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BAR BULLETIN

May 10, 2023 • Volume 62, No. 9

Taos, by Norma Alonzo (see page 4) www.normaalonzo.com

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2022 Annual Report

New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education

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Noon–1 p.m.

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Drafting Demand Letters
1.0 G
11 a.m.–noon

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MAY 31
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1.0 G
Noon–1 p.m.

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

State Bar of New Mexico
Est. 1886

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www.sbnm.org

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About Cover Image and Artist: Norma Alonzo has always taken her painting life seriously, albeit privately. An extraordinarily accomplished artist, she has been painting for over 25 years. Beginning as a landscape painter, she quickly transitioned to an immersion in all genres to experiment and learn. Through her paintings, Alonzo examines our place, metaphysically and functionally, in the midst of today's fast-paced world. For Alonzo, it has been a year of painting dangerously. Experimentation with the formal elements of line, form, mass and texture are now in play. More importantly, the guiding principle is fearlessness in the use of color and space.

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.

Notice Regarding Signing the Official Roll of Attorneys

All attorneys admitted to the State Bar of New Mexico under New Mexico Supreme Court Order No. 20-8500-011 between the dates of April 21, 2020, and June 17, 2022, must sign the Roll of Attorneys by June 16, 2023, pursuant to New Mexico Supreme Court Order No. 22-8500-029. The Roll is available for signing in the Supreme Court Clerk's Office. The Clerk's Office is located at 237 Don Gaspar Ave., Santa Fe, New Mexico, and is open from 8 a.m. to noon (MT) and 1 to 5 p.m. (MT), Monday through Friday, excluding legal holidays. The Roll will also be available for signing on May 15, from 1 to 3:30 p.m. (MT), at the UNM School of Law at 1117 Stanford Dr. NE, Albuquerque, N.M. 87106. No appointments are necessary.

Second Judicial District Court

Notice of Temporary Closure

The Second Judicial District Court will be closed on Friday, June 16 for staff training. The courthouse will reopen on June 20 following the Juneteenth holiday.

Third Judicial District Court

Notice of Investiture Ceremony

The Third Judicial District Court will be hosting an Investiture Ceremony for The Honorable Mark D. Standridge, Division IV on Friday, May 19, 2023 at 3 p.m. (MT). The investiture ceremony will be held in the ceremonial courtroom at the Third Judicial District Courthouse. Please be advised the Third Judicial District Court and the Dona Ana County Magistrate Courts will be closed to the public on May 19 at 2 p.m. (MT) this day for the ceremony. There will be limited seating to individuals who received an invitation and that have RSVP'd.

Veterans Treatment Courts Fifth Anniversary

The Third Judicial District Court will be celebrating the Veterans Treatment Courts Fifth Anniversary on Tuesday, May 23 at 4 p.m. (MT). The Veterans Treatment Court ceremony will be held in the ceremonial courtroom at the Third Judicial District Courthouse. There will be limited seating to individuals who received an invitation and that have RSVP'd.

Fifth Judicial District Court Judicial Nominating Commission

Request for Additional Applicants

Two (2) applications were received in the Judicial Selection Office as of April 17 for the vacancy on the Fifth Judicial District Court in Lovington, NM due to the retirement of the Honorable Judge William Shoobridge, effective May 1. As a result, the application period will be reopened and extend to May 11 by 5 p.m. (MT). Applications received after that time will not be considered. Applications received by the initial deadline of April 17 remain viable and do not need to resubmit their applications. The Fifth Judicial District Court Judicial Nominating Commission will meet on May 25 (time to be determined) to interview applicants for the position at the Lea County District Court located at 100 N. Love St., Lovington, N.M. 88260, to evaluate the applicants for this position. The Commission meeting is open to the public, and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard.

Professionalism Tip

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

I will respect and protect the image of the legal profession, and will be respectful of the content of my advertisements or other public communications

Twelfth Judicial District Court

Notice of Proposed Changes to Rules

The New Mexico Supreme Court's Equity and Justice Commission's Subcommittee on Judicial Nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meeting of the Twelfth Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9:30 a.m. (MT) on Friday, May 26, 2023, at the Otero County District Court located at 1000 New York Avenue, Alamogordo, N.M. Please email Beverly Akin (akin@law.unm.edu) if you would like to request a copy of the proposed changes.

U.S. District Court, District of New Mexico

Notice of Investiture Ceremony

Please join us for the Investiture of Honorable Matthew L. Garcia at 3:30 p.m. (MT) on May 12 in the Rio Grande Courtroom at the Pete V. Domenici United States Courthouse in Albuquerque, N.M. (333 Lomas Blvd NW, Third Floor). A reception hosted by the Federal Bench and Bar of the United States District Court for the District of New Mexico will follow from 6 to 8 p.m. (MT) at the Albuquerque Museum (2000 Mountain Road NW). All members of the Federal Bench and Bar are cordially invited to attend; however, reservations are requested. RSVP, if attending, to Cynthia Gonzales at 505-348-2001, or by email to usdcevents@nmd.uscourts.gov.

State Bar News

Annual Awards

Open for Nominations

Nominations are being accepted for the 2023 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be presented at the 2023 Annual Meeting on Thursday, July 27 at the Hyatt Regency Tamaya Resort & Spa. The

deadline is June 1. View previous recipients, instructions for submitting nominations, and descriptions of each award at www.sbnm.org/CLE-Events/State-Bar-of-New-Mexico-Annual-Awards.

Board of Bar Commissioners

Appointment of Young Lawyer Delegate to American Bar Association House of Delegates

Pursuant to the American Bar Association Constitution and Bylaws (Rules of the Procedure House of Delegates) Article 6, Section 6.4, the Board of Bar Commissioners will make one appointment of a young lawyer delegate to the American Bar Association (ABA) House of Delegates for a two-year term, which will expire at the conclusion of the 2025 ABA Annual Meeting. Members wishing to serve as the young lawyer delegate to the ABA HOD must have been admitted to his or her first bar within the last five years or be less than 36 years old at the beginning of the term; they must also be a licensed New Mexico attorney and a current ABA member in good standing throughout the tenure as a delegate and be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meeting. Qualified candidates should send a letter of interest and brief resume by May 31 to bbc@sbnm.org.

Client Protection Fund Commission

2022 Annual Report Now Available

The Client Protection Fund Commission finished its seventeenth year of operation in 2022, paying nearly $180,000 across 48 separate claims against seven lawyers. Pursuant to Rule 17A-018(A), information related to claims, claimants and respondent lawyers with exceptions for approved claims and other limited purposes is confidential and is unavailable to the public as such. You can view the full report by visiting www.sbnm.org/CPF.

Equity in Justice Program

Have Questions?

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

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 next NM WBC meeting is on May 30 at 3 p.m. (MT). Please email Pam Moore, pam.moore@sbnm.org, for the Zoom link. All passionate about helping with well-being efforts are welcome to attend. The NM WBC is focused on creating a long term culture change towards greater health and well being for the NM legal community. In addition, the WBC plans and organizes well-being events, including educational presentations, and offers well being resources and services through its subcommittees.

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.

Legal Education

May

11 **2023 WCA of NME 42nd Annual Conference**
2.0 EP
Live Program
Workers Compensation Association of New Mexico
workerscomp.nm.gov

11 **Professor Vinay Harpalani - Harvard & UNC (Affirmative Action)**
1.0 G
Virtual Program
Federal Bar Association, New Mexico Chapter
www.fedbar.org/new-mexico-chapter

12 **The Question Spectrum: From Cross to Voir Dire**
6.5 G
In-Person
Law Offices of Michael L. Stout
www.mlstoutlaw.com/home/the-question-spectrum
Contact: erporter@mlstoutlaw.com

12 **REPLAY: Extraordinary Circumstances for Resorting to Your Right to Writ (2021)**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

12 **Drafting Demand Letters**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

16 **Techniques to Avoid and Resolve Deadlocks in Closely Held Companies**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

17 **Wellness Wednesday - REPLAY: The Utilization of Mental Health Professionals & Appropriate Interventions in Family Law (2022)**
1.0 G
Webcast
Center for Legal Education of NMSBF
www.sbnm.org

17 **You're Hired - Check That, You're Fired! Best Practices in Intaking and Terminating Client Relationships**
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In-Person and Webinar
Center for Legal Education of NMSBF
www.sbnm.org

18 **REPLAY: Due Diligence in Commercial Real Estate Acquisitions and Leasing (2022)**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

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1.0 G
Virtual Program
Federal Bar Association, New Mexico Chapter
www.fedbar.org/new-mexico-chapter

24 **Ethics of Shared Law Offices, Working Remotely & Virtual Offices**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
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24 **Wellness Wednesday - REPLAY: Being a Lawyer Should Not Hurt! (2022)**
1.0 EP
Webcast
Center for Legal Education of NMSBF
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26 **How to Stay "Professional" When Videoconferencing: It's Not As Hard As You Think!**
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26 **REPLAY: Special Immigrant Juvenile Status: An Update on Regulations and Deferred Action (2022)**
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30 **Ethics of Co-Counsel and Referral Relationships**
1.0 EP
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31 **60 Years of Asking the Difficult Questions**
20.5 G
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Association of Family and Conciliation Courts
www.afccnet.org

31 **Wellness Wednesday - REPLAY: Emerging Legal Issues and Opportunities in Behavioral Health (2022)**
1.0 G
Webcast
Center for Legal Education of NMSBF
www.sbnm.org

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

Report by Disciplinary Counsel

Reporting Period: January 1, 2023 – March 31, 2023

Disciplinary Quarterly Report

Final Decisions
Final Decisions of the NM Supreme Court 4

In the Matter of Grant L. Marek, (No. S-1-SC-39791). The New Mexico Supreme Court entered an order indefinitely suspending the Respondent pursuant to Rule 17-206(A)(3) NMRA, effective March 31, 2023, with the suspension deferred.

In the Matter of Mary Emily Schmidt-Nowara, (No. S-1-SC-38595). The New Mexico Supreme Court entered an order permanently disbarring the Respondent pursuant to Rule 17-206(A)(1) NMRA, effective January 6, 2023.

In the Matter of Alex Chisholm, (No. S-1-SC-39536). The New Mexico Supreme Court entered an order indefinitely suspending the Respondent pursuant to Rule 17-206(A)(3) NMRA, effective January 5, 2023.

In the Matter of Christopher Dowd Hatch, (No. S-1-SC-39613). The New Mexico Supreme Court entered an order indefinitely suspending the Respondent pursuant to Rule 17-206(A)(3) NMRA, effective January 5, 2023.

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

Administrative Suspensions
Total number of attorneys administratively suspended..... 0

Disability Inactive Status
Total number of attorneys removed from disability inactive states 0

Charges Filed
Charges were filed against an attorney for allegedly failing to comply with a court order, failing to provide competent representation, failing to represent a client diligently, failing to expedite litigation, and/or engaging in conduct that is prejudicial to the administration of justice.

Injunctive Relief
Total number of injunctions prohibiting the unauthorized practice of law 0

Reciprocal Discipline
Total number of reciprocal discipline filed……..….....……..0

Reinstatement from Probation
Petitions for reinstatement filed 0

Formal Reprimands
Total number of attorneys formally reprimanded 4

Informal Admonitions
Total number of attorneys admonished 3

Letters of Caution
Total number of attorneys cautioned 11

Attorneys were cautioned for the following conduct: (1) trust account violations. (1) prosecutorial misconduct; (1) failure to communicate; (2) lack of diligence, (3) lack of competence, (1) lack of fairness to opposing party, (1) improper means, (1) criminal conduct.

Complaints Received

Allegations	***No. of Complaints***
Trust Account Violations	0
Conflict of Interest	0
Neglect and/or Incompetence	48
Misrepresentation or Fraud	16
Improper Withdrawal	2
Fees	0
Improper Communications	0
Prosecutorial Misconduct	4
Advertising Violations	0
Improper Statements about Judge	0
Improper Means	4
UPL	1
Improper Trial Publicity	0
Lack of Fairness to Opposing Party/Counsel	6
Contact with Represented Party	0
Meritless Claims or Defenses	2
Lack of Diligence	11
Other	33
*Total number of complaints received	161*

*Denotes total number of complaints received through 3/31/2022. May differ from the total number reflected in allegations due to reporting timing.

Call for Nominations

STATE BAR OF NEW MEXICO
2023 Annual Awards

Nominations are being accepted for the 2023 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be presented at the 2023 Annual Meeting on Thurs., July 27, at the Hyatt Regency Tamaya Resort & Spa. All awards are limited to one recipient per year, whether living or deceased, with the exception of the Justice Pamela B. Minzner Professionalism Award, which can have two recipients, an attorney and a judge. Nominees may be nominated for more than one award category. Previous recipients for the past three years are listed below.

To view the full list of previous recipients, visit
https://www.sbnm.org/CLE-Events/State-Bar-of-New-Mexico-Annual-Awards

— Distinguished Bar Service Award - Nonlawyer —

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

Previous recipients: Juan Abeyta, Bernice Ramos, Renee Valdez

— Excellence in Well-Being Award —

Many individuals have made significant contributions to the improvement of legal professional well-being including destigmatizing mental health, strengthening resiliency, and creating a synergic approach to work and life. This new award was created to recognize an individual or organization that has made an outstanding positive contribution to the New Mexico legal community's well-being. As the State Bar of New Mexico is committed to improving the health and wellness of New Mexico's legal community, we strongly encourage self-nominations and peer nominations for any lawyer, judge or nonlawyer working in some capacity with the NM legal community.

Previous recipient (created in 2022): Pamela Moore

— Judge Sarah M. Singleton* Distinguished Service Award —

Recognizes attorneys who have provided valuable service and contributions to the legal profession, the State Bar of New Mexico and the public over a significant period of time.

Previous recipients: Michael P. Fricke, Joey D. Moya, Deborah S. Dungan

**This award was renamed in 2019 in memory of Judge Singleton (1949-2019) for her tireless commitment to access to justice and the provision of civil legal services to low-income New Mexicans. She also had a distinguished legal career for over four decades as an attorney and judge.*

— Justice Pamela B. Minzner* Professionalism Award —

Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

Previous recipients: Judge James J. Wechsler and Quentin P. Ray, Frederick M. Hart (posthumously) and F. Michael Hart, William D. Slease

**Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994 to 2007.*

— Outstanding Legal Organization or Program Award —

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: Pueblo of Pojoaque Path to Wellness Court, Intellectual Property Law Section Pro Bono Fair, New Mexico Center on Law and Poverty, New Mexico Immigrant Law Center

— Outstanding Young Lawyer of the Year Award —

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

Previous recipients: Lauren E. Riley, Maslyn K. Locke, Veronica C. Gonzales-Zamora

— Robert H. LaFollette* Pro Bono Award —

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

Previous recipients: Darlene T. Gomez, Torri A. Jacobus, Julia H. Barnes

**Robert LaFollette (1900–1977), Director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.*

— Seth D. Montgomery* Distinguished Judicial Service Award —

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar; generally given to judges who have or soon will be retiring.

Previous recipients: Judge Henry A. Alaniz, Judge Mary W. Rosner, Judge Alvin Jones (posthumously)

**Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989 to 1994.*

Nominations should be submitted through the following link:
https://form.jotform.com/sbnm/2023amawards
Additional information or letters may be uploaded with the form and submitted with the nomination.

Deadline for Nominations: Thursday, June 1st

For more information or questions, please contact Kris Becker at kris.becker@sbnm.org or 505-797-6038.

The Equity in Justice Director-Revealed

Q AND A WITH DR. AMANDA PARKER

It has been almost two years since the State Bar of New Mexico launched the Equity in Justice Program. Brandon McIntyre, the Marketing and Communications Lead for the State Bar, had some questions for Dr. Amanda Parker, the Director of the Equity in Justice Program about who she is, what she draws upon for her work, and the Equity in Justice Program at the State Bar.

Tell us about your background?

I am from Albuquerque, and I have spent most of my life here. I graduated from Manzano High School in 1994 and went to UNM, earning a bachelor's degree in History. I wasn't sure what direction I wanted my career to take so I ended up with a series of odd jobs until I became a case manager at Albuquerque Job Corps in the early 2000s. That position propelled me into teaching, and I spent the early part of my career as a high school history teacher. Once I had my first child, I thought it would be a good time to go to graduate school, earn a master's degree and head back into the classroom. I entered a program at UNM called Educational Thought and Sociocultural Studies. The focus was on systemic inequities, and it combined history, philosophy, and sociology to examine schools and society. A professor in my master's program asked me if I would consider a PhD. Not until that moment had I ever thought that would be for me. There were no PhDs in my family. I didn't know anything about the process and it seemed that with two children, it would not be something I could do, but I felt compelled by what I was learning to take the risk. If that professor had not encouraged me, I would not be where I am today. I finished my doctorate focused on critical race studies in education and society in 2020.

What do you draw upon in doing Equity in Justice work?

I was raised to question authority and to be knowledgeable about what goes on in society. My parents were a product of the 60s and had been at the Kent State Shootings in 1970 where the national guard opened fire on students protesting the Vietnam War, killing 4. That legacy is something that shaped the way I view society and I have always been driven to look at root causes and find deeper meaning. This informs equity in justice work because we have to look below the surface to see how the system has advantaged some at the expense of others. In this position, we are examining the legal profession and how we can rectify the disparities in pay and promotion, as well as the emotional consequences of racism, sexism, ableism, homophobia, and transphobia in legal settings. I draw heavily upon a sense of purpose and justice from my childhood, my early career experiences at Job Corps, and interactions with students and families as a teacher. Those positions gave me an up-close look at the way inequity has built our systems and the consequential aftermath that we live with today. I think a lot about the communities I served daily. I also learned about building coalitions and knowing when it was time to speak up and when it was best to listen through my coursework, assisting on grants, and teaching at UNM.

What has been the most difficult part of your mission as the Equity Programs Director?

This is difficult work due to so many variables involved and so many partnerships that need to be built to make significant changes. There are many leaders in the legal profession who have been doing this work for a very long time and I am grateful to have been invited to collaborate with them. Most lawyers and judges are committed to equity, inclusion, and justice in the profession, but it is challenging to organize and to come up with a plan that is truly inclusive of the voices that must be heard. This work is chaotic and nonlinear by nature, and I have noticed that lawyers aren't comfortable with that. All of this takes more time than we want it to, and we need to stay focused on the long-term in order sustain the vision of the program.

Where do you see your work as the Equity Programs Director most impactful?

Every time members are invited to attend an event online or in-person, it creates a sense of community. We have hosted CLEs online and community events like Juneteenth that bring people together. There is also an Equity in Justice Book Group and an Equity in Justice Learning Group that develops a sense of shared responsibility for

change, and people are getting to know each other in those spaces in a way that will impact the legal community over time. The UNM School of Law has invited me to attend events and I have spoken in a couple of classes this spring, letting law students know that the State Bar is always committed to positive change. My hope is that as students graduate they see a place for themselves in the equity work we are doing.

What are some of your long and short-term goals?

In the short term, I want everyone to know the program is here at the State Bar. I have spent a lot of time getting to know the many committees, sections, and voluntary bars and every year my intention is to meet more people around the state. I want people to feel they can call me if they have any questions or need assistance with issues related to equity and inclusion in their workplaces or other settings. Currently, I'm grateful to say that many lawyers are taking advantage of that. Please don't hesitate to call me. Reach out. Let me know what you think is going on and what should happen. You can find me at (505) 797-6085 or my email is Amanda.parker@sbnm.org.
Long-term goals involve much more complicated, systemic changes that will influence the pipeline into the profession, how lawyers are educated, and how we can retain our lawyers from historically underrepresented and excluded groups. I am particularly concerned with the treatment of women of color in the profession, who are not well-represented in leadership and are leaving the profession at a higher rate than lawyers from other groups. In the long term, we need to know more about why and work together to change the culture and place some solutions into policy. I collaborate with many other entities that are working on reforming the system and the profession and I know we will see change over time.

What's coming up?

The Annual Meeting has an Equity in Justice track again and we will be inviting Bar members to a Juneteenth Celebration and free CLE again this year. I also invite anyone who would like to get involved to reach out to me at **amanda.parker@sbnm.org** any time or join one of the groups or committees that address equity issues.

EQUAL ACCESS TO JUSTICE

2022/23 CAMPAIGN COMMITTEE

M. Karen Kilgore, *co-chair**
Randi McGinn, *co-chair*
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Asterisk (*) indicates EAJ Board of Directors

When our neighbors thrive, our community thrives.
THANK YOU, DEFENDERS OF JUSTICE!

Over $287,000 was raised during Equal Access to Justice's 2022-23 Annual Campaign! EAJ is grateful for the partnership of 25 committee volunteers and 325 attorneys, law firms and community members who came together to support civil legal aid. Thank you for investing in our community and helping break down barriers to justice!

For 35 years, **Equal Access to Justice (EAJ)** has been working to increase access to justice by raising vital funds from the legal community in support of civil legal aid. Legal aid nonprofits provide free legal assistance, representation, and systemic legal advocacy to low-income New Mexicans, as well as leading community training series, hosting free legal clinics, preparing and distributing educational materials, and serving as an invaluable resource in our state.

Every extra dollar raised through EAJ's annual campaign results in increased, flexible funding for our legal aid partners, **New Mexico Legal Aid**, **New Mexico Center on Law and Poverty**, and **DNA People's Legal Services**. EAJ's *unrestricted*, *noncompetitive* grants provide maximum flexibility to respond to community needs, help cover costs excluded by other funding sources, and have no time-consuming administrative requirements freeing staff to focus on meaningful legal services.

LEADERS FOR JUSTICE

Thank you to our Legacy Society members for their transformative, multi-year gifts totaling $25,000+, and to the following individuals for their generous, annual campaign gifts of $1,000+:

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Reflects annual campaign gifts received between 4/1/2022-3/31/2023.

LEADERSHIP SOCIETY

Thank you to the many firms, solo practitioners & foundations for their generous annual campaign contributions supporting civil legal services in our community.

KEYSTONE SOCIETY (Gifts of $25,000+)

Special recognition and appreciation to **Rodey Law Firm** and **Modrall Sperling** who continue to inspire and lead the state in their contributions. Their significant support of civil legal services and systemic advocacy helps resolve problems, change unfair policies, and ultimately, promotes family and economic stability.

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Reflects annual campaign gifts received between 4/1/2022-3/31/2023.

Expanding resources and advocacy for New Mexico's legal aid programs is a collective effort.
EAJ values and recognizes our partners in this critical work: New Mexico Access to Justice Commission, New Mexico State Bar and Foundation, the New Mexico Civil Legal Services Corporation, policymaker champions, Volunteer Attorney Program, all the civil legal services providers and you!

Equal Access to Justice, PO Box 25941, Albuquerque, NM 87125 • (505) 339-8096 • www.eaj-nm.org

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Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Elizabeth A. Garcia, Chief Clerk of the New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

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From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-022
No: S-1-SC-37903 (filed September 26, 2022)

STATE OF NEW MEXICO ex rel. OFFICE OF THE STATE ENGINEER,
Plaintiff-Respondent,
v.
TOBY ROMERO,
Defendant-Petitioner,
and
ELEPHANT BUTTE IRRIGATION DISTRICT et al.,
Defendants.

ORIGINAL PROCEEDING ON CERTIORARI
James J. Wechsler, Presiding Judge

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for Petitioner

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OPINION

THOMSON, Justice.

{1} According to our Constitution and our courts, beneficial use of water is "the basis, the measure and the limit" of a continued water right. N.M. Const. art. XVI, § 3; *State ex rel. Reynolds v. S. Springs Co.*, 1969-NMSC-023, ¶ 15, 80 N.M. 144, 452 P.2d 478. With that in mind, we answer whether an owner of a groundwater right may forfeit part or all of a claimed water right and whether any use, no matter how small, preserves the right to the whole. Petitioner Toby Romero argues that his use of three acre-feet per year of water preserves the claimed 394.85 acre-feet per year water right. Synchronizing the legislative relationship and legal history of groundwater and surface water forfeiture statutes with a plain reading of our Constitution supports only one conclusion: New Mexico's groundwater forfeiture statute allows for partial forfeiture. *See* NMSA 1978, § 72-12-8(A) (2002) (groundwater forfeiture); NMSA 1978, § 72-5-28(A) (2002) (surface water forfeiture). Accordingly, we conclude that substantial evidence supports the special master's findings of nonuse by Petitioner resulting in forfeiture. The Court of Appeals interpretation of the groundwater forfeiture statute is affirmed, albeit for different reasons. *See State ex rel. Off. of State Eng'r v. Romero*, 2020-NMCA-001, 455 P.3d 860.

I. BACKGROUND

{2} The issue on appeal results from an order in the Lower Rio Grande Adjudication where the Office of the State Engineer (OSE) denied Petitioner's claim of ownership over a water right associated with "railroad operations" (Railroad Right) in the now-defunct town of Cutter.[1] The town of Cutter was established in the late nineteenth century as a mining community. A railroad depot was built around 1880 to facilitate the shipping of ore and cattle. The railroad depot's well (Well) was initially used to supply water to steam engines that powered the trains and was also used to water a local commodity, livestock. Soon after the mines shut down, the railroad depot shut down, and the need for the railroad to use the Well to service the steam locomotives diminished. The railroad's Well use eventually ended in 1960. Soon thereafter, the town of Cutter itself ceased to exist.

{3} In 1994, the railroad conveyed a parcel of land to Petitioner that included the Well and the water rights associated with the Well.[2] Four years after the railroad's conveyance, Petitioner filed a declaration of water right with the OSE claiming 394.85 acre-feet of groundwater per year for both "railroad and livestock purposes." His calculation of the Railroad Right was based on the "maximum amount of railroad traffic" passing through Cutter during the "peak" of the railroad's operation in 1944. This calculation was grossly different from a hydrographic survey of the Lower Rio Grande Basin conducted three years later, which calculated the Well's usage as three acre-feet per year for livestock watering.

{4} While awaiting judgment on the Railroad Right, Petitioner was joined in the Lower Rio Grande stream adjudication in 2007. After Petitioner was joined in the stream adjudication but before he received the OSE decision, he attempted to market

[1] Petitioner asked this Court to determine if it was appropriate to remand a second issue to the Court of Appeals: whether the Railroad Right, as quantified by the special master, was abandoned. However, Petitioner makes no argument and provides no facts in the briefing to help us answer that question. Accordingly, we do not reach the issue. Bounds v. State ex rel. D'Antonio, 2013-NMSC-037, ¶ 10 n.1, 306 P.3d 457.

[2] The factual record on which the parties rely involves several transfers of title as well as disputes about whether the Railroad Right was actually included in the land transfer. In addition, the amount of water at issue in the Railroad Right was disputed. However, these are not the central issues of the appeal, and we omit much of the discussion of these issues.

the Railroad Right in 2009 to the Spaceport America Project and submitted an application to the OSE for change of water usage. The OSE did not reply to his application, and Petitioner eventually withdrew it. In June 2010, Petitioner received an offer of judgment from the OSE finding that Petitioner had no water right.

{5} Petitioner rejected the OSE offer of judgment, and a hearing was set before a special master to determine what water right, if any, Petitioner had. The special master calculated the Railroad Right at 107.53 acre-feet per year and found evidence to support three acre-feet per year usage of water for livestock purposes based on the hydrographic survey and witness testimony. Regarding the use of the water at issue, the special master made two findings. First, "water from the Well was not used between 1960 and June 1, 1965 for any purpose other than to water livestock." Second, "The fact that the Railroad Right was used to water livestock does not prevent forfeiture of the remainder of the right." Finding no evidence of water usage for railroad purposes during these same periods, the special master relied on a Utah case to construe New Mexico's groundwater forfeiture statute to allow for partial forfeiture.

{6} In reaching these findings, the special master relied in part on Petitioner's expert report, which confirmed that the steam locomotive era ended in 1955. Exhibits also demonstrated that the railroad company in this case had converted from steam to diesel by 1960 and in doing so had closed the Cutter train depot and removed its crews from Cutter. The railroad's "right-of-way map" depicted the Well as "retired in place" as of 1959. The State presented historical records suggesting that "1960 was the last year of regular main line, standard gauge steam operations in the United States." In addition, a witness testified to repairing the Well in the early sixties, "'60 to '64," and stated that it had been "two or three years since it had been run." The witness remarked that the purpose of the repair was not to operate a steam locomotive but so the owner could "water some livestock that he had out there."

{7} Petitioner objected and filed a motion to set aside the special master's report and order recommending only the right to water livestock. He argued that although the water was not used for railroad purposes, it was used for livestock purposes and therefore that this partial use negated forfeiture of the larger Railroad Right. The core of Petitioner's argument is that usage of a three acre-feet per year livestock right preserved a right to seventy percent of his claimed 394.85 acre-feet per year Railroad Right. The district court reviewed the special master's recommendation and concluded that "substantial evidence supports the special master's finding" of nonuse. The district court also accepted the special master's interpretation of the groundwater forfeiture statute that allowed partial forfeiture.

{8} The Court of Appeals affirmed the district court, finding that the special master's reading of the groundwater statute was consistent with legislative intent, our Constitution, and our state's historic approach to the preservation of water, in particular the recognition of partial forfeiture. *See Romero*, 2020-NMCA-001. The Court of Appeals found the statute ambiguous because it "refers to forfeiture of 'the water rights' without specifying whether such forfeiture may extend to just a portion of an appropriator's water rights." *Id.* ¶ 21. We acknowledge that the statute's varying use of the terms "water," "waters," "water right," and "water rights," creates some ambiguity. *See* § 72-12-8(A). However, we conclude that analysis of the statute to resolve an ambiguity is unnecessary. These terms might refer to each water right by its individual purpose. Or the terms together might refer to a collection of the water rights related to an owner's water permit. We agree with the Court of Appeals that an analysis of legislative intent and history supports a finding that the groundwater forfeiture statute allows for partial forfeiture of water rights. *See Romero*, 2020-NMCA-001, ¶¶ 19-31. However, there is only one constitutionally valid interpretation of these water forfeiture statutes, and that is through the constitutionally acknowledged doctrine of beneficial use.

II. DISCUSSION

A. Standard of Review

{9} The purely legal question, whether partial forfeiture exists in our Constitution or by statute, requires de novo review. *State ex. rel. Off. of State Eng'r v. Elephant Butte Irrigation Dist.*, 2012-NMCA-090, ¶ 8, 287 P.3d 324 (citing *City of Santa Fe v. Travelers Cas. & Sur. Co.*, 2010-NMSC-010, ¶ 5, 147 N.M. 699, 228 P.3d 483). The OSE has "the supervision of the apportionment of water in this state." NMSA 1978, § 72-2-9 (1907), in this case in accordance with the groundwater and surface water forfeiture statutes. When, as here, "an agency decision is based upon the interpretation of a particular statute, the court will accord some deference to the agency's interpretation, especially if the legal question implicates agency expertise." *Fitzhugh v. N.M. Dep't of Labor, Emp. Sec. Div.*, 1996-NMSC-044, ¶ 22, 122 N.M. 173, 922 P.2d 555. However, the court is not bound by an agency decision and "may always substitute its interpretation of the law for that of the agency[] because it is the function of the courts to interpret the law." *Id.* (internal quotation marks and citation omitted).

{10} Finally, although this Court reviews the application of statutory provisions de novo, we review the special master's factual findings, which the district court accepted, for substantial evidence. *See State ex rel. Reynolds v. Lewis*, 1973-NMSC-035, ¶¶ 27-28, 30, 84 N.M. 768, 508 P.2d 577.

B. Beneficial Use in New Mexico

{11} The doctrine requiring beneficial use of water, which forms the foundation of this opinion, originates from territorial legislation. The 1907 water act provides, "All natural waters flowing in streams and water courses . . . belong to the public and are subject to appropriation for beneficial use. . . . Beneficial use shall be the basis, the measure and the limit of the right to the use of water . . . ." 1907 N.M. Laws, ch. 49, §§ 1, 2. Likewise, our territorial court recognized forfeiture of a water right as an important component of beneficial use:

> [T]he failure to beneficially use all or any part of the water for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of four years, shall cause the reversion of such unused water to the public, and it shall be regarded as unappropriated public water.

Hagerman Irrigation Co. v. McMurry, 1911-NMSC-021, ¶ 4, 16 N.M. 172, 113 P. 823.

{12} The language of Article XVI, Section 3 of the New Mexico Constitution, "Beneficial use shall be the basis, the measure and the limit of the right to the use of water," derives from the 1907 water act. That provision captures the purpose of our water laws, which is "to encourage use and discourage nonuse or waste." *S. Springs Co.*, 1969-NMSC-023, ¶ 15. Our courts recognize that the concept of water forfeiture is itself derived from the beneficial use doctrine because the "continuance of the title to a water right is based upon continuing beneficial use." *Elephant Butte Irrigation Dist.*, 2012-NMCA-090, ¶ 14 (internal quotation marks and citation omitted). The language of both the groundwater and surface water forfeiture statutes concerning beneficial use and reversion of the water to the public after continuous nonuse tracks our Constitution's purposes of encouraging water use and discouraging waste. *See id.* ¶¶ 14-15; *see also, e.g.*, N.M. Const. Art. XVI, § 2 ("The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is . . . subject to appropriation for beneficial use, *in accordance with the laws of the state*." (emphasis added)).

{13} Because beneficial use is a grounding principle in our water law policy, the Court has rejected other theories of water

ownership that are incompatible with the beneficial use provision of Article XVI, including theories that ignore the possibility that users can forfeit their rights. For example, in *State ex rel. Martinez v. City of Las Vegas*, this Court declined to recognize a pueblo water right where a successor-in-interest to a colonization pueblo may "take as much water . . . as necessary for municipal purposes" and instead "conclude[d] that . . . rights must be determined by prior appropriation based on beneficial use." 2004-NMSC-009, ¶ 1, 135 N.M. 375, 89 P.3d 47. The Court reasoned that pueblo rights use a nonappropriation-based method of allocating water rights, which creates water rights not measured by beneficial use and contravenes the policies for discouraging nonuse that came from Article XVI. *Id. Martinez* makes clear that forfeiture is an important component of the beneficial use doctrine:

> Forfeiture . . . is an essential punitive tool by which the policy of our constitution and statutes is fostered, and the waters made to do the greatest good to the greatest number. Forfeiture prevent[s] the waste of water—our greatest natural resource. The pueblo right subverts these critical policies.

Id. ¶ 37 (alteration in original) (internal quotation marks and citations omitted).

{14} Thus, forfeiture is an essential enforcement mechanism for Article XVI's beneficial use provision. Just as the pueblo rights discussed in *Martinez* contravened the purpose of Article XVI, the groundwater forfeiture statute, if interpreted to disallow partial forfeiture, would subvert enforcement of the critical polices of preventing waste and using water "'to do the greatest good to the greatest number.'" *See Martinez* 2004-NMSC-009, ¶ 36 (concluding that "total loss of use of any amount of water the pueblo might potentially use in the future . . . interferes with the necessity of utilizing water for the maximum benefits"). In addition, there is no distinction between partial forfeiture and forfeiture. Whether a water owner has ceased to use *all* of the water right or has ceased to use *part* of the water right, Article XVI's admonishment is the same: *use* is the *measure* of the right. Allowing use of a three acre-feet per year water right to preserve an unused 394 acre-feet per year water right would subvert Article XVI's requirement that "[b]eneficial use shall be . . . the measure" of a continuing water right. Therefore, for Section 72-12-8(A) to conform to the constitutional requirements of Article XVI, we must interpret the groundwater forfeiture statute to allow for partial forfeiture. Having established the grounding principle of beneficial use, and in particular the role of forfeiture in advancing the corresponding policy, we turn to the language of the surface water and groundwater acts to complete our analysis.

C. Surface Water and Groundwater Acts Are Viewed as a Bundle of Related Rights, and as Such Their Forfeiture Provisions Must Be Read Together

{15} The groundwater forfeiture statute at issue reads,

> When for a period of four years the owner of a water right . . . or the holder of a permit from the state engineer to appropriate any such waters has failed to apply them to the use for which the permit was granted or the right has vested, was appropriated or has been adjudicated, the water rights shall be, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, forfeited and the water so unused shall revert to the public and be subject to further appropriation.

Section 72-12-8(A). A separate statute governs the forfeiture of surface water and contains slightly different language:

> When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him . . . for a period of four years, such unused water shall, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, revert to the public and shall be regarded as unappropriated public water.

Section 72-5-28(A). The surface water forfeiture statute explicitly states that failure to use "all or any part of the water claimed" will result in forfeiture of the unused part of the water right. *Id.* Unlike the surface water forfeiture statute, the groundwater forfeiture statute does not explicitly state that "all or any part" of the water left unused will result in forfeiture but rather states, "the water so unused shall revert to the public." *Compare* § 72-12-8(A), *with* § 72-5-28(A). The Legislature's omission of "all or any part of" language invites the argument advanced by Petitioner that the Legislature did not intend to allow for partial forfeiture of a groundwater right. The argument is that the differing language between the groundwater forfeiture statute and the surface water forfeiture statute indicates a legislative intent to treat the two types of water differently when it comes to forfeiture; one theory allows partial forfeiture (surface water) and one does not (groundwater). Petitioner believes that limited use of groundwater for livestock watering preserved the entire Railroad Right as the groundwater forfeiture statute makes no allowance for partial forfeiture.

{16} If Petitioner's reading of the groundwater forfeiture statute prevails, the statute is placed in direct conflict with the intent and wording of Article XVI. Such a reading would make the statute unconstitutional. We are obliged to follow the "well-established principle of statutory construction that statutes should be construed, if possible, to avoid constitutional questions," *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 12, 111 N.M. 336, 805 P.2d 603. In addition, "[w]here a statute is susceptible to two constructions, one supporting it and the other rendering it void, a court should adopt the construction which will uphold its constitutionality." *Benavides v. E.N.M. Med. Ctr.*, 2014-NMSC-037, ¶ 43, 338 P.3d 1265 (internal quotation marks and citation omitted). There is a high bar for unconstitutionality, and a statute "will not be declared unconstitutional in a doubtful case, and . . . if possible, it will be so construed as to uphold it." *Bounds*, 2013-NMSC-037, ¶ 11, (internal quotation marks and citation omitted).

{17} Further, Petitioner's argument that the groundwater and surface water forfeiture statutes must be read as completely distinct contravenes the accepted view that "the Legislature extended the basic principles of the 1907 code to groundwater resources and that the basic scheme, for the management of both surface water and groundwater, is *still* with us today." G. Emlen Hall, *The First 100 Years of the New Mexico Water Code*, 48 Nat. Res. J. 245, 249 (2008) (emphasis added). Practically speaking, the two types of water are interconnected through a constant exchange: surface water seeping into the ground, and groundwater percolating to the surface. *See* Stephen J. Vandas et al., *Water and the Environment*, 26 (American Geologic Institute 2002). This interaction is reflected by New Mexico's "long and strong tradition of the coordination of ground and surface water rights." Jason Anthony Robison and Anthony Dan Tarlock¸ *Law of Water Rights and Resources* § 6:30, at 467 (2020) (explaining that in New Mexico administrative officials measure the impact of groundwater pumping on surface flows). Starting with the 1907 water act and confirmed by the territorial Supreme Court in *Hagerman Irrigation Co.*, 1911-NMSC-021, ¶ 4, doctrines of both prior appropriation and beneficial use have applied to surface waters. Later, the Legislature applied these same doctrines to groundwater through the 1927 groundwater code, 1929 NMSA, §§ 151-201 to -205 (1927). *See* 1927 N.M. Laws,

ch.181, §§ 1-5. This Court concluded that the application of beneficial use and prior appropriation to groundwater was "merely declaratory of existing law." *Yeo v. Tweedy*, 1929-NMSC-033, ¶¶ 7-8, 34 N.M. 611, 286 P. 970 (determining the groundwater code to be unconstitutional for technical reasons but deciding that the code was "merely declaratory of existing law"). In 1958 while interpreting the state engineer's power to consider prior appropriations, this Court applied the doctrine of surface water connectivity. *Templeton v. Pecos Valley Artesian Conservancy Dist.*, 1958-NMSC-131, ¶¶ 33-34, 47, 65 N.M. 59, 332 P.2d 465. This doctrine allows for the tracing of an appropriation of surface water to its source, underground streams. *Id*. Later, in 1961, the Court applied an analogous doctrine to groundwater even though there was no statutory equivalent within the groundwater code. *See State ex rel. Reynolds v. Mendenhall*, 1961-NMSC-083, ¶ 19, 68 N.M. 467, 362 P.2d 998. The *Mendenhall* Court confirmed the connectivity of groundwater and surface water recognized in *Yeo*, stating that "ground water in its use, appropriation and administration is affected with all the incidents of surface waters, except for differences necessarily resulting from the fact that it is found below the surface." 1961-NMSC-083, ¶ 19.

{18} Although the language of the groundwater forfeiture statute does not track the language of the surface water forfeiture statute, "its history and background reveal a legislative intent to provide for partial forfeiture." *Romero*, 2020-NMCA-001, ¶ 27. Petitioner's argument is directly contrary to our established view that "[t]here does not exist one body of substantive law relating to appropriation of stream water and another body of law relating to appropriation of underground water." *City of Albuquerque v. Reynolds*, 1962-NMSC-173, ¶ 28, 71 N.M. 428, 379 P.2d 73. Two water codes, one governing surface water and the other groundwater, do not "imply a legislative intention that subsequent statutes dealing with underground waters are to be . . . treated entirely separate and apart as though dealing with two entirely different subjects." *Id*.

{19} It is clear that, through the course of interpretation of various groundwater statutes, this Court has looked to the Legislature's policies for managing surface water for guidance. The legal and legislative relationship between groundwater and surface water, in addition to the constitutional requirement that water rights be measured by beneficial use, supports the Court of Appeals interpretation that the groundwater forfeiture statute allows partial forfeiture. Additionally, although the difference between the two statutes could evidence that the Legislature intended the groundwater and surface water codes to accomplish different purposes, Petitioner does not assert any cognizable purpose or present any evidence that the Legislature intended that groundwater and surface water be treated differently for purposes of forfeiture.

{20} Having established that partial forfeiture of groundwater rights is allowable, we now address Petitioner's alternative argument that forfeiture should not apply in this case because it is only meant to serve as a penalty for deliberate waste or unauthorized water use. Finally, we examine the special master's finding of nonuse and forfeiture.

D. Forfeiture Is Allowed for Nonuse, Not Just for Unauthorized Use or Deliberate Waste

{21} "[T]he continuance of the title to a water right is based upon continuing beneficial use, and where the right is not exercised for a certain period of time (four years), the statute declares that the right to the unused portion is forfeited." *S. Springs Co*., 1969-NMSC-023, ¶ 9. There is no basis for Petitioner's argument that forfeiture is a penalty reserved for unauthorized use of water or deliberate waste. To the contrary, nonuse is one of the actions penalized by the forfeiture statute. For example in *S. Springs Co*., the owners of the water right failed to obtain use of their claimed water for at least thirty years. *Id*. ¶ 8. This Court clarified that "forfeiture as applied to water rights . . . is the penalty fixed by statute for the failure to do . . . certain acts tending toward the consummation of a right within a specified time[] or . . . the failure to use the same for the period specified by the statute." *Id*. ¶ 9 (internal quotation marks and citation omitted). It is clear from *S. Springs Co*. and other related cases that forfeiture is not only a punishment for bad acts like waste or unauthorized use of water but also a penalty for the failure of a water owner to put the water to beneficial use. *See id*.; *see also Elephant Butte Irrigation Dist*., 2012-NMCA-090, ¶¶ 16-17 (applying the forfeiture statute to more than four consecutive years of nonuse); *State ex rel. Reynolds v. Fanning*, 1961-NMSC-058, ¶¶ 6, 15, 68 N.M. 313, 361 P.2d 721 (applying the forfeiture statute to irrigation for more than four consecutive years from an unapproved well); *State ex rel. Erickson v. McLean*, 1957-NMSC-012, ¶¶ 23-26, 62 N.M. 264, 308 P.2d 983 (applying the forfeiture statute to more than four years of nonbeneficial usage□or "continuous nonuse[] through waste"). Forfeiture as a penalty for nonuse is not a new concept or a new way of applying the forfeiture statute. Even in the early forfeiture cases, it is plainly stated, "Nonuse involves forfeiture. A great natural public resource is thus both utilized and conserved." *Yeo*, 1929-NMSC-033, ¶ 20. Therefore, we hold that if the special master properly found nonuse, the forfeiture statute applies to Petitioner's water right.

E. The Special Master's Findings Are Supported by Substantial Evidence

{22} In this case, the special master found that the Well had not been "used between 1960 and June 1, 1965 for any purpose other than to water livestock." The finding of more than four years of nonuse was supported by substantial evidence, including railroad logs, witness testimony, and historical evidence regarding the decline of the town of Cutter. The evidence described earlier in this opinion included exhibits demonstrating that the railroad had converted from steam to diesel by 1960. Historical records revealed that 1960 was the last year of steam operations in the United States. The railroad's "right-of-way" map depicted the Well as "retired in place" as of 1959. While a witness testified to repairing the Well in the early sixties, "'60 to '64," the same witness testified that it had been "two or three years since it had been run" and that the purpose of the repair was so the owner could "water some livestock that he had out there." The records and accounts taken together show that substantial evidence supported a finding of nonuse. Nonuse, as we have said previously, led to forfeiture.

III. CONCLUSION

{23} The special master correctly construed the meaning of Section 72-12-8(A) to allow for partial forfeiture. The Court of Appeals was correct in finding that the statute was ambiguous and that the historical relationship between the surface and groundwater forfeiture statutes supported a harmonious reading of the statutes. However, we stress that the beneficial use doctrine, enshrined in Article XVI, Section 3 of the New Mexico Constitution, mandates that continuous beneficial use be "the basis, the measure and the limit of the right to the use of water" and that water not subject to beneficial use reverts to the public and is subject to appropriation by the state. As such, beneficial use requires that Section 72-12-8(A) allow for any portion of unused water to return to the public and be subject to appropriation by the state. Therefore, we affirm.

{24} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

BRIANA H. ZAMORA, Justice

FRANCIS J. MATHEW, Judge
Sitting by designation

ERIN B. O'CONNELL, Judge
Sitting by designation

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-048
No: A-1-CA-37852 (December 6, 2021)

HIGH DESERT RECOVERY, LLC,
Protestant-Appellant,
v.
NEW MEXICO TAXATION & REVENUE DEPARTMENT,
Respondent-Appellee.

APPEAL FROM THE ADMINISTRATIVE HEARINGS OFFICE
Dee Dee Hoxie, Hearing Officer

Sanchez, Mowrer & Desiderio, P.C.
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Hector H. Balderas, Attorney General
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OPINION

HANISEE, Chief Judge.

{1} This appeal concerns the State's effort to collect unpaid gross receipts taxes from High Desert Recovery, LLC (High Desert). High Desert appeals from an Administrative Hearing Officer's (AHO) decision and order (the Order) determining it to be a successor in business, as well as a mere continuation, of West Rock Incorporated (WRI) and concluding that High Desert is liable for $127,764.92 in back taxes assessed to WRI. We affirm.

BACKGROUND

{2} WRI was formed in 1995 as a three-member LLC. Although not a shareholder himself, Daniel Brown acted as a board member, the president, and the manager of WRI's daily operations. Brown additionally owned and leased a facility to WRI located at an address on Franciscan Street NE in Albuquerque, New Mexico, at which WRI conducted its automobile repossession business.

{3} In 2008, the Taxation and Revenue Department (the Department) assessed WRI for unpaid gross receipts taxes and interest for approximately $270,000. WRI protested the assessment, and an order denying the protest was filed in April 2013. On May 31, 2013, Brown formed High Desert as a single-member LLC, providing his personal P.O. Box address as High Desert's mailing address and listing an address on Cherry Hills Road in Albuquerque, New Mexico as its "place of business." On October 16 and 17, 2013, High Desert purchased two new tow trucks and provided WRI's Franciscan Street NE address in its title application. On October 25, 2013, High Desert applied for a warrant application that would allow it to perform repossessions using the Cherry Hills Road address. The application listed ownership of a single tow truck and identified two employees—Brown and a driver who was still employed by WRI.

{4} Upon approval of its application, High Desert purchased an additional tow truck from WRI for $700, the fair market value of which was later determined by the Department of Motor Vehicles (MVD) to be $14,720, for purposes of calculating excise tax from the transfer. In this transaction, as well as the related title application and registration, High Desert provided the Cherry Hills Road address. High Desert also used WRI's liability insurance policy number to register its newly acquired tow trucks. In March 2014, Brown terminated WRI's lease on the Franciscan Street NE address and WRI passed a resolution to dissolve. Later that same year, High Desert filed a change of address with the transportation division, indicating that it would begin operating from the Franciscan Street NE address. As was the case with WRI, Brown also leased the Franciscan Street NE property to High Desert.

{5} On November 28, 2016, the Department assessed High Desert, as a successor in business to and a mere continuation of WRI, for a total of $271,359.77, of which $143,594.85 was interest. The Department ultimately abated the interest portion. High Desert protested the assessment, which the AHO denied in full. This appeal followed.

DISCUSSION

{6} On appeal, High Desert asserts that (1) the AHO erred in determining that High Desert is a successor in business to WRI; (2) the AHO erred in determining that High Desert is a mere continuation of WRI; and (3) High Desert is entitled to recover attorney fees because the Department's position contradicts binding precedent.

Standard of Review

{7} Since the issue presented is one of statutory interpretation regarding the meaning of NMSA 1978, Section 7-1-61 (2017), we review the Order de novo. *See A&W Rests., Inc. v. Tax'n & Revenue Dep't*, 2018-NMCA-069, ¶ 6, 429 P.3d 976 ("The meaning of language used in a statute is a question of law that we review de novo." (internal quotation marks and citation omitted)). While we are not bound by the AHO's interpretation of the statute, this Court will set aside the Order only if it is: "(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with the law." NMSA 1978, § 7-1-25(C) (2015); *see Stockton v. N.M. Tax'n & Revenue Dep't*, 2007-NMCA-071, ¶ 8, 141 N.M. 860, 161 P.3d 905 (same) (internal quotation marks and citation omitted).

{8} "Our primary goal [in interpreting a statute] is to give effect to the intent of the Legislature." *Sacred Garden, Inc. v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-038, ¶ 5, 495 P.3d 576 (alteration, internal

quotation marks, and citation omitted), *cert. granted*, 2021-NMCERT-___ (No. S-1-SC-38164, Mar. 29, 2021). "We discern legislative intent by first looking at the plain meaning of the language of the statute, [and] reading the provisions together to produce a harmonious whole." *Id.* (omission, internal quotation marks, and citation omitted).

{9} "There is a presumption that all persons engaging in business in New Mexico are subject to gross receipts tax." *TPL, Inc. v. N.M. Tax'n & Revenue Dep't*, 2003-NMSC-007, ¶ 9, 133 N.M. 447, 64 P.3d 474; *see* NMSA 1978, § 7-9-5(A) (2019) ("To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax."). The Department's assessment of taxes or demand for payment "is presumed to be correct." NMSA 1978, § 7-1-17(C) (2007). Because the Department has the authority to enact regulations that interpret statutes, those regulations similarly carry a presumption that they are a "proper implementation of the provisions of the laws[.]" NMSA 1978, § 9-11-6.2(G) (2015); *see Chevron U.S.A., Inc. v. State ex rel. Tax'n & Revenue Dep't*, 2006-NMCA-050, ¶ 16, 139 N.M. 498, 134 P.3d 785 ("Agency regulations that interpret statutes and are promulgated under statutory authority are presumed proper[.]"). Nevertheless, "[a] tax statute must also be given a fair, unbiased, and reasonable construction, without favor or prejudice to either the taxpayer or the [s]tate, to the end that the legislative intent is effectuated and the public interests to be subserved thereby are furthered." *Wing Pawn Shop v. N.M. Tax'n & Revenue Dep't*, 1991-NMCA-024, ¶ 16, 111 N.M. 735, 809 P.2d 649 (internal quotation marks and citation omitted).

I. Successor in Business

{10} High Desert first argues that the AHO misapplied 3.1.10.16(A) NMAC, which provides the factors used to determine whether a given entity is a successor in business, wrongly concluding that High Desert is a successor in business to WRI. The Department answers that the AHO properly determined that High Desert "became a successor in business as a matter of law" when it "took [WRI's] office equipment, liability insurance policy and tow truck to provide the same services using the same equipment with the same employees to the same customers at the same business location[.]"

A. The Successor in Business Framework

{11} New Mexico's successor in business framework is established by statute, as well as by regulations promulgated by the Department. *See* **§ 7-1-61; 3.1.10.16 NMAC.** Section 7-1-61(C) requires a person acquiring a business to set aside from the purchase price, or other sources, sufficient funds to cover any remaining tax liability from the previous owner. By its terms, the statute places this duty on a "successor" who acquires the business from the entity liable for the taxes. Section 7-1-61(C) provides:

> If any person liable for any amount of tax from operating a business transfers that business to a successor, the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary.

{12} The Department considers eight factors to determine whether a business is a successor:

> (1) Has a sale and purchase of a major part of the materials, supplies, equipment, merchandise or other inventory of a business enterprise occurred between a transferor and a transferee in a single or limited number of transactions?
>
> (2) Was a transfer not in the ordinary course of the transferor's business?
>
> (3) Was a substantial part of both equipment and inventories transferred?
>
> (4) Was a substantial portion of the business enterprise that had been conducted by the transferor continued by the transferee?
>
> (5) By express or implied agreement did the transferor's goodwill follow the transfer of the business properties?
>
> (6) Were uncompleted sales, service or lease contracts of the transferor honored by the transferee?
>
> (7) Was unpaid indebtedness to suppliers, utility companies, service contractors, landlords or employees of the transferor paid by the transferee?
>
> (8) Was there an agreement precluding the transferor from engaging in a competing business to that which was transferred?

3.1.10.16(A) NMAC. No single factor is determinative; however, the presence of one of these factors permits the Department to presume that the business is a successor. *See* 3.1.10.16(B) NMAC ("If one or more of the indicia mentioned above are present, the [Department] may presume that ownership of a business enterprise has transferred to a successor in business.").

{13} In addition to these factors, the regulations provide a definition of successor. " '[S]uccessor' means any transferee of a business or property of a business" and "may include a business that is a mere continuation of the predecessor . . . and any business that assumes the liabilities of the predecessor." 3.1.10.16(F)(2) NMAC. "Implicit in the regulation's definition of successor is the notion that the future intent of a transferee of a business, once it has received the business, is an important aspect of determining whether it is a successor." *Hi-Country Buick GMC, Inc. v. N.M. Tax'n & Revenue Dep't*, 2016-NMCA-027, ¶ 17, 367 P.3d 862. "The distinguishing feature is . . . whether the entity acquiring the business intends to retain and operate the business." *Id.* As Judge Sutin noted in *Sterling Title Company of Taos v. Commissioner of Revenue*, "the primary purpose of the [successor in business framework is] to make tangible and intangible property security for payment of the tax. The [L]egislature intended this to protect . . . the public against successors who did not withhold an amount sufficient to pay the tax owned by delinquent taxpayers." 1973-NMCA-086, ¶ 23, 85 N.M. 279, 511 P.2d 765 (Sutin, J., specially concurring).

B. High Desert Is a Successor in Business

{14} High Desert argues that the first three factors of 3.1.10.16(B) NMAC are "intended to capture the sale of a business via an asset sale" and "require transfer of a 'major' or 'substantial' portion of the transferor's assets." The AHO reasoned that because WRI "abandoned its property . . . and [High Desert] took possession of it[,]" there was "clearly a transfer of tangible property[.]" High Desert contends that merely storing the assets at its facility does not equal possession, and "taking possession of a defunct corporation's assets does not constitute legal transfer of those assets."

{15} As an initial general matter, the word "transfer" has been deemed to include transfers of assets without a formal sale. *See, e.g.*, 3.1.10.16.(F)(3) NMAC (defining "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with the property of a business"); *Sterling Title Co.*, 1973-NMCA-086, ¶ 25 (explaining that the term " 'business changes hands' . . . is broad enough to include the personalty as security even though a taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods"); *see Black's Law Dictionary* (11th ed. 2019) (defining a

"transfer" as "embrac[ing] every method . . . of disposing of or parting with property or with an interest in property").

{16} Nonetheless, regarding the first factor, although we determine that "a major part of the materials, supplies, equipment, merchandise or other inventory," 3.1.10.16(A)(1) NMAC, was transferred from WRI to High Desert, because this factor specifically contemplates whether a "sale and purchase" of such assets occurred, and as the Department concedes "admittedly there was no sale," this factor does not weigh in favor of the Department.

{17} Turning to the second factor—whether the transfer was not in the ordinary course of the transferor's business—WRI was a repossession business and was not in the business of selling tow trucks or storing equipment. This factor therefore weighs in favor of the Department.

{18} The third factor—whether a substantial part of the equipment and inventories were transferred—we conclude also weighs in favor of the Department. Although WRI's dissolution plan required that assets of value be liquidated and assets of no value be abandoned or donated, all of WRI's equipment and inventory continued to be held at the Franciscan Street NE address, the property owned by Brown, which he leased first to WRI and then to High Desert. High Desert asserts that even if it "took possession of WRI's remaining property, that does not constitute transfer of such property" to High Desert. We disagree. Although there was no formal transfer of assets, High Desert demonstrated its possession of WRI's assets by continuing to store them at the Franciscan Street NE address and continuing to utilize them for actions related to High Desert's repossession business. For instance, High Desert used WRI's facsimile machine to submit title application materials and relied on WRI's liability insurance policy to register its newly acquired tow trucks. High Desert contends that it had possession of such equipment for the purpose of giving it to the Department; however, High Desert provides no statutory authority and no agreement between itself and the Department indicating that the Department agreed to accept such assets. *See Chan v. Montoya*, 2011-NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 ("The mere assertions and arguments of counsel are not evidence." (internal quotation marks and citation omitted)).[1]

{19} Similarly, the fourth factor—whether a substantial portion of the business conducted by WRI continued to be conducted by High Desert—also weighs in favor of the Department. WRI and High Desert are repossession businesses who operated at the same location on Franciscan Street NE, and High Desert continued to perform repossessions for many of WRI's clients. Which leads to the fifth factor—whether by express or implied agreement WRI's goodwill followed the transfer. Indeed, it did. Not only did High Desert continue to do business for WRI's clients, but it retained each of WRI's employees. Even, Brown—an officer and manager of both LLCs—testified that WRI and High Desert's reputations were "inextricable tied" to his own personal reputation.

{20} Because three factors under 3.1.10.16(A) NMAC weigh in favor of High Desert being categorized as a successor in business, and if a single factor is present, the Department may presume such categorization, we affirm the AHO's conclusion that High Desert failed to overcome this presumption.

II. High Desert Is a Mere Continuation

{21} The parties next dispute whether High Desert is a mere continuation of WRI.[2] NMSA 1978, Section 7-1-63(C) (1997) provides:

> A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:
>
> (1) the business has been transferred to evade or defeat any tax;
>
> (2) the transfer of the business amounts to a de facto merger, consolidation, or *mere continuation* of the transferor's business; or
>
> (3) the successor has assumed liability.

(Emphasis added.)

{22} Under 3.1.10.16(F)(1) NMAC, " 'mere continuation' is determined by the 'substantial continuity test' . . . addressing whether the successor maintains the same business with the same employees doing the same jobs under the same supervisors, work conditions and production process and produces the same product for the same customers." Under the substantial continuity test set forth by 3.1.10.16(F)(1) NMAC, High Desert plainly constitutes a mere continuation of WRI. High Desert continues to conduct a repossession business at the same address, serving most of the same customers, and utilizing the same employees. *See* § 9-11-6.2(G) (explaining that the Department's administrative regulations are presumed to be proper).

{23} In addition to the substantial continuity test provided by 3.1.10.16 NMAC, our Supreme Court has supplemented the substantial continuity test with additional factors, explaining that, "[g]enerally, a continuation of the transferor corporation occurs where there is (1) a continuity of directors, officers, and shareholders; (2) continued existence of only one corporation after the sale of the assets; and (3) inadequate consideration for the sale of the assets." *Garcia v. Coe Mfg. Co.*, 1997-NMSC-013, ¶ 13, 123 N.M. 34, 933 P.2d 243 (citing *McCarthy v. Litton Indus., Inc.*, 570 N.E. 2d 1008, 1012) (explaining that "the imposition of liability on the [successor] is justified on the theory that, in substance if not in form, the purchasing corporation is the same company as the selling corporation")).

{24} Applying the three factors provided by *Garcia* alongside the statutory criteria, we remain persuaded that High Desert is a mere continuation of WRI. To reiterate, Brown was an officer—the president—as well as a director and the manager of WRI's daily operations, and continued to serve in these capacities at High Desert. High Desert asserts that it and WRI had "completely different owners" and "none of WRI's owners had any involvement with [High Desert]." Although WRI had three shareholders and High Desert was a single member LLC, Brown owned and managed the property where business was conducted and served as a member of WRI's board of directors.[3] Additionally, Brown's managerial responsibilities at High Desert are "essentially identical" to those at WRI and include overseeing employees, customer service, payroll and taxes.

{25} Turning to the second *Garcia* factor, there remains only one corporation after the transfer of assets—High Desert. Indeed, the LLCs operated concurrently from the Franciscan Street NE address from May to

[1] Because neither High Desert nor the Department contends that the AHO's determination that 3.1.10.16(A) NMAC factors six through eight weigh against finding that High Desert is a successor in business are erroneous, these findings are binding on appeal. See Lopez v. N.M. Dep't of Tax'n & Revenue, 1997-NMCA-115, ¶ 13, 124 N.M. 270, 949 P.2d 284 (explaining that uncontested administrative hearing officer findings are binding on appeal).

[2] The parties also dispute whether WRI transferred its assets to High Desert "for the purpose of evading or defeating tax" however, given our conclusion that High Desert is a mere continuation of WRI, we need not resolve this issue. See Crutchfield v. N.M. Dep't of Tax'n & Revenue, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 ("A reviewing court generally does not decide academic or moot questions

September 2014. Considering the final factor of *Garcia*, inadequate consideration for the sale of the assets, we remain persuaded that High Desert is a mere continuation of WRI. Because of WRI's dissolution, there was no "sale of assets" as envisioned under *Garcia*. Nonetheless, the record demonstrates that in assuming the operation of the repossession business conducted by WRI, High Desert assumed possession of the equipment and materials used by WRI. Inadequate consideration is most notably demonstrated in High Desert's purchase of WRI's tow truck, which was determined by the MVD to have a value of $14,720, for a mere $700. For these reasons, we determine that High Desert is a mere continuation of WRI.[4]

III. Attorney Fees

{26} High Desert contends that it is entitled to an attorney fee award because it is the "prevailing party" regarding its liability for interest. The Department initially assessed High Desert for $271,359.77, of which $143,594.85 constituted interest and penalties. In its protest, High Desert argued that the interest portion of this assessment should be abated based on our holding in *Hi-Country Buick GMC*, 2016-NMCA-027, ¶ 22 (holding that successor in business could not be held liable for interest and penalties assessed against the predecessor). However, the Department abated the interest prior to a hearing on the protest, and ultimately assessed High Desert for $127,764.92.

{27} NMSA 1978, Section 7-1-29.1(A) (2019) provides that a "taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs and reasonable litigation costs and attorney fees incurred" in connection with an administrative or court proceeding "if the taxpayer is the prevailing party." Section 7-1-29.1(C)(1)(a) explains that a taxpayer is the prevailing party if the taxpayer has "substantially prevailed with respect to the amount in controversy"; or under Section 7-1-29.1(C)(2) is not the prevailing party if "the [AHO] finds that the position of the [D]epartment in the proceeding was based upon a reasonable application of the law of the facts to the case." The determination of whether the taxpayer is the prevailing party is made either: (1) "by agreement of the parties"; (2) or "in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding, by the hearing officer"; or (3) "in the case of a court proceeding, by the court." Section 7-1-29.1(4).

{28} In *Hi-Country Buick GMC*, this Court considered whether a successor purchaser of a business tax liability included penalties and interests accrued by the predecessor seller. 2016-NMCA-027, ¶ 19. We explained that the definition of tax, as provided by Section 7-1-61(A), "specifically deals with the narrow circumstances involving successor-in-business tax liability" and limits the successor's liability to "the amount of tax imposed by the provisions of the Withholding Tax Act and the Gross Receipts Tax Act." *High-Country Buick GMC*, 2016-NMCA-027, ¶ 20 (internal quotation marks and citation omitted). Because Section 7-1-61(A) defined "tax" more narrowly than other sections of the tax code, we held that the successor in business was not liable for interest and penalties assessed against the predecessor. *High-Country Buick GMC*, 2016-NMCA-027, ¶ 22. Our decision was guided by policy considerations, and, importantly, we noted that "because penalties and interest are effectively punitive, it is reasonable to limit those liabilities to be paid by the previous business owner who incurred them rather than impose this punishment upon the successor who bore no responsibility for the unpaid taxes." *Id.*

{29} Although *Hi-Country Buick GMC* clarified that a purchaser successor in business should not be liable for the penalties and interest of its predecessor, the Department's initial interpretation of *Hi-Country Buick GMC* was reasonable. *See* Section 7-1-29.1(C)(1)(a), (2). While *Hi-Country Buick GMC* expressly considered the tax liability of successor in business who purchased a car dealership, including all of its assets, as we explained above, there was no such sale and purchase of the predecessor business in the case at hand. Moreover, the policy considerations that guided our decision in *Hi-Country Buick GMC* are inapplicable to the case at hand. Although we determined that the purchaser of the predecessor business was a successor in business, our decision in *Hi-Country Buick GMC* did not consider whether the successor in business was a "mere continuation." Whereas here, because High Desert is a mere continuation of WRI, High Desert bore some responsibility for the unpaid taxes of its predecessor. For these reasons, we determine that the Department's application of *Hi-Country Buick GMC* to the facts at hand, while albeit incorrect, was not unreasonable. Therefore, High Desert is not the prevailing party, and we deny its request for an award of attorney fees.

CONCLUSION

{30} Because we determine that High Desert is a successor in business, as well as a mere continuation, and is not entitled to attorney fees and costs, we affirm.

{31} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

JANE B. YOHALEM, Judge

GERALD E. BACA, Judge

[3] While we note that the shareholders of WRI and High Desert are not identical, Brown's role as an officer and director of both corporations combined with our analysis of the second and third Garcia factors, leads us to conclude that the supplemental factors provided by Garcia support a determination that High Desert is a mere continuation of WRI. To determine that High Desert is not a continuation of WRI because Brown was not a shareholder of WRI would run afoul of the purpose of the successor in business framework. 4See Sterling Title Co., 1973-NMCA-086, ¶ 23; see also Baker v. Hedstrom, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 ("When construing statutes, our guiding principle is to determine and give effect to legislative intent." (internal quotation marks and citation omitted)).

[4] Because we determine that High Desert is a "mere continuation," we decline to address its argument that its liability is limited to the value of the assets transferred to it from WRI.

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-049
No: A-1-CA-38616 (February 10, 2022)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JULIANNA MONTANO a/k/a JULIANNA P. MONTANO a/k/a JULIANNA PAULINE MONTANO,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Daniel J. Gallegos, District Judge

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

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Steven J. Forsberg, Assistant Appellate Defender
Albuquerque, NM

for Appellant

OPINION

ATTREP, Judge.

{1} Defendant Julianna P. Montano pled guilty to second degree homicide by vehicle, contrary to NMSA 1978, Section 66-8-101(C) (2016), for driving drunk and causing an accident resulting in the death of another human being. As part of its sentencing decision, the district court concluded that Defendant's conviction for second degree homicide by vehicle was a serious violent offense under the Earned Meritorious Deductions Act (EMDA), NMSA 1978, § 33-2-34 (2015). Defendant appeals this determination. Because second degree homicide by vehicle is not an enumerated "serious violent offense" under the EMDA and there is no basis to depart from the plain language of the EMDA, we hold that it is a nonviolent offense. We therefore reverse the district court's determination that Defendant's crime is a serious violent offense. We affirm as to Defendant's other claims of error on appeal.

BACKGROUND

I. Statutory Background

{2} The EMDA allows a prisoner confined in a facility designated by the Corrections Department to earn deductions from his or her sentence for good behavior and for participating in programs designed for rehabilitation (i.e., good time credit). *See* § 33-2-34(B), (D) (describing circumstances that permit a prisoner to earn meritorious deductions); § 33-2-34(F) (describing circumstances that render a prisoner ineligible to earn meritorious deductions). As relevant to this case, the amount of deductions a prisoner may earn depends on whether the crime for which the prisoner is serving his or her sentence is a "serious violent offense" or a "nonviolent offense." A prisoner serving a sentence for a serious violent offense may only receive up to four days per month of deductions, § 33-2-34(A)(1), whereas a prisoner serving a sentence for a nonviolent offense may receive up to thirty days per month of deductions, § 33-2-34(A)(2).

{3} Seventeen crimes, enumerated in fourteen statutory provisions, are, by definition, serious violent offenses. Section 33-2-34(L)(4)(a)-(n). We refer to these crimes as "per se serious violent offenses." Another twenty crimes, enumerated in fifteen statutory provisions, are serious violent offenses if the district court finds that "the nature of the offense and the resulting harm" of the crime under a given set of facts warrant the designation. Section 33-2-34(L)(4)(o); *see also State v. Solano*, 2009-NMCA-098, ¶ 10, 146 N.M. 831, 215 P.3d 769 (explaining that a district court must find "that the crime was committed in a physically violent manner either with an intent to do serious harm or with recklessness in the face of knowledge that one's acts are reasonably likely to result in serious harm" (internal quotation marks and citation omitted)). We refer to these crimes as "discretionary serious violent offenses." All remaining crimes, i.e., those not designated serious violent offenses, are, by definition, nonviolent offenses. Section 33-2-34(L)(3).

{4} New Mexico defines the crime of "homicide by vehicle" as "the killing of a human being in the unlawful operation of a motor vehicle." Section 66-8-101(A). Prior to 2016, a person committing homicide by vehicle—whether while under the influence of intoxicating liquor or any drug (DWI) or while violating NMSA 1978, Section 66-8-113 (1987) (reckless driving)—was guilty of a third degree felony and subject to a basic sentence of six years' imprisonment. Section 66-8-101(C) (2004); NMSA 1978, § 31-18-15(A)(8) (2019)[2] (providing a basic sentence of six years' imprisonment for a defendant convicted of a "third degree felony resulting in the death of a human being"). Under the EMDA, the crime of "third degree homicide by vehicle," as provided in Section 66-8-101, is a discretionary serious violent offense. Section 33-2-34(L)(4)(o)(14).

{5} The Legislature amended Section 66-8-101 in 2016. The amendment elevated the crime of homicide by vehicle (DWI) to a second degree felony. Section 66-8-101(C). A person committing that offense is subject to a basic sentence of fifteen years' imprisonment. Section 31-18-15(A)(4). The amendment did not change homicide by vehicle while driving recklessly—a person committing this offense is still guilty of a third degree felony, subject to a basic sentence of six years' imprisonment. Section 66-8-101(D); § 31-18-15(A)(8). As for the EMDA, the Legislature has not amended it since 2015. As a result, the crime of "second degree homicide by vehicle," which did not exist prior to 2016, is not enumerated as either a per se or discretionary serious violent offense.[1] *See* § 33-2-34(L)(4).

[1] Offenders serving a sentence of life imprisonment or life imprisonment without the possibility of release or parole are an exception since they are ineligible to receive earned meritorious deductions. Section 33-2-34(G).

[2] Although Section 31-18-15 was amended in 2007 and 2016, these amendments did not substantively alter the provisions we cite in this opinion. We, therefore, cite the most recent version of Section 31-18-15 throughout this opinion for convenience.

II. Factual and Procedural Background

{6} A grand jury indicted Defendant with several crimes in connection with her driving drunk on Interstate 40 in late 2017 and causing an accident resulting in the death of Patricia Urban. Defendant and the State ultimately reached an agreement in which Defendant pled guilty to one count of second degree homicide by vehicle in exchange for the dismissal of the remaining charges. The parties agreed that the district court would sentence Defendant to a term of imprisonment of between four and seven years, but made no other agreement as to sentencing. At the sentencing hearing, the district court, consistent with the plea agreement, imposed the basic sentence of fifteen years, but suspended eight of those years—leaving Defendant with an effective term of imprisonment of seven years. The district court deferred ruling on whether Defendant's crime constituted a serious violent offense for purposes of the EMDA.

{7} Relying on the fact that the EMDA does not list second degree homicide by vehicle as a serious violent offense, *see* § 33-2-34(L)(4), Defendant moved the district court to deem her a nonviolent offender. After holding a hearing, the district court entered a written order denying Defendant's motion. Relying on principles of statutory construction, the district court agreed with Defendant that, under the plain meaning of the EMDA, she was convicted of a nonviolent offense. The district court nonetheless thought it "absurd" that the crime of second degree homicide by vehicle was a nonviolent offense, whereas the crime of third degree homicide by vehicle, a less serious offense, could be designated a serious violent offense. The district court thus determined, "the Legislature simply committed an oversight by not amending Section 33-2-34 to categorize second degree homicide by vehicle as a serious violent offense." Finding that Defendant acted recklessly in the face of knowledge that her actions were reasonably likely to result in harm, the district court ruled her crime to be a serious violent offense. Defendant appeals the district court's determination that second degree homicide by vehicle is a discretionary serious violent offense under the EMDA.

DISCUSSION

I. Second Degree Homicide by Vehicle Is Not a Serious Violent Offense Under the EMDA

{8} Whether the district court erred in designating Defendant's conviction for second degree homicide by vehicle a serious violent offense presents a matter of statutory construction, which we review de novo. *See State v. Bennett*, 2003-NMCA-147, ¶ 4, 134 N.M. 705, 82 P.3d 72 ("The district court's authority to classify [the d]efendant as a serious violent offender derives from Section 33-2-34, and our construction of this statute for the district court's authority in this case is an issue we analyze de novo as a matter of law."). "The primary goal in interpreting a statute is to give effect to the Legislature's intent; we first look at the words chosen by the Legislature and the plain meaning of those words." *State v. Hubble*, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579 (internal quotation marks and citation omitted). Typically, "[i]f the meaning of the statutory language is clear and without ambiguity, we apply the statute as it is written." *Bennett*, 2003-NMCA-147, ¶ 6; *see also State v. Maestas*, 2007-NMSC-001, ¶ 14, 140 N.M. 836, 149 P.3d 933 ("Our role is to construe statutes as written and we should not second guess the [L]egislature's policy decisions."). Further, "[w]e will not read into a statute any words that are not there, particularly when the statute is complete and makes sense as written." *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125.

{9} Before turning to the matter at hand, we observe that this Court and our Supreme Court have addressed challenges similar to the one presented today, in which a district court has designated a crime a serious violent offense even though it was not so enumerated in the EMDA. *See State v. McDonald*, 2004-NMSC-033, ¶¶ 19-23, 136 N.M. 417, 99 P.3d 667; *Bennett*, 2003-NMCA-147, ¶¶ 4-13. In this area in particular, our courts have emphasized that the Legislature has carefully structured the EMDA. *See McDonald*, 2004-NMSC-033, ¶ 20; *Bennett*, 2003-NMCA-147, ¶ 13. In turn, our courts have rejected the idea that a particular crime's nondesignation as a serious violent offense was a legislative mistake and have rejected the idea that judicial rectification of such an omission is necessary to effectuate the legislative purpose of the EMDA or avoid an absurdity. *See McDonald*, 2004-NMSC-033, ¶¶ 21-23; *Bennett*, 2003-NMCA-147, ¶¶ 10-13. Instead, our courts have uniformly given effect to the plain language of the EMDA and left it to the Legislature to amend the EMDA if its plain terms do not in fact reflect the Legislature's will. *See McDonald*, 2004-NMSC-033, ¶¶ 19-23 (rejecting the claim that conspiracy to commit any crime enumerated in the EMDA should be a serious violent offense when the EMDA contains no such language); *Bennett*, 2003-NMCA-147, ¶¶ 4-13 (rejecting the claim that the Legislature made a mistake when it classified third degree aggravated battery as a per se serious violent offense but did not classify third degree aggravated battery on a household member as such an offense); *see also State v. Loretto*, 2006-NMCA-142, ¶¶ 9, 22, 140 N.M. 705, 147 P.3d 1138 (reversing the district court's determination that attempted first degree criminal sexual penetration was a serious violent offense when attempt was not enumerated in the EMDA).

{10} With this authority in mind, we turn to the matter at hand. Second degree homicide by vehicle is not enumerated in the EMDA as either a per se or discretionary serious violent offense. *See* § 33-2-34(L). Consequently, as the district court recognized, and as the parties on appeal do not dispute, the plain meaning of the EMDA designates second degree homicide by vehicle a nonviolent offense. *See* § 33-2-34(L)(3) (defining "nonviolent offense" as "any offense other than a serious violent offense"); *see also McDonald*, 2004-NMSC-033, ¶ 23 (providing that a crime not enumerated as a serious violent offense in the EMDA is a nonviolent offense). We thus must give effect to this clear and unambiguous language, unless there is some basis to depart from it. *Bennett*, 2003-NMCA-147, ¶ 6; *see also Maestas*, 2007-NMSC-001, ¶ 14.

{11} To avoid application of the plain language of the EMDA, the State asserts that "[w]hen the homicide by vehicle statute was amended, the Legislature forgot to amend the EMDA to reflect the elevation of homicide by vehicle (DWI) to a second-degree felony" and, in essence, asks us to do so through judicial intervention. As proof of this purported legislative mistake, the State points to what it contends is an absurd result—i.e., the Legislature's inconsistent treatment of second degree homicide by vehicle by, on the one hand, increasing the basic sentence for this offense but, on the other hand, permitting more good time credit for this offense than for some third degree homicide by vehicle offenders.

{12} We acknowledge that "in construing a statute, we may depart from its plain language if necessary to correct a mistake or an absurdity that the [L]egislature could not have intended." *Bennett*, 2003-NMCA-147, ¶ 10 (internal quotation marks and citation omitted); *see also Maestas*, 2007-NMSC-001, ¶ 15 ("We may only add words to a statute where it is necessary to make the statute conform to the [L]egislature's clear intent, or to prevent the statute from being absurd."). We, however, cannot agree with the State that this case presents such a circumstance.

{13} As an initial matter, the State's argument runs afoul of at least one basic canon of statutory construction. In construing statutes to effectuate legislative intent, we operate pursuant to a presumption that the Legislature is well informed of existing statutory and common law. *See Maestas*, 2007-NMSC-001, ¶ 21; *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, ¶ 15,

136 N.M. 630, 103 P.3d 554. The State's argument not only ignores this presumption but seems to invite us to draw the opposite presumption—that unless there is some affirmative proof the Legislature acted with full knowledge of existing law, we should presume it did not. The State's suggestion is made without citation to legal authority and we are unaware of any authority that would have us presume the Legislature is prone to mistake or forgetfulness, or lack of awareness for that matter. What is more, an intolerable amount of ambiguity and uncertainty would be inserted into our construction of New Mexico statutes were we to presume the Legislature lacks a basic understanding of the law. We decline to employ such a presumption.

{14} Instead, to ascertain whether a departure from the plain meaning of the EMDA is necessary to correct a mistake or avoid an absurdity that the Legislature could not have intended, as the State suggests, we turn to legislative history. *See Maestas*, 2007-NMSC-001, ¶ 17 (examining legislative history to determine whether the Legislature intended the plain reading of a statute); *see also id.* ¶ 15 ("[A]ny divergence from the plain meaning of a statute must be done in conformity with clear legislative intent."). The State contends this history supports the idea that legislative oversight led to second degree homicide by vehicle being erroneously categorized as a nonviolent offense in the EMDA. In particular, the State cites the title of the Senate bill that amended Section 66-8-101, which reads in relevant part, "Increasing the Penalty for Homicide by Vehicle While Under the Influence of Intoxicating Liquor or Drugs." S.B. 118, 52nd Leg., 2nd Sess. (N.M. 2016), https://www.nmlegis.gov/Sessions/16%20Regular/final/SB0118.pdf. From this, the State contends that the legislative intent at the time was to increase penalties for this offense and that treating this offense as a nonviolent offense would be contrary to such intent and thereby absurd.[3] So the reasoning seems to go, the Legislature must have forgotten to amend the EMDA.

{15} A more fulsome review of the relevant legislative history undermines the State's position. As discussed, in 2016, the Legislature passed amendments to Section 66-8-101, which, in relevant part, elevated the crime of homicide by vehicle (DWI) to a second degree felony but retained homicide by vehicle while reckless driving as a third degree felony. *Compare* § 66-8-101 (2004), *with* § 66-8-101 (2016). During the same legislative session, contemporaneous documents considered along with the bill amending Section 66-8-101 and other proposed legislation reveal the Legislature was aware of the potential need to amend the EMDA but ultimately did not take action.

{16} First, a document considered contemporaneously with the bill amending Section 66-8-101 reveals that the Legislature was alerted to the potential need to examine the EMDA in light of the proposed amendments to homicide by vehicle (DWI) in Section 66-8-101. The bill analysis by the Legislative Finance Committee provided, in its discussion of the fiscal cost of increasing penalties for homicide by vehicle, that "[t]he cost takes into consideration *earned meritorious deductions*." Fiscal Impact Report for S.B. 118, Fiscal Implications, at 2 (February 17, 2016), https://www.nmlegis.gov/Sessions/16%20Regular/firs/SB0118.PDF (emphasis added). *See State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶¶ 33, 35, 117 N.M. 346, 871 P.2d 1352 (providing that contemporaneous documents, including analyses from the Legislative Finance Committee, presented to and presumably considered by the Legislature during the course of enacting a statute, may be considered by a court to glean legislative intent). "Earned meritorious deductions" or "meritorious deductions" are terms appearing only in the EMDA and related statutory provisions. *See* NMSA 1978, §§ 33-2-36 (2006), -37 (2006); § 31-18-15(G) (requiring certain reporting by the New Mexico Sentencing Commission on earned meritorious deductions made pursuant to the EMDA). Its use apprised the Legislature that offenders convicted of second degree homicide by vehicle would, under the amended version of Section 66-8-101, be eligible to receive good time credit under the EMDA and presumably alerted the Legislature of the potential need to examine the EMDA's treatment of this offense.

{17} Second, and significantly, the Legislature, in the same session in which Section 66-8-101 was amended, considered amending the EMDA in a way that would have accounted for the elevation of homicide by vehicle (DWI) to a second degree felony.[4] *See* H.B. 305, 52nd Leg., 2nd Sess. (N.M. 2016), https://www.nmlegis.gov/Sessions/16%20Regular/bills/house/HB0305.pdf. House Bill 305 would have, among other things, made homicide by vehicle (DWI), as provided in Section 66-8-101, a per se serious violent offense under the EMDA. *See* H.B. 305, 52nd Leg., 2nd Sess. (N.M. 2016), at 8. The bill also would have removed third degree homicide by vehicle, as provided in Section 66-8-101, from the list of discretionary serious violent offenses, making it a nonviolent offense. *See* H.B. 305, 52nd Leg., 2nd Sess. (N.M. 2016), at 10. Had House Bill 305 been enacted, those convicted of second degree homicide by vehicle, like Defendant, would have been designated per se serious violent offenders under the EMDA and, as a result, would have been eligible to receive only a limited amount of good time credit. Although this bill passed the House of Representatives, it was never enacted. *See* https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=305&year=16 (last visited Jan. 30, 2022) (showing that action on House Bill 305 was postponed indefinitely).

{18} From this legislative history, we do not perceive, as the State surmises, a neglectful Legislature unable to track how an amendment to one statute (Section 66-8-101) might impact another statute (Section 33-2-24). The Legislature instead presumably was aware of the interplay between Section 66-8-101 and the EMDA and introduced legislation to address how homicide by vehicle (DWI) was treated in the EMDA. That the Legislature did not pass this (or similar) legislation does not appear to be a legislative mistake or oversight, but instead appears to be a product of legislative inaction or choice, which, as far as we are aware, provides no basis for

[3] On its face, the State's argument—that the designation of second degree homicide by vehicle as a nonviolent offense under the EMDA would be contrary to a legislative intent to increase the penalty for that offense—is doubtful for a couple reasons. First, the EMDA does not in fact alter the penalty for a crime or change a defendant's sentence. See, e.g., State v. Ayala, 2006-NMCA-088, ¶ 6, 140 N.M. 126, 140 P.3d 547 ("[W]e have held that the EMDA does not change the defendant's sentence."). Second, while it is true that designating homicide by vehicle (DWI) a nonviolent offense permits offenders convicted of this crime to earn good time credit at a higher rate than before the 2016 amendment, such offenders still may serve significantly more prison time than they would have prior to 2016. Compare § 66-8-101(C) (2004) (third degree felony), with § 66-8-101(C) (2016) (second degree felony); compare § 31-18-15(A)(8) (six years' imprisonment for third degree felony resulting in death), with § 31-18-15(A)(4) (fifteen years' imprisonment for second degree felony resulting in death).

[4] While the use of draft or proposed legislation has been criticized as an unsuitable tool for interpreting legislative intent, we cite this proposed legislation not to glean meaning from the words actually used by the Legislature, but for the limited purpose of showing the Legislature did not simply forget to amend the EMDA, as the State contends. See State v. Vest, 2021-NMSC-020, ¶ 33, 488 P.3d 626 (cautioning "against relying on draft versions of bills or proposed statutory language in interpreting legislative intent").

departing from clear and unambiguous statutory language. *See generally Clark v. Lovelace Health Sys., Inc.*, 2004-NMCA-119, ¶ 14, 136 N.M. 411, 99 P.3d 232 ("When language in a statute enacted by the [L]egislature is unambiguous, we apply it as written, and any alteration of that language is a matter for the [L]egislature, not for this Court. The decision to extend the scope of an existing statute is a matter for the Legislature[.]" (omission, internal quotation marks, and citations omitted)), *overruled on other grounds by Est. of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶ 42, 373 P.3d 977. Indeed, for the judicial branch to amend a statute by edict, when the legislative branch simply chose not to do so through legislation, plainly would offend basic principles of separation of powers. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21, 125 N.M. 343, 961 P.2d 768 (noting, parenthetically, that "the Legislature makes, the executive executes, and the judiciary construes the laws" and "the Legislature possesses the sole power of creating law" (alteration, internal quotation marks, and citation omitted)).

{19} Accordingly, we are in no position to depart from the plain meaning of the EMDA and override what the State might consider to be an absurd policy choice by the Legislature. *See McDonald*, 2004-NMSC-033, ¶ 22 ("We take no position on the [s]tate's policy arguments. It is profoundly a matter for the [L]egislature to determine whether [an offense should be treated as a serious violent offense under the EMDA]."); *see also Bybee v. City of Albuquerque*, 1995-NMCA-061, ¶ 11, 120 N.M. 17, 896 P.2d 1164 (stating that even though a result may seem contradictory, courts presume that the Legislature knows the law and acts rationally). We instead give effect to the plain language of the EMDA and the legislative choice inherent in that language. If second degree homicide by vehicle should be defined as a per se or discretionary serious violent offense under the EMDA, it is the Legislature that must make it so. *See McDonald*, 2004-NMSC-033, ¶ 23. Until then, second degree homicide by vehicle, under Section 66-8-101, is not so defined, and those convicted of this offense shall be deemed nonviolent offenders under the EMDA. *See McDonald*, 2004-NMSC-033, ¶ 23.

II. Defendant's Remaining Claims Lack Support

{20} Defendant additionally appeals the district court's denial of her motion to withdraw her guilty plea and the district court's decision to grant her less presentence confinement credit than she requested. Defendant, however, acknowledges that the existing record lacks key facts necessary to resolve these claims. We agree that the record is insufficient to resolve these remaining claims and, accordingly, do not address them. Defendant, however, is not precluded from raising her claims in a habeas or other post-conviction proceeding. *See State v. Arrendondo*, 2012-NMSC-013, ¶ 44, 278 P.3d 517 (affirming that a defendant is not precluded from pursuing a claim in habeas where the record is insufficient on appeal); *Martinez v. State*, 1990-NMCA-033, ¶ 2, 110 N.M. 357, 796 P.2d 250 (explaining that a claim the defendant was denied mandatory credits is within the scope of Rule 5-802 NMRA).

CONCLUSION

{21} We reverse Defendant's sentence to the extent that it classifies her conviction for second degree homicide by vehicle as a serious violent offense under the EMDA. We remand for the district court to correct Defendant's sentence in accordance with this opinion. We otherwise affirm.

{22} IT IS SO ORDERED.

JENNIFER L. ATTREP, Judge

WE CONCUR:

J. MILES HANISEE, Chief Judge

JACQUELINE R. MEDINA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-050
No: A-1-CA-38507 (March 7, 2022)

CHARLES BENNS,
Petitioner-Respondent
v.
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY,
Respondent-Petitioner.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Denise Barela Shepherd, District Judge

Christin K. Kennedy
Albuquerque, NM

Justine Fox-Young, P.C.
Justine Fox-Young
Albuquerque, NM

for Respondent

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Santa Fe, NM

for Petitioner

OPINION

DUFFY, Judge.

{1} In this appeal we consider whether the New Mexico Department of Public Safety (DPS) erred in denying Petitioner Charles Benns's application for a concealed handgun license under the Concealed Handgun Carry Act (CHCA), NMSA 1978, §§ 29-19-1 to -15 (2003, as amended through 2015). DPS concluded that Benns is disqualified by statute from obtaining a concealed handgun license based on two prior convictions for which he received deferred sentences. On Benns's petition for writ of certiorari to the district court, the court reversed DPS's denial, reasoning that because Benns had successfully completed his deferred sentences, he was not considered to have been "convicted" for purposes of the CHCA. We conclude that the term "convicted" as used in the CHCA refers to an adjudication of guilt and does not depend on the imposition of a sentence. Therefore, Benns's prior convictions disqualify him from obtaining a concealed handgun license, notwithstanding his successful completion of his deferred sentences. We reverse the district court and affirm DPS.

BACKGROUND

{2} New Mexico's CHCA authorizes DPS to issue concealed handgun licenses to "qualified applicants." Section 29-19-3. Applicant qualifications are set out in Section 29-19-4, which first lists ten criteria that applicants must satisfy, followed by four types of past criminal conduct that disqualify an applicant. Two of these criteria are at issue here. First, Section 29-19-4(A)(5) requires that an applicant must not have been "convicted of a felony in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction." Second, Section 29-19-4(B)(4) states that DPS shall deny a concealed handgun license to an applicant who has "been convicted of a misdemeanor offense involving assault, battery or battery against a household member." The CHCA does not define the word "convicted."

{3} In 2017, Benns applied for a concealed handgun carry license. DPS denied Benns's application based on his prior misdemeanor and felony history: in 1989, Benns was convicted of misdemeanor battery against a household member and received a deferred sentence, and in 1991, Benns was charged with aggravated assault with a deadly weapon, a fourth-degree felony, to which he pleaded no contest and received a deferred sentence. *See* NMSA 1978, § 30-3-2(A) (1963). Benns successfully completed the terms of the second deferred sentence in 1994.

{4} Benns requested an administrative hearing for reconsideration of the denial. DPS granted this request and, after the hearing, issued a final order denying Benns's application. Benns appealed the decision to the district court. The district court reversed DPS's denial, concluding that upon successful completion of his deferred sentences, Benns was no longer "convicted" for purposes of Sections 29-19-4(A)(5) and (B)(4). DPS filed a petition for a writ of certiorari, which we granted.

DISCUSSION

{5} The issue in this case is whether the word "convicted" as used in the CHCA includes convictions for which a defendant has successfully completed a deferred sentence. We conclude that it does and hold that Benns's criminal history constitutes a basis for disqualification under Section 29-19-4.

I. Standard of Review

{6} "Upon a grant of a petition for writ of certiorari under Rule 12-505 [NMRA], this Court conducts the same review of an administrative order as the district court sitting in its appellate capacity, while at the same time determining whether the district court erred in the first appeal." *Commc'n Workers of Am., AFL-CIO v. State*, 2019-NMCA-031, ¶ 13, 446 P.3d 1183 (internal quotation marks and citation omitted). "[W]e apply a de novo standard of review to administrative rulings regarding statutory construction." *Id.* (internal quotation marks and citation omitted).

II. A Deferred Sentence Does Not Eliminate the Underlying Criminal Conviction for Purposes of the CHCA

{7} In order to understand the effect of Benns's deferred sentences in this case, we begin with a brief overview of the features of a deferred sentence. We then turn to New Mexico case law addressing how a deferred sentence may be taken into account for other purposes. As we discuss below, the characteristics that define a deferred sentence—an adjudication of guilt without the imposition of a sentence—are what ultimately inform our conclusion that the underlying conviction remains and may be taken into account for purposes of the CHCA.

{8} Deferments are one of three statutory sentencing options that provide an alternative to confinement. *See* NMSA 1978, § 31-20-3 (1985) (providing for deferred and suspended sentences); NMSA 1978, § 31-20-13 (1994) (providing for condi-

tional discharge orders). "The Legislature intended to give courts the authority to defer sentencing if, in the court's opinion, the defendant could be rehabilitated without imposing punishment." *United States v. Reese*, 2014-NMSC-013, ¶ 29, 326 P.3d 454; *see id.* (stating that "[t]ypically, a deferred sentence would be considered in cases where the court feels that it is more appropriate to allow the offender the opportunity to prove that his lapse in judgment was a one-time mistake and not an error indicative of a more serious, underlying issue requiring incarceration"). Thus, for all but first degree and capital felonies, the Legislature provided that

> [*u*]*pon entry of a judgment of conviction* of any crime not constituting a capital or first degree felony, any court having jurisdiction when it is satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may . . . enter an order *deferring the imposition of sentence*.

Section 31-20-3(A) (emphases added).

{9} Functionally, deferments take place after the entry of a plea or conviction but before any sentence is imposed. *See Reese*, 2014-NMSC-013, ¶ 24; *State v. Fairbanks*, 2004-NMCA-005, ¶ 10, 134 N.M. 783, 82 P.3d 954 (stating that a deferred sentencing order is entered with an adjudication of guilt). When the period and conditions of deferment are complete, the defendant "has satisfied his criminal liability for the crime, [and] the court shall enter a dismissal of the criminal charges." NMSA 1978, § 31-20-9 (1977). Thus, "[d]eferment, if successfully completed, would result in no actual sentence being imposed and ultimately in a dismissal of the charges." *Reese*, 2014-NMSC-013, ¶ 24. *But see State v. Kenneman*, 1982-NMCA-145, ¶ 7, 98 N.M. 794, 653 P.2d 170 (stating that if the defendant violates the terms of his probation, the district court may revoke the deferral and impose any sentence that might originally have been imposed).[1]

{10} New Mexico courts have previously concluded that even though the criminal charge is dismissed after a defendant has completed the period of deferment, the "conviction" remains. *E.g.*, *Padilla v. State*, 1977-NMSC-063, ¶ 9, 90 N.M. 664, 568 P.2d 190; *State v. Brothers*, 2002-NMCA-110, ¶ 15, 133 N.M. 36, 59 P.3d 1268. Under longstanding New Mexico precedent, a "conviction" refers to the finding of guilt by plea or by verdict and does not require the imposition of a sentence. *E.g.*, *Reese*, 2014-NMSC-013, ¶ 44; *Fairbanks*, 2004-NMCA-005, ¶ 10 (collecting cases); *see also* NMSA 1978, § 30-1-11 (1963) (stating that "[n]o person shall be convicted of a crime unless found guilty by the verdict of the jury" a guilty or no contest plea, or a finding of guilt in a bench trial). Consequently, this Court and our Supreme Court have held that while a deferred sentence may remove the criminal liability, the adjudication of guilt remains and may be taken into account for other purposes. *Reese*, 2014-NMSC-013, ¶ 47; *Brothers*, 2002-NMCA-110, ¶ 15.

{11} In *Padilla*, for example, our Supreme Court held that the defendant could be charged under the state's habitual offender statute based on a prior felony conviction for which he had received a deferred sentence. 1977-NMSC-063, ¶¶ 1, 11. The defendant argued that his prior conviction could not serve as the basis for a habitual offender charge because it had been dismissed after he successfully completed the deferred sentence. *Id.* ¶ 1. The Court acknowledged that "[t]here is some merit to the contention that upon dismissal of criminal charges under the deferred sentence provision . . . there has been no prior conviction." *Id.* ¶ 9. However, the Court noted that in previous cases, it had "determined that the contrary is true, holding that a 'conviction' *refers to a finding of guilt and does not include the imposition of a sentence*." *Id.* (emphasis added). The Court thus concluded that the defendant's prior conviction could be used for purposes of habitual offender proceedings because "[h]abitual offender proceedings are based by statute on prior felony convictions. Since it is not necessary to impose a sentence in order to constitute a conviction, the deferred sentence was of no consequence. It is the conviction that is crucial and not the sentence." *Id.* ¶ 11.

{12} Similarly, in *Brothers*, this Court held that the defendant was required to register as a convicted sex offender under the Sex Offender Registration and Notification Act (SORNA), even though he had satisfactorily completed his deferred sentence for the underlying charge and the charge had been dismissed. 2002-NMCA-110, ¶ 15. SORNA defined a "sex offender" as "a person convicted of a sex offense on or after July 1, 1995." NMSA 1978, § 29-11A-3(A)(1) (1995, amended 2013). The defendant argued that "the expiration of his deferred sentence, satisfaction of criminal liability, dismissal of the . . . charges, and restoration of his civil rights combined to eradicate his convictions, and he therefore was no longer required to register as a sex offender." *Brothers*, 2002-NMCA-010, ¶ 8. We rejected this argument, reasoning that "[n]othing in Section 31-20-9 suggests that when a deferred sentence expires and the charges are dismissed, the conviction no longer exists." *Brothers*, 2002-NMCA-010, ¶ 9. We also noted that "if the expiration of a deferred sentence resulted in the eradication of a conviction, a deferred sentence would be no different than a conditional discharge." *Id.* ¶ 10.

{13} In light of these precedents, Benns's underlying convictions remain, even if he never received a sentence and the charges were ultimately dismissed. We hold that those convictions can—and must—be taken into account for purposes of the CHCA.

III. *Reese* Does Not Support Reversing DPS's Denial of Benns's Concealed Handgun License Application

{14} Benns argues that *Padilla* and *Brothers* are outdated authority and that our Supreme Court's more recent decision in *Reese* is dispositive. According to Benns, *Reese* instructs that when a felony charge is dismissed following the completion of a deferred sentence, the charge can no longer be used as a predicate conviction for other purposes. However, the holding in *Reese* is not as broad as Benns suggests. As we explain, *Reese* expressly left *Padilla* and *Brothers* intact and did not alter the longstanding precept that a "conviction" is based on an adjudication of guilt.

{15} At issue in *Reese* was a narrow question certified by the Tenth Circuit to our Supreme Court: "If an otherwise-qualified person has completed a deferred sentence for a felony offense, is that person barred from holding public office without a pardon or certificate from the governor[?]" 2014-NMSC-013, ¶ 1 (internal quotation

[1] A deferment falls between the other alternative sentencing options. A suspended sentence also involves an adjudication of guilt, but in contrast to a deferment, the court will "sentence the defendant and enter an order suspending in whole or in part the execution of the sentence[.]" Section 31-20-3(B); see also Fairbanks, 2004-NMCA-005, ¶ 10 (stating that for both suspended and deferred sentences there has been an adjudication of guilt); Kenneman, 1982-NMCA-145, ¶ 8 (stating that "the difference . . . is that suspension involves a sentence imposed while deferral does not"). A conditional discharge, on the other hand, is different from a suspended or deferred sentence "because there is no adjudication of guilt." Fairbanks, 2004-NMCA-005, ¶ 10; see also id. ¶ 8 ("[U]pon a guilty plea or verdict, the defendant is placed on probation and sentencing is deferred without an adjudication of guilt."); § 31-20-13(A) (stating that a court may enter a conditional discharge and place a defendant on probation "without entering an adjudication of guilt"). "[E]ven though there is a guilty plea, the successful completion of probation under the terms of a conditional discharge results in the eradication of the guilty plea or verdict and there is no conviction." Fairbanks, 2004-NMCA-005, ¶ 10.

marks and citation omitted). The question arose after the defendant—who had successfully completed a deferred sentence for a felony conviction under New Mexico law—was federally indicted under 18 U.S.C. § 922(g)(1), which made it unlawful for any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" to possess firearms. *Reese*, 2014-NMSC-013, ¶¶ 4, 6, 9. The defendant pleaded guilty to the federal felon-in-possession charge and appealed his conviction, asserting that he was no longer a felon under New Mexico state law because he successfully completed a deferred sentence for the state felony conviction and the charges had been dismissed. *Id.* ¶¶ 6, 8.

{16} The federal felon-in-possession statute at issue in *Reese* defined what constitutes a conviction and explicitly excluded any conviction for which a person has had his or her civil rights restored. *Id.* ¶ 10; 18 U.S.C. § 921(a)(20) (stating that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or *has had civil rights restored shall not be considered a conviction*" for purposes of § 922(g)(1) (emphasis added)). "[F]ederal law considers the civil rights of convicted felons 'restored' when, under *state law*, they have regained four basic civil rights: (1) the right to vote, (2) the right to hold public office, (3) the right to serve on a jury, and (4) the right to possess firearms." *Reese*, 2014-NMSC-013, ¶ 11. The parties agreed that the defendant's rights to vote, serve on a jury, and possess firearms had been restored but disputed whether New Mexico had restored the defendant's right to hold public office. *Id.* ¶ 12. The Tenth Circuit certified the case to our Supreme Court to resolve the question of state law. *Id.* ¶ 13.

{17} Reviewing the case, our Supreme Court noted that the Legislature had enacted a "restoration of citizenship" statute that provided a felon's civil rights (including the right to hold public office) would be restored upon the successful completion of an individual's sentence. *Id.* ¶ 26 (citing NMSA 1953, § 40A-29-14(A), (C) (1963) and NMSA 1978, § 31-13-1 (2005)). The Court reasoned that because the statutory mechanism for restoring civil rights was tied to the completion of a sentence, it was never meant to apply to those who received a deferred sentence (and had no sentence to complete) because it was not necessary. *Id.* ¶¶ 27-28. Instead, the Court concluded that a defendant's civil rights were restored by operation of law when the defendant successfully completed the conditions of deferment and the underlying charges were dismissed. *Id.* ¶¶ 28, 43.

{18} In context, *Reese* did no more than determine the effect of a deferred sentence within the framework of two statutes—a federal statute that specifically defined what constitutes a conviction, and a state statute that tied the restoration of a defendant's civil rights to a sentence imposed. *See id.* ¶¶ 44-45 (explaining that the scope of the Court's analysis was limited to whether a deferred sentence stood as a conviction under the federal definition, which depends on whether a defendant's civil rights had been restored under state law). Benns nevertheless argues that *Reese* controls here because the Court, when discussing the history and purpose of deferred sentencing in New Mexico, characterized a deferred sentence as "an act of judicial clemency" that allows a court to "reinstate the defendant to civic life with the same rights and privileges as if the conviction had never occurred." *Id.* ¶ 29 (alteration, internal quotation marks, and citation omitted). Benns concludes that a defendant who completes a deferred sentence does not forever remain "convicted" of a felony or misdemeanor. But as DPS correctly notes, the *Reese* Court specifically "recognized that restoration of an individual's civil rights following a felony conviction was an issue distinct from whether the individual remained a convicted felon."

{19} The *Reese* Court discussed the distinction in response to the government's argument, relying on *Padilla* and *Brothers*, "that a felony conviction, even with a deferred sentence, remains on the record after the charges are dismissed and, therefore, that the felony should remain a conviction for the purposes of the federal felon-in-possession statute." *Id.* ¶ 44. The Court ultimately concluded that *Padilla* and *Brothers* were not relevant to the question of whether a conviction "still stand[s] as a conviction under the federal definition which excludes those who have had their civil rights restored," *id.* (alteration, internal quotation marks, and citation omitted), because "[r]estoring a defendant's civil rights does not require that the record of the conviction be erased." *Id.* ¶ 49. Importantly, the Court expressly reaffirmed the core holdings from *Padilla* and *Brothers*, stating that "since a conviction does not impose a sentence, it follows that criminal liability may be removed while leaving the adjudication of guilt as a mere notation in the record, *which may be taken into account for other purposes*." *Id.* ¶ 47 (emphasis added).

{20} Unlike *Reese*, this case does not implicate Benns's civil rights. Rather, Benns wishes to obtain a license to carry a concealed handgun—a statutory privilege. Accordingly, *Reese*'s analysis of how completing the terms of a deferred sentence affects a defendant's civil rights is not dispositive of the question before us: whether Benns's convictions are convictions that may be considered as disqualifying criteria for purposes of the CHCA. Under *Padilla* and *Brothers*, they are because they involved an adjudication of guilt. And contrary to Benns's contentions, these cases continue to control our decision here.

IV. A Conviction for Purposes of Section 29-19-4 Is an Adjudication of Guilt

{21} Benns's final argument rests on the plain language of Section 29-19-4. He notes that in Section 29-19-4(B)(1), the Legislature specifically referred to deferments as a disqualifying condition, but failed to identify them specifically in the two subsections at issue here, Sections 29-19-4(A)(5) and (B)(4). In Benns's view, that omission was intentional.

{22} Section 29-19-4 states in relevant part:

> A. The department shall issue a concealed handgun license to an applicant who:
> . . . .
> (5) has not been convicted of a felony in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;
> . . . .

[2] DPS argues that the term "deferment" in Section 29-19-4(B)(1) could refer to a deferred adjudication rather than a deferred sentence. However, DPS has not provided any New Mexico authority expressly discussing or applying a deferred adjudication procedure; rather, DPS points only to a single case from the United States District Court for the District of New Mexico in which that court mentioned that "New Mexico's conditional discharge statute is known as a deferred adjudication statute." United States v. Silva-Borrego, No. 00-1164 JP, 2000 WL 36739489, at *1 (D.N.M. Dec. 21, 2000) (emphasis added) (internal quotation marks omitted) (citing to a Ninth Circuit Court of Appeals case in support). Thus, if we accepted DPS's argument, then Section 29-19-4(B)(1) would effectively say that DPS must deny a concealed handgun license to an applicant who has "received a conditional discharge, a diversion or a [conditional discharge] . . . [for] a misdemeanor offense involving a crime of violence within ten years immediately preceding the application[.]" DPS has offered no argument to explain or justify such redundancy.
In contrast to DPS's suggestion, New Mexico cases use the term "deferment" when addressing deferred sentences. See, e.g., Reese, 2014-NMSC-013, ¶ 4 (stating that the defendant "successfully satisfied the conditions of his deferment").

> B. The department shall deny a concealed handgun license to an applicant who has:
>
> (1) received a conditional discharge, a diversion or *a deferment or has been convicted of,* pled guilty to or entered a plea of nolo contendere to a misdemeanor offense involving a crime of violence within ten years immediately preceding the application;
>
> . . . .
>
> (4) been convicted of a misdemeanor offense involving assault, battery or battery against a household member.

Section 29-19-4 (emphasis added).

{23} As the district court correctly noted, "Section 29-19-4(A)(5) uses the term, 'convicted,' but does not include deferred sentencing. . . . The same is true of Section 29-19-4(B)(4) with regard to misdemeanor assault, battery or battery against a household member. This is in contrast to Section 29-19-4(B)(1), which does include the term 'convicted' as well as reference to . . . deferment." [2] Benns argues that "the specificity of the Legislature in [Sub] section (B)(1) demonstrates legislative awareness of and the decision to include deferred sentences . . . for these types of offenses, as well as highlights the absence of these terms in the other sections of the statute." In other words, Benns infers that a "deferment" is different from a "conviction" because both terms are used in 29-19-4(B)(1), and the Legislature did not intend to disqualify applicants who had received a deferred sentence following a felony conviction because the Legislature did not specifically identify deferred sentences in Section 29-19-4(A)(5); likewise for a misdemeanor conviction for aggravated battery against a household member, *see* § 29-19-4(B)(4).

{24} While Benns's reading of these subsections conforms to the rule of statutory construction that a statute must be read in its entirety and each part construed "in connection with every other part in order to produce a harmonious whole," *Britton v. Off. of the Att'y Gen.*, 2019-NMCA-002, ¶ 28, 433 P.3d 320 (internal quotation marks and citation omitted), we cannot apply his interpretation to some of the other specifically listed items in Section 29-19-4(B)(1) without reaching an absurd and unreasonable result. *See State v. Strauch*, 2015-NMSC-009, ¶ 13, 345 P.3d 317. In particular, the Legislature included guilty pleas and no contest pleas among the specifically listed items in Section 29-19-4(B)(1). Under Benns's interpretation, convictions arising from guilty or no contest pleas would also not be considered "convictions" under the subsections at issue here. That would lead to an absurd result whereby someone convicted by a jury would be prohibited from obtaining a concealed carry license, while someone who pleads guilty or no contest to the same charge would not. We find no indication of a legislative intent to distinguish between applicants in this way and thus decline to adopt such an interpretation here. *See Nat'l Council on Comp. Ins. v. N.M. State Corp. Comm'n*, 1986-NMSC-005, ¶ 5, 103 N.M. 707, 712 P.2d 1369 (stating that "courts may substitute, disregard or eliminate, or insert or add words to a statute, if it is necessary to do so to carry out the legislative intent or to express the clearly manifested meaning of the statute").

{25} We adhere to the principle that "words used in a statute are to be given their ordinary and usual meaning," *Blue Canyon Well Ass'n v. Jevne*, 2018-NMCA-004, ¶ 9, 410 P.3d 251 (internal quotation marks and citation omitted), and "presume the [L]egislature is aware of existing law when it enacts legislation." *State v. McClendon*, 2001-NMSC-023, ¶ 10, 130 N.M. 551, 28 P.3d 1092 (internal quotation marks and citation omitted). Applying these devices, we presume the Legislature was aware of *Padilla* and *Brothers* when it enacted Section 29-19-4 in 2003 and used the term "convicted" in Sections 29-19-4(A)(5) and (B)(4) to mean an adjudication of guilt, regardless of the imposition of a sentence. *See* § 30-1-11 (stating that a person is convicted if found guilty by jury verdict, guilty or no contest plea, or a finding by the court in a bench trial). Since the successful completion of a deferred sentence leaves the underlying conviction intact, we conclude that the term "convicted" in Sections 29-19-4(A)(5) and (B)(4) applies to defendants whose charges are dismissed at the completion of deferred sentences.

{26} Accordingly, in light of the undisputed facts regarding Benns's prior felony charge, we hold that DPS properly denied his application for a concealed handgun license.

CONCLUSION

{27} For the foregoing reasons, we reverse the district court and reinstate DPS's denial of Benns's application for a concealed handgun license.

{28} IT IS SO ORDERED.

MEGAN P. DUFFY, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

JANE B. YOHALEM, Judge

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-051
No: A-1-CA-38525 (March 10, 2022)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
FELICIA A. GARCIA, FELICIA GARCIA, a/k/a FELICIA ANN GARCIA,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Charles W. Brown, District Judge

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

for Appellant

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Mark A. Peralta-Silva, Assistant Appellate Defender
Albuquerque, NM

for Appellee

OPINION

MEDINA, Judge.

{1} The State appeals the district court's order granting Defendant's motion, filed before trial, pursuant to Rule 5-601(B) NMRA (1999) (amended as Rule 5-601(C) NMRA), and *State v. Foulenfont*, 1995-NMCA-028, 119 N.M. 788, 895 P.2d 1329, to dismiss one count of possession of a controlled substance (methamphetamine), contrary to NMSA 1978, Section 30-31-23(E) (2011, amended 2021).[1] The State argues that the district court erred in dismissing the charge because the district court (1) incorrectly determined that Section 30-31-23 does not define a unit of prosecution, and (2) erred in determining there was insufficient indicia of distinctness between the two acts because the State had yet to present evidence at trial. We reverse.

BACKGROUND

{2} Defendant stipulated to the following facts set forth in the criminal complaint for purposes of her motion to dismiss. Defendant was a passenger in a vehicle that was the subject of a traffic stop. While speaking to the driver of the vehicle, the officer noticed Defendant was not wearing her seatbelt. Upon request, Defendant provided the officer with her name and other identifying information. A subsequent records check revealed an outstanding warrant for Defendant's arrest. During a search incident to arrest, the officer found a clear bag containing a substance that tested positive for heroin in Defendant's purse. Shortly thereafter, during an inventory search of the vehicle, a bag containing a substance that tested positive for methamphetamine and a clear glass pipe were found in the outer pocket of the center console near the driver's seat.

{3} Defendant admitted that both bags belonged to her. Relevant to this appeal, an indictment charged Defendant with two counts of possession of a controlled substance, contrary to Section 30-31-23, the first count for possession of heroin and the second for possession of methamphetamine. Prior to trial, Defendant filed a motion to dismiss the second count. In support of her motion to dismiss, Defendant argued that that statute does not allow multiple charges for one act of possession of controlled substances and there was insufficient evidence to show two distinct acts of possession. After hearing argument by the parties, the district court dismissed the second count of possession of a controlled substance. The district court found, in part, (1) "Section 30-31-23 does not define the unit of prosecution"; (2) Defendant's acts of possession were not sufficiently distinct to support two charges; (3) the rule of lenity applies; and (4) Defendant could only be charged with one count of possession of a controlled substance. Pursuant to NMSA 1978, Section 39-3-3(B)(1) (1972), the State appealed.

DISCUSSION

{4} The State argues that the district court erred in dismissing the second count of possession of a controlled substance because Section 30-31-23 defines the unit of prosecution as each controlled substance a defendant possesses. Defendant contends that the language of the statute is "insurmountably ambiguous," and therefore the rule of lenity should apply to our analysis.

{5} "The Fifth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment Due Process Clause, and Article II, Section 15 of the New Mexico Constitution each protect defendants against multiple punishments for the same offense." *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 38, 136 N.M. 309, 98 P.3d 699 (citation omitted). When a defendant faces multiple punishments under the same statute, we apply a "unit of prosecution" analysis to determine "whether the Legislature intended punishment for the entire course of conduct or for each discrete act." *State v. Benally*, 2021-NMSC-027, ¶ 10, 493 P.3d 366 (alteration, internal quotation marks, and citation omitted); *see also State v. Ramirez*, 2018-NMSC-003, ¶ 46, 409 P.3d 902 (clarifying that "the unit of prosecution defines how many offenses the defendant has committed" (emphasis, internal quotation marks, and citation omitted)). To determine Legislative intent with respect to the unit of prosecution for a particular criminal offense, appellate courts apply a two-step test. *Ramirez*, 2018-NMSC-003, ¶ 47. First, we "analyze the statute to determine whether the Legislature has defined the unit of prosecution and, if the statute spells out the unit of prosecution, then the court follows that language and the inquiry is complete." *Benally*, 2021-NMSC-027, ¶ 13 (internal quotation marks and citation omitted). The interpretation of a statute is a question of law that we review de novo. *Id.* ¶ 11.

[1] Because Defendant was charged under the 2011 version of the statute, references in this opinion to Section 30-31-23 refer to the 2011 version unless stated otherwise. See State v. Lucero, 2007-NMSC-041, ¶ 14, 142 N.M. 102, 163 P.3d 489 ("We have held that the law, at the time of the commission of the offense, is controlling." (internal quotation marks and citation omitted)).

{6} "To discern the Legislature's intent, we begin our analysis with the plain language [of the statute]." *Id.* ¶ 25. Section 30-31-23(A) provides in relevant part that "[i]t is unlawful for a person intentionally to possess a controlled substance." The Legislature defined a "controlled substance" as "a drug or substance listed in Schedules I through V of the Controlled Substances Act." NMSA 1978, § 30-31-2(E) (2017, amended 2021). Both Section 30-31-23(A) and Section 30-31-2(E) reference controlled substances in the singular. We find the Legislature's reference to controlled substance in the singular significant because "legislative reference to an item in the singular suggests that each instance of that item is a separate unit of prosecution." *Ramirez*, 2018-NMSC-003, ¶ 52 (internal question marks and citation omitted). Grammatically, a statute containing a singular direct object that is the recipient of the action in the statute supports the conclusion that the Legislature intended the unit of prosecution to be each individual object. *Compare id.* ¶¶ 52-53, *with State v. Olsson*, 2014-NMSC-012, ¶ 21, 324 P.3d 1230 ("[T]he use of the word 'any' in the statute only compounds the ambiguity."), *and State v. DeGraff*, 2006-NMSC-011, ¶ 33, 139 N.M. 211, 131 P.3d 61 ("[W]e are not persuaded that the statute's use of the word 'any' shows the Legislature's intent to permit only a single conviction for all tampering with a single crime scene."). Therefore, we conclude that the plain language of Section 30-31-23(A) defines the unit of prosecution for a person in simultaneous possession of each distinct controlled substance. Consequently, our inquiry is complete and we do not proceed to the second step of the analysis. *See Benally*, 2021-NMSC-027, ¶ 13. Based on the foregoing, we hold that if the State can prove a defendant simultaneously possessed distinct controlled substances, a defendant can be charged and convicted for each distinct controlled substance in his or her possession in violation of Section 30-31-23(A).

{7} Our interpretation of Section 30-31-23(A) here is supported by our Supreme Court's interpretation of similar language in other statutes involving controlled substances. *See, e.g.*, *State v. Smith*, 1980-NMSC-059, ¶ 11, 94 N.M. 379, 610 P.2d 1208 (holding that the merger of four counts of trafficking with intent to distribute was in error because the defendant was trafficking four distinct drugs); *see also State v. Quick*, 2009-NMSC-015, ¶¶ 21-22, 146 N.M. 80, 206 P.3d 985 (vacating the conviction of simple possession because the defendant could not be convicted of simple possession and possession with intent to distribute for only possessing one drug).

{8} To the extent that Defendant argues the language of the statute is ambiguous and therefore policy concerns should instead guide our analysis in determining the unit of prosecution, we disagree. Defendant concedes that Section 30-31-23 refers to an item in the singular and, as stated above, the unit of prosecution for Section 30-31-23 is each distinct controlled substance. "[I]f the statute spells out the unit of prosecution, then the court follows that language and the inquiry is complete." *Benally*, 2021-NMSC-027, ¶ 13 (internal quotation marks and citation omitted). Therefore, we do not engage in an analysis of policy concerns that could guide the Legislature in creating the Controlled Substances Act. *See id.* ¶¶ 25-35 (analyzing legislative history and possible legislative purpose of the statute after analyzing the language of the statute and determining it was ambiguous on its face).

{9} Finally, to the extent Defendant contends reliance on the singular noun in Section 30-31-23, to discern the unit of prosecution in that statute runs contrary to the Uniform Statute and Rule Construction Act (USRCA), NMSA 1978, § 12-2A-5(A) (1997), which states that "[u]se of the singular number includes the plural, and use of the plural number includes the singular," we disagree. The USRCA only applies to statutes enacted on or after the effective date, or adopted after its own adoption. NMSA 1978, § 12-2A-1(B) (1997). The Controlled Substances Act was adopted in 1972. *See* 1972 N.M. Laws, ch. 84, § 1. The USRCA was adopted in 1997. *See* 1997 N.M. Laws, ch. 173, § 1. Therefore, it does not apply to our analysis here.

{10} In this case Defendant was charged with possession of heroin, a Schedule I controlled substance under NMSA 1978, Section 30-31-6(B)(10) (2017, amended 2021), and methamphetamine, a Schedule II controlled substance under NMSA 1978, Section 30-31-7(A)(3)(c) (2007, amended 2021). Defendant's separate charges for the simultaneous possession of two distinct controlled substances did not violate Defendant's double jeopardy rights, and therefore, the district court erred in dismissing Defendant's second count of possession of controlled substance charge. Because we hold the district court erred in finding that Section 30-31-23 defines a unit of prosecution, we need not address the State's additional argument.

CONCLUSION

{11} We reverse the district court's order dismissing one count of the indictment and remand for further proceedings consistent with this opinion.

{12} IT IS SO ORDERED.

JACQUELINE R. MEDINA, Judge

WE CONCUR:

SHAMMARA H. HENDERSON, Judge

GERALD E. BACA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2022-NMCA-052
Nos.: A-1-CA-39257 & A-1-CA-39258 (consolidated for purpose of opinion)
(March 22, 2022)

STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
CARMELLA M.,
Respondent-Appellant,
and
GARRETT S.F.,
Respondent,
IN THE MATTER OF CARLOS F.,
Child.
and
STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
CARMELLA M.,
Respondent,
and
GARRETT S.F.,
Respondent-Appellant,

IN THE MATTER OF CARLOS F.,
Child.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Kathleen A. McGarry, District Judge

Children, Youth & Families Department
Mary McQueeney, Acting Chief Children's Court Attorney
Robert Retherford, Children's Court Attorney
Santa Fe, NM

for Appellee

Law Offices of Nancy L. Simmons, P.C.
Nancy L. Simmons
Albuquerque, NM

for Appellant Carmella M.

Susan C. Baker
El Prado, NM

for Appellant Garrett S.F.

Johnna L. Studebaker
Santa Fe, NM

Guardian Ad Litem

OPINION

ATTREP, Judge.

{1} Carmella M. (Mother) and Garrett S.F. (Father) (collectively, Parents) separately appeal the district court's adjudication of abuse, based on the endangerment definition of "abused child" in NMSA 1978, Section 32A-4-2(B)(4) (2018), and its finding of aggravated circumstances, under Section 32A-4-2(C)(1), as to their son, Carlos F. (Child).[1] Parents challenge the sufficiency of the evidence to support both the adjudication of abuse and the finding of aggravated circumstances.

{2} This case arose from the unexpected death of Child's older sibling, Santiago F. (Sibling). The Children, Youth and Families Department's (CYFD) allegations of abuse as to Child are based on the injuries or abuse that befell Sibling. In particular, CYFD argues that Child is an "abused child" based either on (1) the theory that Sibling was physically abused by someone and this alone renders Child endangered, or (2) the theory that Parents knew or should have known about Sibling's injuries or abuse and failed to act appropriately in the face of their actual or constructive knowledge and this renders Child endangered. Because the culpability or responsibility of Parents must somehow be established to adjudicate a child abused, CYFD's first theory fails as a matter of law. Because CYFD's second theory is not supported by substantial evidence in the record, it likewise fails. We accordingly conclude that CYFD did not meet its burden to prove by clear and convincing evidence that Child is an "abused child" under Section 32A-4-2(B)(4), and we reverse the adjudication of abuse. We do not reach Parents' additional claims of error.

BACKGROUND

{3} Soon after Sibling's death, CYFD filed a petition alleging (1) abuse of Child, as defined in Section 32A-4-2(B)(1) and (B)(4), and (2) aggravated circumstances, as defined in Section 32A-4-2(C). It also filed an ex parte motion for custody of Child, which the district court granted. Child was eventually placed in the care of Mother's mother and stepfather. The district court's judgment of adjudication was rendered more than one and one half years after the filing of the petition. The delay in the adjudicatory proceedings resulted in part

[1] Because Parents' appeals involve the same underlying proceedings and raise related issues, we exercise our discretion to consolidate their appeals for decision. See Rule 12-317(B) NMRA.

Excerpts from the

State Bar of New Mexico
Client Protection Fund

2022 Annual Report

Presented to the
Supreme Court of New Mexico *and the*
State Bar of New Mexico Board
of Bar Commissioners

Full report available at www.sbnm.org/CPF

State Bar *of* New Mexico
Client Protection Fund

State Bar *of* New Mexico
Client Protection Fund

March 31, 2023

Dear Colleagues,

It was my pleasure to serve as the 2022 Chair of the Client Protection Fund Commission, a statewide body whose purpose is to promote public confidence in the administration of justice and the integrity and competence of attorneys admitted and licensed to practice law in New Mexico. The Commission's history and work in 2022 are described in the following annual report.

A principal focus of the Commission's work involves considering claims and allocating funds to reimburse claimants for losses arising from the dishonest conduct of New Mexico attorneys. The conduct at issue often involves misappropriation of client money by attorneys who commingled attorney funds with client funds or otherwise failed to follow the rules concerning trust accounts, retainers, and unearned fees. The increase in the number of such claims in the last few years, particularly claims involving attorneys now deceased, highlights the critical importance of education and compliance in the area of attorney trust accounting.

In 2022, the seventeenth full year of Commission operation, Commissioners approved 48 claims against 7 attorneys, with $179,367.99 allocated in total reimbursements. Commissioners also denied 13 claims and carried 26 claims into 2023.

I thank all of my fellow Commissioners for their work, dedication, and service, with special thanks to Jeff Baker, who served his final year as a Commissioner in 2022. On behalf of all Commissioners, I thank the staff members of the State Bar and Disciplinary Board, whose contributions are essential to the Commission's mission and work.

Sincerely,

Linda Vanzi
2022 Chair

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Introduction

History and Purpose

The purpose of the Client Protection Fund (CPF) is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this jurisdiction. The Client Protection Fund Commission was established by order of the New Mexico Supreme Court effective Dec. 13, 2005, as a permanent commission of the State Bar of New Mexico Board of Bar Commissioners. The Supreme Court adopted a modified version of the American Bar Association's model rules for client protection funds and codified them at Rules 17A-001 et seq. of the New Mexico Rules Annotated. The Commission oversees the CPF and is charged with receiving, holding, managing, and disbursing money from the Fund according to the rules. The State Bar is responsible for administering the Commission, developing and approving the budget, and managing operations and staffing. Since January 1, 2014, the New Mexico Disciplinary Board has assisted in the technical administration of the Commission's tasks, including the processing of claims under the Commission's direction.

Revenues

The initial resources for the Fund were provided in 2005 by a Supreme Court order transferring funds from accumulated fines against lawyers who failed to comply with the Court's Minimum Continuing Legal Education requirements. In 2008 the Supreme Court ordered an additional transfer of funds from MCLE to the Fund. In 2009 the Supreme Court ordered a $15 annual assessment of every active New Mexico attorney pursuant to Rule 17A-003 (B) NMRA. In 2010, 2012, 2016, and 2018 additional monies were also transferred from MCLE to the Fund by Supreme Court Orders. The State Bar provides in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2022 Financial Information, page 10). From time to time, the Fund receives monies from court-ordered sanctions directed to the fund at the discretion of the judge.

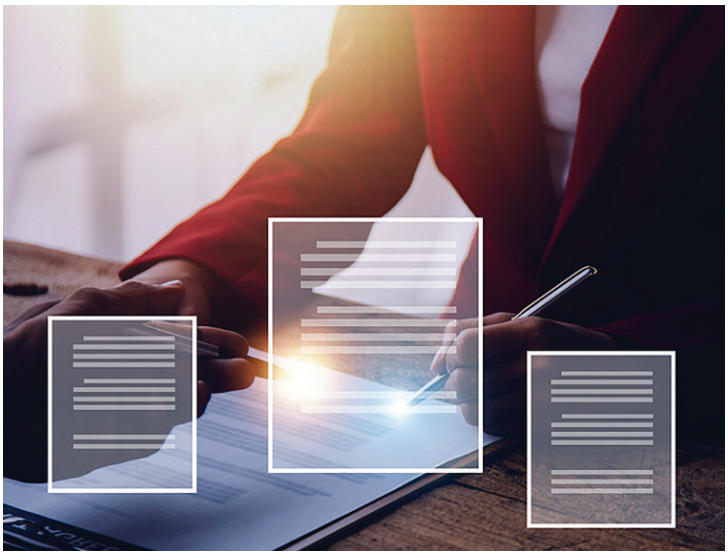
Eligible Claims

To qualify for a reimbursement from the Fund, a client must have incurred a financial loss caused by the dishonest conduct of a New Mexico-licensed lawyer who was counseling, advising, or representing the client or serving in another fiduciary capacity such as a trustee. The claim must be filed no later than five years after the client knew or should have known of the lawyer's dishonest conduct. Dishonest conduct is specifically defined under the CPF rules as wrongful acts such as theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value; e.g., failing to refund unearned fees or borrowing money from a client without the intention to repay or disregarding the lawyer's inability or reasonably anticipated inability to repay. A typical CPF claim involves a lawyer who collected a retainer from a client, performed some legal work, and then became unable or unwilling to finish the work or refund the unearned amount.

The rules also include a hardship exception which allows the Commission, in cases of extreme hardship or special and unusual circumstances, to recognize a claim that was filed late or would not otherwise be reimbursable. This exception is rarely used. The maximum reimbursable amount was increased in 2012 from $10,000 to $20,000 per individual claim, and, effective January 1, 2016 from $20,000 to $50,000.

Processing a Claim

The claimant must complete a prescribed claim form and have it notarized. The claimant must provide a copy of any written agreement pertaining to the claim and copies of any checks, money orders, receipts, or other proof of payment. The claimant is responsible for completing the form and providing evidence of a reimbursable loss up to the maximum amount payable per claim.



The CPF gives notice of a claim to the lawyer against whom it is filed (or the lawyer's representative) and allows 20 days for a response. The Disciplinary Board is also notified of the claim. After the lawyer's response and other initial facts and documents are gathered, the claim is assigned to one of the CPF commissioners for investigation. The commissioner investigates and presents a recommendation to the full Commission. If appropriate under the circumstances, the recommendation includes the investigating commissioner's estimate of any amount that should be allowed as a credit against the claim for the value of work the lawyer performed or costs the lawyer properly paid with client funds. The approval or denial of a claim requires the affirmative votes of at least five commissioners.

The claimant and the lawyer are notified of the Commission's decision. Either party may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If no request for reconsideration is received, the check for any approved reimbursement is sent after the notice period expires. If a timely request is received, the check for any approved reimbursement is sent after the Commission has reconsidered its decision. Rule 17A-013 NMRA provides that in either case the Commission's decision is final and there is no further right of appeal. Reimbursement is discretionary and no person has a legal right to reimbursement from the Fund. As part of the claim form, the claimant agrees to assign his/her claims against the lawyer to the fund in the event that the CPF makes a payment, and the CPF may pursue reimbursement and recovery from the lawyer or the lawyer's successor (e.g., an estate).

2022 Annual Report Highlights and Commission Activities

The Client Protection Fund Commission finished its seventeenth full year of operation in 2022 paying nearly $180,000 in 48 claims against 7 lawyers. To date, the Commission has paid $1,226,367 in cumulative reimbursements for clients' financial losses involving 76 lawyers. Year-by-year and cumulative statistics appear later in this report.

The Commission met 4 times in 2022, with Commissioners appearing in person and via Zoom. There was no conference travel by the Commissioners.

The Commission reminds everyone that Rule 17A-018(A) protects the confidentiality of information on claims, claimants, and respondent lawyers with exceptions for approved claims and other limited purposes as set forth below:

A. Publicizing awarded claims. Claims, proceedings and reports involving claims for reimbursement are confidential until the commission authorizes reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the commission shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the commission unless specific permission has been granted by the claimant. The commission may provide a waiver to the claimant which authorizes disclosure.

B. Exceptions. This rule shall not be construed to deny access to relevant information by the disciplinary board, other professional discipline agencies or other law enforcement authorities as the commission shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the fund's subrogation rights under Rule 17A-015 NMRA.

Visit the State Bar website at
www.sbnm.org
for further information on the
Client Protection Fund.

State Bar *of* New Mexico
Client Protection Fund

2022 Claims and Respondent Lawyers

2022 Claims and Respondent Lawyers

As required by Rule 17A-018, the Commission reports that 48 claims resolved in 2022 resulted in payments to the complaining party as a result of the actions of 7 lawyers. The following table summarizes those payments.

2022 Summary of Claims Approved by Lawyer

Lawyers	Lawyer's Status as of 12/31/2022	Claims Approved in 2022	Dollars Awarded in 2022	Reason
Jon Fredlund	Suspended	2	$6,309.13	Unearned Fees
Peter Keys	Suspended	1	$996.60	Unearned Fees
Anthony Rascon	Disbarred	2	$3,650.00	Unearned Fees
Daniel Salazar	Suspended	2	$14,000.00	Unearned Fees
David Serna	Deceased	13	$110,994.36	Unearned Fees
Sean Thomas	Deceased	26	$34,597.65	Unearned Fees
Armando Torres	Suspended	2	$8,820.25	Unearned Fees
Claims paid on lawyers	**Total approved**	**48**	**$179,367.99**	

Annual Statistics 2006-2022

2006-2022 Annual Statistics

CLAIMS APPROVED	2006-2017	2018	2019	2020	2021	2022	TOTALS
Total number of claims approved in whole or in part	236	11	6	7	10	48	318
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	$877,557	$43,054	$22,093	$41,877	$62,398	$179,367.99	$1,226,346.99
CLAIMS DENIED							
Total number of claims denied in whole or part	228	20	11	12	7	13	291
Total dollar amount of denials	$1,290,274	$147,363	$ 164,065	$277,192	$149,624	$259,099.28	$2,287,617.28
Claims made over limit	20	0	0	0	1	2	23
Total amount denied over limit	$290,638	0	0	0	$51,000	0	$341,638
Total amount denied for other reasons	$999,636	$147363	$164,065	$277,192	$98,624	$259,099.28	$1,945,979.28
CLAIMS PENDING AT END OF YEAR							
Claims undecided and carried over to next year	103	12	15	16	34	26	-------
Claim amount pending at end of year	$545,025	$102,089	$272,336	$205,821	$347,744	$183,792.42	-------
ATTORNEY STATISTICS							
Total number of attorneys with claims filed	215	20	14	14	20	27	-------
CONTRIBUTIONS/ SANCTIONS/ RESTITUTION	$49,252.53	$6,934.96	$1,700.00	$12,932.31	$12,991.03	$16,465.18	$100,276.01

Full report available at www.sbnm.org/CPF

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from a delay in obtaining the autopsy results for Sibling. The following recitation of facts is derived from testimony at the adjudicatory proceedings.

{4} Sibling was born premature to Father and another woman. Sibling entered CYFD custody soon after birth, before Father gained custody of him. For a period of time in Sibling's early life, while Father was incarcerated, Sibling lived with Mother and her parents. In time, Father and Mother began living together, Sibling came back into Father's custody, and Child was born to Parents. Sibling had developmental delays. His gross motor movement was impaired, and he was largely nonverbal. At the time of his death at nearly five years old, Sibling was walking, but still in diapers. Family members described that Sibling would sometimes have tantrums and throw his body around on the ground and on other objects when he became angry or frustrated.

{5} On the day before Sibling's death, Mother's brother (Brother), his wife, and their two young sons spent the day at Parents' home with Mother, Father, Sibling, and Child. Brother described that he and Parents played with the four children. Brother did not see anything concerning in how Mother was caring for Sibling or Child. Brother often left his two young sons in Mother's care.

{6} On the day Sibling died, he awoke at around 3:00 a.m., and Mother gave him some water before putting him back to bed. She later found him at the bathroom sink running his hands under the water and looking dazed. She asked him what was wrong, but he did not respond. She then took Sibling to another room, and as he was seated on the floor, he fell over, apparently unable to support himself. Concerned, Mother woke Father, and Mother called 911. At some point, Sibling stopped breathing, and Father began giving him CPR. After paramedics arrived, Sibling was taken to the emergency room. He died later that day at the hospital.

{7} The forensic pathologist who performed the autopsy on Sibling's body reported that the cause of death was diabetes insipidus, with a significant contributing condition of blunt head trauma. Diabetes insipidus is the body's inability to handle water in the blood, which can elevate salt levels in the blood; elevated salt levels, in turn, can cause seizures, damage brain cells, and cause death. The forensic pathologist testified that the autopsy also revealed multiple areas of blunt force trauma to the head and the torso. One such trauma caused a subdural hemorrhage that was estimated to have predated Sibling's death by about two to four days. Of the external bruises on Sibling's body, the only one the forensic pathologist was able to date was behind Sibling's right ear, which he estimated to be at least eighteen hours old. Ultimately, the forensic pathologist deemed the manner of death undetermined because, whether the diabetes insipidus was a preexisting organic condition or caused by blunt head trauma, was unknown. CYFD's expert in forensic pediatrics also testified to her opinion that some of the trauma on Sibling's head and torso was indicative of abuse. Parents' expert witness in anatomic, clinical, and forensic pathology opined that a pineal gland tumor in Sibling's brain (and not some external force) triggered the diabetes insipidus and that Sibling died of natural causes.

{8} After the close of evidence, the district court ordered the parties to submit written closing arguments and proposed findings of fact and conclusions of law. Parents and Child's guardian ad litem's submissions proposed that Sibling's death was due to natural causes, that Child not be adjudicated as abused, and that the petition be dismissed. CYFD proposed that Sibling's death was nonaccidental and that Child be adjudicated abused.

{9} The district court orally announced its findings of fact and conclusions of law, which then were memorialized in the adjudicatory judgment. The district court, quoting the statutory language of Section 32A-4-2(B)(4), concluded Child is an abused child as to Mother and Father as follows: "[Child]'s parents have knowingly, intentionally, or negligently placed the child in a situation that may endanger the child's life or health." The district court, quoting the statutory language of Section 32A-4-2(C)(1), concluded aggravated circumstances existed as to Mother and Father as follows: "[Child]'s parent or custodian has attempted, conspired to cause, or caused great bodily harm to the child or great bodily harm or death to the child's sibling."[2] In toto, the district court's findings of fact were:

> a. [Sibling] died February 18, 2019;
>
> b. [Sibling] was an older sibling of [Child]; [Mother] and [Father] are the parents of [Child];
>
> c. The cause of the death of [Sibling] was diabetes insipidus, with a significant contributing factor of blunt head trauma;
>
> d. Diabetes insipidus is a condition caused by the disregulation of glandular functions, flushing fluid from the body and resulting in a dangerous imbalance of minerals;
>
> e. The cause of the diabetes insipidus that resulted in [Sibling]'s death was blunt force trauma to the head, shown by a significant subdural hemorrhage and the accumulation of [sixty] milliliters of blood in the brain and skull cavity;
>
> f. It is evident from the healing in the subdural hemorrhage that some of the blunt head trauma [Sibling] suffered was inflicted more than [eighteen] hours prior to [P]arents' call to first responders;
>
> g. Although there is evidence [Sibling] was prone to accidents, the trauma and bruising in some areas of the head and torso are inconsistent with accidental injury; and
>
> h. The opinion offered by [Parents'] expert witness, that a pineal-glial cyst caused the deadly condition diabetes insipidus, disregards the significant evidence of blunt force trauma to [Sibling] and subarachnoid hemorrhaging in close proximity to the pituitary gland.

{10} After Parents appealed the adjudicatory judgment, CYFD moved for a permanent guardianship, pursuant to NMSA 1978, Sections 32A-4-31 (2005) and 32 (2009), seeking the appointment of Mother's mother and stepfather as permanent guardians of Child and contending, among other things, that "termination of parental rights is not in . . . Child's best interests." The district court granted the motion, appointed Mother's mother and stepfather as Child's permanent guardians, reserved Parents' right to appeal the adjudicatory judgment, and dismissed CYFD from the district court action.

STANDARD OF REVIEW

{11} The burden was on CYFD to establish through clear and convincing evidence that Child was abused. *See State ex rel. Child., Youth & Fams. Dep't v. Amanda H.*, 2007-NMCA-029, ¶ 22, 141 N.M. 299, 154 P.3d 674; *see also* NMSA 1978, § 32A-4-20(H) (2014) (establishing the clear and convincing standard for adjudications of abuse and neglect). To evaluate Parents' sufficiency challenge on appeal, "we must determine whether the district court's decision is supported by substantial evidence of a clear and convincing nature." *State ex*

2 On appeal, CYFD maintains that aggravated circumstances exist as a result of "Parents' failure to seek medical attention when they knew [or] should have known about Sibling's abuse." As we explain in our examination of the district court's adjudication of abuse, this assertion is supported neither by findings of fact made by the district court nor substantial evidence in the record.

rel. Child., Youth & Fams. Dep't v. Alfonso M.-E., 2016-NMCA-021, ¶ 26, 366 P.3d 282. "For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *State ex rel. Child., Youth & Fams. Dep't v. Michelle B.*, 2001-NMCA-071, ¶ 12, 130 N.M. 781, 32 P.3d 790 (internal quotation marks and citation omitted). "Substantial evidence is relevant evidence that a reasonable mind would accept as adequate to support a conclusion." *State ex rel. Child., Youth & Fams. Dep't v. Keon H.*, 2018-NMSC-033, ¶ 36, 421 P.3d 814 (internal quotation marks and citation omitted). "We will uphold the district court's judgment if, viewing the evidence in the light most favorable to the judgment, a fact finder could properly determine that the clear and convincing standard was met." *Alfonso M.-E.*, 2016-NMCA-021, ¶ 26 (internal quotation marks and citation omitted). To the extent our review involves questions of law, it is de novo. *Michelle B.*, 2001-NMCA-071, ¶ 12.

DISCUSSION

{12} Before we address whether substantial evidence supports the adjudication of abuse of Child, we briefly discuss the parties' dispute about the cause of Sibling's death, as this largely has been the focus of these proceedings to date. The parties vigorously disputed below and now dispute on appeal whether Sibling's diabetes insipidus and death resulted from blunt head trauma. The cause of Sibling's death was the focal point of the adjudicatory hearings and the district court's findings. We, however, find it unnecessary to address the parties' arguments in this regard. Even assuming sufficient evidence supports the district court's finding that blunt head trauma caused Sibling's diabetes insipidus and death, CYFD did not meet its burden to prove that Child is an abused child under Section 32A-4-2(B)(4).

{13} We reach this conclusion in view of CYFD's theories of abuse before us. CYFD's contention that Child is an abused child is not based on an allegation that Child suffered abuse at the hands of Parents. Instead, CYFD relies on the endangerment definition in Section 32A-4-2(B)(4), which defines an "abused child" as a child "whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health." CYFD contends Parents' actions or inactions vis-à-vis Sibling endangered the life or health of Child. What, precisely, CYFD contends Parents did (or did not do) to or for Sibling, such that placing Child in the same environment that Sibling had been in would endanger Child, is, frankly, difficult to discern from the record and the briefing on appeal.

{14} As best we can tell, CYFD advances two theories why Child is abused under Section 32A-4-2(B)(4). First, CYFD contends that because Sibling was "physically abused," as that term is defined in Section 32A-4-2(H), this alone renders Child endangered under Section 32A-4-2(B)(4). Second, CYFD contends that Parents "knew or should have known" about Sibling's injuries or abuse and should have taken action to protect him before they called for help on the day of his death, and that Parents' failure to do so renders Child endangered under Section 32A-4-2(B)(4). As we discuss below, CYFD's first theory fails because, as this Court has previously explained, an adjudication of abuse "require[s] some degree of culpability or responsibility on the part of the parent." *State ex rel. Child., Youth & Fams. Dep't v. Vincent L.*, 1998-NMCA-089, ¶ 10, 125 N.M. 452, 963 P.2d 529. CYFD's second theory of abuse is void of substantial evidence in the record and likewise fails.

I. Proof That Sibling Was Physically Abused, by Itself, Does Not Render Child Endangered Under Section 32A-4-2(B)(4)

{15} Both Parents argue at length that insufficient evidence supports a finding, if any, by the district court that one or both of them caused any injury to Sibling. We understand from CYFD's briefing on appeal, however, that this is not the theory of abuse advanced by CYFD.[3] Instead, in response to Parents' argument, CYFD effectively concedes that insufficient evidence exists to support a finding that one or both Parents "harmed Sibling" and asserts that the district court "did not have [to] find that one or both Parents caused Sibling's injuries."

{16} In support of its argument that Parents need not have caused Sibling's injuries, CYFD cites the definition of "physical abuse" in the Abuse and Neglect Act.

> "[P]hysical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:
>
> (1) there is not a justifiable explanation for the condition or death;
>
> (2) the explanation given for the condition is at variance with the degree or nature of the condition;
>
> (3) the explanation given for the death is at variance with the nature of the death; or
>
> (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence.

Section 32A-4-2(H). In citing this definition, CYFD appears to contend that Sibling was physically abused by *someone* and that this fact alone renders Child endangered in Parents' care under Section 32A-4-2(B)(4).

{17} To the extent CYFD argues that Sibling's physical abuse in and of itself—without any corresponding parental culpability in or responsibility for the abuse—is sufficient to render Child abused under Section 32A-4-2(B)(4), we cannot agree. Although it is not required under Section 32A-4-2(B)(4) that the parent inflict or cause harm to a child, it is required that the parent be responsible or culpable in some way for placing the child in a situation that may endanger the child's life or health. *See* § 32A-4-2(B)(4) (requiring

[3] New Mexico law permits a district court to adjudicate a child as abused if CYFD establishes through clear and convincing evidence that a parent physically abused a sibling. See, e.g., In re I.N.M., 1987-NMCA-043, ¶¶ 11, 18-19, 27, 105 N.M. 664, 735 P.2d 1170 (holding that the father's severe physical abuse of the sibling and the mother's failure to protect the sibling supported the trial court's finding that the parents endangered the child and the trial court's conclusion that the child was abused under a provision substantially identical to Section 32A-4-2(B)(4)); State ex rel. Child. Youth & Fams. Dep't v. Arthur C., 2011-NMCA-022, ¶¶ 28, 33, 149 N.M. 472, 251 P.3d 729 (holding that "the court validly relied on the past physical abuse of [the child's] sibling, at least in part, to find sufficient evidence of abuse [under Section 32A-4-2(B)(4)] and neglect of [the child]"). But, again, we do not understand this to be CYFD's theory of abuse in this case. Furthermore, the district court made no findings of fact as to that theory. In fact, CYFD proposed factual findings supporting an inference that Parents were responsible for Sibling's injuries—i.e., that Sibling, in the days immediately preceding his death, was cared for almost exclusively by Mother and Father. These findings, however, were not adopted by the district court and, as a result, are deemed rejected. See In re Guardianship of Ashleigh R., 2002-NMCA-103, ¶ 18, 132 N.M. 772, 55 P.3d 984 ("When a trial court rejects proposed findings of fact, we assume that there was insufficient evidence to support them."); see also In re Yalkut, 2008-NMSC-009, ¶ 18, 143 N.M. 387, 176 P.3d 1119 ("[F]ailure to make a finding of fact is regarded as a finding against the party seeking to establish the affirmative."). We therefore give this theory of abuse no further consideration.

that the parent "*knowingly, intentionally or negligently* place[] the child in a situation that may endanger the child's life or health" (emphasis added)). This requirement was made clear over twenty years ago in *Vincent L.*, a case in which this Court held that all adjudications of abuse "require some degree of culpability or responsibility on the part of the parent." 1998-NMCA-089, ¶ 10; *see also State ex rel. Child., Youth & Fams. Dep't v. Carl C.*, 2012-NMCA-065, ¶¶ 13, 15, 281 P.3d 1242 (reading *Vincent L.* as holding that the district court is required to assign responsibility for the abuse or neglect to a parent).[4]

{18} In *Vincent L.*, CYFD argued that the definition of "physical abuse," quoted above, provides an independent ground to adjudicate a child abused when the parent, guardian, or custodian is *not* responsible for the abuse. 1998-NMCA-089, ¶ 9. This Court rejected CYFD's argument, explaining that "this definition of physical abuse, rather than providing an independent basis for proceeding on an abuse petition, simply defines what is meant by physical abuse in the definition for an abused child." *Id.* The Court went on to explain that "a child is either neglected or abused due to actions or inactions by a parent or guardian." *Id.* ¶ 10. As a result, CYFD must "show that the parent or guardian had a duty to the child and through some action or inaction allowed the child to be harmed or neglected." *Id.* Further, although "[t]here is no requirement of criminal culpability," the Court explained, "there must still be a showing that the parent or guardian was responsible somehow for the harm." *Id.*; *cf. Carl C.*, 2012-NMCA-065, ¶ 13 (providing that, to adjudicate a child abused under Section 32A-4-2(B)(1), the risk of harm to the child must be caused by a parent, as distinct from the situation in which, e.g., the child was sexually abused by a neighbor or bullied at school). The Court concluded, "[W]e do not believe that the [L]egislature intended to make evidence of physical abuse alone, without any evidence that a parent was in some fashion responsible for the injury, enough to prove a child abused under the Act." *Vincent L.*, 1998-NMCA-089, ¶ 12. In sum, an abuse adjudication cannot be based on the mere fact that the child is the victim of physical abuse; instead, the parent, through action or inaction, must somehow be culpable in or responsible for the harm to the child. *See id.* ¶¶ 9-12; *see also* § 32A-4-2(B) (requiring culpability or responsibility of parent under all definitions of "abused child").

{19} Under *Vincent L.*, physical abuse of Child, without any corresponding culpability or responsibility on the part of Parents, would be insufficient to support an adjudication of abuse. *See* 1998-NMCA-089, ¶¶ 9-12; *see also* § 32A-4-2(B). Likewise, physical abuse of Sibling in and of itself is insufficient to support a finding that Child is endangered under Section 32A-4-2(B)(4), and thus CYFD's contentions to the contrary fail. *Id.*

II. CYFD's Contention That Parents Knew or Should Have Known About Sibling's Abuse or Injuries Is Not Supported by Substantial Evidence

{20} In apparent recognition of the need to establish culpability or responsibility, CYFD contends that Parents knew or should have known about Sibling's abuse or injuries—in particular, bruising on Sibling's body—and failed to act appropriately in the face of this actual or constructive knowledge.[5] Although CYFD does not cite the "neglected child" definition in the Abuse and Neglect Act, it appears CYFD's argument is premised on some theory of neglect of Sibling. *See* § 32A-4-2(G)(3) (defining a "neglected child" as a child "who has been physically . . . abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm"); *see also Michelle B.*, 2001-NMCA-071, ¶ 17 (providing that, to support a finding of neglect, "the court must have been presented with clear and convincing evidence of [the parent's] culpability through intentional or negligent" action or inaction). CYFD's neglect argument fails.

{21} As an initial matter, the district court made no findings of fact to the effect that Parents knew or should have known about Sibling's injuries and failed to respond appropriately. None of the district court's findings, which are set out in full in the background section of this opinion, relate to whether—or support a finding that—Parents knew or should have known about Sibling's injuries. As a result, the district court's findings cannot support a legal conclusion that Parents neglected Sibling because they knew or should have known about his injuries and failed to respond appropriately. *Cf. State ex rel. Child., Youth & Fams. Dep't v. Amanda M.*, 2006-NMCA-133, ¶ 31, 140 N.M. 578, 144 P.3d 137 (explaining that the district court's findings did not support the legal conclusion that the mother "inflicted or caused" the child's physical abuse under Section 32A-4-2(B)(2)). And although we must construe findings liberally in support of a judgment, we cannot go so far as to find facts omitted by the district court. *See Toynbee v. Mimbres Mem'l Nursing Home*, 1992-NMCA-057, ¶ 16, 114 N.M. 23, 833 P.2d 1204 (explaining that "[o]n appeal, a reviewing court liberally construes findings of fact adopted by the fact finder in support of a judgment"); *Herndon v. Albuquerque Pub. Schs.*, 1978-NMCA-072, ¶ 14, 92 N.M. 635, 593 P.2d 470 (providing that "it is beyond the function of an appellate court to find facts omitted by the trial court" and that our duty is instead "to interpret the findings made to determine whether the findings are sufficient to support the judgment entered").

{22} Regardless, even had the district court made findings in support of CYFD's theory that Parents knew or should have known about Sibling's injuries and failed to act appropriately, the evidence CYFD directs us to on appeal does not support that theory. CYFD cites the following:

[4] Carl C. grappled with the specific question of whether Section 32A-4-2(B)(1) requires CYFD to prove which parent in particular placed the child at risk by his or her inaction, so long as CYFD can prove at least one parent did. See Carl C., 2012-NMCA-065, ¶¶ 12-16. In this case, we deal with a different question—i.e., whether CYFD can adjudicate a child abused without proof that either parent is somehow culpable or responsible. Vincent L. answered this question in the negative, and this holding remains good law today. See Carl C., 2012-NMCA-065, ¶¶ 13, 15. Although there was a period of time following Vincent L. when one definition of "abused child," § 32A-4-2(B)(1) (1997), appeared not to require the culpability or responsibility of a parent, all definitions of "abused child" in the 1993 version of Section 32A-4-2(B), at issue in Vincent L., like the current version of Section 32A-4-2(B), require some culpability or responsibility on the part of a parent. Compare § 32A-4-2(B) (1993) (requiring abuse "inflicted by the child's parent," a parent who "has knowingly, intentionally or negligently" endangered the child, or a parent who "has knowingly or intentionally tortured, cruelly confined or cruelly punished the child"), with § 32A-4-2(B) (requiring "action or inaction of the child's parent," physical abuse "inflicted or caused by the child's parent," sexual abuse or exploitation "inflicted by the child's parent," a parent who "has knowingly, intentionally or negligently" endangered the child, or a parent who "has knowingly or intentionally tortured, cruelly confined or cruelly punished the child").

[5] CYFD is not entirely consistent with its argument on this point. At times, it argues that Parents knew or should have known about Sibling's abuse; and at others, it argues that Parents knew or should have known about Sibling's injuries. All of CYFD's arguments, however, turn on actual or constructive knowledge of Sibling's injuries—a premise, as we discuss, that lacks support in the record.

> Sibling was at higher-than-normal risk of abuse due to his premature birth, developmental delays, lack of potty-training, having a younger sibling, and having a nonbiological parent reportedly as the primary caregiver. There were indications of Father having anger management issues. Mother's demeanor seemed "odd" to [one of the officers who responded to the 911 call on the day of Sibling's death]. Between Sibling's transition [from Mother's mother] to Parents and his death, [Mother's mother and stepfather never] saw Parents' home or how Sibling was cared for in the home. [Mother's mother] saw nothing in the home that Sibling might have accidentally fallen on.

This evidence, such as it is, does not relate to, let alone establish, Parents' actual or constructive knowledge of Sibling's injuries or Parents' inaction in response to such injuries. In fact, it supports nothing more than a vague inference of a risk of harm to Sibling. Such an inference, this Court previously has explained, "does not meet a clear and convincing standard, instantly tilting the scales in the affirmative, for any of the statutory definitions" of abuse or neglect. *State ex rel. Child., Youth & Fams. Dep't v. Shawna C.*, 2005-NMCA-066, ¶ 22, 137 N.M. 687, 114 P.3d 367 (rejecting a similar attempt to establish that a father's personality traits and criminal history created an inference of child abuse, despite the absence of any evidence of the father being violent toward the child).

{23} Nor does our review of the record reveal evidence that might support CYFD's contention that Parents knew or should have known about Sibling's injuries, particularly Sibling's bruising, and failed to take appropriate action. In terms of the medical evidence: Other than a single bruise behind Sibling's right ear, which was described as prominent and yellowish and at least eighteen hours old, the record before us contains little description about the nature of the bruising on Sibling's body,[6] and it contains no information about when that bruising might have been visible or whether a lay person would have recognized such bruising as nonaccidental or needing immediate medical attention. Further, there is no evidence that Sibling's subdural hemorrhage would have resulted in noticeable symptoms. In terms of lay testimony: Three witnesses—Mother, Father, and Brother—saw Sibling in the days before his death. Of those witnesses, only Father testified to Sibling's injuries, describing them as bumps and bruises from playing with other children, but nothing out of the ordinary.[7]

{24} In short, CYFD's assertion that Parents knew or should have known about Sibling's injuries and failed to take appropriate action is unsupported. *Compare Amanda M.*, 2006-NMCA-133, ¶ 30 (affirming an adjudication of abuse where "[the m]other was aware that something was wrong with [the child]" and there was "expert testimony that injuries like [the child's] would result in immediately apparent signs of trauma" and concluding that "[t]hese signs were sufficient to have put [the m]other on notice that [the child] required immediate medical attention"), *with Michelle B.*, 2001-NMCA-071, ¶ 15 (reversing a finding of abuse against the mother based on sexual abuse by the father where the record was "silent" as to evidence establishing that the mother knew or should have known that the father intended to injure the child or had a propensity to sexually abuse the child).

CONCLUSION

{25} Having examined the evidence in the light most favorable to CYFD in view of CYFD's theories of child abuse in this case, we conclude that CYFD failed to establish by clear and convincing evidence that Child is an "abused child" under Section 32A-4-2(B)(4). We therefore reverse the adjudication of abuse as to Mother and Father. Because we reverse on this basis, we do not reach Parents' claims of error as to the aggravated circumstances finding.

{26} IT IS SO ORDERED.

JENNIFER L. ATTREP, Judge

WE CONCUR:

JANE B. YOHALEM, Judge

KATHERINE A. WRAY, JudgeIN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

[6] Although the autopsy report and photographs were introduced into evidence before the district court, they were not made part of the record on appeal.

[7] CYFD contends Father's description of Sibling's injuries is contradicted by what the autopsy revealed and, as a result, suggests that "Father was either negligent in caring for Sibling's well-being or intentionally hiding his son's real condition." As noted, the autopsy report and photographs were not made part of the appellate record. Regardless, given that the timing of all but one of Sibling's bruises could not be established and no testimony or evidence described how the bruises would have appeared at the time Father described, the possible discrepancy between Father's description and what the autopsy later revealed is not indicative of negligent care or deceit, as CYFD suggests.

New Mexico Hispanic Bar Association

Dear State Bar Members,

I am Sarah Gorman, president of the New Mexico Hispanic Bar Association. I want to take this opportunity to introduce myself, our board, keep you informed as to our upcoming events and plans. We have a talented, enthusiastic and diverse board and we look forward to fulfilling our mission of promoting and advocating for Hispanic/Chicana/o/x, Latina/a/x legal professionals, as well as supporting our community through education, mentorship and scholarships. If you've let your membership lapse, we invite you to re-join the NMHBA this year and if you are a new member or an ally to the Hispanic legal community, we welcome your membership!

I am a 2005 University of New Mexico School of Law graduate, born and raised in Albuquerque with roots in Santa Fe, Belen, and Taos. I have practiced as a state public defender in Albuquerque, a Federal Public Defender in San Diego and a Criminal Justice Act practitioner in San Diego and New Mexico. Please meet our current NMHBA Board:

President – Sarah M. Gorman • **Vice President** – Ramona Martinez
Secretary – Victoria Lucero • **Treasurer** – Marco Santamaria • **Immediate past-president** – Alicia Santos

Board Members:
Brian Colón • Reyes De La Cruz • Arturo Garcia • Justin Goodman • Luis Leyva • Chris Melendrez • Carlos Padilla

This year, we will be providing continuing education opportunities and monthly mixers. One of the hallmarks of the NMHBA has been providing mentorship to our UNM MALSA law students, and we are also sponsoring and supporting the return of Law Camp for New Mexico middle-schoolers. Our NMHBA holiday fundraiser provides much-needed scholarships to law students, and we plan on providing opportunities to our membership for mentorship by current members of the judiciary, as it is important that our judiciary reflect our community. As part of our continued support for law students and the Hispanic/Chicana/o/x, Latina/o/x legal community, we will be advocating for an increase in admissions of Hispanic students and New Mexico residents and the reinstatement of the student representative on the admissions committee. These admissions issues directly affect the composition of our legal community and the NMHBA.

We invite you to join us for a happy hour at Hollow Spirits on May 18, 2023 at 5pm-7pm.
We look forward to seeing you at our events this year.

Gracias,
Sarah M. Gorman

Questions? Smgorman.law@gmail.com or nmhispanicbar@gmail.com

The NMHBA thanks our generous sponsors of the 2022 Holiday Fundraiser and look forward to your support in 2023:

Cuddy & McCarthy, LLP • Peacock Law P.C. • O'Brien & Padilla, P.C. • Elias Law
Allen Law • Adams and Crow Law Firm • Law Offices of Mary T. Torres
Law Office of Victoria Lucero, LLC • Ben Sherman Law • Medrano Struck PC
Resnick and Louis, PC • Runfit • McGinn, Montoya, Love, and Curry, P.A.
Jones, Skelton & Hochuli • Art DeLaCruz

Paid Advertising

Classified

Positions

Public Defender
Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to represent adult criminal defendants and juveniles in delinquency cases in Laguna Pueblo Court. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply now, will fill quickly. Application instructions and position details at: Employment | Pueblo of Laguna (lagunapueblo-nsn.gov)

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
Stiff, Garcia & Associates, insurance defense firm, seeking full time experienced attorney for immediate opening. Must have excellent writing and communication skills. We offer medical, dental, life and disability insurance plus 6% 401K. Salary, DOE. We will consider remote and or part-time depending upon qualifications. Please send resume to agarcia@stifflaw.com

Litigation Attorney
Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced litigation attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The firm offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

Attorney
Insurance defense firm seeks attorney to assist with all aspects of litigation. 2-4 years of experience preferred. Send resume and letter of interest to James Barrett c/o the Eaton Law Office, PO Box 25305, Albuquerque 87125 or email to jbarrett@eatonlaw-nm.com.

Prosecutor
Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to prosecute adult criminal defendants and juveniles in delinquency cases in Laguna Pueblo Court. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply now, will fill quickly. Application instructions and position details at: Employment | Pueblo of Laguna (lagunapueblo-nsn.gov)

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

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.

Attorney
Madison, Mroz, Steinman, Kenny & Olexy, P.A., an AV-rated civil litigation firm, seeks an attorney with 3+ years' experience to join our practice. We offer a collegial environment with mentorship and opportunity to grow within the profession. Salary is competitive and commensurate with experience, along with excellent benefits. All inquiries are kept confidential. Please forward CVs to: Hiring Director, P.O. Box 25467, Albuquerque, NM 87125-5467.

Prosecutors
Immediate openings for Prosecutors in Las Vegas, New Mexico. Work with a diverse team of professionals, a manageable caseload with a competitive salary in a great workplace environment. If you are interested in learning more about the positions or wish to apply, contact us at (505) 425-6746, or forward your letter of interest and resumé to Thomas A. Clayton, District Attorney, c/o Mary Lou Umbarger, Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701 or e-mail: mumbarger@da.state.nm.us

City Attorney
Full-Time Regular Exempt position. The chief legal advisor to the City Manager and City Council, and Director of the Legal Department. Provide legal opinions and strategy, minimize risk and liability, manage legal issues, and represent the City in administrative proceedings and legal actions. Juris Doctor Degree AND seven (7) years of experience in a government legal practice, including three (3) years of administrative and management experience to include supervising personnel. Must be a member of the New Mexico State Bar Association, licensed to practice law in the State of New Mexico, and remain active with all New Mexico Bar annual requirements. If not licensed in the State of New Mexico at the time of hire, applicant must apply for a Public Employee Limited License issued under NMRA 15-301.1 and must obtain a regular State of New Mexico bar license within one (1) year of the date of hire Associated costs will be the responsibility of the applicant. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at www.lascruces.gov . Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. SALARY: $148,239.79 - $217,571.79 / Annually OPENING DATE: 12/28/22 CLOSING DATE: Continuous

Deputy City Attorney

Plans, coordinates, and manages operations, functions, activities, staff, and legal issues in the City Attorney's Office to ensure compliance with all applicable laws, policies, and procedures. Juris Doctor Degree AND seven years of experience in a civil and criminal legal practice; at least one (1) year of experience in municipal finance, land use, and public labor law is preferred. If not licensed in the State of New Mexico at the time of hire, applicant must apply for a Public Employee Limited License issued under NMRA 15-301.1 and must obtain a regular State of New Mexico bar license within one (1) year of the date of hire. Associated costs will be the responsibility of the applicant. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at www.lascruces.gov . Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. SALARY: $112,510.21 - $164,605.37 / Annually OPENING DATE: 04/05/23 CLOSING DATE: Continuous: This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed.

Various Assistant City Attorney

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 – Employment/ Labor; 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.

Attorneys must possess J.D. Degree

The U.S. Attorney's Office for the District of New Mexico is to uphold the rule of law, keep New Mexico and the nation safe, and to protect civil rights. The 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, 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 May 15, 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 $182,509 which includes a 17.63% locality pay. Las Cruces, N.M., Salary is $69,107 to $180,756 which includes a 16.50% locality pay. The complete vacancy announcement may be viewed at https://www.usajobs.gov/GetJob/ViewDetails/717055500 (USAJobs). All applicants must apply through USAJobs.

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 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.

Litigation Associate

Do you want to be a great litigator? Do you want to work at a firm that supports your professional growth? Are you passionate about representing injured people? Begum & Cowen, PLLC is hiring a litigation associate for our Albuquerque, New Mexico office. The position involves litigating car crash and other personal injury claims in New Mexico state and federal courts. Job duties include client communication, drafting pleadings and motions, case strategy, depositions, and hearings. We provide constant training and development for our lawyers, including both paid continuing le-gal education seminars and in-house training. If you want to become a great personal injury trial lawyer we will give you the tools, training, and resources to reach your full potential. To learn more about our litigation and management philosophy, listen to partner Michael Cowen's podcast, Trial Lawyer Nation. This is an in-office job, not a remote position. The base salary is $75,000 to $100,000 plus a bonus structure with no ceiling. There is also the potential for additional bonuses based on production. The firm also pays bar dues, NMTLA and AAJ dues, and continuing legal education. The firm also provides health insurance and a 401(k). To apply, please send your resume to michael@nmlawgiant.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@jamesscherrlaw.com

Hearing Officer (RFP 23-OGC-00)
The New Mexico Department of Health has issued a Request for Proposals (RFP no. 23-OGC-001) for the provision of hearing officer services for the Department in administrative adjudicative and rulemaking hearings. The purpose of the Request for Proposals (RFP) is to solicit sealed proposals to establish multiple contracts through competitive negotiations for the procurement of the services of hearing officers to conduct adjudicative and rulemaking administrative hearings in connection with the Department's legal obligations to provide such hearings under various applicable statutory and regulatory requirements. Assignments vary with the requirements of the Department as to rulemaking proceedings and the need for revised or newly authorized administrative regulations. Assignments are authorized by the Cabinet Secretary of the Department and are typically related to initiatives of the Department Division or Program whose jurisdiction relates to the subject matter of the proceedings to be conducted. In regard to adjudicative matters, various Divisions, Programs, Offices or Facilities of the Department which are concerned with the adjudication will be party to the proceedings. GENERAL INFORMATION: All questions about the contents of the RFP document should be directed to Mark Lujan, Procurement Manager, P.O. Box 26110, 1190 South St. Francis Dr., Ste. N-3052 Santa Fe, NM 87505 Email: Mark.Lujan@doh.nm.gov. ISSUANCE: The Request for Proposals was issued on Thursday, March 14, 2023. Organizations interested in obtaining a copy may access and download the document from the Internet at the following address: https://www.nmhealth.org/publication/rfp/. PROPOSAL DUE DATE AND TIME: Proposals must be received by the Procurement Manager no later than 3:00 PM MST ON June 7, 2023. Proposals received after this deadline will not be accepted. All dates and information should be confirmed in this master document.

Hearing Officer (RFP 23-OGC-001)
The NM Department of Health published Notice of a Request for Proposals for the Provision of Hearing Officer Services in Adjudicative and Rulemaking Hearings (RFP no. 23-OGC-001) in the May 10, 2023 issue (Issue 9) of the NM Bar Bulletin. Please review that Notice for complete information to respond by June 7, 2023. All questions about the contents of the RFP document shall be directed to: Procurement Manager: Mark Lujan, Procurement Manager Address: P.O. Box 26110, 1190 South St. Francis Dr., Ste. N-3052 Santa Fe, NM 87505 Email: Mark.Lujan@doh.nm.gov.

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

Family Law Attorney
Law Office of Dorene Kuffer exclusively practices family law. From the simple to complex, we've been helping New Mexicans for over 12 years. Our legal team works hard and smart. Work life balance isn't just a philosophy, we live it. Vacations, holidays, and weekends are typically work free. You can count on teamwork and mentorship in a technology rich, beautiful office. No one goes it alone in our practice, we practice as a team. You should possess minimum of two years' experience practicing family, civil, or criminal law. If you need to strengthen certain areas of your experience, our seasoned practitioners provide one-on-one mentorship and the team structure offers unique opportunities for learning and development. You should possess litigation and negotiation experience and must be licensed to practice in New Mexico. Compensation is generous, count on a signing bonus, and hefty annual bonuses. Please inquire, with confidence to: dorene@kufferlaw.com and daniel@kufferlaw.com

Lateral Partner/ Senior Associate Attorney

Moses, Dunn, Farmer & Tuthill (MDFT) is seeking a lateral partner or senior associate attorney with 5 to 15 years' experience in business and/or commercial litigation and real estate law. The ideal candidate is an experienced attorney who will take pride in their work and who is interested in growing and expanding their established client base at MDFT. Our firm is an AV Preeminent® firm that has expertise in a wide variety of civil practice areas including real estate, business transactions, probate, employment, and litigation. MDFT has served the needs of its world-wide business clientele and individuals from all walks of life for more than 68 years and we are committed to continuing that legacy for years to come. We offer a collegial and collaborative work environment. We look forward to talking with you about joining our team! Please send your resume to Alicia Gutierrez, alicia@moseslaw.com.

Associate Attorney

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

NM FOG Legal Director

The New Mexico Foundation for Open Government (FOG) seeks a full-time attorney interested in protecting the First Amendment and New Mexico's open records laws. We seek a highly motivated self-starter with civil trial court experience to strategically select and pursue lawsuits that will advance FOG's mission, which includes enforcing and protecting the New Mexico Inspection of Public Records Act (IPRA), Open Meetings Act (OMA), and The First Amendment. Remote work is an option. Some travel. Candidates are asked to send a cover letter detailing experience, education and background and a sample legal brief to info@nmfog.org. NM FOG has a panel of experienced volunteer lawyers who can provide advice and support for this position when requested. Salary range $80,000 to $120,000.

Housing Attorney

Under the direction of the CEO, assess, research, and analyze legal issues, coordinate legal services, and provide legal representation to HopeWorks clients. Counsel would be specifically dedicated to advocating for and representing Housing clients with a specialty in eviction-prevention. ESSENTIAL FUNCTIONS: 1. Review and analyze leases and related documents to ensure compliance with housing laws; 2. Advocate on behalf of clients to increase housing access and outcomes; 3. Interpret laws, rulings and regulations as they apply to housing and related services; 4. Conduct legal research and gather facts and evidence; 5. Explain the law and give legal advice to a wide-range of clients; 6. Offer legal representation at arbitration or mediation hearings; 7. Facilitate innovative solutions to client problems; 8. Represent clients in court proceedings on civil matters and coordinate services with public defenders or other attorneys, if applicable; 9. Prepare pleadings, responses, motions, and notices and arrange for proper service on opposing parties; 10. Keep accurate, up-to-date files in compliance with the New Mexico Rules of Professional Conduct. REQUIREMENTS: Juris Doctorate degree; Admitted to practice law in New Mexico in good standing and with at least two years of experience; Bilingual preferred; Experience in drafting, negotiating and reviewing legal documents; Analytical thinker with strong conceptual and research skills; Natural leader who displays sound judgment and attention to detail; Ability to work under pressure and meet deadlines; Ability to work independently and as part of a team; Excellent written and oral communication skills, including interpersonal communication and public speaking skills; Will uphold the law while protecting a client's rights; Experience with landlord-tenant law, fair housing law, and consumer protection laws preferred; Familiarity with homeless issues, substance abuse, mental illness, and behavioral issues preferred. To apply: send email to vpalmer@hopeworksnm.org with resume and cover letter.

Part-Time Contract Attorney

The New Mexico Victim's Rights Project seeks an attorney to represent victims of violent crime around the state to protect and assert their constitutional and statutory rights as victims in criminal proceedings and assist with Order of Protection cases occasionally. Work is intermittent and would be in collaboration with NMVRP's staff attorney. If you are interested, please send a resume to latkinson@victimsrightsnm.org or contact Carolyn Callaway at 505-291-9774 for more information. New Mexico Victim's Rights Project is a project of DWI Resource Center, Inc., a 501(c)(3) organization.

Full-Time Civil Legal Attorney

POSITION: Full-Time Civil Legal Attorney; PROGRAM: Peacekeepers, Espanola, NM; STATUS: Full-Time; BENEFITS: Yes; RATE OF PAY: DOE; EDUCATION: High School Diploma or GED. Bachelor's Degree in Sociology, Social Work, Criminal Justice preferred. EXPERIENCE: 5+ years of law experience. Three years in domestic violence, shelter or advocacy work. PREFERRED CERTIFICATES: None. Job Summary: Practice civil and family law with an emphasis on domestic violence orders of protection within the Eight Northern Pueblos. Essential functions: Practice law in the following areas: child support, custody, paternity, and interim income allocation, orders of protection, parenting plans, dissolution of marital proceedings, discovery, and post-divorce issues related to domestic violence in State and Tribal courts. Draft temporary orders of protection, attend permanent order of protection hearings, and interim hearings. Complete wage withholding orders, child support worksheets and marital settlement agreements. Represent PK clients in dissolution of marital proceedings and child support and custody proceedings. Attend emergency expedited motions among the pueblos in representation of PK clients. Conduct research, interview clients, and witnesses and handle other details in preparation for hearings and/or trial. Represent client in court and work closely with victim advocates. Maintain strict Confidentiality unless by written approval of the victim. Maintain orderly client files in compliance with applicable legal requirements and department standards of confidentiality. Demonstrate expertise in safety planning, stalking logs, and Cybernet abuse. Ability to recognize sign of escalating violence given specific fact patterns. 327 Eagle Drive, PO Box 969, Ohkay Owingeh, NM 87566. www.enipc.org/humanresources (to access application). Submit applications and or Resumes to: Krystal Martinez/HR Specialist, kmartinez@enipc.org. This position is also posted on Indeed.com

Staff Attorney

Pegasus Legal Services for Children is a nonprofit organization dedicated to advancing the rights of New Mexico's children. We are looking for a staff attorney to join our team. This position is hybrid, and our offices are located in downtown Albuquerque. To learn more about this position (salary, benefits, hiring timeline & job description) please visit https://pegasuslaw.org/join-our-team/

Attorneys

For more than sixty years, Butt Thornton & Baehr PC has been known as a law firm of quality and integrity. We are proud of the position of trust and respect the firm has earned in New Mexico's business, legal and governmental communities. Our commitment is to continue to meet the high standards that have earned us that reputation into the twenty-first century. BTB attorneys work together to analyze legal issues and provide legal counsel to clients. New attorneys are exposed to all areas of civil litigation, from legal research and drafting documents, to taking and defending depositions, trial preparation and trial, and working directly with clients. If you are licensed to practice law and are seeking an opportunity to enjoy the practice law with plenty of room for growth, please send letter of interest, resume, and writing samples to Agnes Padilla at afpadilla@btblaw.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.

Sealed Electronic Proposals

The City of Albuquerque Purchasing Division is seeking sealed electronic proposals, which can be accessed at https://cabq.bonfirehub.com/portal/?tab=openOpportunities, for the following services by the designated times and dates: RFP-2023-432-POL-EV, Services to Review Police Discipline for Accountability. Description: Consulting services to review police discipline for accountability. NIGP Commodity Codes: 918-00, 918-06, 918-46. Closing Date & Time: May 15, 2023, 4:00 PM MST

Attorneys

The Rio Rancho City Attorney's Office is hiring multiple attorneys. We offer a rewarding work environment with outstanding benefits and great work-life balance! Responsibilities may include: representing the City in civil litigation and criminal prosecutions; providing advice to City departments regarding legal issues, policies, trainings, and contracts; and drafting legislation and ordinances. Additional duties may be assigned as necessary. Salary and position will be based on experience. To learn more about these opportunities, and to submit your application, please visit www.rrnm.gov and click on "Employment".

Associate Attorney

Moses, Dunn, Farmer & Tuthill (MDFT) is seeking a 3-to-6-year attorney. Our firm practices in a wide variety of civil practice areas including transactions, employment, litigation, and commercial legal advice, serving the needs of our world-wide business clientele and individuals from all walks of life. We are an AV Preeminent® firm serving New Mexico clients for more than 68 years. We offer a flexible billable hour requirement and compensation structure. At MDFT, you will be mentored by attorneys with decades of experience and be given ample opportunities to grow. Along with a collegial and collaborative environment from the top down, is the expectation that you will take ownership over your work and invest in the Firm and its clients just as they are investing in you. If you share our values and believe that you can thrive at MDFT, we look forward to talking with you about joining our team! Please send your resume to Lucas Frank, lucas@moseslaw.com.

New Mexico Public Education Department - Paralegal Position

PARALEGAL - The New Mexico Public Education Department (PED) Office of General Counsel is seeking a paralegal with strong writing and interpersonal skills, and great attention to detail. To apply, please submit an application at https://www.spo.state.nm.us/work-for-new-mexico/. Please contact Aaron.Rodriguez2@ped.nm.gov for questions.

Paralegal

The Santa Fe office of Hinkle Shanor LLP seeks a paralegal for the practice areas of litigation and administrative law. Candidates should have a strong academic background, excellent research skills and the ability to work independently. Competitive salary and benefits. All inquiries kept confidential. Santa Fe resident preferred. Please email resume to: gromero@hinklelawfirm.com.

Litigation Paralegal

Small Albuquerque law firm seeking a litigation paralegal. Experience is preferred in general civil practice, including employment, insurance defense, medical malpractice defense, personal injury and civil rights. Candidates should have excellent writing and research skills, and the ability to work independently. A paralegal certificate or degree is a plus. Competitive salary and benefits. All inquiries kept confidential. Please email resume and salary requirements to jertsgaard@parklawnm.com

Experience Litigation Paralegal

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

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
MARRS GRIEBEL LAW, LTD. is an Albuquerque law firm serving businesses and their owners who find themselves dealing with business disputes. We aim to provide our clients with responsive, sensible, and efficient legal services that meet their broader business objectives. Come join our growing team. Paralegal Job Responsibilities: Document review, organization, and analysis; preparing document summaries and indices; Working directly with clients regarding document retrieval and discovery response; Assisting with the preparation, filing and service of pleadings; Coordinating the collection, review and production of documents and responding to discovery requests; Assisting with trial preparation including the assembly of exhibits, witness binders and appendices for depositions and court filings; Summarizing deposition transcripts and exhibits; Researching case-related factual issues using in-house files and outside reference sources. Benefits of Working with our Firm: We are a small firm that rewards hard work Salary begins at 50K and up depending on experience and production; We offer a generous compensation plan and full benefit package; Hours can be flexible and working remotely is allowed if desired. Skills, Education and Experience Requirements:; Research and investigation skills; Ability to prioritize workload and assignments with moderate level of guidance; Bachelor's Degree preferred; Paralegal certificate from an ABA accredited program preferred, or a combination of education and/or experience; 2+ years of significant and substantive litigation experience as a paralegal; Basic legal drafting skills for less involved filings – simple motions; Managing medium to large-scale document production experience; Proficiency with Document Review Software (Adobe) and MS Suite; SharePoint experience preferred. To apply, please send resume to hiring@marrslegal.com.

Experienced Civil Litigation Paralegal Needed:
Albuquerque Plaintiffs firm with a significant focus on medical malpractice seeking experienced civil litigation paralegal. Upon hiring, the paralegal will be involved in all stages of litigation from discovery to trial prep/assistance. Ideal candidate will have seven years of prior experience in civil litigation with knowledge of State and Federal District Court rules and filing procedures, factual and legal online research and document management and processing. Remote work allowed. All inquiries confidential. Salary DOE, benefits included. Email resume and cover letter to: info@collinsattorneys.com

Full-Time Paralegal
Armstrong Roth Whitley Johnstone Family Law is seeking a full-time paralegal to join our team. We are looking for someone with at least two years of work experience as a paralegal or other comparable employment position. Family law experience is preferred but not required. Responsibilities include: Drafting and preparing pleadings for filing, interacting with and handling client inquiries, assisting attorneys with discovery requests and trial and hearing preparations, scheduling of meetings and hearings, interacting with Court staff, and other duties as assigned. Our ideal candidate has excellent organizational skills, the ability to handle deadlines in a fast-paced environment, strong oral and written communication skills, the ability to work well under pressure, knowledge of computer programs, the ability to process and format complex documents, and the ability to learn and adapt to our client management software. Benefits include: 401(k) with employer matching, medical, dental and vision insurance, generous paid time off, short/long term disability and group life insurance. Pay to be determined commensurate with experience. To apply email resume and cover letter to arwjllc@gmail.com

Part-time Legal Assistant/Paralegal
Quinones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a full-time paralegal with minimum 5 years of Legal Assistant/Paralegal experience. Please send resume to quinoneslaw@cybermesa.com

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KEYNOTE ADDRESS
Friday, July 28, 2023

ANTHONY C. THOMPSON
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New York University School of Law
Faculty Director Emeritus, The Center on Race, Inequality, and the Law, New York University School of Law

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