 3 years of recent immigration legal services experience, minimum of 1 year of supervisory experience and minimum of 2 years' experience working with survivors of domestic violence or other vulnerable populations preferred. Bilingual in English/Spanish, knowledge of Albuquerque social service systems and multicultural experience a plus. Must have intermediate computer competency in MS Office and Windows. Compensation/Benefits: Pay range starts at \$25.03 - \$32.55 per hour/\$52,062 - \$67,704 annually, DOE. Catholic Charities' provides a comprehensive benefits package that includes medical, dental, PTO and 50% daycare discount at the Children's Learning Center (depending on availability). To Apply: E-mail resume and letter of intent to Catholic Charities, Human Resources, to jobs@ccasnm.org. EOE. Only candidates selected for interviews will be contacted.

Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is accepting applications for at least one full-time permanent Associate Staff Attorney or Assistant Staff Attorney position. The position may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. The target pay for the Associate Staff Attorney positions is \$74,000, plus generous fringe benefits. The target pay for the Assistant Staff Attorney positions is \$69,500, plus generous fringe benefits. Eligibility for the Associate Staff Attorney positions requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant Staff Attorney positions requires one year of practice or judicial experience plus New Mexico Bar admission. The Associate Staff Attorney or Assistant Staff Attorney positions require management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, law school transcript, and writing sample of 5-7 double-spaced pages to Aletheia Allen, Chief Appellate Attorney, c/o AOC Human Resources Division, aochrd-grp@nmcourts.gov, 237 Don Gaspar Ave., Santa Fe, New Mexico 87501, no later than 5:00 p.m. on Friday, March 18, 2022. More information is available at www.nmcourts.gov/careers. The New Mexico Judicial Branch is an equal-opportunity employer. Please note: Prospectively, the New Mexico Judicial Branch is requiring full vaccination status as a condition of employment to being hired into the judiciary. Fully vaccinated means two weeks beyond the second Moderna or Pfizer vaccination or single dose of the Johnson and Johnson vaccination, and if eligible, must have received the COVID-19 Booster.

Deputy District Attorney

The Ninth Judicial District Attorney's Office is seeking an experienced trial attorney for our Clovis office. Preferred Qualifications: Career prosecutor, licensed attorney to practice law in New Mexico, plus eight (8) or more years of relevant prosecution experience. 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.

Attorney III – 2 Positions

The Litigation and Adjudication Program of the Office of the State Engineer seeks to hire two attorneys (Attorney III positions) with litigation experience and a demonstrated interest in water and natural resources law to work in the Lower Rio Grande adjudication bureau. Attorneys in the adjudication bureaus prosecute all water rights adjudications brought on behalf of the State of New Mexico to determine the extent of existing water rights and to aid the State Engineer in the administration of those water rights. The positions are in Santa Fe and involve evaluating water rights information with technical staff, preparing and serving water rights offers, negotiating with attorneys and pro se claimants, litigating cases in court and on appeal (including conducting discovery, drafting pleadings and trial preparation), and working on special projects as needed. Required for the positions are a Juris Doctorate from an accredited law school, a license to practice law in New Mexico or otherwise qualified to practice, and 4 years of legal practice. Preferred are superb oral and written communication and interpersonal skills, and a willingness to learn. If you are interested in the difficult and important legal challenges raised by an increasingly hotter and drier climate, and want to be part of the solution, please apply at <https://www.spo.state.nm.us/>. Please include a cover letter and writing sample with your application.

Assistant Trial Attorney

Assistant 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.

Entry Level and Experienced Trial Attorneys

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

Attorney Senior

The Eleventh Judicial District & Magistrate Courts has an immediate career opportunity for an Attorney Senior (Staff Attorney). This position, located at Aztec District Court, provides highly complex and diverse legal work and support for judges and staff in San Juan and McKinley Counties, with occasional travel to Gallup. Salary for this position will be based upon the New Mexico Judicial Branch Salary Schedule with a target starting pay rate of \$76,556.48 annually \$36.806 p/hr. For a full job description and to download the required forms or application, please visit the Judicial Branch Career page at <https://www.nmcourts.gov/careers.aspx>. Resumes, with the required Resume Supplemental Form or Application, and supporting documentation may be emailed to 11thjdchr@nmcourts.gov, faxed to 505-334-7762, or mailed to Human Resources, 103 S. Oliver Drive, Aztec NM 87410. This position is open until filled.

Attorney

Winger Law Firm, PC seeks a full-time or part-time New Mexico licensed attorney to assist with insurance, personal injury, and general civil litigation. This position requires a motivated, self-starter with solid research and writing skills. Insurance defense experience is a plus but not required. Candidate must be familiar with State and Federal Rules of Civil Procedure. This position is remote with extremely flexible hours. Winger Law Firm prides itself on providing competent, efficient legal services to clients with an emphasis on creating a manageable and enjoyable work-life balance for its employees. All inquiries kept confidential. Salary DOE. Please forward your resume to jobs@wingerlawfirm.com

Legal Assistant

Legal Secretary/Assistant with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, is technologically adept and familiar with use of electronic databases and legal-use software. Seeking organized and detail-oriented professional with excellent clerical, computer, and word processing skills for established commercial civil litigation firm. Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to e_info@abrfirm.com or Fax to 505-764-8374.

Real Estate Paralegal

The Rodey Law Firm is accepting resumes for a real estate paralegal position in its Albuquerque Office. This position provides the opportunity to work on important and interesting transactions for A Level clients. A minimum of three years hands-on, real estate transactional experience required. Applicants expected to have familiarity with various types of real estate documents, including purchase and sale agreements, leases, easements, title commitments, and conveyance documents, as well as a demonstrated ability to manage a real estate transaction from commencement to closing, including maintenance of a transaction calendar, preparation and review of real estate transaction documents, monitoring of the due diligence process, title review, and oversight of closings. Requires attention to detail and the ability to manage multiple matters and multiple deadlines. Experience with financings and/or the land use approval process, including zoning, platting, permitting, and other development approvals a plus. Must be a self-starter, willing to take initiative and work as a member of a team. Firm offers congenial work environment, competitive compensation and excellent benefit package. Please send resume to jobs@rodey.com or mail to Human Resources Director, PO Box 1888, Albuquerque, NM 87103.

Part-time Judicial Assistant

U.S. District Court, District of New Mexico, Albuquerque, Judge James O. Browning is seeking a Part-time Judicial Assistant, 20 hours/week (40 hours/pay period). Salary is \$22,551 to \$33,375 annual DOQ. See full announcement and application instructions at www.nmd.uscourts.gov/employment.

Full-Time Legal Assistant

Madison, Mroz, Steinman, Kenny & Olexy, P.A., a well-established civil litigation firm, seeks a full-time Legal Assistant. The ideal candidate should have a minimum of 2 years civil litigation experience, be highly motivated, detail oriented, well-organized, strong work ethic, knowledge of State and Federal court rules, and proficient in Odyssey and CM/ECF e-filing. We offer an excellent fully funded health insurance plan, 401(K) and Profit Sharing Plan, paid designated holidays and PTO, and a professional and team-oriented environment. Please submit your resume to: becky@madisonlaw.com, or mail to Human Resources Manager, P.O. Box 25467, Albuquerque, NM 87125-5467.

Legal Assistant/Paralegal

Leigh & Dougherty, P.C., a family law firm located in Albuquerque, is accepting resumes for a legal assistant/paralegal position. Candidate must have excellent organizational skills, attention to detail and demonstrate initiative. Position requires the ability to work in a fast-paced environment, multi-task and prioritize. Excellent typing skills and proficiency with Microsoft Word, Excel and electronic filing required. Family Law experience a plus but not required. Firm offers comprehensive benefits package and competitive salary. Please send cover letter and resume to tol@ldfamilylaw.com with Legal Assistant/Paralegal in the subject line.

Litigation Paralegal

MMLC specializes in complex litigation (catastrophic injury or death). The right candidate would work with a highly effective team of attorneys and paralegals in representing our clients from intake through trial. Excellent benefit and profit-sharing package. Salary commensurate with experience. Spanish speaking helpful. Responsibilities: Complete case management; prepare and organize pleadings, discovery and production; request, organize, summarize medical records and bills; legal fact and basic legal research. Qualifications: 3 – 5 years relevant experience - medical malpractice, personal injury preferred; solid abilities in MS365 suite, Adobe PDF; Ability to work overtime as needed; Must be able to work in a busy, fast-paced litigation practice, have strong writing, communication, multitasking and organization skills. Benefits: Health, Dental, Vision, Short/long Term Disability, 401K. Please send resume to mcmladmin@mcginlaw.com

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 \$21.31 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$22.36 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Legal Secretary

The City of Albuquerque Legal Department (Litigation Division) is seeking a Legal Secretary to assist assigned attorneys in performing a variety of legal secretarial/administrative duties, which include but are not limited to: preparing and reviewing legal documents; creating and maintaining case files; calendaring; provide information and assistance, within an area of assignment, to the general public, other departments and governmental agencies. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Legal Assistant/Paralegal

Santa Fe law firm, whose attorneys primarily practice in medical malpractice and personal injury, is accepting resumes for a legal assistant/paralegal position. Candidate must possess excellent organizational skills, demonstrate initiative, resourcefulness and flexibility. The ability to work in a fast-paced environment, multi task and assess priorities is a must. Responsible for calendaring. High school diploma or equivalent and a minimum of three years' experience as a legal assistant or paralegal in litigation is preferred. Proficiency in Microsoft Office products and electronic filing. Paralegal skills a plus. Competitive salary dependent on experience. Send resume to lee@huntlaw.com.

Legal Assistant

Well established Santa Fe personal injury law firm is in search of an experienced paralegal/legal assistant. Candidate should be honest, highly motivated, detail oriented, organized, proficient with computers & excellent writing skills. Duties include requesting and reviewing medical records and bills, meeting with clients, opening claims with insurance companies and preparing demand packages. We offer a very competitive salary, a retirement plan funded by the firm, full health insurance benefits, paid vacation and sick leave, bonuses and opportunities to move up. We are a very busy law firm and are looking for an exceptional assistant who can work efficiently. Please submit your resume to personalinjury2020@gmail.com

Full Time Legal Assistant

Downtown plaintiff's personal injury firm seeking full time legal assistant with at least three years legal experience. Transcription and filing; Federal and State e-filing; organize medical records and bills; light bookkeeping. Good benefits. Mail resume to P.O. Box 527, Albuquerque, NM 87103 or fax to (505) 246-9797.

Office Space

Two Santa Fe Offices Available April 1, 2022

Two adjacent offices in a conveniently located professional office complex. The building has six offices, large reception area, kitchenette, and ample parking for clients and professionals. Four offices are currently occupied by two attorneys. Rent includes alarm, utilities, and janitorial services. \$950/mo Basement storage available. Call Donna 505-795-0077

Executive Office Spaces

Large Offices; Conference Room; Kitchen/Security Alarm. 3009 Louisiana Blvd. NE. Call Mike Contreras 505-263-7334. Sentinel Real Estate & Investment

Law Office For Sale

Located just 1/2 a mile south of I-40 on San Mateo Blvd. 3 nice sized offices, 2 restrooms, copy room, conference room, and a nice reception area. Newer roof and HVAC, with parking in front and back of the building. \$360,800. Ariana West, (505)235-0637, ariana@base5retail.com

Purpose-Built Law Office For Lease

Modern office. 6 professional offices and 10 staff workstations. Stunning conference room, reception, kitchen. Fully furnished. Lots of file storage. Phones and copier available. 1011 Las Lomas Road NE, Albuquerque. Available immediately. Inquiries: admin@kienzlelaw.com

Miscellaneous

Want To Purchase

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

For Roswell Attorney's - Search for Will

I am searching for a recent will made sometime in 2021 for Jose A. Gallegos (aka Andy) for probate. For more info - contact Gene at 505-699-3710.

Search for Will - Albuquerque attorneys

Searching for any Will executed by Alan Ringshall, deceased for probate. Please contact Jeffrey Johnson, Esq. via Jeff@JeffreyDJohnson.com or call 505-269-8626.

2022 Bar Bulletin Publishing and Submission Schedule

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

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

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

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

Spence Law Firm Adds Two Attorneys.



Francheska Bardacke

Francheska Bardacke, attended the University of New Mexico School of Law where she won a place on the National Mock Trial team and a national scholarship to attend legendary Gerry Spence's Trial Lawyers College in Wyoming. Since then, throughout her career as an attorney, Francheska has been committed to helping people in New Mexico and fighting on their behalf. She has tried over 50 criminal trials—30 to a jury from start to finish.

Professional memberships:

- New Mexico Trial Lawyers Association
- The American Association of Justice
- License to practice in Federal Court

Francheska attended Colorado College and Oxford University and received her J.D. from the University of New Mexico School of Law.



Erin Marshall

Erin Marshall has twenty years of public policy experience giving her the skills and knowledge of law to effectively represent clients. Erin brings passion for justice born from drafting legislation. Transitioning from creating law to practicing law has been rewarding and exciting. Her legal work builds on her years of legislative work combined with her hospital compliance work. Erin brings clinical perspective to her clients experiencing issues with acute stroke, cardiovascular, diabetes, end of life, and maternal/infant care or birthing. Erin is committed to her clients and community.

Professional memberships:

- New Mexico State Bar Association
- New Mexico Health Law Section, Board Member
- New Mexico Women's Bar Association, Board Member
- Federal Bar Association, New Mexico Chapter, Board Member
- New Mexico Trial Practice Section
- New Mexico State Bar Committee on Women in the Legal Profession
- Birth Rights Bar Association
- Human Milk Repository of New Mexico, Board Member

Erin received her B.A. in Cultural Anthropology from the University of Colorado Denver and her J.D. from the University of New Mexico



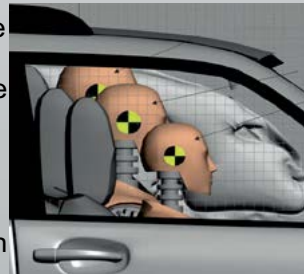
505.823.6363
SpenceNM.com

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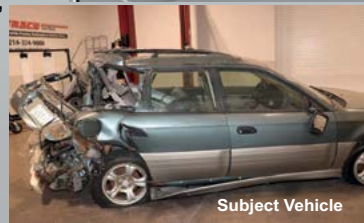
We Didn't Invent the Word;
We DEFINED it.



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.



The **TRACY** law firm

 A Nationwide Practice Dedicated to Vehicle Safety

4701 Bengal Street, Dallas, Texas 75235

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