

BAR BULLETIN

March 8, 2023 • Volume 62, No. 5



Lucero Sunset, by Jonathan Miller (see page 3)

rattlesnakelaw.com

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— SPECIAL INSERT —
YLD in Brief
Spring 2023



New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



MARCH 14

Teleseminar

Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 1

1.0 G
11 a.m.–Noon

MARCH 15

Teleseminar

Franchise Agreements: What You Need to Know Before Your Clients Signs, Part 2

1.0 G
11 a.m.–Noon

MARCH 21

Teleseminar

Mother Nature & Leases: Drafting Issues to Protect Against Storm & Other Da.m.age

1.0 G
11 a.m.–Noon

MARCH 28

Teleseminar

Trust and Estate Planning with Rising and Volatile Interest Rates

1.0 G
11 a.m.–Noon

Webinar

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

1.0 EP
11 a.m.–Noon

MARCH 29

Webinar

The Paperless Law Firm – A Digital Drea.m.

1.0 EP
11 a.m.–Noon

MARCH 31

Webinar

Ethics: Practical and Budget-Friendly Cybersecurity for Lawyers

1.0 EP
11 a.m.–Noon

APRIL 13

Webinar

REPLAY: Drug Testing and the Chain of Custody (2022)

2.0 G
Noon–2 p.m.

APRIL 20

Webcast

REPLAY: Introduction to Legal Specialties – Practice Area Cannabis Law (2022)

1.0 G
Noon–1 p.m.

APRIL 21

Webcast

REPLAY: Wait My Parents Were Wrong? It's Not All About Me?

3.0 EP
Noon–3:15 p.m.

APRIL 27

Webinar

REPLAY: Cybersecurity: How to Protect Yourself and Keep the Hackers at Bay (2022)

1.0 EP
Noon–1 p.m.

APRIL 28

Webinar

REPLAY: Determining Competency and Capacity in Mediation (2022)

2.0 G
Noon–2 p.m.

March Women's History Month

MARCH 9

Webinar

REPLAY: Pay Equity and Gender: Women and Fair Pay in the Workplace (2021)

1.0 G
11 a.m.–noon

MARCH 16

Webinar

REPLAY: Gender Discrimination and Sexual Harassment Complaints (2021)

1.0 EP
Noon–1 p.m.

MARCH 23

Webinar

REPLAY: Women in the Court Room (2021)

1.0 G
Noon–1 p.m.

MARCH 30

Webinar

REPLAY: Structural Impediments to Equal Pay (2021)

1.0 EP
9 a.m.–10 a.m.

Escape March Madness and Join Us for

Wellness Wednesday

APRIL 5

Webinar

Wellness Wednesday – REPLAY: What a Healthy Lawyer Looks Like (2021)

1.0 EP
Noon – 1 p.m.

APRIL 12

Webcast

Wellness Wednesday – REPLAY: Resiliency (2021)

1.0 EP
Noon–1 p.m.

APRIL 19

Webcast

Wellness Wednesday – REPLAY: Emotional Intelligence

1.0 EP
Noon–1 p.m.

APRIL 26

Webinar

Wellness Wednesday – REPLAY: Policing the Mentally Ill: A Brief History and Today's Liabilities (2022)

1.0 EP
Noon–1 p.m.

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



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www.sbnm.org



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Meetings

March

- 8**
Animal Law Section
noon, virtual
- 10**
Cannabis Law Section
9 a.m., virtual
- 10**
Prosecutors Section
noon, virtual
- 14**
Business Law Section
11 a.m., virtual
- 16**
Public Law Section
noon, virtual
- 17**
Indian Law Section
noon, virtual
- 17**
Family Law Section
9 a.m., virtual
- 20**
Children's Law Section
noon, virtual
- 21**
Appellate Section
noon, virtual
- 28**
Intellectual Property Law Section
noon, virtual
- 31**
Immigration Law Section
noon, virtual

Workshops and Legal Clinics

March

- 22**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

April

- 5**
Divorce Options Workshop
6-8 p.m., virtual
- 26**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

May

- 3**
Divorce Options Workshop
6-8 p.m., virtual
- 24**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

June

- 7**
Divorce Options Workshop
6-8 p.m., virtual
- 28**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

July

- 5**
Divorce Options Workshop
6-8 p.m., virtual
- 26**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

About Cover Image and Artist: Jonathan Miller is an attorney/author based out of Albuquerque. Jonathan travels around the state providing indigent criminal defense. He frequently stops along the highway to snap his photos on the way to court using his smart phone. He's also become addicted to the "layout app."

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

Bernalillo County Metropolitan Court Announcement of Formal Investiture

A formal Investiture for Judge Shonnetta R. Estrada will take place on Friday, March 10 at 5:15 p.m. (MT) in the Metropolitan Court Rotunda. Participating Justices and Judges are asked to please bring their robe and report to the Viewing Room by 5 p.m. (MT). Contact Camille Baca at 505-401-6149 for more information.

Sixth Judicial District Court New Hidalgo County District Court Clerk's Office Hours for 2023

The Hidalgo County District Court Clerk's Office hours are 8 a.m. to 5 p.m. (MT), closing during the noon hour, Monday through Thursday. The Hidalgo County District Court Clerk's Office remains closed to the public for in-person services on Friday. However, the Court will be available by telephone at 575-542-3411 and email at lordadmin@nmcourts.gov during the hours noted above and will also be expanding its hours of operation for calendar year 2023 to include March 31, April 28, May 26, June 30, July 28, Aug. 25, Sept. 29, Oct. 27, Nov. 17 and Dec. 29.

Professionalism Tip

With respect to the public and to other persons involved in the legal system:

I will be mindful of my commitment to the public good.

United States Court of Appeals for the Tenth Circuit Notice of Reappointment of Incumbent Bankruptcy Judge

The current 14-year term of office of Robert H. Jacobvitz, United States Bankruptcy Judge for the District of New Mexico at Albuquerque, N.M., is due to expire on Aug. 9. The United States Court of Appeals for the Tenth Circuit is presently considering whether to reappoint Judge Jacobvitz to a new 14-year term of office. Upon reappointment, Judge Jacobvitz would continue to exercise the jurisdiction of a bankruptcy judge, as specified in Titles 11 and 28 of the United States Code. Members of the bar and the public are invited to submit comments for consideration by the Tenth Circuit Court of Appeals. All comments will be kept confidential and should be submitted by April 6 to David Tighe via mail at 1823 Stout Street, Denver CO 80257 or by email at bankruptcycomments@ca10.uscourts.gov.

U.S. District Court, District of New Mexico Announcement of New Judicial Appointment

The United States District Court has appointed Judge Jennifer M. Rozzoni as the District's newest United States Magistrate Judge in Albuquerque, New Mexico.

STATE BAR NEWS Access to Justice Fund Grand Commission Request for Proposals Open

The Access to Justice Fund Grant Commission announces the 2023-2024 Request for Proposals. If your organization intends to apply for an Access to Justice Fund Grant, send an email to Donna Smith at donna.smith@sbnm.org and provide a statement of intent to apply, the organization contact person and his/her email, telephone number and mailing address. Donna will respond by email acknowledging receipt of the intent to apply and provide the application materials. Upon notification

of a statement of intent to apply, prospective applicants will receive application materials and any further instructions, copies of all of the questions asked by potential applicants and the question responses. Submitting an "Intent to Apply" does not obligate your organization to submit an application, but you should notify Donna by email if you decide not to apply.

Equity in Justice Program Have Questions?

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

Listening Session on Disability

If you are a lawyer with a disability or a primary caretaker of a person with a disability, we invite you to a candid conversation regarding your experiences in the legal profession and legal settings and your recommendations for improvement. Please reach out to Dr. Amanda Parker at amanda.parker@sbnm.org or call 505-797-6085 to be part of or help facilitate this session.

Historical Committee Announcement of Lunch & Learn

Join the Historical Committee of the State Bar on March 10 from noon – 1 p.m. (MT), for a Lunch & Learn on "The 1862 Confederate Invasion of the New Mexico Territory." Hear why the invasion occurred as well as why Jefferson Davis, President of the Confederacy, personally authorized it. The answer to these questions involves the Mexican War, the Treaty of Guadalupe Hidalgo, the history of the thorny relationship between Texas and New Mexico, the Compromise of 1850, the 3/5th Clause of the Constitution, the Wilmot Proviso and the Fugitive Slave Law. The presentation's speaker, Henry M. Rivera, is a partner in the Washington, D.C., firm

of Wiley Rein where he specialized in matters before the Federal Communications Commission, the Commerce Department, the White House and Congress. The event is free to attend and will be held in-person at the State Bar Center or virtually. Pre-registration is required for virtual attendance, which tentative attendees can sign up for at no cost. Virtual attendees will receive a joining link closer to the event date. For more information, please contact memberservices@sbnm.org.

Legal Specialization Commission

Notice of Commissioner Vacancy

The State Bar of New Mexico is accepting applications for one available commissioner seat on the Legal Specialization Commission. Applicants must be lawyers who have passed the bar examination, are licensed and in good standing to practice law in New Mexico and have practiced law for a minimum of seven years. To apply, please send a letter of intent and resume to kate.kennedy@sbnm.org.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

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

NM LAP Committee Meetings

The, NM LAP Committee will meet at 4 p.m. (MT) on May 18, July 13, Oct. 5 and Jan. 11, 2024. The, NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The, NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

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.

UNM SCHOOL OF LAW Law Library Hours

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

— *Featured* —

Member Benefit



MeetingBridge offers easy-to-use teleconferencing especially designed for law firms. You or your staff can set up calls and notify everyone in one simple step using our Invitation/R.S.V.P. tool. No reservations are required to conduct a call. Client codes can be entered for easy tracking. Operator assistance is available on every call by dialing *0.

Call 888-723-1200, or email sales@meetingbridge.com or visit meetingbridge.com.

To take advantage of your Member Discount, please use the promo code "SBNM."

OTHER NEWS

New Mexico Christian Legal Aid Virtual Training Seminar Announcement

New Mexico Christian Legal Aid will be hosting a Virtual Training Seminar on April 28 from 1 - 5 p.m. (MT) via Zoom on the topics of justice for the poor and assisting the needy. Attendants will receive free CLE credits and up-to-date training in providing legal aid. For more information and registration, contact Jim Roach at 505-243-4419 or Jen Meisner at christianlegallaid@hotmail.com.

Legal Education

March

<p>1-31 Self-Study - Tools for Creative Lawyering: An Introduction to Expanding your Skill Set 1.0 G, 2.0 EP Online On-Demand The Ubuntuworks Project www.ubuntuworksschool.org</p>	<p>15 Franchise Agreements: What You Need to Know Before Your Client Signs, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>27 Tools for Creative Lawyering: An Introduction to Expanding your Skill Set 1.0 G, 2.0 EP Video Replay with Monitor (Live Credits) The Ubuntuworks Project www.ubuntuworksschool.org</p>
<p>3-5 Taking and Defending Depositions 31-4/2 31.0 G, 4.5 EP Live Program University of New Mexico School of Law lawschool.unm.edu</p>	<p>16 REPLAY: Gender Discrimination and Sexual Harassment Complaints (2021) 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>28 Ethics, Attorneys, and Social Media: How to Keep the Disciplinary Counsel from Knocking at Your Door 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>9 REPLAY: Pay Equity and Gender: Women and Fair Pay in the Workplace (2021) 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>21 Mother Nature & Leases: Drafting Issues to Protect Against Storm & Other Damage 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>28 Trust and Estate Planning with Rising and Volatile Interest Rates 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>9 Law & Technology Series: TECM Workshop 16.2 G Live Program Administrative Office of the U.S. Courts www.uscourts.gov</p>	<p>21 Poverty Law 10.0 G, 2.0 EP Live Program University of New Mexico School of Law lawschool.unm.edu</p>	<p>29 The Paperless Law Firm: A Digital Dream 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>
<p>14 Franchise Agreements: What You Need to Know Before Your Client Signs, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>21 Planning and Goal-Setting Webinar 1.0 EP Webcast New Mexico Defense Lawyers Association www.nmdla.org</p>	<p>30 REPLAY: Structural Impediments to Equal Pay (2021) 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org</p>
	<p>23 REPLAY: Women in the Court Room (2021) 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org</p>	<p>31 Ethics: Practical and Budget-Friendly Cybersecurity for Lawyers 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.

April

- | | | |
|---|---|---|
| <p>1-30 Self-Study - Tools for Creative Lawyering: An Introduction to Expanding your Skill Set
1.0 G, 2.0 EP
Online On-Demand
The Ubuntuworks Project
www.ubuntuworksschool.org</p> <p>3 Roadways to the Bench
2.3 G
Webcast
U.S. District Court,
District of New Mexico
www.nmd.uscourts.gov</p> | <p>5 Wellness Wednesday: REPLAY: What a Healthy Lawyer Looks Like
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> <p>14 Family Mediation
30.0 G, 2.0 EP
Live Program
University of New Mexico
School of Law
lawschool.unm.edu</p> | <p>24 Tools for Creative Lawyering: An Introduction to Expanding your Skill Set
1.0 G, 2.0 EP
Video Replay with Monitor Credits (Live Credits)
The Ubuntuworks Project
www.ubuntuworksschool.org</p> <p>27 REPLAY: Cybersecurity: How to Protect Yourself and Keep the Hackers at Bay (2022)
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
|---|---|---|

CERTIORARI TABLE, 2023-NMCERT-001 (January 2023)

2023-NMCERT-001 NEW MEXICO SUPREME COURT CERTIORARI TABLE JANUARY 2023

2023-NMCERT-001

PETITION FOR WRIT OF CERTIORARI DENIED (13)

S-1-SC-39581	Perea v. Fiesta Park Healthcare, LLC	1/4/2023	A-1-CA-38271
S-1-SC-39681	Wells Fargo Bank v. Graham	1/17/2023	A-1-CA-38144
S-1-SC-39696	State v. May	1/17/2023	A-1-CA-39659
S-1-SC-39704	State v. Miller	1/17/2023	A-1-CA-38831
S-1-SC-39675	State v. Ruffin	1/18/2023	A-1-CA-40079
S-1-SC-39713	State v. Ahidley	1/18/2023	A-1-CA-40278
S-1-SC-39714	State v. Coleman	1/18/2023	A-1-CA-38893
S-1-SC-39674	State v. Doyal	1/20/2023	A-1-CA-39723
S-1-SC-39694	Cummings, et al. v. Board of Regents of UNM, et al.	1/31/2023	A-1-CA-40599
S-1-SC-39702	Skeet v. NM Tax & Rev	1/31/2023	A-1-CA-38577
S-1-SC-39707	State v. Bierner	1/31/2023	A-1-CA-38998
S-1-SC-39719	State v. Espinoza	1/31/2023	A-1-CA-39789
S-1-SC-39721	State v. Scroggins	1/31/2023	A-1-CA-38617

PETITION FOR WRIT OF CERTIORARI GRANTED (5)

S-1-SC-39540	Puma v. Walmart Store East LP	1/3/2023	A-1-CA-38023
S-1-SC-39616	The Acequia Compound v. Orchard Metal Capital	1/3/2023	A-1-CA-38797
S-1-SC-39641	Salas v. Guadalupe Credit Union	1/3/2023	A-1-CA-39021
S-1-SC-39679	Zangara v. LSF9 Master Participation Trust	1/17/2023	A-1-CA-38169
S-1-SC-39563	Sanchez v. United Debt Counselors, et al.	1/19/2023	A-1-CA-40164

PETITION FOR WRIT OF CERTIORARI QUASHED (1)

S-1-SC-39058	State v. Chavez	1/10/2023	A-1-CA-38788
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Certiorari tables may be viewed on the New Mexico Supreme Court's website:

<https://supremecourt.nmcourts.gov/supreme-court/court-calendar-live-viewing-and-case-information/certiorari-tables/>

Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-040
No: A-1-CA-38641 (filed February 11, 2022)

MARK VAN BUSKIRK and LORI VAN BUSKIRK, husband and wife,
Plaintiffs-Appellants,
v.
CITY OF RATON, a New Mexico municipal corporation,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY

Melissa A. Kennelly, District Judge

Montgomery & Andrews, P.A.
Stephen S. Hamilton
Kaleb W. Brooks
Santa Fe, NM

for Appellants

Kerry Kiernan, P.C.
Kerry Kiernan
Albuquerque, NM

Utton & Kery, P.A.
Craig T. Erickson
Susan C. Kery
Albuquerque, NM

Ray A. Floersheim
Raton, NM

for Appellee

OPINION

YOHALEM, Judge.

{1} This is an action for quintuple damages for inverse condemnation brought against the City of Raton, pursuant to NMSA 1978, Section 42A-1-29(B) (1983), by Plaintiffs Mark and Lori van Buskirk. The van Buskirks appeal from the district court’s decision granting summary judgment to the City. We affirm.

THE UNDISPUTED MATERIAL FACTS

{2} The material facts are undisputed. Triangle Dot Ranch, Inc. (TDR), a New Mexico corporation, was the owner of the approximately 300-acre ranch at issue in this case until 1984, when the corporation was dissolved. Mark van Buskirk was a minority shareholder in TDR. In 1980, TDR sold approximately 27 acres at the southwest end of the ranch to the City for use as a landfill, retaining 214 acres of grazing land adjacent to the landfill to the east, and three tracts totaling 64.77 acres, adjacent to both the landfill and the ranch’s grazing land to the southeast.

{3} Sometime after TDR dissolved (somewhere between 1997 and 1999), the

van Buskirks acquired the 214 acres of grazing land as its sole owner. The van Buskirks also held a shared interest with other family members in the three tracts totaling 64.77 acres, adjoining both the grazing land and the landfill. Until 2014, when the City closed the landfill, the van Buskirks complained that trash from the landfill blew onto their grazing land. They accused the City of negligence in failing to cover the garbage daily with soil. The New Mexico Environment Department fined the City several times for improperly maintaining the landfill.

{4} In 1997, the van Buskirk family sold the three tracts totaling 64.77 acres (contiguous with both the ranch grazing land and the City landfill) to the City. At the time of purchase, the City intended to use one of the three tracts for a new regional landfill (which was never opened), and another tract as a source of cover soil for the City landfill. From 1998 to 2014, the year the City landfill closed, trash continued to blow onto the van Buskirks’ 214-acre grazing land.

THE PROCEDURAL HISTORY IN THE DISTRICT COURT

{5} The van Buskirks filed a pro se complaint on December 9, 2013, alleging neg-

ligence by the City for failing to properly cover the trash in the landfill. Recognizing that their negligence claim was likely barred by the statute of limitations, the van Buskirks amended their complaint to allege inverse condemnation, under Section 42A-1-29(A) (Subsection A). The second complaint continued to seek compensation for alleged damage to their 214-acre grazing land from trash blowing from the landfill.

{6} After filing their inverse condemnation complaint, the van Buskirks obtained counsel and filed a third complaint (first amended complaint for inverse condemnation), dropping their Subsection A inverse condemnation claim, and instead pleading a cause of action for quintuple damages for inverse condemnation under Section 42A-1-29(B) (Subsection B). Subsection B provides a cause of action for damages for inverse condemnation under limited circumstances. Damages pursuant to Subsection B are calculated at “the greater of the fair market value or a unit rate of five times that of the compensation or consideration [the condemnee or grantor] received for the land [originally] taken[.]” Section 42A-1-29(B)(3).

{7} The City filed a motion for summary judgment asking the district court to dismiss for failure state a claim under Subsection B. The City contended that unlike Subsection A, which creates a cause of action for either the original owner or “any subsequent grantee” of property that is taken or damaged by a government entity, Subsection B focuses on a prior, original transaction and expressly limits the right of action to the “condemnee or grantor” of previously taken contiguous property. The district court granted summary judgment to the City, finding that the van Buskirks were not the “grantors or condemnees” of the property previously taken for the landfill: TRD was the grantor. The district court agreed with the City that the van Buskirks were not the real parties in interest and that the van Buskirks did not have standing to sue on TDR’s behalf.

{8} Rather than appealing the district court’s dismissal of their third complaint, the van Buskirks filed a second amended complaint (fourth complaint). The second amended complaint again sought compensation under Subsection B. This time the van Buskirks claimed standing and real party in interest status based on their 1997 sale of the 64.77-acre tract to the City. They claimed that that the City’s purchase of the 64.77 acres met the Subsection B(3) requirements for “contiguous to property previously taken” owned by the same “condemnee or grantor.” Section

42A-1-29(B)(3). They sought more than \$5 million in compensation for the damage to their 214-acre grazing land, five times the per-acre price paid by the City for the 64.77-acre tract.

{9} The City again filed a motion for summary judgment, contending that the van Buskirks' second amended complaint failed to state a Subsection B claim because there was no damage to their land caused by the public use of the 64.77 acres purchased by the City; any damage arose from the landfill, which was purchased by the City from a different grantor seventeen years before the van Buskirks acquired the adjoining property. The City contended that Subsection B was intended by the Legislature to deter the government from shortchanging a private property owner by purchasing less of his or her property than the government knows will subsequently be damaged or taken for the intended public use. Subsection B provides compensation to the private property owner whose property was subsequently damaged by the public use of adjoining property purchased or taken in the original transaction.

{10} The van Buskirks responded to the City's motion for summary judgment, claiming that Subsection B, by its plain language, requires only that the City "take[] or damage[] property contiguous to property previously taken or granted from the . . . grantor without making just compensation[.]" Section 42A-1-29(B)(3). The van Buskirks claimed that they met the requirements of that statutory phrase, pointing to the City's purchase of their 64.77-acre tract, and the damage to their contiguous 214 acres of grazing land. Again relying on this phrase from Subsection B(3), the van Buskirks disputed the City's argument that the damage to the contiguous land must be related to the original under-purchase or taking of property from the grantor or condemnee. *See id.*

{11} The district court granted summary judgment to the City, agreeing with the City that the Legislature did not intend to provide a cause of action for quintuple compensation under the circumstances of this case. The district court focused on the deterrent intent behind the quintuple compensation authorized by Subsection B, concluding that the Legislature's purpose is to use the threat of quintuple compensation to deter "conduct in which the government seeks to save money and shortchange a private property owner by purchasing less than the amount of property actually needed for its public purpose." The district court found that, because the government-

tal conduct in this case was neither different from nor more reprehensible than the conduct ordinarily involved in a claim for inverse condemnation under Subsection A, this was not the kind of conduct Subsection B was intended to deter. The district court granted the City's motion for summary judgment.

DISCUSSION

{12} The van Buskirks argue on appeal that they have stated a cause of action under the plain language of Subsection B(3). The van Buskirks claim that because the 64.77 acres purchased from them by the City (seventeen years after the landfill was purchased from TDR) is contiguous to their 214 acres of grazing land, the facts of this case fit squarely within the plain language of Subsection B(3)'s requirement of damage by the City to land contiguous to land previously purchased from the same grantor.¹ They contend that the district court erred in looking beyond the plain language to legislative intent. Finally, they claim that even if the legislative purpose of Subsection B is considered, their reading of the statute facilitates the statutory goal of broadly deterring the government from purchasing less property from a private landowner than actually needed for public use.

{13} The City contests the van Buskirks' construction of the statutory language. The City points out that the van Buskirks' "plain meaning" argument relies on a single phrase in Subsection B(3), taken out of context, arguing that the plain meaning of a statute must be determined by looking to the language as a whole. Reading the statute as a whole, the City contrasts the cause of action for inverse condemnation adopted by the Legislature in Subsection A, with Subsection B's focus on compensating a particular landowner involved in a transaction where the government under-purchases the grantor's land, for the damage subsequently caused to that landowner's remaining property by the adjoining public use. The City argues that the van Buskirks' interpretation of the statute—to not require any causal connection between the under-purchase of a grantor's land in a prior transaction and the subsequent damage to that same grantor's adjoining land—is not supported by the statute's language or its purpose.

{14} {14} We agree with the City. We construe Subsection B of the inverse condemnation statute to create a right of action, which provides a statutory measure of "just compensation" to a private landowner when the government uses its power of eminent domain to take or

purchase less property than it needs for the intended public use, resulting in damage to the grantor's adjoining property.

I. The Guiding Principles of Statutory Interpretation

{15} This case raises a question of statutory interpretation concerning Subsection B of New Mexico's inverse condemnation statute, Section 42A-1-29(A), (B). The construction of Subsection B is an issue of first impression. Neither the parties, the district court, nor this Court have found a comparable statute in any other state. We, therefore turn to the principles of statutory construction, with the goal of "ascertain[ing] and giv[ing] effect to the intent of the Legislature." *State v. Smith*, 2004-NMSC-032, ¶ 8, 136 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted).

{16} The interpretation of a statute is an issue of law that is subject to *de novo* review by our appellate courts. *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69. We begin the search for legislative intent by first considering the plain language of the statute. *Id.* "[W]e look to the plain language of the statute to determine if the statute can be enforced as written." *State v. Vest*, 2021-NMSC-020, ¶ 14, 488 P.3d 626 (internal quotation marks and citation omitted). In examining the language used by the Legislature, words must be viewed in the context in which they are used in the statute. Every word chosen by the Legislature must be considered and given meaning. *See State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622.

{17} The initial question in this regard is whether the words of the statute are so clear that they rule out any ambiguity, confusion, or uncertainty about the statute's meaning. In the absence of ambiguity or uncertainty in the language of the statute, we can give effect to the language as written and need not either construe the language or consider the policy implications flowing from the statutory language. *See id.* As our Supreme Court recognized, however, caution must be exercised in applying this plain meaning rule. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. It is exceedingly rare to find statutory language "crystal clear in its meaning[.]" *id.*, "not vague, uncertain, ambiguous, or otherwise doubtful[.]" *Id.* ¶ 22. Even a statute, "apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *Id.* ¶ 23. "In such a case, it is part of the essence of judicial responsibility to search for and ef-

¹ Subsection B applies, by its terms, to property acquired by a government entity with the power of eminent domain either through condemnation or by purchase. Because all of the properties at issue in this case were acquired by the City by purchase from a grantor, we use the term "grantor" in our discussion, rather than the phrase "condemnee or grantor" to simplify the discussion.

fectuate the legislative intent—the purpose or object—underlying the statute.” *Id.*

II. The Plain Language of Subsection B Does Not Support Imposing Liability on the Government Without a Causal Connection to a Prior Transaction

{18} We begin our analysis “by looking first to the words chosen by the [L]egislature.” *Farish*, 2018-NMCA-003, ¶ 6 (internal quotation marks and citation omitted), *rev’d in part and remanded*, 2021-NMSC-030. Subsection B states as follows:

B. Notwithstanding the provisions of Subsection A of this section or any other provision of law regarding compensation for damage in the situation described in that subsection:

(1) if the person authorized [to exercise eminent domain] had taken or been granted for public use, pursuant to a final judgment, an order of immediate possession or private agreement, any property;

(2) the property subsequently taken or damaged was contiguous to the property taken or granted; and

(3) the person takes or damages property contiguous to property previously taken or granted from the condemnee or grantor without making just compensation or without instituting and prosecuting . . . any proceeding for condemnation; the condemnee or grantor shall receive compensation for the land taken or damaged at the greater of fair market value or a unit rate of five times that of the compensation or consideration he received for the land taken; provided that if the width of the property taken or damaged is not equal to the width originally taken or damaged, compensation required pursuant to this subsection shall be increased or reduced ratably in accordance with the relationship of the respective widths.

Section 42A-1-29(B).

{19} The van Buskirks rely on the first phrase in Subsection B(3): “the [condemning authority] takes or damages property contiguous to property previously taken or granted from the condemnee or grantor without making just compensation[.]” Section 42A-1-29(B)(3). This language, they argue, “places no limitation on how the condemning authority takes or damages that property so as to be liable for the prescribed statutory damages.” All that need be shown, according to the van Buskirks, is damage to property which

happens to be contiguous to property previously acquired from that grantor, regardless of whether the damage results from the public use of the property originally taken. They assert that, had the Legislature intended to limit the cause of action to damages that originate from or are caused by the public use of the originally taken property, it could easily have said so clearly.

{20} We do not agree. When the words used by the Legislature are viewed in context, they support the construction advanced by the City: that the Legislature intended that the damage to contiguous property compensable under Subsection B is damage caused by or resulting from the under-purchase of land in an earlier transaction.

{21} Subsection B sets forth three requirements. It begins, in Subsection B(1), by requiring an original transaction between a government entity having the power of eminent domain and a private landowner, where the government acquires property either by way of a grant for public use or by condemning the land. It then requires, in Subsection B(2), “subsequent damage” to land contiguous to the land taken in the original transaction. Subsection B(3) then ties the “subsequent damage” to adjoining land to the public use of the property taken in the original transaction in three ways. *See* § 42A-1-29(B)(2)(3). First, Subsection B(3) describes the damage it intends to compensate as damage to “property contiguous to property previously taken or granted from the condemnee or grantor” in the original transaction. Section 42A-1-29(B)(3). Second, it measures the damages authorized by Subsection B with reference to the compensation received by the grantor in the original transaction. In particular, Subsection B authorizes damages at the greater of “a unit rate of five times that of the compensation or consideration [the landowner] received for the land taken” in the original transaction, or the fair market value of the land, whichever is greater. *Id.* Third, the last sentence of Subsection B(3) indicates that the compensation can be adjusted “if the width of the property taken or damaged is not equal to the width *originally taken.*” *Id.* (emphasis added).

Taken together, this language indicates that the Legislature intended Subsection B to address situations where the public use of property previously acquired from a landowner causes damage to the landowner’s remaining adjacent parcel. The parties agree that the example used by the district court of a utility, which acquires only the six-inch width of land it needs for its line and fails to acquire the greater width of land that will be damaged by laying and maintaining the line, is the type of conduct the Legislature seeks to discourage.

{22} Having carefully reviewed the language of Subsection B, we do not agree with the van Buskirks’ claim that the plain meaning of its language is to allow quintuple compensation without regard to a causal connection between the original transaction and the damage to the landowner’s contiguous property. To the contrary, when the plain language of Subsection B is read as a whole, it indicates legislative intent to require a causal connection between the government’s use of property originally acquired from the landowner and the subsequent injury to the landowner’s remaining contiguous land.

{23} We are not persuaded by the van Buskirks’ argument that, because the Legislature could easily have added an explicit requirement that the subsequent damage originate on or be caused by the public use of the land originally purchased, the omission of that language rules out a causation requirement. The Court’s responsibility is to carefully assess the words actually used by the Legislature and to look to the purpose and objectives of the statute’s language if that language is less than clear. *See Perea v. Baca*, 1980-NMSC-079, ¶ 22, 94 N.M. 624, 614 P.2d 541 (“A statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration.” (internal quotation marks and citation omitted)).

{24} Although our analysis of the language of Subsection B alone leads us to conclude that Subsection B is intended to compensate a landowner whose adjoining property has been damaged by the public use of property previously purchased or taken from that landowner, we acknowledge that the statutory language is awkward, and therefore, arguably less than crystal clear. We therefore review the purpose, background, and history of the statute to ensure that our analysis of the language does not lead to “injustice, absurdity, or contradiction[.]” *State v. Padilla*, 2008-NMSC-006, ¶ 7, 143 N.M. 310, 176 P.3d 299 (internal quotation marks and citation omitted).

III. An Analysis of the Background, Purpose, and History of the Legislative, as Well as Its Place in the Statutory Scheme, Supports Our Reading of the Statutory Language

{25} We now proceed to examine the statutory language in the broader context of the Legislature’s purpose, looking to the “spirit or reason” of the statute. *Vest*, 2021-NMSC-020, ¶ 21 (holding that if statutory language is “doubtful, ambiguous, or an adherence to the literal use of the

words would lead to injustice, absurdity, or contradiction, the court should reject the plain meaning rule in favor of construing the statute according to its obvious spirit or reason” (internal quotation marks and citation omitted)).

{26} The legislative purpose of Subsection B of the inverse condemnation statute is consistent with our analysis of the statutory language. The van Buskirks, the City, and the district court agree that the Legislature enacted Subsection B both to compensate landowners and to deter the government, in the exercise of its power of eminent domain, from shortchanging a private landowner by taking or purchasing less than the amount of property likely to be subsequently damaged by the intended public use. The van Buskirks contend that their reading of the Subsection B furthers this purpose by broadly punishing any damage to land, which happens to be contiguous with land previously purchased by the government from the same grantor. They claim that the Legislature did not intend to require the grantor to prove that the under-purchase of land in the original transaction caused or resulted in the subsequent damage to the grantor’s adjoining property. We do not agree.

{27} To discern the Legislature’s purpose, we turn to the history of Subsection B and its function within the context of our inverse condemnation statute, Section 42A-1-29, as a whole. *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 (“[W]e closely examine the overall structure of the statute we are interpreting, as well as the particular statute’s function within a comprehensive legislative scheme[.]” (citation omitted)).

{28} Subsections A and B together address inverse condemnation in New Mexico. A comparison of the two subsections strongly supports the district court’s conclusion that the Legislature intended to establish a cause of action different from the one it enacted in Subsection A two years earlier. (Subsection A was enacted in 1981. See 1981 N.M. Laws, ch. 125, § 25. Subsection B was enacted in 1983. See 1983 N.M. Laws, ch. 131, § 1. Subsection A establishes a general cause of action for inverse condemnation, implementing the takings clause of the New Mexico Constitution, N.M. Const. art II, § 20.² *North v. Pub. Serv. Co. of N.M.*, 1983-NMCA-124, ¶ 9, 101 N.M. 222, 680 P.2d 603; see § 42A-1-29(A). Subsection A allows a landowner to initiate an action for compensation for

the fair value of the land taken or damaged without waiting for the government to initiate condemnation proceedings. See *Pub. Serv. Co. of N.M. v. Catron*, 1982-NMSC-050, ¶ 7, 98 N.M. 134, 646 P.2d 561. Fair compensation for damage to land caused by an adjoining public use can be obtained by a landowner in an inverse condemnation action brought under Subsection A without any additional requirements, apart from a showing of damage from a public use. See UJI 13-704 NMRA (providing for damages for a partial taking). A claim for compensation for damage to land adjoining a public use brought under Subsection A does not depend upon an original transaction where the government purchased less land from the same grantor than it needed: any landowner can bring a claim for the fair market value of property that is taken for public use, or for the reduction in market value caused by damage to the property caused by a public use. *Mesich v. Bd. of Comm’rs of McKinley Cnty.*, 1942-NMSC-054, ¶ 12, 46 N.M. 412, 129 P.2d 974 (“[I]n this state . . . the right to damages runs with the land, and a subsequent purchaser may recover such damages if not paid to his predecessor in title.”).

{29} Subsection B does something quite different: it creates a private cause of action for a particular grantor. It is aimed at fairly compensating a grantor who suffered additional uncompensated damage following a previous transaction. The cause of action is intended, by its terms, to both compensate that grantor for subsequent damage to his or her adjoining property and to encourage the government to fairly evaluate the amount of land necessary for the public use of the property originally purchased.

{30} The van Buskirks’ reading of Subsection B, which removes from the Subsection B cause of action both the requirements that the government have under-purchased land in the original transaction and that the damage to the grantor’s land resulted from or was caused by that under-purchase of land, is inconsistent with the spirit and reason of this statute. There is no reasonable basis for providing such generous additional compensation to a landowner based solely on the happenstance that land damaged by a public use is contiguous to an unrelated purchase of land years later from the same landowner. To so conclude would subject the public to potential liability well beyond that contemplated by our Legislature in this statute, which is targeted at fairly compensating

grantors who suffer subsequent, uncompensated damage to their adjoining land. Subsection A, rather than Subsection B, provides the van Buskirks and those in a similar position with a cause of action in inverse condemnation for the fair value of the damage to their land if it was caused by a public use. Allowing the van Buskirks additional compensation above that permitted in a Subsection A inverse condemnation action does not serve the dual legislative purposes of fairly compensating a landowner who suffered additional, uncompensated damage following an original transaction and encouraging the fair evaluation by the government of the amount of land needed for a public use. We will not assume that the Legislature acted unreasonably. See *Citation Bingo, Ltd. v. Otten*, 1996-NMSC-003, ¶ 22, 121 N.M. 205, 910 P.2d 281 (“[T]his [C]ourt must presume that the [L]egislature acted reasonably” (internal quotation marks and citation omitted)).

{31} It is undisputed in the summary judgment record that the van Buskirks were not the grantors from whom the City purchased the landfill that caused the damage alleged in this case. Likewise, there is no evidence of subsequent damage resulting from the original transaction the van Buskirks rely on here—the sale of 64.77 acres to the City. Accordingly, the van Buskirks have failed to state a cause of action under Subsection B.

IV. We Do Not Address the City’s Remaining Arguments

{32} Given our decision affirming the district court’s grant of summary judgment, we do not reach and do not comment on the merits of the City’s two remaining arguments: (1) that the Legislature never intended to authorize the sort of multi-million dollar damages sought by the van Buskirks; and (2) that the Legislature intended Subsection B to apply only to the purchase by a utility of too narrow a strip of land to lay and service its lines, where the “width” damaged and the “unit” price are both easily measurable.

CONCLUSION

{33} For the reasons stated, we affirm the district court’s grant of summary judgment and the dismissal of this action.

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

JANE B. YOHALEM, Judge

WE CONCUR:

J. MILES HANISEE, Chief Judge

MEGAN P. DUFFY, Judge

² Subsection A states as follows: “A person authorized to exercise the right of eminent domain who has taken or damaged or who may take or damage any property for public use without making just compensation or without instituting and prosecuting to final judgment in a court of competent jurisdiction any proceeding for condemnation is liable to the condemnee, or any subsequent grantee thereof, for the value thereof or the damage thereto at the time the property is or was taken or damaged[.]”

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Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-041
No: A-1-CA-39709 (filed March 23, 2022)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ANTONIO M.,
Child-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Grace B. Duran, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM
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Harrison & Hart, LLC
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for Appellant

for Appellee

OPINION

HENDERSON, Judge.

{1} Following an adjudicatory hearing, a jury found Antonio M. (Child or A.M.) committed felony murder, attempt to commit armed robbery, conspiracy to commit armed robbery, child abuse, and aggravated assault by the use of a deadly weapon. On appeal, Child argues (1) the State failed to bring him to an adjudicatory hearing in a timely manner; (2) the witness identifications of Child during the adjudicatory hearing were unnecessarily suggestive; (3) the district court abused its discretion by admitting evidence regarding “rumors” that Child and two others planned to rob Fabian Lopez (Victim); (4) the State failed to present sufficient evidence to sustain Child’s delinquency adjudications; and (5) the cumulative impact of these errors warrant the reversal of his delinquency adjudications.

{2} We hold that the delays before the adjudicatory hearing did not require the district court to dismiss the petition and do not require this Court to vacate Child’s delinquency adjudications. Nevertheless, because we conclude that the in-court identifications were impermissively suggestive, we reverse and remand for a new adjudicatory hearing. We address Child’s

remaining arguments to the extent necessary to avoid error in retrial and to ensure that retrial does not violate double jeopardy protections.

BACKGROUND

I. Factual Background

{3} On the night of August 4, 2020, Victim drove with his girlfriend (Girlfriend) and their infant son to Frenger Park in Las Cruces, New Mexico. Victim parked his vehicle at Frenger Park, and not long after, a young man walked up to the driver’s side of the car and asked Victim if he could get in. After getting into the front passenger seat of Victim’s car, the young man, later identified as M.M., was heard counting and apologizing to Victim. M.M. then stepped out of the vehicle, took out a gun, and pointed it at Victim, telling him, “Give me what you got.” Victim held his hands up and responded to M.M., “I don’t have anything. You already have whatever you wanted.” While pointing a gun at Victim, two other young males walked up to the driver’s side of the vehicle and also pointed guns at Victim. M.M. shot and killed Victim as he sat in the driver’s seat with his hands up.

{4} The medical investigator determined that Victim died from a gunshot wound to the chest that entered his body from the right side and exited on his left side.

{5} Child, along with two other individuals, M.M. and A.C., were later arrested and

charged with the robbery and killing of Victim.

II. Procedural Background

{6} On August 17, 2020, the State filed a delinquency petition against Child, alleging that he committed first degree felony murder for his involvement in the robbery and killing of Victim. On August 19, 2020, the district court ordered that Child be detained pending further proceedings. The original date for Child’s adjudicatory hearing was set for September 18, 2020.

{7} On September 4, 2020, the State filed a motion to continue Child’s adjudicatory hearing for sixty days. The State asserted that the lead investigator on the case, who would provide crucial testimony to the State’s case, would be unavailable for the original setting. The State also cited a pending autopsy report and a social media warrant as additional reasons to continue the hearing. Child opposed the State’s motion; however, the district court granted the motion to continue and rescheduled Child’s adjudicatory hearing for October 16, 2020.

{8} The State filed an amended delinquency petition on September 9, 2020, alleging Child committed five additional delinquent acts, including armed robbery, conspiracy to commit armed robbery, abuse of a child, and two counts of aggravated assault with a deadly weapon.

{9} On September 29, 2020, the State filed a second motion to continue Child’s adjudicatory hearing for thirty days, because the autopsy report from the New Mexico Office of the Medical Investigator (OMI), a material piece of the State’s case, was still pending. Additionally, the State noted general societal delays caused by the COVID-19 pandemic as another reason to continue Child’s hearing. The district court again granted the State’s motion over the objection of Child and rescheduled the adjudicatory hearing for November 13, 2020.

{10} On November 2, 2020, the State filed its third motion to continue Child’s adjudication for thirty days, explaining the COVID-19 pandemic “has caused [e]xceptional [c]ircumstances . . . out of the State’s control” and requesting live testimony that was, at the time, restricted due to COVID-19 infection concerns. Child again opposed the motion; however, the district court granted the State’s motion to continue citing “[e]xceptional [c]ircumstances caused by the current COVID-19 [p]andemic that would jeopardize the health of all parties involved,” and extended the deadline to hold Child’s adjudicatory hearing to December 13, 2020.

{11} On November 13, 2020, our Supreme Court issued Order No. 20-8500-039,¹ which suspended all in-person civil and criminal trials set to begin on or after November 16, 2020, until at least January 1, 2021. Consequently, the district court informed the parties via e-mail on November 24, 2020, that it had sua sponte vacated the December trial date. However, the district court did not enter an order extending the time limit to hold Child's adjudicatory hearing and the State did not file another motion asking the district court to do so. On November 29, 2020, Child filed a motion seeking release from detention based on the State's failure to bring him to an adjudicatory hearing within thirty days. The district court denied the motion following a hearing on December 10, 2020.

{12} On January 3, 2021, Child filed a motion to dismiss the petition with prejudice. Child alleged that the State had failed to comply with the Children's Court rules of procedure and that "the failure to hold an adjudicatory hearing within the designated time limits required a dismissal with prejudice." Specifically, Child argued that Rule 10-243(A) NMRA requires that an adjudicatory hearing be held within thirty days, and that any extensions of this deadline cannot, according to Rule 10-243(D), exceed ninety days absent a showing of exceptional circumstances. Child also asserted that under Rule 10-243(E), a motion to extend time limits must be filed no later than ten days after the deadline has passed, and the State failed to file such a motion before ten days after the December 13, 2020 deadline. The State opposed the motion, citing the Supreme Court's order suspending jury trials through January 2021, and the district court's e-mail sua sponte vacating Child's hearing, arguing that the e-mail removed the necessity for the State to file a motion to continue. In its response, the State also requested the court enter an order for an extension of time nunc pro tunc, to the date the adjudicatory hearing was vacated.

{13} The district court denied both of Child's motions. The court referenced Supreme Court Order No. 20-8500-039, noting it "imposed strict limitations on all in-person judicial proceedings" and suspended all jury trials until January 1, 2021. The court clarified that it vacated Child's adjudicatory hearing on November 23, 2020, "to comply with the Supreme Court order, as well as with the [s]tate public health order and the Judiciary's Emergency Court Protocols." The district court also noted that "[t]he delay in this case is entirely due to the public health emergency.

These are exceptional circumstances that were out of the [c]ourt's and the State's control and that justifi[es] an extension of time beyond [ninety] days pursuant to Rule 10-243(D)." Last, the district court granted nunc pro tunc the extension of the deadline to hold Child's hearing from December 13, 2020 to February 26, 2021. Ultimately, Child's adjudicatory hearing was set for February 22, 2021.

III. Adjudicatory Hearing

{14} Girlfriend provided further details regarding the night Victim was killed. She testified that while the two males were right outside the driver's side window, she was screaming that there was a baby in the vehicle. One of the young males was holding a small compact revolver and the other was holding what looked like a rifle. Girlfriend was unable to see the faces of the males on the driver's side of the car, but she was able to generally describe them. The male that was holding the rifle was "medium in weight," "medium complected," and was 5 feet 5 inches or 5 feet 6 inches in height. The male who was holding the handgun was described as "skinny," "medium tan," "probably the same height as the one on the passenger's side," and he had "dreadlocks." After two shots were fired at Victim, the first from the driver's side and the second from the passenger's side, the three males waited a couple of seconds and then ran off.

{15} Another witness, M.A., was at Frenger Park on the night of August 4, 2020. M.A. testified that she was sitting in her pickup truck when she saw two young males, one who was wearing a red hoodie, jump a fence near the park and pass "a long object" to one another before walking away. Approximately thirty minutes later, she saw a small vehicle pull up and park behind her, and the same two young males from earlier reappeared and approached the vehicle. After they reached the vehicle, it appeared that they were arguing with the occupants of the vehicle, and M.A. testified that it was then that one of the males pulled out a gun and pointed it at the driver. She saw the gun, drove off, and heard a gunshot.

{16} E.M. testified that he and another friend, Y.C., drove M.M., A.C., and Child to Frenger Park "because they were going to do a drug trade." E.M. further testified that A.C. said something about them "hitting a lick" or committing robbery while at the park. After E.M. dropped the three males off at the park, he and Y.C. went and parked a few blocks

away. A few minutes later Child came running to the vehicle in a panic and said, "Some shit went down" and "they shot someone." After all three males returned to the vehicle, E.M. drove them to another friend's, D.G.'s, house.

{17} Y.C. also offered testimony recounting a similar story as E.M. She assumed that the three males were going to the park to buy "weed or Xanax" because "[t]hat was what we were all mainly doing at the time." Y.C. confirmed that Child came running back to the car, panicking, and screaming, "He shot him."

{18} D.G. confirmed that late on August 4, 2020, E.M., Y.C., M.M., A.C., and Child came to her house. She testified that, upon their arrival, they were all "freaked out" and she overheard one of them saying, "I think we hurt somebody." D.G. further testified that when they arrived, Child was wearing a dark hoodie, and A.C. was wearing a red and black sweater. She also testified that, at the time, Child had "curls or dreads or something, but he had blonde in his hair." That night, she saw M.M. with a gray handgun and A.C. with a black or brown shotgun.

{19} E.M., Y.C., and D.G. all testified that they only had brief interactions with Child leading up to and following the night of August 4, 2020, when Victim was killed. However, all three witnesses identified Child in court during the hearing.

{20} Detective Ricky Bardwell, the lead investigator on the case, testified that upon canvassing the area surrounding the crime scene, he located pills leading away from the vehicle. There were also pills and a pill bottle found in Victim's vehicle. Following his initial investigation at the crime scene, Detective Bardwell spoke to Girlfriend and learned that Victim was communicating with someone via Snapchat to coordinate the meeting at the park. Detective Bardwell then obtained photos of this person, later identified as M.M., from Victim's phone. Detective Bardwell used these photos to put out a news release, and he obtained tips from the public that led him to M.M. and A.C. After speaking with M.M., E.M., and D.G., he was able to develop enough evidence to charge M.M., A.C., and Child in connection with the death of Victim. The State also presented photos of M.M., A.C., and Child taken during the course of Detective Bardwell's investigation that illustrated how the three males looked around the time of the killing. Detective Bardwell identified

¹ See Supreme Court Order No. 20-8500-039 (Nov. 13, 2020), https://www.nmcourts.gov/wp-content/uploads/2020/12/Combined-Order-No_-20-8500-039-Amending-PHE-Protocols-Nos-1-2-and-3.pdf

² Child also filed a motion for immediate release at the same time as his motion to dismiss.

Child in the photos and described him as having “dreads” with dark roots and blonde highlighted tips that went down to his cheeks.

{21} The jury found that Child committed felony murder, contrary to NMSA 1978, Section 30-2-1(A)(2) (1994) and NMSA 1978, Section 32A-2-3 (2019), attempt to commit armed robbery, contrary to NMSA 1978, Section 30-16-2 (1973), NMSA 1978, Section 30-28-1 (1963) and Section 32A-2-3, conspiracy to commit armed robbery, contrary to Section 30-16-2, NMSA 1978, Section 30-28-2 (1979) and Section 32A-2-3, child abuse, contrary to NMSA 1978, Section 30-6-1(D) (2009) and Section 32A-2-3, and aggravated assault by the use of a deadly weapon, contrary to NMSA 1978, Section 30-3-2(A) (1963) and Section 32A-2-3. This appeal followed.

DISCUSSION

I. Timeliness of Child’s Adjudicatory Hearing

{22} Child’s first argument is that the State’s failure to bring him to an adjudicatory hearing in a timely manner pursuant to Rule 10-243 requires his delinquency adjudications to be vacated and remanded with instructions to dismiss the petition with prejudice. We are not persuaded.

{23} We review a district court’s interpretation of rules of procedure de novo. *See State v. Stephen F.*, 2006-NMSC-030, ¶ 7, 140 N.M. 24, 139 P.3d 184 (applying de novo review to interpretation of children’s court rules). However, Child’s argument involves extensions of time under the rules, based on timeliness and exceptional circumstances. We review a district court’s decision to deny or grant a continuance or extension under an abuse of discretion standard. *See State v. Anthony L.*, 2019-NMCA-003, ¶¶ 7, 16, 433 P.3d 347 (holding that the district court did not abuse its discretion in granting an extension to commence a child’s adjudication under the Children’s Code); *see also Vigil v. Fogerson*, 2006-NMCA-010, ¶¶ 54, 56, 138 N.M. 822, 126 P.3d 1186 (noting that we consider relief for exceptional circumstances to be equitable relief, which we review for an abuse of discretion). “An abuse of discretion occurs when the ruling is clearly untenable or not justified by reason.” *State v. Alejandro M.*, 2021-NMCA-013, ¶ 5, 485 P.3d 787 (internal quotation marks and citation omitted). We conduct our review “in the light most favorable to the district court’s decision.” *Id.*

{24} Rule 10-243 provides, in pertinent part:

A. Child in detention. If the child is in detention, the adjudicatory hearing shall be commenced within thirty (30) days from whichever of the following events occurs latest:

(1) the date the petition is served on the child;

...

D. Extensions of time. For good cause shown, the time for commencement of an adjudicatory hearing may be extended by the children’s court, provided that the aggregate of all extensions granted by the children’s court shall not exceed ninety (90) days, except upon a showing of exceptional circumstances. An order granting an extension shall be in writing and shall state the reasons supporting the extension. An order extending time beyond the ninety (90)-day limit set forth in this paragraph shall not rely on circumstances that were used to support another extension.

E. Procedure for extensions of time. The party seeking an extension of time shall file with the clerk of the children’s court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit. ...

F. Effect of noncompliance with time limits.

...

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

{25} Child first contends that the district court erred in granting the State’s motions to continue because each continuance was based upon the same reason as prior

extension request, in violation of Rule 10-243(D). Child next contends that the district court violated Rule 10-243(E) when it granted the fourth extension of time because it did not require the State to demonstrate exceptional circumstances even though the extension resulted in the adjudicatory hearing being scheduled more than ninety days after the State filed its amended petition. Child also argues that the district court erred when it extended Child’s hearing for the fourth and fifth times without the State filing a motion or requiring the State to show exceptional circumstances as required by Rule 10-243(D), (E). Child’s fourth argument is that even if the district court considered the State’s response to the Child’s motion to dismiss as a request for an extension of time, it erred in granting this request because it was filed outside of the time limit for doing so under Rule 10-234(E). Finally, Child argues that the failure to bring him to an adjudicatory hearing in a timely manner should have resulted in a dismissal of his case as a matter of policy.

A. Circumstances Supporting the

First Three Extensions

{26} First, we address Child’s argument that the first three extensions the district court granted the State were for the same reason, contrary to Rule 10-243(D). Upon our review of the motions in the record, this is inaccurate. The State’s first motion was based upon the unavailability of Detective Bardwell, who would provide testimony necessary for the State’s case. The motion also noted that the autopsy report and a social media warrant were both pending. The district court was well within its discretion to grant this motion. *See State v. Pruett*, 1984-NMSC-021, ¶ 8, 100 N.M. 686, 675 P.2d 418 (“The grant or denial of a motion for continuance based on absence of evidence rests in the sound discretion of the [district] court.”); *see also State v. Doe*, 1977-NMCA-065, ¶¶ 6-11, 90 N.M. 568, 566 P.2d 117 (holding that the absence of a witness, in part, was good cause for the continuance of a child’s hearing).³

{27} In support of its second motion to continue, the State noted that the autopsy was still pending and would not be available for another ninety days, according to OMI. The State also acknowledged that the COVID-19 pandemic was causing “delays in every aspect of our society.” The reasoning in the second motion to continue, although similar, was not the same as the State’s first motion. Again, the district court did not abuse its discretion in granting this motion. *See Pruett*, 1984-NMSC-021, ¶ 8.

³ The State’s first motion to continue was filed prior to the filing of the amended petition, on September 9, 2020. The rule triggering the time to commence the adjudication, Rule 10-243(A)(1), may not require the amendment of the petition to be considered in the analysis when determining whether the time limits for adjudicatory hearings were followed; however, we have included it for a full understanding of what occurred below.

{28} Finally, the district court granted the State's third motion that noted exceptional circumstances created by the COVID-19 pandemic, the increasing COVID-19 cases in Doña Ana County at the time, and the State's request for live testimony. The State argued that it would "be at a disadvantage if it were to proceed to trial without live testimony," but also acknowledged the potential risks posed by the COVID-19 pandemic that would "jeopardize the health of all parties involved" if the court proceeded without a continuance. Rule 10-243(D) states that "the aggregate of all extensions granted by the children's court shall not exceed ninety (90) days, except upon a showing of exceptional circumstances."⁴ The third extension was not entirely the same as the other two motions as Child suggests. The first motion relied on missing witnesses and evidence, the second motion explained that the COVID-19 pandemic was generally causing delays, and the third motion argued that live witness testimony was not feasible because of COVID-19 restrictions and risks. Moreover, this Court recently held that "the COVID-19 pandemic and the resulting precautionary measures were exceptional circumstances warranting an extension of time." *Alejandro M.*, 2021-NMCA-013, ¶ 9; see also *id.* ¶ 8 ("COVID-19 is a rapidly evolving public health crisis of an extraordinary magnitude."). The same holds true here. Because the State showed different reasons and exceptional circumstances for the third continuance of Child's adjudicatory hearing, it met Rule 10-243(D)'s requirements and the district court, therefore, did not abuse its discretion in granting this motion.

B. The Nunc Pro Tunc Fourth Extension

{29} Next, we address the entry of the extension of time nunc pro tunc. Supreme Court Order No. 20-8500-039,⁵ dated November 13, 2020, suspended jury trials until January 1, 2021. Because the district court sua sponte vacated Child's adjudicatory hearing based on our Supreme Court's Order No. 20-8500-039, the State did not need to file an additional motion for continuance under Rule 10-243(E) and show exceptional circumstances. Nevertheless, the State, in its response to Child's motion to dismiss, requested that the district court enter a fourth order to continue nunc pro tunc dated for the day the adjudicatory hearing was vacated.

{30} On January 13, 2021, the district court entered and granted the State's final, albeit unrequired, motion to continue

nunc pro tunc. Child argues that the final request to continue in the State's response to Child's motion to dismiss, was not filed within ten days of the expiration of the ninety-day time-to-adjudication period as set forth by Rule 10-243(E). However, because the district court entered the motion nunc pro tunc and dated it for November 24, 2020, the date Child's hearing was vacated, this argument also fails. See *State v. Reyes-Arreola*, 1999-NMCA-086, ¶ 17, 127 N.M. 528, 984 P.2d 775 ("A nunc pro tunc order has reference to making of an entry now, of something which was actually previously done, so as to have it effective as of the earlier date." (internal quotation marks and citation omitted)). This date, November 24, 2020, was within the time confines required by Rule 10-243(E), and thus, the filing cannot be considered to be in violation of the rule.

C. Exceptional Circumstances for the Fourth and Fifth Extensions of Time Limits

{31} Child's argument that the fourth extension (after Supreme Court Order No. 20-8500-039) and the fifth and final extension (after Child's motion to dismiss) were done in error because the State did not show exceptional circumstances fails because the COVID-19 pandemic and the resulting precautionary measures have already been determined to be exceptional circumstances. See *Alejandro M.*, 2021-NMCA-013, ¶ 9. This fact is bolstered by the record, which reflects that the State demonstrated such circumstances by articulating that the COVID-19 pandemic was a necessary reason for a continuance and included an exhibit of our Supreme Court's Order suspending jury trials until the beginning of 2021. See *Anthony L.*, 2019-NMCA-003, ¶ 16 ("Because there was good cause in the record, although not memorialized in the district court's order granting the extension of time limits, we hold that the district court did not abuse its discretion in granting the [s]tate's motion for extension of time in which to commence [the c]hild's adjudication."). Therefore, because there was no violation of Rule 10-243, we hold that the district court did not abuse its discretion in extending Child's hearing for the fourth or fifth and final time.

{32} The delays in Child's adjudicatory hearing were unfortunate, but unavoidable. However, they cannot be attributed to error on the part of the State or the district court. See Rule 10-243(E). The COVID-19 pandemic has disrupted all facets of life,

and although there are important policy considerations to protect children's liberty interests by bringing them to adjudication as soon as possible, the pandemic has created exceptional circumstances and delays far beyond the control of the judiciary. For these reasons, we conclude the district court did not abuse its discretion in granting any of the extensions of Child's adjudicatory hearing.

II. In-Court Identification Procedures

{33} The State asked three witnesses at Child's adjudication hearing to identify Child as follows:

"Your Honor, I would like to ask [E.M.] if he can identify [A.M.]. But I would like to ask if [A.M.] could take off his mask for the purpose of identification so he can see his face."

....

"Your Honor, I would like to ask [Y.C.] if she could identify [A.M.]. Could I please ask [A.M.] to remove his mask just long enough for her to see if she identifies him or not? ... So please look at this young man. Can you tell us this [A.M.] or not?"

....

"Your Honor, I would like to ask if [D.G.] could identify [A.M.]. I would like to ask if [A.M.] could briefly remove his mask to see if she can identify him ... Please look at this young man here and tell us if this is [A.M.]."

{34} At the time of Child's adjudicatory hearing, a Supreme Court Order No. 21-8500-003⁶ was in place due to the COVID-19 pandemic that required everyone present to wear a mask and limited the number of individuals in the courtroom. The individuals present during the hearing included the judge, court personnel, jurors, the witness, counsel, and Child. Child did not object to the State's identification procedures, the district court permitted Child to briefly remove his mask each time, and, subsequently, the three witnesses positively identified Child. {35} Child argues that these in-court identifications were unnecessarily suggestive and violated his due process rights under both the United States and New Mexico constitutions, and urges us to extend the recent standard set forth in *State v. Martinez*, 2021-NMSC-002, 478 P.3d 880, for unnecessarily suggestive out-of-court identification procedures to in-court identification procedures. We agree with

⁴ We do not determine whether Rule 10-243 only requires extensions that are beyond the ninety-day limit set forth in section (D) be on new grounds.

⁵ See Supreme Court Order No. 20-8500-039, supra note 1.

⁶ See Supreme Court Order No. 21-8500-003 (Feb. 12, 2021), <https://www.nmcourts.gov/wp-content/uploads/2021/02/Order-No.-21-8500-003-Amending-PHE-Protocol-No.1-2-12-21-Combined.pdf>.



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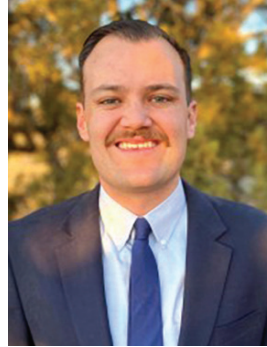
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YLD *in brief*

SPRING
2023

The Official Newsletter of the
State Bar of New Mexico Young Lawyers Division



Message from the YLD Chair

As you all are aware, monumental shifts in the world around us, mostly related to COVID-19 and its after-effects, have altered the practice of law. Almost every court appearance I have made as an attorney has been at my computer through Zoom or Google Meet, and only once or twice in athletic shorts and a suit top. Many new/young attorneys entering the practice of law spent all or part of their law school experience in a virtual setting. And any more established attorney made large changes to their practice in order to continue serving their clients. The movement to a more online practice created gaps and opportunities for participation in the bar and community.

My goal here is to make clear what a great chance it is to now get involved with the programs of the State Bar of New Mexico, the different Sections, Committees and Divisions, different bar organizations, your local community, and of course the Young Lawyers Division and its programs. The greater bar, your community, and the State of New Mexico are better for your involvement. I encourage you to get involved in a pro bono program or opportunity: volunteer with your local bar district's pro bono committee, sign up for NM Legal Aid's Volunteer Attorney Program, join an in-person clinic or teleclinic, or assist any of the other fantastic civil legal service providers in the state. The bar and your clients are better when we connect with each other, even if we ultimately oppose each other later on. Pro bono work, section involvement and greater bar involvement, will not only improve your practice and assist fellow New Mexicans, but also the work you do for your clients. Also, I think it will help to combat the loneliness that can be associated with how much of the practice of law has become remote. One of my favorite parts about participating with the YLD and the greater bar is interacting with other lawyers and making friends along the way.

My hope is that the YLD can provide many outlets for involvement for all New Mexico attorneys. We look forward to continuing to provide and expand our programming, including Wills for Heroes, Lunch with Judges, the UNMSOL Mentorship program, Legal Clinics, Ask-A-Lawyer Call-in Day, Fit2Practice programming, Networking Events and additional opportunities to connect throughout the state. We hope to see you at some of our events. We would love to hear from you if you have any ideas for the YLD and how we can better serve New Mexico young attorneys and the greater bar. Good luck in 2023!

Best,
Damon J. Hudson

Meet the Board



Damon J. Hudson

Chair

Director-at-Large, Position 1

Damon Hudson is an attorney at The Jones Firm in Santa Fe, N.M., practicing primarily in medical malpractice, personal injury, 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 is the chair of the Young Lawyers Division, previously chairing the Wills for Heroes program and the Ask-A-Lawyer Call in Day program. In his free time, he enjoys woodworking, gardening, reading, hiking, eating copious amounts of green chile, and spending time with his wife and daughter.



Randy Taylor

Chair-Elect

Director-at-Large, Position 5

Randy Taylor is a Director in the Albuquerque office of the Rodey Law Firm. He is a member of the Products and General Liability Practice Group, practicing in a broad range of areas including personal injury, medical, legal and other professional malpractice, insurance coverage and bad faith, commercial litigation, and real property disputes.

Randy graduated *cum laude* from the UNM School of Law in 2016. While in law school, he served as the Managing Editor of the New Mexico Law Review and competed on the ABA National Appellate Advocacy Competition team, which achieved a regional Best Brief Award. Following law school, Randy returned to his hometown of Las Cruces to clerk for a United States Magistrate Judge. Back in Albuquerque, Randy enjoys trying new restaurants, breweries, and cafes, card and board games, and road tripping around New Mexico.



Lauren Riley

Vice Chair

Region 5 Director

Lauren Riley practices family law at Batley Family Law, P.A. in Albuquerque, N.M. 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 Vice-Chair of the Young Lawyers Division and holds the position of Region 5 Director. Lauren is co-chair of the UNMSOL & Mentorship Programming Committee, FEMA/Emergency Services Committee, and Membership Outreach Committee. Lauren is Immediate Past Chair of the Wesley Kids Early Education Center Board, where her son attends.



Taylor Duffney

Director-at-Large, Position 2

Taylor Duffney recently joined the YLD Board of Directors as a Director-at-Large. She is an associate attorney at Briones Business Law Consulting P.C., practicing primarily in corporate law, employment law, and succession planning. She worked as a law clerk at Briones and joined as an associate attorney after she passed the New Mexico Bar. She obtained her B.A. from Arizona State University, and her law degree from the University of New Mexico School of Law. She co-chairs the Veterans Law Clinic presented in conjunction with the Veterans Association in Albuquerque and co-chairs the YLD Networking Committee. In her time outside of the office, she enjoys spending time with her family, trying new local restaurants and breweries, playing fantasy football with her friends, and traveling to new places.

Meet the Board



Laura Unklesbay

Director-at-Large, Position 3

Laura Unklesbay serves as the Director-at-Large, Position 3. This is her second year on the Young Lawyers Division board. Laura is a litigation associate at Modrall, Sperling, Roehl, Harris & Sisk, P.A. in Albuquerque, with a focus on employment matters, personal injury claims, product liability cases and debt collection. Laura obtained both her undergraduate and law degrees from the University of Arizona, moving to Albuquerque in fall 2018. She is the current chair of the Wills for Heroes Program and is a co-chair of both the Networking Committee and Membership Outreach Committee. Laura is excited to spend this year planning more events for New Mexico's young lawyers.



Chandler Farnworth

Director-at-Large, Position 4

Chandler Farnworth serves as the Director-at-Large, Position 4. This is her first year on the Young Lawyers Division Board. She serves on the Wills for Heroes Committee, and is a Co-Chair for the Judicial Clerkship Selection, Fit2Practice, and "Ask-a-Lawyer" Law Day Call-In Programs. Chandler is an Associate Attorney at Modrall, Sperling, Roehl, Harris & Sisk, P.A., and practices in the firm's Natural Resources Department. Before joining Modrall Sperling, Chandler completed a judicial clerkship with the Honorable Judge J. Miles Hanisee at the New Mexico Court of Appeals. She obtained her undergraduate degree from the University of Texas at Austin, and her law degree from Tulane University.



Jeff Dan Herrera

Region 2 Director

Jeff Dan Herrera is an Assistant Attorney General with the New Mexico Office of the Attorney General. His practice includes civil litigation on behalf of the state and its officers and agencies. He also represents the state of New Mexico in multistate antitrust investigations and litigation. Jeff received his Juris Doctor from the University of Arizona James E. Rogers College of Law and his Bachelor of Arts in Political Science and Sociology from the University of New Mexico. Prior to law school, Jeff was a political campaign professional. He worked on progressive campaigns at every level of government throughout New Mexico. In his spare time, Jeff enjoys spending time with his partner, playing guitar, and doomscrolling Twitter.



Jeremy Angenend

Region 3 Director

Jeremy Angenend is an Associate Attorney with the Roswell, New Mexico office of Hinkle Shanor LLP. He is a civil litigator primarily representing commercial clients in a multitude of matters within the energy sector. Originally from Central Texas, he has lived in several countries due to his time spent in the Marine Corps and working as a security contractor with the U.S. Department of State. During his time in the military, Jeremy was a combat tracker K9 handler and a military police officer. Working together with his military dog, Fito, the pair deployed to Afghanistan in 2010 in support of Operation Enduring Freedom. After being honorably discharged from the Marines, he decided to work for a few years as a private security contractor with a primary base of operations at the U.S. Embassy in Baghdad, Iraq. Ultimately, he grew tired of being away from his home country and decided to move back to get an education. Jeremy holds an associate degree in pre-law studies from Temple College, a bachelor's degree in political science from Texas A&M University – Central Texas, a master's degree in interdisciplinary studies with a concentration in energy from the Texas Tech Graduate School, and

Meet the Board

law degree from the Texas Tech University School of Law. Jeremy has become an active member of several nonprofit organizations in Roswell. He is the current President and Board Chair for MainStreet Roswell, the Director for Chaves County Heroes, and proudly serves as the Region 3 Director and Board Member for the New Mexico State Bar's Young Lawyers Division. Lastly, he is a co-chair for the Diversion, Treatment, and Services subcommittee of the New Mexico Supreme Court's Commission on Mental Health and Competency.



Andrew Cavazos
Region 4 Director

Andrew J. Cavazos is a Partner at Poulos & Coates LLP, where he primarily represents plaintiffs in complex medical malpractice litigation. He practices throughout the entire States of New Mexico and Texas. After becoming licensed, Andrew's service to the legal community quickly garnered the respect of his peers. From 2017 to present, Andrew has served the El Paso Young Lawyers Association as a Board Member, President-Elect, and its President. In 2022, Andrew was elected to serve on the Board of Directors for the Texas Young Lawyers Association, where he regularly works on state-wide initiatives aimed at progressing the legal profession. In 2023, Andrew also began proudly serving as the Region 4 Director for the New Mexico State Bar's Young Lawyers Division, where he works on similar initiatives.

Andrew has also been selected by the National Trial Lawyers as a "Top 40 under 40" civil plaintiffs attorney for the years 2019 through 2023, a Super Lawyers "Rising Star" for the years 2020 through 2023, and in 2021, was honored as the "The Most Outstanding Young Lawyer of the Year" by the El Paso Young Lawyers Association.



Jessica A. Perez
Immediate Past Chair

Jessica Perez is an Assistant District Attorney in the 13th Judicial District within Sandoval County. There, she works primarily as a felony trial attorney handling a variety of cases. She manages expungement and extradition matters in the office as well. In addition to her work as a prosecutor, Jessica likes to be involved with the legal community through volunteer work. She serves on various boards, including the Young Lawyers Division and the Prosecutors Section. In 2019, she was awarded as Community Service Prosecutor of the Year by the New Mexico District Attorneys' Association and by the Prosecutors Section in 2020 for prosecutorial excellence. On the rare occasion that she's not working, Jessica enjoys reading, hiking with her dog, and she's a big fan of sleeping.

Child that his due process rights were violated under the United States Constitution; however, as we explain, we decline to extend the new standard set forth in *Martinez* to the facts of this case.

A. Standard of Review

{36} The admission of identification evidence implicates a child's right to due process. *State v. Ramirez*, 2018-NMSC-003, ¶ 29, 409 P.3d 902. Appellate courts review questions of suppression bearing on "important constitutional rights" de novo. *State v. Belanger*, 2009-NMSC-025, ¶ 8, 146 N.M. 357, 210 P.3d 783 (internal quotation marks and citation omitted); see also *id.* ("This appeal implicates . . . the Fourteenth Amendment right to due process of law, including the right to a fair trial, and therefore our review is de novo."). {37} However, Child did not object to the State's in-court identification procedures at his adjudicatory hearing. As a result, the parties agree we should review this issue for plain error. Plain error review applies "to errors that affect substantial rights of the accused and only applies to evidentiary matters." *State v. Darte*, 1998-NMCA-009, ¶ 21, 124 N.M. 455, 952 P.2d 450. Otherwise, the rule of fundamental error applies. *Id.* To hold that either kind of error occurred, we "must be convinced that admission of the testimony constituted an injustice that creates grave doubts concerning the validity of the verdict." *Id.* ¶ 22 (internal quotation marks and citation omitted). "Further, in determining whether there has been plain error, we must examine the alleged errors in the context of the testimony as a whole." *State v. Montoya*, 2015-NMSC-010, ¶ 46, 345 P.3d 1056 (alteration, omission, internal quotation marks, and citation omitted).

B. The *Manson* and *Martinez* Standards Regarding Witness Identifications

{38} Because this appeal involves the interplay between the due process protections afforded by United States and New Mexico Constitutions and the different types of identification procedures, we first offer a brief explanation of the legal principles in play. In *Manson v. Brathwaite*, 432 U.S. 98 (1977), the Supreme Court of the United States set forth the federal due process standard for the admissibility of pretrial eyewitness identifications. *Id.* at 99. Recently, in *Martinez*, our Supreme Court rejected the *Manson* identification standard for the purposes of the due process protections under the New Mexico Constitution. *Martinez*, 2021-NMSC-002, ¶ 3. The question in this case, however, involves the procedure used for an in-court identification of Child, and not out-of-court, "police-arranged identification procedures." *Id.*

{39} The State argues that "an in-court identification, which is independent of, and not tainted by the extra-judicial identification is admissible." *State v. Clark*, 1986-NMCA-058, ¶ 40, 104 N.M. 434, 722 P.2d 685; see *State v. Stampley*, 1999-NMSC-027, ¶¶ 31-32, 127 N.M. 426, 982 P.2d 477. We agree with Child that in these cases, the issue was whether an in-court identification was tainted by a pretrial identification, exposure to pre-identification media, or the reality that the defendant was the only Black man in the room during the in-court identification. See *Stampley*, 1999-NMSC-027, ¶ 30; *Clark*, 1986-NMCA-058, ¶ 45. Those Courts did not address whether a procedure used by the prosecutor, and permitted by the district court, to obtain the in-court identifications were impermissibly suggestive.

{40} Our Supreme Court has applied the *Manson* principles to determine whether in-court identification procedures violate due process under the Fourteenth Amendment. See *Ramirez*, 2018-NMSC-003, ¶¶ 30-31. In *Ramirez*, the defendant argued that media reports tainted in-court identifications and that his placement at the defense table, his ethnicity, and his gender were overly suggestive. *Id.* ¶ 28. The Court first observed that its "treatment of the issue presented by [the defendant] is guided by *Perry v. New Hampshire*, 565 U.S. 228 (2012)." See *Ramirez*, 2018-NMSC-003, ¶ 30. After considering the circumstances of *Perry*, the *Ramirez* Court observed that *Perry* applied *Manson* "to determine whether due process requires suppression of eyewitness identification." *Ramirez*, 2018-NMSC-003, ¶¶ 30-31. Under this analysis, the *Ramirez* Court rejected the defendant's arguments because (1) only law enforcement procedures—and not media or the common arrangement of a courtroom—could be the source of unconstitutional tainted identifications; and (2) other constitutional safeguards protected the defendant from "any fundamental unfairness resulting from eyewitness identifications." *Id.* ¶¶ 33-36.

{41} Because this case involves only a challenge to in-court identification, and not an argument that out-of-court identification procedures tainted an in-court identification, we first follow the approach set forth in *Ramirez* to evaluate whether the in-court identification violated federal due process protections before turning to Child's assertion that the state Constitution provides additional protections under *Martinez*.

C. The Fourteenth Amendment—*Manson* Standard

{42} Child contends that the procedures used by the State to obtain the in-court identifications were suggestive and resulted in a high likelihood of irreparable

misidentification because "the procedures gave the witness only one result—to identify Child[] who was already identified by the State." Child further asserts that because the procedures used gave the witnesses only one possibility to choose from, and because the State "used procedures that rigged the system to indicate to the witness that it wanted the witness to identify Child[], the risk of misidentification was high." He maintains that because it was established that each witness had limited or brief interactions with Child prior to his adjudicatory hearing and the in-court identification procedure used was "rigged," these identifications cannot be considered reliable. We agree.

{43} *Ramirez* and *Manson* set forth an approach to take in deciding if due process requires suppression of eyewitness identifications. *Ramirez*, 2018-NMSC-003, ¶ 31. The *Manson* test requires appellate courts to analyze "whether the procedure used was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification and whether, under the totality of the circumstances, the identification was still reliable." *Martinez*, 2021-NMSC-002, ¶ 28 (internal quotation marks and citation omitted). As we noted, in *Ramirez*, our Supreme Court rejected the defendant's due process argument because law enforcement did not taint the procedures and because other due process protections ameliorated any suggestive procedures that occurred in the courtroom. 2018-NMSC-003, ¶¶ 33-36. Applying those principles, a different outcome than in *Ramirez* is required in the present case.

{44} We agree with Child that the in-court identifications were unreliable, tainted by the State's suggestiveness while eliciting the identifications and other due process protections did not provide an opportunity for Child to counteract the taint, and resulted in a violation of his due process rights under the Fourteenth Amendment. We hold that under the circumstances of this case, as set forth below, the State's acts triggered a due process concern when eyewitness evidence was procured in-court under unnecessarily suggestive circumstances. See *Martinez*, 2021-NMSC-002, ¶ 28 (considering under the federal standard, "whether, under the totality of the circumstances, the [in-court] identification[s] were] . . . reliable" (internal quotation marks and citation omitted)); cf. *Ramirez*, 2018-NMSC-003, ¶¶ 33-36. Considering the identifications in the context of the testimony as a whole, we hold that it was plain error to admit the identifications.

{45} First, the State used Child's name while asking each witness to identify him. Second, the State asked two of the wit-

nesses to “please look at this young man,” instead of asking the witnesses if they saw Child in the courtroom. Finally, the State singled Child out by asking him to remove his mask, which is comparable to asking Child to identify himself by raising his hand or turning around. No amount of cross-examination would lessen the impact of having the prosecutor, for three witnesses in succession, identify Child by name, ask that he remove his mask on command to be the only unmasked person in the room, and have each witness confirm that Child was A.M. See *Ramirez*, 2018-NMSC-003, ¶ 36 (describing other constitutional safeguards to prevent against unfairness). The State suggested exactly who it wanted the witnesses to identify and did not allow the witnesses to identify Child on their recollection. Under the totality of circumstances, the procedures used by the State rendered the in-court identifications highly suggestive, and consequently, unreliable. Because the prosecutor used unnecessarily suggestive procedures to elicit the in-court identifications of Child, the district court erred in admitting the three identifications. We therefore turn to the next step of plain error analysis, whether the “admission of the testimony constituted an injustice that created grave doubts concerning the validity of the verdict.” *Montoya*, 2015-NMSC-010, ¶ 46 (internal quotation marks and citation omitted).

{46} Identity was a central issue in this case. It was undisputed that M.M. killed Victim. However, the two eyewitnesses to the crime testified that they did not get a clear look at the other two males who also pointed guns at Victim, and none of the eyewitnesses to the crime identified Child. E.M. and Y.C. are the only witnesses to put Child at the park that night. No other evidence connected Child specifically to the crimes. Furthermore, the three witnesses that identified Child in court—and particularly E.M. and Y.C.—only had brief interactions with him prior to the adjudicatory hearing. In light of the witnesses’ testimonies as a whole, the State’s actions tending to suggest the identification of Child for these witnesses in court “constituted an injustice” that creates doubts about the validity of the verdict and violated his right to due process. *Id.* Therefore, we reverse and remand for a new adjudicatory hearing.

D. The New Mexico Constitution—*Martinez* Standard

{47} Child next urges us to extend our Supreme Court’s per se exclusionary rule for unnecessarily suggestive out-of-court identifications articulated in *Martinez* to unnecessarily suggestive in-court identification procedures. We decline to do so. {48} The first reason we decline to apply the newly adopted per se exclusionary rule

is because *Martinez* is silent with regard to in-court identification procedures and only “overrule[d] prior cases to the extent that they apply the *Manson* reliability standard to determine whether unnecessarily suggestive, police-arranged, pretrial identifications are nonetheless admissible.” *Martinez*, 2021-NMSC-002, ¶ 72; see *State v. Sanchez*, 2015-NMSC-018, ¶ 26, 350 P.3d 1169 (“The general rule is that cases are not authority for propositions not considered.” (internal quotation marks and citation omitted)).

{49} Second, we decline to apply *Martinez*, which would analyze whether these in-court identifications violated due process under the New Mexico Constitution, because we have already held error under the federal constitution. See *State v. Gomez*, 1997-NMSC-006, ¶ 19, 122 N.M. 777, 932 P.2d 1 (“Under the interstitial approach, the [C]ourt asks first whether the right being asserted is protected under the federal constitution. If it is, then the state constitutional claim is not reached.”). As such, we decline to consider extending the *Martinez* per se exclusionary rule to in-court identification procedures in this instance.

III. Hearsay

{50} Child also argues that the district court abused its discretion by allowing testimony regarding rumors that M.M., A.C., and Child planned to engage in a drug deal and rob Victim. Because we are reversing and remanding on other grounds, we need not address Child’s hearsay argument; however, we exercise our discretion to do so to provide guidance to the district court as this question is likely to recur on remand. See *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 37, 136 N.M. 309, 98 P.3d 699 (providing guidance on issues unnecessary to the resolution of the case but that may “arise[] again on remand”). Specifically, Child challenges the admission of E.M.’s testimony regarding (1) why he drove Child and the other two young males to the park, and (2) their plan to commit a robbery. We disagree and explain.

{51} “We review the admission of evidence under an abuse of discretion standard and will not reverse in the absence of a clear abuse.” *State v. Sarracino*, 1998-NMSC-022, ¶ 20, 125 N.M. 511, 964 P.2d 72. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the [district] court abused its discretion by its ruling unless we can characterize [the ruling] as clearly untenable or not justified by reason.” *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citation omitted); see also *State v. Kincheloe*, 1974-NMCA-126,

¶ 9, 87 N.M. 34, 528 P.2d 893 (“In order to establish an abuse of discretion, it must appear that the [district] court acted unfairly, arbitrarily or committed manifest error.”). {52} Upon our review of the record, we conclude that the district court did not err in admitting E.M.’s testimony. Child’s argument that E.M. should not have been allowed to testify regarding the reason why he was driving Child and the others to the park fails because this testimony is not hearsay. Rule 11-801(C) NMRA defines hearsay as “a statement that (1) the declarant does not make while testifying at the current trial or hearing, and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” E.M. did not answer the State’s inquiry with an out-of-court statement offered for the truth of the matter asserted and thus, could not have violated the rule against hearsay. We decline to address Child’s second argument that E.M. should not have been allowed to testify about the plan to commit robbery because it was unpreserved. See *State v. Leon*, 2013-NMCA-011, ¶ 33, 292 P.3d 493 (“We generally do not consider issues on appeal that are not preserved below.” (internal quotation marks and citation omitted)). Because we conclude the district court did not admit inadmissible hearsay and Child’s second argument was unpreserved, we hold that the district court did not abuse its discretion by admitting the testimony at issue.

IV. Sufficiency of the Evidence

{53} Because we reverse on Fourteenth Amendment grounds, we must address Child’s contention that insufficient evidence was presented to support his delinquency adjudications so as to avoid double jeopardy concerns on remand if Child is retried. See *State v. Consaul*, 2014-NMSC-030, ¶ 41, 332 P.3d 850 (“To avoid any double jeopardy concerns, we review the evidence presented at the first trial to determine whether it was sufficient to warrant a second trial.”); *State v. Gonzales*, 2020-NMCA-022, ¶ 22, 461 P.3d 920 (same). Child argues that absent the improper, suggestive in-court identifications and hearsay statements about the drug deal and robbery, there is not sufficient evidence to support any of his five delinquency adjudications. We disagree.

{54} The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a finding that the child committed the act beyond a reasonable doubt with respect to every element essential to a delinquency adjudication. See *Montoya*, 2015-NMSC-010, ¶ 52. “[S]ubstantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *State v. Baca*, 1997-NMSC-059, ¶

14, 124 N.M. 333, 950 P.2d 776 (internal quotation marks and citation omitted). The reviewing court “view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176.

{55} Our review of the record shows that Child’s adjudication as a delinquent was supported by substantial evidence. Child argues that absent the in-court identifications of him and testimony regarding why M.M., A.C., and Child were dropped off at the park, i.e., to engage in a drug deal and commit robbery, there was not sufficient evidence to show that Child planned and attempted to rob Victim, was present when Victim was killed, or pointed a gun at Victim. However, Child’s argument is flawed because when considering sufficiency of the evidence, reviewing courts consider all evidence, even improperly admitted evidence. See *State v. O’Kelley*, 1994-NMCA-033, ¶ 16, 118 N.M. 52, 878 P.2d 1001 (“The correct rule is that when determining whether retrial is barred because there was insufficient evidence of

guilt at the trial from which the appeal is taken, the appellate court considers all of the evidence admitted, even that evidence which it holds was admitted improperly.”).

{56} Upon consideration of the evidence presented by the State, including the in-court identifications and the testimony regarding why the three young males were dropped off at the park, Child has not persuaded us that the evidence was insufficient to support his delinquency adjudications. Therefore, here, there are no double jeopardy concerns. See *Con-saul*, 2014-NMSC-030, ¶ 41. On remand, adjudication proceedings on these charges are not precluded. See *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 141 N.M. 705, 160 P.3d 886 (stating that “a defendant may be retried if the conviction was set aside because of trial error, including the situation when the trial court wrongly admitted incriminating evidence or wrongly excluded exculpatory evidence”).

V. Cumulative Error

{57} Lastly, Child argues that the errors raised on appeal constitute cumulative error sufficient to overturn his delinquency adjudications. Child relies on *State v.*

Baca, which states, “Under the doctrine of cumulative error, [appellate courts] must reverse a conviction when the cumulative impact of the errors that occurred at trial was so prejudicial that the defendant was deprived of a fair trial.” 1995-NMSC-045, ¶ 39, 120 N.M. 383, 902 P.2d 65 (alteration, internal quotation marks, and citation omitted). However, because we have already held reversible error, Child’s delinquency adjudications have been vacated, and this case is being remanded for a new adjudicatory hearing, we need not address this issue. See *State v. French*, 2021-NMCA-052, ¶ 13 n.3, 495 P.3d 1198 (“[A]ppellate courts need not address questions unnecessary for the resolution of the case.”). Thus, we proceed no further on the question of cumulative error.

CONCLUSION

{58} We reverse Child’s delinquency adjudications and remand for a new adjudicatory hearing.

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

SHAMMARA H. HENDERSON, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

KATHERINE A. WRAY, Judge

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8TH Judicial District Attorney (Taos and Colfax County)

Prosecuting Attorney Opportunities

The 8th Judicial District Attorney Office is accepting applications for a full-time Associate Trial Attorney, Trial Attorney and Senior Trial Attorney. Requirements: Associate Trial / Trial Attorney: New prosecutor: Licensed attorney to practice law in New Mexico with zero (0) through two (2) years of relevant prosecution experience. Senior Trial Attorney: Career track prosecutor who is a Licensed attorney to practice law in New Mexico with three (3) through five (5) years of relevant prosecution experience. Salary: Based upon experience and the current District Attorney Personnel and Compensation Plan. Range of salary begin with Associate Trial Attorney at \$72,000 upwards to \$95,000 for Senior Trial Attorney. Please submit resumes and letters of interest to Victoria Bransford, District Office Manager by mail to 105 Albright Street, Suite L, Taos, NM 87571 and/or by email to vbransford@da.state.nm.us

Attorney (7+ years)

Well established (17+ years) civil defense firm is seeking an experienced attorney with 7+ years litigation with prospects of becoming a shareholder. We are flexible, team oriented and committed to doing excellent work for our clients. We have long standing clients and handle interesting matters, including in the areas of labor/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. Excellent pay and benefits and opportunities for bonuses. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to Conklin, Woodcock & Ziegler, P.C. at: jobs@conklinfirm.com.

Senior Trial Attorney

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

Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

Associate Attorney

Do you want to work among colleagues, not cutthroats? Do you want to refine your case presentation skills? Do you want plenty of time in front of mediators and judges? Do you want to have the ability to work from home, from the office, or a combination of both? We specialize in workers' compensation defense, run a completely paperless office, and do a variety of district court work. We are a litigation focused firm looking for a newly licensed attorney or an attorney looking for a new challenge. If you think you are up to the task, submit a resume and cover letter to: jeffrey@hklfirm.com. Competitive salary and benefits.

Various Assistant City Attorney Positions

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

Lawyers

Montgomery & Andrews, P.A. is seeking lawyers with 3+ years of experience to join its firm in Santa Fe, New Mexico. Montgomery & Andrews offers enhanced advancement prospects, interesting work opportunities in a broad variety of areas, and a relaxed and collegial environment, with an open-door policy. Candidates should have strong written and verbal communication skills. Candidates should also be detail oriented and results-driven. New Mexico licensure is required. Please send resumes to rvalverde@montand.com.

Request For Proposal – Guardian Ad Litem Legal Services

Pueblo of Laguna seeks proposals from any law firm or individual attorney practicing in NM to provide Guardian ad litem services in cases involving child or adult neglect or abuse. Reply by March 15, 2023. RFP details at: www.lagunapueblo-nsn.gov/rfp_rfq/

Attorney (3+ years)

Well established (17+ years) civil defense firm is seeking an experienced attorney with 3+ years litigation experience for an associate position with prospects of becoming a shareholder. We are flexible, team oriented and committed to doing excellent work for our clients. We have long standing clients and handle interesting matters, including in the areas of labor/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. Excellent pay and benefits and opportunities for bonuses. All replies will be kept confidential. Interested individuals should e-mail a letter of interest and resumes to Conklin, Woodcock & Ziegler, P.C. at: jobs@conklinfirm.com.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney (\$ 65,000.00) to a Senior Trial Attorney (\$76,600.00), based upon experience. These positions are located in the Carlsbad, NM office. 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

Associate Attorney

Atkinson & Kelsey, P.A. seeks a new associate attorney. We are among the oldest and largest firms in New Mexico focusing exclusively on family law. Our practice areas include complex divorce litigation, asset valuation and division, child custody and time sharing, child support, mediation and collaborative divorce. Our attorneys are leaders in the family law bar, having written treatises on family law in New Mexico and argued many of the most cited family law cases. Our firm offers mentorship with experienced and successful practitioners. We seek an ambitious attorney who would build on this heritage of excellence. A successful applicant must be licensed to practice law in New Mexico and have a strong interest and commitment to family law. We will consider both new and experienced attorneys. Send all inquiries to the Atkinson & Kelsey Shareholders at both these addresses: tommontoya@aol.com and lhs@atkinsonkelsey.com

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

Associate Lawyer – Commercial

Sutin, Thayer & Browne is looking to hire a full-time associate, with at least 3 years of transactional experience, for our Commercial Group. The successful candidate must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Send letter of interest, resume, and writing sample to sor@sutinfirm.com.

Civil Litigation Defense Firm Seeking Associate and Senior Associate Attorneys

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

Policy Analyst City of Santa Fe

The Santa Fe City Attorney's Office, Office of Legislation and Policy Innovation, seeks a full-time Policy Analyst. The selected candidate will research, analyze, and recommend legislative and policy solutions to the City's policy makers; collect and analyze data related to policy solutions; and draft policy memos and legislation. The City Attorney's Office seeks applicants with excellent written and verbal communications skills, a high aptitude for working with a wide variety of people, experience in developing and analyzing public policy, and a dedication to public service. Three years' experience in related work is required. A bachelor's degree in public policy, public administration, government, or a related field is required; a juris doctorate or a graduate degree in public policy or a related field is preferred but not required. Attending evening meetings may be required up to a few times a month. The pay and benefits package are excellent and are partially dependent on experience. The position is based in downtown Santa Fe at City Hall and reports to the Legislation and Policy Innovation Manager. The position is classified. Qualified applicants are invited to apply online at https://www.santafenm.gov/job_opportunities.

Trust Officers

Zia Trust is hiring Trust Officers in Albuquerque, Santa Fe and Phoenix. The Trust Officer is responsible for the administration and management of various trusts and estates where Zia Trust is acting as trustee, personal representative, or agent. The Trust Officer will be the primary point person for trust clients and their advisors. Email letter of interest and resume to lwagner@ziatrust.com

Plaintiff Associate Attorney-Parnall Law Firm \$25,000 local sign-on bonus

MISSION STATEMENT: To use intelligent, compassionate and determined advocacy to effectively maximize reimbursement of the value of our client's harm, and the wrong that caused it and to make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. **RESPONSIBILITIES:** As a Parnall Attorney you will be supported by senior attorneys, legal assistants, paralegals and case managers, and other staff who will help lead client communications, obtain and prepare documents, and assist with the various demands related to your cases. Overall organization and attention to detail are paramount to this position along with the willingness and ability to regularly interact with clients, adjusters, and other lawyers/paralegals over the phone and/or in-person. **Intakes:** Meet with clients to evaluate case for representation; Take all facts pertinent to liability, damages, coverage; Show compassion; Posture case by articulating client and office action items; Explain representation agreement and have sign; Bring in paralegal. **Investigation:** Evaluate needed investigation; Communicate with paralegal about what investigation tasks need to be completed; Determine if UM/UIM applies; Posture the case for trial or negotiations **Correspondence;** compose letters and requests **Negotiation;** Meet with clients to evaluate and get authorization to negotiate; Negotiate with adjusters and keep client informed; Prepare case for mediation; Speak with adjusters, build and maintain negotiation relationships, aggressively negotiate and/or posture cases with adjusters where appropriate; Make determination about filing suit or further negotiations; If filing suit, prepare client for litigation process. **Litigation:** Draft pleadings and discovery for lawsuits; Compose discovery responses; Compose discovery requests; Prepare case for trial, arbitration, and/or mediation. **QUALIFICATIONS:** 3 + years of experience in litigating personal injury cases (plaintiff or defense); Licensed or ability to become licensed in New Mexico, either through reciprocity, transferring UBE score to New Mexico, or taking the bar exam **Be available in the office from Monday through Friday, 8 to 5 (and more as required for caseload).** **BENEFITS:** A positive fun, caring environment where learning and growing are encouraged; Opportunities for community outreach throughout the year; Medical/Dental/Vision Benefits, 401k, PTO, Bonus Pay. To apply submit resume to jennygarcia@parnalllaw.com or visit: www.hurtcallbert.com/careers

Legal Counsel Position

ADC LTD NM is a large family-owned NM Corporation providing personnel and physical security services & background security services to federal, state, local government agencies, and corporate clients across the United States. ADC LTD NM is seeking Candidates for a Legal Counsel position that leads Corporate strategic and tactical legal initiatives, providing Senior Management with effective advice on company strategies and their implementation, managing corporate compliance, handling litigation and litigation management, including oversight of outside counsel, advising HR on employment and other general matters. This person will be directly involved in complex business transactions and negotiating critical contracts. Required to be licensed in NM and a minimum six years of experience in a law firm environment. If interested, contact Peter O'Neill, HR Manager, 505-322-2563, poneill@adcltdnm.com or submit a resume for consideration.

Associate Position

The Santa Fe office of Hinkle Shanor LLP is looking for an experienced attorney to join the firm. Hinkle Shanor has multiple practice groups with a large volume of work and is looking for an attorney who can contribute in a meaningful way to our busy practices in the areas of oil and gas regulation, environmental law, public utility law, the ski industry, and commercial litigation. We are passionate about our work and clients and would love to find someone who has the same excitement for litigation. The attorney's job duties will be focused on legal research and writing, motions practice and discovery, communicating with clients, court and deposition appearances, and working closely with other attorneys on matters. Experience in litigation is preferred, and candidates should have a strong academic background, excellent research and writing skills, and the ability to work independently. The individual must live in or be willing to relocate to Santa Fe. Please send resume, law school transcript, and writing sample to Hinkle Shanor LLP's office manager, Gilbert Romero, at gromero@hinklelawfirm.com.

Briefing/Research/Writing Attorney

Scherr Law is currently seeking an excellent and career-driven Briefing/Research/Writing Attorney with strong education, experience and appellate qualifications to join our team! Duties include drafting motions, appeals, pleadings, memos as well as preparation and research for depositions, hearings and at trial for both state and federal Courts, including Texas, New Mexico and other states. This role requires a JD, licensure as an attorney, strong research and writing skills along with creative critical analysis skills. Full-time salary range: \$80,000.00 - \$150,000.00+ per year. Please submit resume and writing sample to jim@jamescherrlaw.com

Associate Attorney

Batley Family Law, a nationally recognized family law firm, seeks an Associate Attorney to join our team. We handle complex Family Law cases and try to maintain a smaller case load which allows us the opportunity to best serve our clients. We are looking for an ambitious, dedicated and passionate attorney with 3+ years' experience who strives to do their best in an environment that encourages personal growth and development. Applicant must be able to work independently and collaborate with a team; the ability to think outside the box and attention to detail is a must. Must possess strong organizational skills, superior writing and communication skills and the ability to independently manage their own family law cases. Applicants must also possess a strong work ethic and commitment to delivering excellent client service. We offer a great benefits package for our employees which includes, PTO, Health, Dental, Vision, 401K. We also offer an employee bonus/incentive program separate from the employee's salary compensation. Please email cover letter and resume to lorrie@batleyfamilylaw.com

Civil Assistant U.S. Attorney(s)

The U.S. Attorney's Office for the District of New Mexico is recruiting one or more Civil Assistant U.S. Attorney(s) (AUSA) in the Albuquerque office. Civil AUSAs enforce federal civil rights, environmental statutes, combat fraud in the government, and defend agencies and employees in the federal government in civil litigation. The Civil Division seeks to be a force for that which is right, uphold the rule of law, and make fairness, equality, and impartiality the hallmarks of its work. Applicants must be able to independently manage all aspects of their assigned cases, including overall strategy, preparing pleadings and motions, taking depositions, preparing and answering discovery, negotiating settlements, and trying cases. If you are interested in serving the public and representing the people of the United States in a manner that will instill confidence in the fairness and integrity of the USAO and the judicial system, and have the experience necessary to do so, please apply before the vacancy closes on March 27, 2023. Qualification: Applicants must possess a J.D. Degree, be an active member in good standing of a bar (any jurisdiction) and have at least one (1) year of post-J.D. legal or other relevant experience. Salary: AUSA pay is administratively determined based, in part, on the number of years of professional attorney experience. The pay for this position is \$69,107 - \$163,721 including locality pay. The complete vacancy announcement may be viewed at <https://www.usajobs.gov/GetJob/ViewDetails/706396500> (USAJobs). All applicants must apply through USAJobs.

Criminal Assistant U.S. Attorney (AUSAs)

There is only one Cabinet Department named after an ideal: The Department of Justice. If you care deeply about justice, if you want to make a difference, or if you are looking for an exciting and challenging career in public service, the U.S. Attorney's Office has an opportunity for you as a criminal Assistant U.S. Attorney (AUSAs). Criminal AUSAs in the District of New Mexico uphold the rule of law, keep New Mexico and the nation safe, and protect civil rights. The U.S. Attorney's Office earns the public trust by following the facts wherever they lead, without fear or favor. The Office adheres to the highest standards of excellence and ethical behavior, interested not in winning cases but in ensuring justice is done. And the Office values differences in people and in ideas, treating defendants, victims, witnesses, and colleagues with dignity, compassion, and fairness. Applicants must be able to independently manage all aspects of their assigned cases, including overall strategy, preparing pleadings and motions, managing discovery, advocating at hearings, and trying cases. Please apply before the vacancy closes on March 27, 2023. Qualification: Applicants must possess a J.D. Degree, be an active member in good standing of a bar (any jurisdiction) and have at least one (1) year of post-J.D. legal or other relevant experience. Salary: AUSA pay is administratively determined based, in part, on the number of years of professional attorney experience. The pay for this position is as follows, including locality pay: Albuquerque, N.M., Salary is \$69,777 to \$163,721 which includes a 17.63% locality pay. Las Cruces, N.M., Salary is \$69,107 to \$162,148 which includes a 16.50% locality pay. The complete vacancy announcement may be viewed at <https://www.usajobs.gov/job/706818300> (USAJobs). All applicants must apply through USAJobs.

Senior Civil Litigation Associate

Tucker Holmes, PC, a well-established Denver area insurance defense firm is seeking a senior civil litigation associate with a minimum of seven years' experience in insurance defense. Job responsibilities will include independent handling of all aspects of first and third-party litigation from assignment through resolution or trial. Candidates must have strong research and writing skills, and be licensed in Colorado, or willing to get licensed in Colorado. Salary range is \$120,000-\$145,000 depending on years in practice, and level of experience in the field of insurance defense. There is some flexibility for candidates with both exceptional qualifications, and portable clients. To learn more about our firm please visit tucker-holmes.com. Please submit a cover letter, resume, writing sample, references & salary requirements to bdt@tucker-holmes.com.

Judge

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time Judge for the Pueblo Court with at least 5 years of legal experience to adjudicate criminal and civil cases. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply by March 27. Application instructions and position details at: [Employment|PuebloofLaguna\(lagunapueblo-nsn.gov\)](http://Employment|PuebloofLaguna(lagunapueblo-nsn.gov))

Hiring 40 Prosecutors

Are you ready to work at the premiere law firm in New Mexico! The Bernalillo County District Attorney's Office is hiring 40 prosecutors! Come join our quest to do justice every day and know you are making a major difference for your community. We offer a great employment package with incredible benefits. If you work here and work hard, you will gain trial experience second to none, collaborating with some of the most seasoned trial lawyers in the state. We are hiring at all levels of experience, from Assistant District Attorneys to Deputy District Attorneys. Please apply to the Bernalillo County District's Attorney's Office at: <https://berncoda.com/careers-internships/>. Or contact us at recruiting@da2nd.state.nm.us for more information.

Attorney

JGA is seeking an attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, and Civil Litigation. Please send cover letter, resume, and 3 references to: jay@jaygoodman.com. All replies will be kept confidential.

Multiple Legal Roles

The American Civil Liberties Union of New Mexico will be filling multiple legal roles. Our mission is to protect and advance justice, liberty, and equity as guaranteed by the constitutions of New Mexico and the United States. The legal team uses litigation and policy advocacy to bring greater justice, liberty, and equity to New Mexicans. Current and upcoming openings focus on civil liberties and reproductive rights. Please see our website for open roles as they become available: www.aclu-nm.org

Paralegal

AV Rated insurance defense firm needs full-time paralegal. Seeking individual with minimum of five years' experience as a paralegal in insurance defense. Excellent work environment, salary private pension, and full benefits. Please submit resume and references to Office Manager, 3880 Osuna Rd., NE, Albuquerque, NM 87109 or email to mvelasquez@rileymlaw.com.

Firm Administrator

Ten-lawyer downtown law firm needs full-time administrator. Minimum of three years' experience in management or legal-related field. Responsibilities include financial management and bookkeeping, facility and systems management, and human resources management. Please send resume to Sara N. Sanchez, Peifer, Hanson, Mullins & Baker, P.A., P.O. Box 25245, Albuquerque, NM 87125

Paralegal For Busy Medmal Practice

Hinkle Shanor LLP is seeking an experienced paralegal to join their Albuquerque office in 2023! The Albuquerque office of Hinkle Shanor is heavily specialized in medical malpractice defense litigation. Ideal candidates will have 2-3 years of experience. Substantial consideration will be given to candidates with prior medical malpractice litigation paralegal experience. Interested candidates should submit a resume and cover letter. Highly competitive salary and benefits. All inquiries will be kept confidential. Please email resumes and cover letters to recruiting@hinklelawfirm.com.

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 \$24.68 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$25.89 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Paralegal

Ortiz & Zamora, LLC, is growing and seeks an experienced and motivated paralegal to work in the Santa Fe office. The paralegal will work with our attorneys to manage an active civil litigation docket involving personal injury, medical malpractice, governmental liability, and more. Civil litigation experience is required and it is preferred that a candidate meet the paralegal qualifications in NMRA Rule 20-115. Experience with discovery, motion practice, court filings, calendaring, and hearing and trial preparation desired. Salary D.O.E. Benefits include retirement, insurances, and paid time off. Please email your resume to nadine@ortiz-zamora.com.

Legal Assistant/Paralegal-Parnall Law Firm

MISSION STATEMENT; Paralegal/Legal Assistant collaborates with all attorneys to provide them with information on assigned personal injury cases. We treat our clients with compassion and advocate for them by maximizing compensation caused by wrongful actions of others. Our goal is to ensure our clients are satisfied and know Parnall Law has stood up and fought for them by giving them a voice. RESPONSIBILITIES: Partner closely with our passionate attorneys; Following up with clients or insurance providers/carriers by phone, email, or mail; Ensuring all liability, UIM, and Med Pay claims are opened; Determine when to open or not to open health insurance subrogation claims; Complete analysis of case; Review and modify, update or edit demand packages; Collaborate with billing analysts to verify balances and coordinate benefits; Partner with settlement paralegal on settlement issues including reductions on subrogation claims and/or provider balances. QUALIFICATIONS: Significant interpersonal relationship skills; able to communicate by phone, email, text and in-person with a diverse group of personalities; Strong proven ability to work in a team collaborative environment; Self-starter with outgoing and results-oriented personality; Organization to work on multiple projects is strongly needed; Ability to listen, ask questions and make decisions; Desire to go the extra mile for the team and our clients; Possesses a strong working knowledge of Microsoft WORD and Excel; Experience in case management for plaintiffs preferred. BENEFITS: A positive fun, caring environment where learning and growing are encouraged; Opportunities for community outreach throughout the year; Medical/Dental/Vision Benefits, 401k, PTO, Bonus Pay. To apply submit resume to jennygarcia@parnelllaw.com or visit: www.hurtcallbert.com/careers

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- Schedule flexibility
- Popular content



**State Bar of
New Mexico**
Est. 1886

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

Paralegal

Paralegal position in established commercial civil litigation firm. Prior experience preferred. Requires knowledge of State and Federal District Court rules and filing procedures; factual and legal online research; trial preparation; case management and processing of documents including acquisition, review, summarizing, indexing, distribution and organization of same; drafting discovery and related pleadings; maintaining and monitoring docketing calendars; oral and written communications with clients, counsel, and other case contacts; proficient in MS Office Suite, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal software technology. Must be organized and detail-oriented professional with excellent computer skills. All inquiries confidential. Salary DOE. Competitive benefits. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Legal Assistant

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks Legal Assistant. Must be detail-oriented, organized, and have excellent communication skills. Bilingual in Spanish a plus. Competitive salary. Please e-mail your resume to karrants@stiffllaw.com

Office Space

Offices For Rent

820 Second Street NW, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

All-Inclusive North Valley Office Suite

Locally owned and operated. Move-in ready suite ideal for a solo attorney. Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Visit our website www.sunvalleyabq.com for more details or call Jaclyn Armijo at 505-343-2016.

Private Office Suite in Law Office

Private office suite in law building for rent. Includes separate clerical common area, access to conference room, and kitchenette. Only a few blocks from all court houses located at 900 Lomas NW. Contact Kim @ 505-331-3044 or email baiamonte4301@gmail.com

2023 Bar Bulletin Publishing and Submission Schedule

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

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

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

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



Next level co-counsel relationships.

In-house expertise in all catastrophic cases including carbon monoxide and electrocutions.

Over \$20 million in co-counsel settlements in 2021 and more than \$1 billion in the firm's history.

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TITAN DEVELOPMENT WELCOMES OUR NEW GENERAL COUNSEL



Aimeé González

Having practiced law for almost 15 years, Ms. González is differentiated by her professional achievements as an attorney in both the private and public sectors, where she has extensive experience in residential and commercial real estate transactions and development, land use, and municipal government work. Ms. González has and continues to play a significant role in the setup and management of all Titan private equity investment funds, which have collectively amassed over \$325 million in committed capital and with total project values estimated to be over \$1 billion. She has also been essential in establishing and maintaining relationships with over 200 investors in both the United States and Mexico. Ms. González oversees Titan's legal team to ensure consistent and reliable representation of and for the Company.

Ms. González earned her Bachelor of Arts in International Business and Economics, with honors, from New Mexico State University in 2004 and a Juris Doctor from the University of New Mexico School of Law in 2008, and is admitted to the practice of law in before New Mexico State and Federal Courts and in Texas.



Albuquerque | Austin
www.titan-development.com