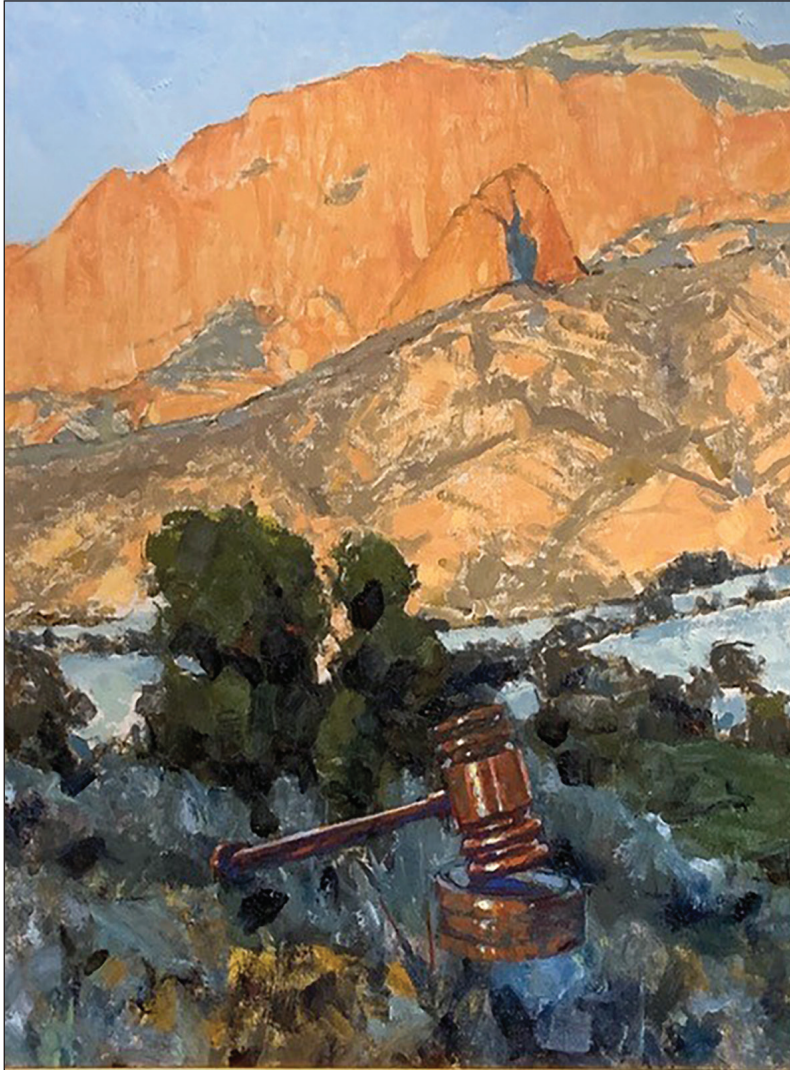


# BAR BULLETIN

June 28, 2023 • Volume 62, No. 12



*Law of the Land, 2023*, by Jacob Tarazoff (see page 4)

[www.jacobtarazoff.com](http://www.jacobtarazoff.com)

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THE FIRST ANNUAL SOUTHWEST CRIMES AGAINST CHILDREN CONFERENCE

# SOUTHWEST CRIMES AGAINST CHILDREN CONFERENCE



**August 23 & August 24, 2023**

## **2- Day Multidisciplinary Crimes Against Children Conference**

Sponsored by the 13th Judicial District Attorney of New Mexico, Barbara Romo

A multi-disciplinary gathering, this conference will encompass three-tracks: Prosecutors, Law Enforcement and Victim Advocates – focusing on issues related to the investigation and prosecution of crimes against children featuring a Keynote address by Victor Vieth, Chief Program Officer of the Zero Abuse Project.

This conference is free and open to all who work directly with child victims of crime, especially those who are involved in the prosecution and investigation of these crimes.

For more information and to register, please visit  
[www.13th.nmdas.com](http://www.13th.nmdas.com)

**Santa Ana Star Casino and Hotel**  
54 Jemez Canyon Dam Road, Bernalillo, NM  
8:00am – 5:00pm both days

Check in and registration begins August 22, from 4:00 – 7:00pm.

A block of hotel rooms offered at the special conference price of \$96 will be available to reserve starting June 1.



13<sup>th</sup> DISTRICT ATTORNEY  
**BARBARA ROMO**  
Cibola | Sandoval | Valencia  
[www.13th.nmdas.com](http://www.13th.nmdas.com)



Children, Youth &  
Families Department  
STATE OF NEW MEXICO





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

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## Meetings

**June**

**30  
Immigration Law Section**  
Noon, virtual

**July**

**5  
Employment and Labor Law Section**  
12:30 p.m., virtual

**12  
Animal Law Section**  
Noon, virtual

**14  
Cannabis Law Section**  
9 a.m., virtual

**14  
Prosecutors Section**  
Noon, virtual

**20  
Public Law Section**  
Noon, virtual

## Workshops and Legal Clinics

**July**

**5  
Divorce Options Workshop**  
6-8 p.m., virtual

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

**August**

**2  
Divorce Options Workshop**  
6-8 p.m., virtual

**23  
Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

**September**

**6  
Divorce Options Workshop**  
6-8 p.m., virtual

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

**About Cover Image and Artist:** Jacob Tarazoff paints with oil paint and watercolors outdoors, en plein air, and usually all in one session, alla prima; all with the intention of either finishing a statement as a finished painting or using the experience to gather visual and other information that he can take back to the comfort of his studio and use to inform images that he makes in oil paint in his studio. Jacob makes images that address social issues that affect him, the land and culture generally. His aim is to present an homage, a visual exaltation, to the natural processes that have shaped the Earth, along with ourselves. He also paints action portraits of friends and patrons engaging in adventure pursuits in the landscape. He has been rock climbing, snowboarding, mountain biking and pursuing adventure in the wilderness for most of his life and this has greatly helped him to make images that celebrate the landscape and adventures in it.



# 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](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### Fifth Judicial District Court Announcement of Consideration of Additional Applicants

The Fifth Judicial District Judicial Nominating Commission met on May 25 and submitted one name to Gov. Michelle Lujan Grisham for consideration to fill the vacancy in the Fifth Judicial District Court due to the retirement of the Honorable Judge William Shoobridge, effective May 1. Pursuant to her authority to do so, Gov. Lujan Grisham has requested that the commission consider submitting additional names to her for consideration. The deadline for additional applications was June 22. Applications received by the initial deadline of May 11 remain open for consideration. Applicants who appeared before the commission on May 25, including the one applicant whose name was submitted to Gov. Lujan Grisham, do not need to reapply or reappear before the commission. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Fifth Judicial District Judicial Nominating Commission will reconvene on July 7 (time to be determined), at the Lea County District Court located at 100 N. Love St., Lovington, N.M. 88260, any additional interviews will be conducted then. 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 speak at that time.

## Professionalism Tip

### With respect to parties, lawyers, jurors and witnesses:

I will be courteous, respectful and civil to parties, lawyers, jurors and witnesses.  
I will maintain control in the courtroom to ensure that all proceedings are conducted in a civil manner.

### Sixth Judicial District Court Notice of Mass Reassignment of Cases

Effective July 1, in Hidalgo County, all new, pending, and reopened CR, JR, LR, YR, PD, and SI cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new, pending, and reopened JQ and FC cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new PQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). Effective July 1, in Luna County, all new, pending, and reopened CR, JR, LR, YR, PD, and SI cases will be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened JQ and FC cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new PQ cases shall be assigned to the Honorable Jennifer E. DeLaney (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable James B. Foy (100%). Effective July 1, in Grant County, all new, pending, and reopened CR, JR, LR, YR, and SI cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new, pending, and reopened JQ and FC cases will be assigned to the Honorable Jarod K. Hofacket (100%). All new and pending PD cases will be assigned to the Honorable James B. Foy (100%). All new PQ cases shall be assigned to the Honorable James B. Foy (100%). All new, pending, and reopened CV, DM, DV, ER, EX, FP, JV, PB, SA, and SQ cases shall be assigned to the Honorable Thomas F. Stewart (100%). Parties to these cases who have not previously exercised their right to excuse a judge may do so within 10 days of the last publication in the Bar Bulletin, pursuant to Rule 1-088.1 NMRA.

### Eighth Judicial District Court Judicial Nominating Commission Announcement of Vacancy

A vacancy on the Eighth Judicial District Court in Raton, N.M. exists as of May 14, due to the retirement of the Honorable

Judge Melissa Kennelly, effective June 30. This position will be located in Raton, New Mexico. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. The Eighth Judicial District Court Judicial Nominating Commission will convene 9:30 a.m. (MT) on July 18 to interview applicants for the Raton, New Mexico position at the Eighth Judicial District Court located at 105 Albright St., Taos, N.M. 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.

### Notice of Proposed Changes to the Rules Governing Judicial Nominating Commissions

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 Eighth Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9:30 a.m. (MT) on July 18 at the Eighth Judicial District Court located at 105 Albright St., Taos, N.M. Please email Beverly Akin ([akin@law.unm.edu](mailto:akin@law.unm.edu)) if you would like to request a copy of the proposed changes.

### United States District Court, District of New Mexico Notice Concerning Reappointment of Incumbent United States Magistrate Judge

The current term of office of Full-Time United States Magistrate Judge Gregory J. Fouratt is due to expire on Feb. 28, 2024. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term. The duties of a magistrate judge in this court include the following: (1) presiding over most preliminary proceedings in criminal cases, (2) trial

## Correction to the 2023-24 Resource Deskbook & Membership Listing

**Bernalillo County  
Metropolitan Court**

[metro.nmcourts.gov](http://metro.nmcourts.gov)

and disposition of misdemeanor cases, (3) presiding over various pretrial matters and evidentiary proceedings on delegation from a district judge, (4) taking of felony pleas and (5) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to MJMSP@nmcourt.uscourts.gov. Questions or issues may be directed to Monique Apodaca, (575) 528-1439. Comments must be received by Aug. 17.

### STATE BAR NEWS Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in 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](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question. No question is too big or too small.

### New Mexico State Bar Foundation Announcement of Fundraising Events at the 2023 Annual Meeting

The New Mexico State Bar is hosting two fundraising events at this year's Annual Meeting; all of the proceeds will go to the Bar Foundation to support its mission. The first is a raffle for a chance to win a vacation package valued at \$2,500 and includes a Southwest Airlines Gift Card and a Visa Gift Card. The tickets are \$100 and can be purchased during the Annual Meeting at the Registration Desk anytime on Thursday, July 27, or Friday, July 28 at the Hyatt Regency Tamaya Resort & Spa. The drawing will take place on the evening of July 28, and you don't

have to be present to win. If you will be unable to attend the Annual Meeting, you can still purchase raffle tickets using the secure Jotform by clicking on the button below and we will enter your name in the raffle. For questions please contact [info@sbnm.org](mailto:info@sbnm.org). The other event that will take place at the Annual Meeting is a "Snag a Bag" event. The tickets are \$50 and everyone is a winner! Pick up your bag at the Registration Desk. Purchase raffle tickets at [form.jotform.com/sbnm/BarFoundationRaffle](http://form.jotform.com/sbnm/BarFoundationRaffle).

### 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](mailto:pam.moore@sbnm.org) or Briggs Cheney at [bcheney@dsc-law.com](mailto:bcheney@dsc-law.com) for the Zoom link.

### NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on 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.

— *Featured* —

**Member Benefit**



**The  
Solutions  
Group**

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

**To access this service call  
855-231-7737 or 505-254-3555  
and identify with, NM LAP.  
All calls are confidential.**

### 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](http://lawlibrary.unm.edu).

# Legal Education

## June

- 1-30 **Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**  
1.0 G, 2.0 EP  
Online On-Demand  
The Ubuntuworks Project  
www.ubuntuworksschool.org
- 29 **Employment Law 2023: Legal Developments, Cutting-Edge Issues, and Workplace Trends**  
5.0 G  
Virtual Seminar  
U.S. Equal Employment Opportunity Commission  
www.eeoc.gov
- 29 **REPLAY: Overview of Prosecutorial Discretion in Immigration Court: Current Guidance & Strategies (2022)**  
1.0 G  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org
- 30 **Multi-Generational Workplace: Part 2**  
1.5 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org

## July

- 1-31 **Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**  
1.0 G, 2.0 EP  
Online On-Demand  
The Ubuntuworks Project  
www.ubuntuworksschool.org
- 5 **Ethical Issues Relating to Smartphone Use**  
1.0 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org
- 12 **Planning for End of Life: Updates to New Mexico Aid in Dying Law**  
1.0 G  
Webcast  
Center for Legal Education of NMSBF  
www.sbnm.org
- 13 **Family Law Lunch n Learn: Savvy Social Security**  
1.25 G  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org
- 14 **How to Take Charge of Technology - Ethically and Mindfully**  
1.0 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org
- 18 **Battling Gender Bias: How Bill Cosby and Other Sexual Predators Escape Punishment**  
1.0 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org
- 19 **Please Help; I Feel So Conflicted Right Now! Common Conflict Issues**  
1.0 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org

## August

- 1-31 **Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**  
1.0 G, 2.0 EP  
Online On-Demand  
The Ubuntuworks Project  
www.ubuntuworksschool.org
- 2 **Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**  
1.0 G, 2.0 EP  
Video Replay with Monitor (Live Credits)  
The Ubuntuworks Project  
www.ubuntuworksschool.org
- 16 **Follow Me on Insta! Social Media in Your Practice - How, Why, and What are the Risks?**  
1.0 EP  
Webinar  
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](mailto:notices@sbnm.org). Include course title, credits, location/course type, course provider and registration instructions.



# Opinions

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

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

## Effective May 12, 2023

### PUBLISHED OPINIONS

A-1-CA-39012	TAL Realty v. A Kaushal	Affirm	05/08/2023
A-1-CA-39724	T Tawater v. Board of Commissioners Sandoval Co	Affirm/Reverse/Remand	05/10/2023

### UNPUBLISHED OPINIONS

A-1-CA-40282	State v. D Little	Affirm/Reverse	04/17/2023
A-1-CA-39413	State v. J Arenas	Reverse/Remand	05/08/2023
A-1-CA-40497	State v. J Norberto	Affirm	05/08/2023
A-1-CA-40539	A Quintana v. Board of County Commissioners of San Miguel County	Affirm	05/08/2023
A-1-CA-39989	State v. P Chavez	Affirm	05/09/2023
A-1-CA-40417	State v. J Armijo	Affirm	05/09/2023
A-1-CA-38807	A Padilla v. R Garcia	Affirm	05/10/2023
A-1-CA-40757	M Sierra v. Albuquerque Bernalillo Co Water Utility Authority	Affirm	05/10/2023
A-1-CA-40858	J Lowrey v. J Regan	Affirm	05/10/2023
A-1-CA-39866	State v. Z Reynosa	Affirm/Vacate/Remand	05/11/2023
A-1-CA-40593	CYFD v. Gerald H	Affirm	05/11/2023
A-1-CA-40625	US Bank Trust v. J Hickerson	Affirm	05/11/2023
A-1-CA-40029	Casa Grande Realty v. A Kanawite	Dismiss	05/12/2023

## Effective May 19, 2023

### PUBLISHED OPINIONS

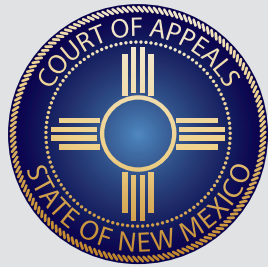
A-1-CA-38779	Process Equipment v. NM Tax & Rev	Affirm	05/16/2023
A-1-CA-40171	Roof & Metal Co. v. Board of Regents of NMSU	Remand	05/16/2023

### UNPUBLISHED OPINIONS

A-1-CA-39402	State v. S Aguilar	Affirm/Remand	05/15/2023
A-1-CA-40134	State v. D Smith	Reverse/Remand	05/15/2023
A-1-CA-40239	E DeHerrera v. G Lynn	Affirm	05/15/2023
A-1-CA-40550	State v. M Felix	Affirm	05/15/2023
A-1-CA-40649	State v. J Young	Reverse/Remand	05/15/2023
A-1-CA-40730	State v. R Miller	Affirm	05/15/2023
A-1-CA-39453	State v. M Griego	Affirm/Vacate/Remand	05/16/2023
A-1-CA-39814	A Kaushal v. Santa Fe Community Housing	Reverse/Remand	05/16/2023
A-1-CA-38126	State v. M C Garcia	Reverse/Remand	05/17/2023
A-1-CA-40397	B Franklin v. H Jaramillo	Affirm	05/17/2023
A-1-CA-40677	R Coons v. T Williams	Affirm	05/17/2023
A-1-CA-40748	CYFD v. Brittany V.	Affirm	05/17/2023
A-1-CA-40745	City of Hobbs v. C Nielson	Affirm	05/18/2023

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

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



State Bar *of*  
New Mexico  
Est. 1886



Dear Legal Community of the State of New Mexico,

On June 1, 2023, the New Mexico Court of Appeals and the State Bar of New Mexico launched an exciting new project wherein State Bar members now receive Court of Appeals opinions and decisions, and dispositional orders from the general calendar on the day they are filed via email, bringing timely and instant access to full opinions and decisions from the Court of Appeals.

Through this project, the State Bar of New Mexico is distributing emails containing filed opinions and decisions for the day, displaying the case number, the parties involved and the case introduction. This abbreviated format serves as a concise preview of the full opinion or decision, all of which are available through the Court of Appeals' main website via a link distributed in the email.

Members will also find these one-page introductions in the Bar Bulletin, which will include links to the full opinions and decisions. This will give members timely access to all Court of Appeals opinions and decisions from the general calendar, as compared to the previous format, which provided members delayed access to formal opinions only.

We hope this project will be a benefit for members, a vast number of whom are eager to read and have access opinions on specific cases. This project demonstrates the Court of Appeals and State Bar of New Mexico's dedication to New Mexico's thriving legal community and serves as an important example of the ways in which significant legal institutions can work together and with one another to provide significant benefits to our legal community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer L. Attrep".

Jennifer L. Attrep  
Chief Judge, New Mexico Court of Appeals

A handwritten signature in blue ink, appearing to read "Benjamin I. Sherman".

Benjamin I. Sherman  
President, State Bar of New Mexico

STATE BAR OF NEW MEXICO

# 2023 ANNUAL MEETING

Hyatt Regency Tamaya Resort & Spa • July 27–29

[www.sbnm.org/AnnualMeeting2023](http://www.sbnm.org/AnnualMeeting2023)



## RECIPROCITY SESSION:

**Hon. Henry A. Alaniz (Ret.), Dylan O'Reilly, Mateo S. Page and Camille A. Pedrick, New Mexico Board Of Bar Examiners, and Anne L. Taylor, New Mexico Disciplinary Board**

In 2014, New Mexico began a method of attorney licensure based on reciprocity. That program has evolved and now includes thirty-eight states and territories. Licensure by UBE score transfer began in 2015 and is now the most common mechanism to gain licensure in New Mexico. This presentation will include information on this method of licensure and more.



Indian Law Section

Employment and  
Labor Law Section

Paralegal Division

## BREAKOUT TRACK:

**Featured Sections: Indian Law Section, Employment and Labor Law Section and Paralegal Division**

The State Bar of New Mexico's **Indian Law Section, Employment and Labor Law Section** and the **Paralegal Division** have coordinated sessions relevant to their practice areas. Join them in these sessions during the Annual Meeting as they discuss highly topical and interesting ideas pertaining to their realms of expertise.



## BREAKOUT TRACK:

**Writing & Professional Development**

Writing skills are crucial for legal professionals, as legal documents require clear and precise language that accurately conveys legal concepts and arguments. Join speaker **Stuart I. Teicher** as he examines how effective writing is an essential component of the legal profession. Professional Development sessions offer resources and guidance to navigate key issues in law practice management, professionalism and ethics.





### WHY BOTter WRITING: LAWYER AND JUDICIAL ETHICS OF USING BOT TECHNOLOGY

Justice David K. Thomson, New Mexico Supreme Court; Sonia Gipson-Rankin, UNM School Of Law; and William D. Sleese, State Bar of New Mexico, Professional Development Program

Writing bots, artificially intelligent solutions that can write digital content, are developing at an accelerated pace, producing high quality material. This presentation reflects on the ethical concerns lawyers and judges should consider with such content.



### BREAKOUT TRACK: Equity in Justice/Well-Being

Fairness, respect and equal access to justice within the legal community is essential for a just society. Well-being is essential for legal professionals because of the high levels of stress and pressure associated with the legal profession. Lawyers and other legal professionals often work long hours, face intense deadlines, and deal with emotionally charged cases. However, by prioritizing their own well-being, legal professionals can better manage stress, improve their job satisfaction and provide better support to their clients.

### ACTIVITIES:

#### Thursday, July 27

- Guided Meditation Session (*Open Event*)
- Wine & Watercolor (*Ticketed Event*)
- Santa Ana Pueblo Storytelling at Sunset (*Ticketed Event*)
- State Bar Annual Awards Ceremony (*Open Event*)
- Hospitality Lounge (*Open Event*)

#### Golf Outing, Twin Warriors

**Golf Course** (*Individual Event*)

#### Friday, July 28

- #Fit2Practice Walking Meditation (*Open Event*)
- President's Reception (*Open Event*)
- Hospitality Lounge (*Open Event*)
- Movie Night! — TBC (*Open Event*)
- Pub-Style Trivia Contest with Young Lawyers Division (*Open Event*)

#### Saturday, July 29

- #Fit2Practice Poolside Yoga (*Open Event*)
- Tamaya Stables Riding Clinic (*Ticketed Event*)





# *Congratulations to the* **2023 Annual Award Recipients**

The State Bar of New Mexico is pleased to announce the 2023 Annual Awards recipients. The Annual Awards recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. A record number of submissions were received this year, which is a testament to the extraordinary individuals and organizations who were nominated. Out of those nominees, the following eight outstanding individuals and organization were selected as the recipients this year. The awards will be presented during the 2023 Annual Meeting at the Hyatt Regency Tamaya Resort on Thursday, July 27. For a schedule of events for the Annual Meeting and registration information, please visit [www.sbnm.org/CLE-Events/Annual-Meeting-2023](http://www.sbnm.org/CLE-Events/Annual-Meeting-2023).

## **MARY GALVEZ**

### **— Distinguished Bar Service - Nonlawyer Award —**

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

## **JOY APPLEWHITE**

### **— Excellence in Well-Being Award —**

Many individuals have made significant contributions to the improvement of legal professional well-being to include destigmatizing mental health, strengthening resiliency and creating a synergic approach to work and life. This 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.

## **DAVID J. STOUT**

### **— 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.



**JUSTICE EDWARD L. CHAVEZ**

— **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.

**JUDICIAL BRANCH IT STAFF**

— **Outstanding Legal Organization Award** —

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

**SHASTA N. INMAN**

— **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 by demonstrating a commitment to clients' causes and to public service, enhancing the image of the legal profession.

**ELLA JOAN FENOGLIO**

— **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.

**JUDGE LORENZO F. GARCIA**

— **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.



**State Bar of  
New Mexico**

Est. 1886

For more information, visit [www.sbnm.org/AnnualAwards](http://www.sbnm.org/AnnualAwards).



# *A Note of Gratitude*

*to New Mexico State Bar Foundation*

*Chief Staff Attorney*

**Gayolyn Johnson, Esq.**



Gayolyn Johnson, Esq. joined the New Mexico State Bar Foundation team in 1994 as a volunteer attorney for the Legal Resources for the Elderly Program (LREP), a legal helpline for New Mexico residents 55 and older, where she demonstrated her skills in helping those residents effectively and efficiently. Soon after joining the Bar Foundation, Gayolyn became an LREP Staff Attorney and would later go on to, in recent years, become a Chief Staff Attorney.

Gayolyn's areas of expertise include Probate, Estate Planning, Medicaid, Medicare, Social Security, Real Estate and many other areas of civil law. Throughout her tenure in LREP, Gayolyn has provided seniors with invaluable legal assistance, impacting the lives of thousands of New Mexicans and closing approximately 15,000 helpline cases in the last decade alone—an outstanding achievement in our organization.

After 29 years in dedicating her entire career as an attorney to help clients of modest means, Gayolyn will be concluding her role as a Chief Staff Attorney for the New Mexico State Bar Foundation. Her work in that time period will be forever cherished and looked back on as integral to the groundwork of the New Mexico State Bar Foundation on a broader scale.

Today, we celebrate Gayolyn's impeccable career with the Bar Foundation, and we honor her contributions to the senior community in New Mexico. Gayolyn's professionalism, ethics and ability to connect seamlessly with New Mexicans have been a real asset to clients, her colleagues and the Bar Foundation.

Thank you Gayolyn!





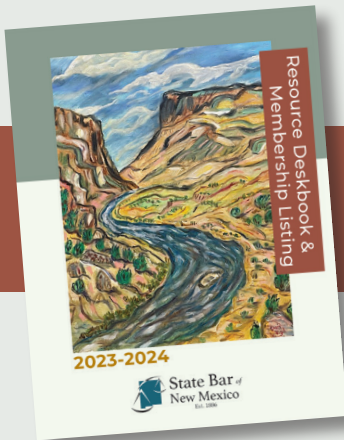
A Commission of the State Bar of New Mexico has awarded **just over \$1,200,000** in the grant funds to nine civil legal services organizations for the **2023 Fund cycle**.

The Commission's mission is to be the financial steward of the New Mexico Supreme Court's Fund for Access to Justice which consists of funds generated pursuant to Supreme Court rule including interest on Lawyer's Trust Accounts (IOLTA) and Pro Hac Vice fees. The fund also includes annual attorney donations.

The Commission awards grants to nonprofit organizations that provide civil legal services to low-income New Mexicans.

*Grant recipients for the 2023 Fund cycle are Disability Rights of New Mexico, Enlace Comunitario, Las Americas Immigrant Advocacy Center, Native American Disability Law Center, New Mexico Environmental Law Center, New Mexico Center on Law and Poverty, New Mexico Immigrant Law Center, New Mexico Legal Aid and Pegasus Legal Services for Children.*

For more information about the Commission, visit <https://www.sbnm.org/Leadership/Commissions/Access-to-Justice-Fund-Grant-Commission>.



## Check your mail for your copy of the **2023-2024** Resource Deskbook & Membership Listing

Featuring helpful information for every State Bar of New Mexico member:

- State Bar programs, services and contact information
- A comprehensive list of courts and government entities in New Mexico
- A summary of license requirements and deadlines
- A membership directory of active, inactive, paralegal and law student members

**Don't forget the extra copies for your staff!**

[www.sbnm.org/News-Publications/Resource-Deskbook-Membership-Listing-2023-24](http://www.sbnm.org/News-Publications/Resource-Deskbook-Membership-Listing-2023-24)



# 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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**Victoria Gammill**  
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On May 9, 2023:  
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---

## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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# Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-001**

No: S-1-SC-38989 (filed October 24, 2022)

STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.

NORMAN TYRELL CATES,  
Defendant-Appellee.

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

Albert J. Mitchell, Jr., District Judge

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

for Appellant

Bennett J. Baur, Chief Public Defender  
Thomas J. Lewis,  
Assistant Appellate Defender  
Santa Fe, NM

for Appellee

## OPINION

### ZAMORA, Justice.

#### I. INTRODUCTION

{1} This matter comes to us on appeal of the district court's grant of Defendant Norman Tyrell Cates' petition for writ of habeas corpus. We consider whether the district court erred by concluding that Defendant, a serious youthful offender serving less than life imprisonment, is eligible to earn meritorious deductions under the Earned Meritorious Deductions Act (EMDA), NMSA 1978, § 33-2-34 (2015).<sup>1</sup> In *State v. Tafoya*, 2010-NMSC-019, ¶ 21, 148 N.M. 391, 237 P.3d 693, we held that the authority of a district court to sentence a serious youthful offender to less than life imprisonment "implies the discretion to award [a] serious youthful offender[] good-time credit eligibility within the existing framework of the EMDA, that is, zero, four, or thirty days good-time credit eligibility per month." In this opinion, we clarify that a serious youthful offender serving less than a term of life imprisonment only becomes eligible to earn meritorious deductions if expressly made eligible to do so by the sentencing court. We conclude that Defendant's

original judgment and sentence is silent as to his good-time eligibility, and he is not eligible to earn meritorious deductions. Accordingly, the district court that heard the habeas petition (the habeas court) erred by granting Defendant's petition and ordering that his judgment and sentence be amended to provide for this eligibility. {2} We reverse the district court's order and remand with instructions to vacate Defendant's amended judgment and sentence and to reinstate the original judgment and sentence.

#### II. BACKGROUND

{3} In 2006, Defendant was convicted of first-degree murder, NMSA 1978, § 30-2-1(A) (1994), in the stabbing and beating death of his elderly neighbor, Lena Barrett. According to evidence adduced at trial, Defendant violently attacked the victim in her home while she was sleeping, stabbed her twenty-eight times, bludgeoned her, and choked her repeatedly. Defendant was seventeen years old at the time of the offense. The district court sentenced him as a serious youthful offender. *See* NMSA 1978, § 31-18-15.2(A) (1996) (defining a "serious youthful offender" as "an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder"). The parties agree that the district court sentenced

Defendant to less than life imprisonment, as allowed by statute, NMSA 1978, § 31-18-15.3(D) (1993). Defendant was given a term of thirty years of incarceration followed by five years of parole. The parties dispute whether Defendant's sentence made him eligible to earn meritorious deductions.

{4} During Defendant's sentencing hearing, the district court accepted proffers and heard statements regarding Defendant and his offense. Defense counsel requested a sentence of eighteen to twenty years, "with a recommendation of treatment accompanying the judgment and sentence," but did not request that Defendant be made eligible for meritorious deductions. The State requested a sentence of life. After commenting on the evident brutality and senseless nature of the murder, the district court announced an intent to sentence Defendant to "the maximum penalty of life in prison." Notwithstanding this verbally expressed intent, the district court entered a written judgment and sentence providing that Defendant would be incarcerated for a fixed-term sentence of thirty years. During the sentencing hearing, the court also expressed an intent to "permit participation in therapeutic amenities during the term of incarceration." However, the court did not reference the EMDA, and Defendant's judgment and sentence is silent as to his eligibility to earn meritorious deductions.

{5} The parties do not explain the discrepancy between the sentencing court's oral pronouncement to give a life sentence and its written judgment and sentence giving a thirty-year term sentence. The record fails to reflect, for example, whether the court decided to reduce Defendant's sentence before issuing the written judgment and sentence, whether any error was made in preparing the document, or whether there is some other explanation for the discrepancy.

{6} Fourteen years after his sentencing hearing, Defendant filed a habeas petition in the district court seeking to clarify his eligibility to earn meritorious deductions. During his term of incarceration, Defendant has engaged in therapeutic and educational programming, including passing his high school equivalency exam and speaking at community outreach events for at-risk youth.

<sup>1</sup> We note that the 2004 statute was in effect at sentencing, but the EMDA has not changed materially since then and, for ease of future reference and application, we cite the current version of the EMDA throughout this opinion.



Although the New Mexico Corrections Department (NMCD) kept track of Defendant's participation in these programs, Defendant learned that NMCD was not awarding him good time against his sentence for these activities.

{7} In his amended habeas petition, Defendant contended that NMCD had wrongly concluded that he was ineligible to earn meritorious deductions because he was not serving a life sentence. *See* § 33-2-34(G) (“The provisions of [the EMDA] shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of life imprisonment without possibility of release or parole.”). Defendant further argued that, since his judgment and sentence was silent as to his eligibility to earn meritorious deductions, the sentencing court had not expressly limited his good-time eligibility. Because first-degree murder is not listed as a serious violent offense in the EMDA, Defendant reasoned that his crime must be designated a nonviolent offense under Section 33-2-34(L)(3), making him eligible for up to thirty days of deductions per month of time served under Section 33-2-34(A)(2).

{8} Although the State stipulated that Defendant was not serving a life sentence, it nevertheless opposed habeas relief. The State argued that Defendant was not eligible to earn meritorious deductions because the sentencing court had not affirmatively exercised its discretion to grant Defendant eligibility to earn deductions. {9} The district court held a hearing on Defendant's habeas petition and, after hearing arguments, partially granted the petition. Relying on *Tafoya*, the court concluded that a serious youthful offender sentenced to less than life imprisonment is eligible to earn meritorious deductions and must be considered to have committed a “serious violent offense” under Section 33-2-34(L)(4). The court rejected the State's contention that “silence in the [j]udgment and [s]entence regarding good-time equates to zero days per month credit,” and rejected Defendant's contention that such silence “equates to thirty . . . days per month.” The court further reasoned that “not including first degree murder as a serious violent off[en]s[e] or discretionary serious violent offense would lead to a nonsensical result” in light of *Tafoya*, 2010-NMSC-019.

{10} Accordingly, the habeas court determined that Defendant's judgment and sentence rendered him eligible to earn meritorious deductions of up to four days per month. The court also concluded that Defendant was eligible to earn lump-sum credits as provided by Section 33-2-34(D) and (E). The court ordered that Defendant's judgment and sentence be amended

to conform to this legal conclusion.

{11} The State timely filed a notice of appeal. We have jurisdiction over this appeal from a grant of a petition for writ of habeas corpus under Rule 12-102(A)(3) NMRA.

### III. STANDARD OF REVIEW

{12} We consider whether the district court correctly concluded that Defendant is eligible to earn meritorious deductions within the framework of the EMDA. This is a question of law that we review de novo. *Dominguez v. State*, 2015-NMSC-014, ¶ 9, 348 P.3d 183 (reiterating that, when reviewing a ruling on a petition for writ of habeas corpus involving questions of law or questions of mixed fact and law, a de novo review assures that this Court maintains its role as arbiter of the law).

### IV. DISCUSSION

{13} The authority of a district court to impose a sentence is derived from statute. *State v. Chadwick-McNally*, 2018-NMSC-018, ¶ 24, 414 P.3d 326. “This limitation on judicial authority reflects the separation of powers notion that it is solely within the province of the Legislature to establish penalties for criminal behavior.” *State v. Martinez*, 1998-NMSC-023, ¶ 12, 126 N.M. 39, 966 P.2d 747 (internal quotation marks and citation omitted). Yet a court's sentencing authority “is not a purely ministerial task,” and courts possess inherent discretion to fashion an appropriate sentence within the framework of our sentencing laws. *Id.* ¶ 13.

{14} Under the Criminal Sentencing Act, NMSA 1978, §§ 31-18-12 to -26 (1977, as amended through 2022), adults convicted of first-degree murder must be sentenced to either life imprisonment or life imprisonment without the possibility of parole. Section 31-18-14. Serious youthful offenders convicted of the same offense, however, may be sentenced to less than the mandatory life term for an adult. *See* § 31-18-15.3(D) (providing that a district court may sentence a serious youthful offender “to less than, but not exceeding, the mandatory term for an adult”); § 31-18-15.1(G) (“[W]hen the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence.”). In *Tafoya*, we determined that the authority to grant good-time eligibility to serious youthful offenders is in the district court's discretionary sentencing authority, which it may use to advance the rehabilitative purposes of both the EMDA and the juvenile sentencing scheme. 2010-NMSC-019, ¶¶ 20-21.

{15} Defendant asserts, and the habeas court concluded, that a serious youthful offender sentenced to less than life imprisonment is eligible to earn meritorious deductions under the EMDA, citing our opinion in *Tafoya*, 2010-NMSC-019. Ac-

ording to Defendant, this case presents “essentially the same issues of statutory construction” as *Tafoya* and thus should “yield the same result,” that is, eligibility to earn up to four days of deductions per month of time served. Alternatively, Defendant contends that the sentencing court was unaware of the possibility that he might be eligible to receive meritorious deductions. Defendant thus suggests that the sentencing court abused its discretion because the judgment and sentence was based on a misunderstanding of law. Defendant also argues that the habeas court properly exercised its discretion in amending the judgment and sentence to provide for his good-time eligibility.

{16} We conclude that a serious youthful offender does not become eligible to earn meritorious deductions solely by virtue of being sentenced to less than life imprisonment. However, in exercising its discretion to sentence a serious youthful offender to less than the mandatory life sentence of an adult, a sentencing court may specify that the offender is eligible to earn deductions within the existing framework of the EMDA. *Tafoya*, 2010-NMSC-019, ¶ 21. The district court did not expressly exercise this discretion in sentencing Defendant; therefore, he is not eligible to earn meritorious deductions. We further reject Defendant's assertion that the district court abused its discretion by not expressly addressing Defendant's good-time eligibility, and we explain that the habeas court did not have discretion to amend Defendant's judgment and sentence to provide for this eligibility.

#### A. A Serious Youthful Offender Is Eligible to Earn Meritorious Deductions Only if the Sentencing Court Expressly Confers Such Eligibility

##### 1. Overview of the EMDA, the Criminal Sentencing Act, and *Tafoya*

{17} The EMDA is “a detailed set of guidelines for both the courts and the [NMCD] to administer in the ultimate determination of a prisoner's eligibility for good-time reductions from [the prisoner's] period of confinement.” *State v. Rudolfo*, 2008-NMSC-036, ¶ 35, 144 N.M. 305, 187 P.3d 170. Under the EMDA, eligible prisoners may earn deductions of either a maximum of four or thirty days per month, “upon recommendation by the classification supervisor, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs.” Section 33-2-34(A), (B). A prisoner confined for a “nonviolent offense” is eligible to earn deductions of up to thirty days per month during the prisoner's term of incarceration. Section 33-2-34(A)(2). A



prisoner confined for a “serious violent offense” is eligible to earn up to four days of deductions per month served. Section 33-2-34(A)(1).

{18} The EMDA enumerates fourteen offenses as *per se* serious violent offenses, including second-degree murder and voluntary manslaughter. Section 33-2-34(L)(4)(a)-(n). Another fifteen offenses may be designated by the sentencing court as serious violent offenses “when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense.” Section 33-2-34(L)(4)(o). The statute defines nonviolent offenses residually as “any offense other than a serious violent offense.” Section 33-2-34(L)(3).

{19} “Courts generally have a limited role in administering the EMDA.” *Tafoya*, 2010-NMSC-019, ¶ 8 (internal quotation marks and citation omitted). A sentencing court typically must only determine “which offenses are to be considered ‘serious violent offenses’ for good time purposes.” *Rudolfo*, 2008-NMSC-036, ¶ 37. After sentencing, “the deduction of good time credits from an inmate’s sentence is a discretionary matter entrusted not to the courts but to the administrators of the [NMCD] or the county jails.” *State v. Aquil*, 1986-NMSC-048, ¶ 9, 104 N.M. 345, 721 P.2d 771, *holding limited by Brooks v. Shanks*, 1994-NMSC-113, ¶¶ 8-9, 118 N.M. 716, 885 P.2d 637. We have recognized that Section 33-2-34 and NMSA 1978, Section 33-2-36 (1999, amended 2006), pertaining to forfeiture of earned meritorious deductions, create a statutory entitlement for due process purposes, and a prisoner’s meritorious deductions, once earned, may not “be subjected to a forfeiture or termination . . . unless the appropriate procedures were followed.” *Brooks*, 1994-NMSC-113, ¶ 10; *see also Miller v. Tafoya*, 2003-NMSC-025, ¶ 14, 134 N.M. 335, 76 P.3d 1092 (“The statutorily created right to good-time credit is a liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Therefore, before a prisoner may be deprived of good-time credits, he or she must be afforded due process.” (citations omitted)). However, prisoners do not have an interest in erroneously granted or unearned meritorious de-

ductions. *Tafoya*, 2010-NMSC-019, ¶ 27. {20} A prisoner serving a life sentence is ineligible for, and cannot earn, meritorious deductions under the EMDA. Section 33-2-34(G). The Criminal Code defines first-degree murder as a capital felony, § 30-2-1, subject by the Criminal Sentencing Act to a mandatory life sentence when committed by an adult, § 31-18-14. Thus, an adult prisoner convicted of first-degree murder clearly would be ineligible to earn meritorious deductions according to the plain language of the EMDA. Section 33-2-34(G). Perhaps because of this, the offense of first-degree murder is not expressly addressed by the EMDA. *See Rudolfo*, 2008-NMSC-036, ¶ 38 (“The offense of first-degree murder is not only conspicuously missing from the offenses that can be considered ‘serious violent offenses,’ it is specifically dealt with in Section 33-2-34(G), which precludes the award of any good time whatsoever for offenses carrying sentences of death or life imprisonment.”).

{21} However, the Criminal Sentencing Act provides that a serious youthful offender convicted of first-degree murder may be sentenced to less than the mandatory life term of an adult. Section 31-18-15.3(D). If a serious youthful offender is sentenced to less than life imprisonment, as Defendant was here, the offender would not be excluded from eligibility to earn deductions under the plain language of Section 33-2-34(G). Further, because first-degree murder is not enumerated as either a *per se* or discretionary serious violent offense, an application of the plain language of the statute would result in first-degree murder being categorized as a nonviolent offense. Section 33-2-34(L)(3), (4).

{22} In *Tafoya*, 2010-NMSC-019, we considered this interplay between the EMDA and the serious youthful offender sentencing scheme in the context of a serious youthful offender who was expressly made eligible for meritorious deductions at sentencing. The defendant in *Tafoya*, a serious youthful offender, was sentenced to a term of less than life imprisonment. *Id.* ¶¶ 1, 4. The defendant’s sentence expressly authorized NMCD to “award [the d]efendant good time credit in accordance with New Mexico law.” *Id.* ¶ 4. Because NMCD interpreted this language to mean that the

defendant was eligible for deductions of up to thirty days per month, the state filed a motion to clarify the sentence. *Id.* Following a hearing, the district court clarified that the defendant was eligible to earn up to four days per month. *Id.* The defendant appealed, arguing that the EMDA granted him eligibility of up to thirty days and the district court erred in limiting his maximum eligibility. *Id.* ¶¶ 5, 22.

{23} The question presented in *Tafoya* was whether the district court could limit the defendant’s maximum good-time eligibility. *Id.* ¶¶ 1-2. The Court answered this question in the affirmative, concluding that the district court had discretion to specify the maximum amount of deductions for which the defendant would be eligible. *Id.* ¶ 2. The Court rejected the argument that the defendant was eligible to earn up to thirty days per month as technically a nonviolent offender. *Id.* ¶ 15. While noting that this interpretation was supported by the plain meaning of the statutory text, the Court stated that “[c]lassifying first degree murder by a serious youthful offender as a *per se* nonviolent offense is the sort of absurd result for which we forego applying the plain meaning test.” *Id.*

{24} The *Tafoya* Court also rejected the State’s argument that Section 33-2-34(G) categorically precluded the defendant from earning deductions, explaining that the subsection “speaks in terms of sentence length rather than the crime for which the sentence is imposed.” *Tafoya*, 2010-NMSC-019, ¶ 13. The *Tafoya* Court, *id.*, distinguished our earlier opinion in *Rudolfo*, 2008-NMSC-036, ¶ 38, which stated that the EMDA “precludes the award of any good time whatsoever for offenses carrying sentences of death or life imprisonment.” The Court explained that categorical preclusion was limited to adults who must serve a mandatory life sentence and that Section 33-2-34(G) did not preclude an award of eligibility to a serious youthful offender who is sentenced to less than life imprisonment. *Tafoya*, 2010-NMSC-019, ¶¶ 13, 15.

{25} “Reading the EMDA and the serious youthful offender sentencing statutes in harmony,” and noting the rehabilitative policies expressed by both enactments, the *Tafoya* Court reasoned that “the discretion granted to judges in sentencing serious

<sup>2</sup> In declining to follow the plain language of the statute, *Tafoya* departed with our past approach to interpreting the EMDA, as we have generally refused to construe an offense as a serious violent offense unless it is specifically enumerated as such in the EMDA. *See, e.g., State v. McDonald*, 2004-NMSC-033, ¶¶ 20-23, 136 N.M. 417, 99 P.3d 667 (concluding that conspiracy to commit armed robbery is not an enumerated serious violent offense and thus falls within the definition of a nonviolent offense for purposes of the EMDA); *State v. Bennett*, 2003-NMCA-147, ¶¶ 7-13, 134 N.M. 705, 82 P.3d 72 (rejecting the state’s contention that the Legislature’s failure to define aggravated battery with a deadly weapon on a household member as a serious violent offense was a “mistake” and reversing the district court’s limitation on defendant’s eligibility to earn meritorious deductions). Nevertheless, we agree with *Tafoya* that classifying first-degree murder as a nonviolent offense would be absurd. *Tafoya*, 2010-NMSC-019, ¶ 15. We view the omission of first-degree murder from the plain language of the EMDA as a confirmation of an intent to exclude the offense of first-degree murder from that act, § 33-2-34(G), and not as expressing an intent to classify first-degree murder as a nonviolent offense.

youthful offenders would be severely curtailed if serious youthful offenders were strictly prohibited from earning good time credits during imprisonment.” *Id.* ¶ 20. The Court also noted its statement in *State v. Trujillo*, 2002-NMSC-005, ¶ 66, 131 N.M. 709, 42 P.3d 814, that a sentence authorizing a serious youthful offender to earn meritorious deductions was “authorized by statute.” *Tafoya*, 2010-NMSC-019, ¶ 17 (quoting *Trujillo*, 2002-NMSC-005, ¶ 66). The Court construed the Legislature’s silence on the issue since *Trujillo* as indicative of legislative acquiescence. *Tafoya*, 2010-NMSC-019, ¶ 17.

{26} The *Tafoya* Court thus held that the explicit [l]egislative grant of discretion to the district court in sentencing [the d]efendant as a serious youthful offender implies the discretion to award serious youthful offenders good time credit eligibility within the existing framework of the EMDA, that is, zero, four, or thirty days good time credit eligibility per month.

*Id.* ¶ 21. Critically, the Court did not rely on the EMDA for this holding; it underscore[d] that this discretion is based not on the district court’s defining first degree murder committed by a serious youthful offender as a serious violent offense or a nonviolent offense for purposes of the EMDA, but rather on the discretion our Legislature granted sentencing courts in imposing a sentence that will best contribute to the rehabilitation of the child.

*Id.* In other words, the Court determined that the authority to grant good-time eligibility to serious youthful offenders is an incident of the district court’s discretionary sentencing authority, which it may use to advance the rehabilitative purposes of both the EMDA and the juvenile sentencing scheme. *Id.* ¶¶ 20-21; see also *Martinez*, 1998-NMSC-023, ¶ 13 (recognizing that “courts inherently possess ample right to exercise reasonable, that is, judicial, discretion to enable them to wisely exert their authority” in sentencing a defendant (internal quotation marks and citation omitted)).

{27} *Tafoya* also explicitly declined to define first-degree murder as either a non-violent or serious violent offense, further underscoring that the authority to make a serious youthful offender eligible to earn meritorious deductions does not emanate from the EMDA. 2010-NMSC-019, ¶¶ 15, 21. Indeed, in affirming the district court, the Court expressly relied upon the fact that “the district court did not define the crime which [the d]efendant committed as a serious violent offense; rather, the district

court determined that [the d]efendant should be eligible to earn good time credits during his imprisonment as an exercise of discretion to increase [the d]efendant’s chance of rehabilitation.” *Id.* ¶ 22.

**2. A serious youthful offender’s eligibility to earn meritorious deductions may be authorized only through an express exercise of discretion by the sentencing court**

{28} Defendant contends, and the habeas court concluded, that *Tafoya* recognizes that a serious youthful offender serving less than a life sentence is eligible to earn meritorious deductions under the EMDA. But *Tafoya* does not support this contention. To the contrary, the *Tafoya* Court made clear that a court possesses the discretionary authority to award a serious youthful offender “zero . . . good time credit eligibility per month.” 2010-NMSC-019, ¶ 21. Yet there is no category of offense under the EMDA that addresses the award of zero meritorious deductions, reaffirming that the Court recognized that the decision to award a serious youthful offender good-time eligibility is fully discretionary and does not arise from the EMDA itself. The defendant in *Tafoya* was eligible to earn up to four days per month of meritorious deductions because the sentencing court in that case expressly exercised its discretion to award the defendant this eligibility. *Id.* ¶ 4. *Tafoya* does not address the situation presented here, where the sentencing court was silent as to whether Defendant would be eligible to earn meritorious deductions.

{29} Thus, we must consider whether a judgment and sentence providing that a serious youthful offender will serve less than life imprisonment but not expressly stating that the offender will be eligible to earn meritorious deductions, nevertheless makes the offender eligible to earn deductions pursuant to the EMDA and the Criminal Sentencing Act. We conclude that it does not.

{30} Neither the EMDA nor the Criminal Sentencing Act expresses an intent to make a serious youthful offender sentenced to less than life imprisonment eligible to earn meritorious deductions in the absence of the district court’s affirmative authorization of this good-time eligibility. Under the Criminal Sentencing Act, a serious youthful offender convicted of first-degree murder is, by statutory default, subject to a life sentence for his or her capital offense. Section 31-18-14; § 31-18-15.3(D); see also *State v. Jones*, 2010-NMSC-012, ¶ 11, 148 N.M. 1, 229 P.3d 474 (noting that serious youthful offenders “are automatically sentenced as adults if convicted”). If given that default life sentence, a serious youthful offender would be expressly precluded from earning deductions under

the plain language of the EMDA. Section 33-2-34(G).

{31} If not given the statutory default life sentence, the Legislature has provided that “[t]he court may sentence the offender to less than, but not exceeding, the mandatory term for an adult.” Section 31-18-15.3(D). The Legislature has not detailed the exact amount by which a serious youthful offender’s sentence may be reduced from this otherwise life sentence. See § 31-18-15.1(G) (“[W]hen the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence.”). Thus, a sentencing court is given discretion to fashion an appropriate sentence for a serious youthful offender within the existing framework of our sentencing laws. *Cf. Martinez*, 1998-NMSC-023, ¶ 14 (recognizing a court’s “inherent discretionary authority” to award presentence confinement credits as long as the credit “does not lessen the penalty intended by the Legislature, or otherwise frustrate the Legislature’s constitutional function of establishing criminal penalties”).

{32} The Legislature’s decision to grant discretion to district courts in sentencing serious youthful offenders is grounded in the unique considerations that arise in the context of juvenile sentencing. *Cf. Ira v. Janecka*, 2018-NMSC-027, ¶¶ 20-23, 419 P.3d 161 (identifying “three themes regarding the constitutionality of juvenile sentencing” and observing that juveniles may have more potential for reform than adults). However, unlike other juvenile defendants, a serious youthful offender is not afforded the protections of the Delinquency Act, NMSA 1978, §§ 32A-2-1 to -33 (1993, as amended through 2021). Section 32A-2-3(H). Thus, the Legislature has expressed an intent to distinguish serious youthful offenders from other juvenile offenders, likely in view of the severity of the serious youthful offender’s capital offense. *Cf. State v. Ortiz*, 2021-NMSC-029, ¶¶ 37, 39, 498 P.3d 264 (rejecting an equal protection claim for a serious youthful offender’s exclusion from the protections of the Delinquency Act, including an amenability hearing, because of the serious nature of first-degree, felony murder).

{33} The EMDA mirrors this distinction between capital and noncapital offenses. Section 33-2-34(G). We read Section 33-2-34(G) and the omission of first-degree murder from the offenses enumerated by the EMDA as expressing the Legislature’s intent to exclude prisoners convicted of capital offenses from the benefit of the statutory provisions. Even before the 1999 repeal and reenactment of Section 33-2-34, which added Subsection (G)’s exclusion of life sentences, our

meritorious deductions statute applied only to prisoners convicted of noncapital offenses. See 1999 N.M. Laws, ch. 238, § 1; *Compton v. Lytle*, 2003-NMSC-031, ¶¶ 19-20, 134 N.M. 586, 81 P.3d 39 (“Because Section 33-2-34 describes the meritorious deductions as pertaining to ‘basic’ and ‘enhanced’ sentences, and the relevant provisions of the Criminal Sentencing Act only describe noncapital felonies as having basic and enhanced sentences, we conclude that the Legislature intended that only inmates convicted of noncapital crimes receive the benefit of good-time credits.”). Subsection (G) merely clarified and continued this intent to exclude prisoners serving life sentences for their capital offenses. See *Compton*, 2003-NMSC-031, ¶ 21 (“Having removed the language that implicitly tied meritorious deductions to noncapital sentences, it is understandable that the Legislature would have wanted to add other language clarifying that the section, as amended, ‘shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of death.”) (emphasis added) (quoting Section 33-2-34(G)). Thus, while we agree with *Tafoya*, 2010-NMSC-019, ¶ 15, that Section 33-2-34(G), by its language, does not preclude a serious youthful offender sentenced to less than life imprisonment from good-time eligibility, we nevertheless view Section 33-2-34(G) as advising against our presuming that such an offender is eligible.

{34} A serious youthful offender’s life sentence may be reduced only through an express exercise of discretion by the sentencing court. Section 31-18-15.3(D). Likewise, we conclude that a serious youthful offender’s eligibility to earn meritorious deductions may be authorized only through an express exercise of discretion by the sentencing court. Accordingly, when a serious youthful offender’s judgment and sentence says nothing about the offender’s good-time eligibility, the judgment and sentence should be understood to have not made the offender eligible to earn meritorious deductions. As stated in *Tafoya*, 2010-NMSC-019, ¶ 21, the serious youthful offender in this scenario has been granted “zero . . . good time credit eligibility.” Because Defendant’s judgment and sentence was silent as to his good-time eligibility, he was not eligible to earn meritorious deductions. The habeas court erred by concluding otherwise.

**B. The District Court Did Not Abuse Its Discretion in Sentencing Defendant Without Eligibility to Earn Meritorious Deductions**

{35} Defendant also argues that the sentencing court abused its discretion because the court wrongly assumed that it could not authorize good-time eligibility. De-

fendant asserts that the district court did not “have the benefit of this Court’s *Tafoya* analysis” when he was sentenced in 2006, and thus was unaware of the possibility that an offender in Defendant’s position might be eligible to earn meritorious deductions. Defendant states, “Without the guidance of *Tafoya*, the sentencing court misunderstood the law and failed to give due consideration to [Defendant’s] status as a [serious] youthful offender.”

{36} As we have explained, *Tafoya* stands for the proposition that a district court may, in its discretion, authorize a serious youthful offender to earn meritorious deductions. But the sentencing court is not required to explicitly disavow this sentencing possibility. See *State v. Ferry*, 2018-NMSC-004, ¶ 2, 409 P.3d 918 (“Discretion is the authority of a district court judge to select among multiple correct outcomes.”); § 31-18-15.3(D) (“The court may sentence the offender to less than, but not exceeding, the mandatory term for an adult.”) (emphasis added)). The district court did not abuse its discretion by not expressly addressing Defendant’s good-time eligibility in its judgment and sentence.

{37} Further, we will not speculate about what rules of law the sentencing court considered at the time of sentencing. We cannot say, as a matter of law, that the district court in 2006 was unaware of the possibility that it could, in its discretion, make Defendant eligible for meritorious deductions. As noted in *Tafoya*, 2010-NMSC-019, ¶ 17, we recognized in 2002 that a judgment and sentence providing that a serious youthful offender could earn meritorious deductions was “authorized by statute.” *Trujillo*, 2002-NMSC-005, ¶ 66. Indeed, the sentencing courts in *Trujillo* and *Tafoya* expressly awarded good-time eligibility to the serious youthful offenders in those cases before we addressed the issue. *Trujillo*, 2002-NMSC-005, ¶ 7; *Tafoya*, 2010-NMSC-019, ¶ 4. Moreover, any factual dispute over the extent of the sentencing court’s legal knowledge or understanding was not preserved, and we are in no position to rule on the issue. See Rule 12-321(A) NMRA (“To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.”).

{38} Finally, Defendant’s contention that the sentencing court did not give due consideration to his status as a serious youthful offender is directly refuted by the record on appeal, which demonstrates that the court was well apprised of Defendant’s juvenile status and expressly considered his age in determining his sentence.

**C. The Habeas Court Did Not Have Discretion to Amend Defendant’s Lawful Judgment and Sentence**

{39} Defendant suggests that, in partially

granting his petition for habeas corpus, the habeas court was properly exercising the discretion afforded to it under *Tafoya*. However, *Tafoya* does not recognize that a court has discretion to amend a final judgment and sentence on a petition for habeas corpus. As the habeas court itself clarified with the parties, and Defendant conceded, the court did not have authority to change the decision of the sentencing court; instead, it was seeking to determine the legal effect of the sentence that was already imposed.

{40} Rule 5-802 NMRA permits a prisoner to file a petition for a determination that [Their] custody or restraint is, or will be, in violation of the constitution or laws of the State of New Mexico or of the United States; that the district court was without jurisdiction to impose such sentence; or that the sentence was illegal or in excess of the maximum authorized by law or is otherwise subject to collateral attack.

Rule 5-802(A). We have determined that Defendant’s judgment and sentence was statutorily authorized and made within the sentencing court’s sound discretion; thus, the habeas court had no basis to amend the judgment and sentence by way of habeas corpus.

{41} Defendant does not cite any other authority that would allow the court to amend his judgment and sentence in these proceedings. Nor are we aware of any authority that would allow it to do so. Our sentencing scheme requires a district court to fashion an appropriate sentence at a sentencing hearing held within a reasonable time after the adjudication of guilt. Rule 5-701(B), (C) NMRA. Once finalized, legal judgments and sentences are generally subject to amendment only by motions to reduce the sentence, Rule 5-801 NMRA, or motions to correct clerical errors, Rule 5-113 NMRA. Neither party suggests that Rule 5-801 or Rule 5-113 is applicable here. The district court’s order, if made under Rule 5-801, also would conflict with the strict time limits set by Rule 5-801(A).

{42} As the habeas court had no authority to amend Defendant’s legal judgment and sentence, it erred by ordering that the judgment and sentence be amended.

**V. CONCLUSION**

{43} We conclude that Defendant’s sentence for a term of years, rather than life, for first-degree murder as a serious youthful offender did not automatically make him eligible to earn meritorious deductions. In order for a serious youthful offender convicted of first-degree murder to be eligible to earn meritorious deductions, the sentencing court must explicitly grant such eligibility. The sentencing court made no such provision here, and the habeas

court erred by ordering that Defendant's judgment and sentence be amended to afford him good-time eligibility. We therefore reverse the order of the district court granting Defendant's habeas petition. We

remand this matter to the district court with instructions to vacate the amended judgment and sentence and to reinstate the original judgment and sentence.

**{44} IT IS SO ORDERED.  
BRIANA H. ZAMORA, Justice  
WE CONCUR:  
C. SHANNON BACON, Chief Justice  
MICHAEL E. VIGIL, Justice  
DAVID K. THOMSON, Justice  
JULIE J. VARGAS, Justice**



# Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-002**

No: S-1-SC-38367 & No. S-1-SC-38368 (consolidated for purpose of opinion)  
(filed September 26, 2022)

STATE OF NEW MEXICO,  
Plaintiff-Respondent/Cross-Petitioner,  
v.  
DAVID GUTIERREZ,  
Defendant-Petitioner/Cross-Respondent,  
and  
CONNIE LEE JOHNSTON,  
Defendant-Petitioner/Cross-Respondent,  
and  
FRANCESCA ESTEVEZ,  
Defendant-Petitioner/Cross-Respondent,  
and  
DEMESIA PADILLA,  
Defendant-Cross-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

Angie K. Schneider, District Judge

Bennett J. Baur, Chief Public Defender Steven James Forsberg, Assistant Public Defender Santa Fe, NM	Kennedy, Hernandez & Associates, P.C. Paul John Kennedy Jessica Hernandez Albuquerque, NM
for Petitioner/Cross-Respondent Gutierrez	for Cross-Respondent
Sitterly Law Firm, LLC Nicholas Sitterly Albuquerque, NM	Hector H. Balderas, Attorney General Walter M. Hart, III, Assistant Attorney General Santa Fe, NM
for Petitioners/Cross-Respondents Johnston and Estevez	for Respondent/Cross-Petitioner New Mexico State Ethics Commission Jeremy Daniel Farris James Walker Boyd Albuquerque, NM
	for Amicus Curiae

**OPINION**

**BACON, Chief Justice.**

{1} This consolidated case requires us to determine whether the Legislature intended for violations of NMSA 1978, Sec-

tion 10-16-3(A)-(C) (2011) (“Subsections (A)-(C)”) of the Governmental Conduct Act (GCA), NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2019), to be punishable as criminal violations and, if so, whether Subsections (A)-(C) are unconstitutionally vague. In four separate and unrelated cases, Petitioners/Cross-Respondents

David Gutierrez, Francesca Estevez, and Connie Lee Johnston (Petitioners) and Cross-Respondent Demesia Padilla were each charged under two or all three of those subsections. District court orders dismissed the charges in all four cases on different grounds, and Respondent/Cross-Petitioner State of New Mexico appealed.

{2} The Court of Appeals first concluded that the Legislature intended for violations of Subsections (A)-(C) to be punishable as crimes, relying on its plain-meaning statutory interpretation of the GCA’s penalty provision, § 10-16-17 (“Criminal penalties”). *State v. Gutierrez*, 2020-NMCA-045, ¶¶ 10-24, 472 P.3d 1260. On the void-for-vagueness issue, the Court of Appeals concluded that Subsection (A) of Section 10-16-3 is not unconstitutionally vague whereas Subsections (B) and (C) are unconstitutionally vague. *Gutierrez*, 2020-NMCA-045, ¶¶ 28-42. We reverse on the statutory interpretation issue, thereby vacating the charges brought under Subsection (A). We hold that the Legislature intended for Subsections (A)-(C) to be applied as ethical principles rather than as criminal statutes. This holding forecloses any unconstititional vagueness analysis.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

**A. The Relevant Statutes**

{3} We begin by providing the relevant sections of the GCA. We then summarize the underlying district court cases and the Court of Appeals’ consolidated opinion.

{4} Section 10-16-3 of the GCA provides:

**Ethical principles of public service; certain official acts prohibited; penalty.**

A. A legislator or public officer or employee shall treat the legislator’s or public officer’s or employee’s government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of [NMSA 1978, ]Section 31-18-15 [(2007, amended 2022)].

{5} Section 10-16-17, the penalty provision of the GCA, provides:

Unless specified otherwise in the [GCA], any person who knowingly and willfully violates any of the provisions of [the GCA] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the [GCA] shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

#### B. The Underlying Cases in the District Courts

{6} We restate here the Court of Appeals' succinct recitation of the facts in the four separate and unrelated underlying cases: [Petitioner] Gutierrez

The State charged [Petitioner] Gutierrez with violating [S]ection[] 10-16-3(A)-(C) of the GCA, alleging he pursued an unwanted sexual relationship with one of his employees during the course of his work as county treasurer by repeatedly commenting on her physical appearance and offering to give her money and use his authority as treasurer to expunge a prior disciplinary write-up in exchange for sex. [Petitioner] Gutierrez filed three motions, which included a motion in limine, a motion to dismiss, and a motion pursuant to *State v. Foulentfont*, 1995-NMCA-028, ¶ 6, 119 N.M. 788, 895 P.2d 1329 (authorizing dismissal of a case in lieu of an evidentiary hearing or a trial on the merits where a case raises a purely legal issue). These motions made largely the same assertion—that the provisions of [S]ection[] 10-16-3(A)-(C) do not define or create criminal offenses, but instead are ethical principles

intended to guide the behavior of public officials.

The district court granted [Petitioner] Gutierrez's motions and dismissed the indictment, reasoning that violations of [S]ection[] 10-16-3(A)-(C) were not crimes but "ethical considerations," and that the grand jury indictment, therefore, "failed to allege the commission of a criminal offense."

*Gutierrez*, 2020-NMCA-045, ¶¶ 4, 5. [Petitioner] Estevez

The State charged [Petitioner] Estevez, in relevant part, with violating [S]ection[] 10-16-3(A) and (B) of the GCA, alleging she attempted to use her position as district attorney to manipulate or intimidate officers who were investigating allegations that she improperly used a state vehicle for personal use. [Petitioner] Estevez filed a motion to dismiss these counts, arguing the GCA was unconstitutionally vague. The district court concluded that although Section 10-16-3 establishes "advisory guideposts setting forth standards of ethical conduct[.]" insurmountable ambiguities existed regarding its intended scope and the applicability of Section 10-16-17's provision for criminal penalties. As a result, the district court applied the rule of lenity and dismissed the charges.

*Gutierrez*, 2020-NMCA-045, ¶ 6 (sixth alteration in original).

[Petitioner] Johnston

The State charged [Petitioner] Johnston, in relevant part, with violating [S]ection[] 10-16-3(A) and (B) based on allegations that, while acting in her capacity as a magistrate judge, [Petitioner] Johnston unlawfully recorded the communications of her colleagues and coworkers in secure areas within the Aztec Magistrate Court Building. [Petitioner] Johnston filed a motion to dismiss these charges, arguing that the subsections at issue set forth "aspirational provisions" rather than criminal offenses and are unconstitutionally vague. The district court dismissed the charges, concluding that even if Subsections (A) and (B) provided for criminal offenses, they were nevertheless void for vagueness.

*Gutierrez*, 2020-NMCA-045, ¶ 7. [Cross-Respondent] Padilla

The State charged [Cross-Respondent] Padilla, in relevant part, with violating [S]ection[] 10-16-3(B) and (C), alleging she used her position as the Secretary of the New Mexico Taxation and Revenue Department to access the tax records of the accounting firm at which she worked prior to her appointment as well as the records of her former clients. [Cross-Respondent] Padilla filed motions to dismiss these charges, arguing the subsections at issue were unconstitutionally vague and overbroad. The district court granted [Cross-Respondent] Padilla's motions and dismissed these charges.

*Gutierrez*, 2020-NMCA-045, ¶ 8.

#### C. The Court of Appeals' Consolidated Opinion

{7} In all four cases, the State appealed the district courts' orders dismissing the charges brought under Subsections (A)-(C). *Gutierrez*, 2020-NMCA-045, ¶ 2. Though the district courts dismissed those charges on different grounds, the Court of Appeals consolidated based on the identical issues shared by the four cases. *Id.*

{8} As we recount below, being central to our determination, the Court of Appeals first conducted statutory interpretation as to whether violations of Subsections (A)-(C) of Section 10-16-3 are criminal offenses. *Gutierrez*, 2020-NMCA-045, ¶ 9. Under de novo review, the Court concluded in the affirmative. *Id.* ¶¶ 12, 19, 24.

{9} The Court of Appeals then analyzed whether Subsections (A)-(C) are unconstitutionally vague. *Gutierrez*, 2020-NMCA-045, ¶¶ 28-42. The Court held that Subsection (A) is not unconstitutionally vague. *Gutierrez*, 2020-NMCA-045, ¶¶ 31-36. Accordingly, the Court reversed the district courts' dismissals of the counts brought under Subsection (A) and remanded to the respective district courts for reinstatement of those charges against Petitioners Gutierrez, Estevez, and Johnston. *Gutierrez*, 2020-NMCA-045, ¶ 43. The Court also held that Subsections (B) and (C) are unconstitutionally vague and accordingly affirmed the district courts' dismissals of the counts charging Petitioners and Cross-Respondent under those subsections. *Gutierrez*, 2020-NMCA-045, ¶¶ 37-43. Because we reverse on the statutory interpretation issue, we do not recount the Court's unconstitutionally vague analysis.

{10} In its statutory interpretation, the Court of Appeals began by recognizing that if the plain language of a statute renders its "meaning . . . truly clear—not vague, uncertain, ambiguous, or otherwise doubtful—it is of course the responsibility of the judiciary to apply the statute as written."

*Id.* ¶ 12 (quoting *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 22, 117 N.M. 346, 871 P.2d 1352). The Court stated that “[w]e therefore first consider whether the language of the statutes at issue is clear, or whether we must look further before applying the statutes to the facts of these cases.” *Id.*

{11} The Court of Appeals then reviewed the plain language of Section 10-16-17. *Gutierrez*, 2020-NMCA-045, ¶ 13. The Court concluded that under that provision a defendant is guilty of a misdemeanor when three requirements are satisfied: (1) “a defendant must have violated a provision of the GCA,” (2) “the violation must have been knowing and willful,” and (3) “the violation must not be subject to treatment otherwise specified in the GCA.” *Id.*

{12} Noting the parties’ focus on Section 10-16-3(A)-(C), the Court of Appeals then provided the text of Section 10-16-3. *Gutierrez*, 2020-NMCA-045, ¶ 14. However, the Court did not also conduct a textual analysis of Subsections (A)-(C).<sup>1</sup>

{13} The Court of Appeals next considered Petitioners’ and Counter-Respondent’s arguments that the heading of Section 10-16-3, “Ethical principles of public service; certain official acts prohibited; penalty,” establishes legislative intent for Section 10-16-3(A)-(C) to exist outside the scope of Section 10-16-17. *Gutierrez*, 2020-NMCA-045, ¶ 14. They argued under the section’s heading (1) that, as ethical principles, “compliance with Subsections (A)-(C) is merely aspirational and, therefore, any violations of those provisions are not crimes,” and (2) “that criminal penalties are limited to [certain official acts] set out in Subsection (D).” *Gutierrez*, 2020-NMCA-045, ¶ 14.

{14} The Court of Appeals rejected these arguments regarding the heading of Section 10-16-3 under its plain-meaning construction of Section 10-16-17. *Gutierrez*, 2020-NMCA-045, ¶¶ 17, 18. The Court noted that a section’s heading “ordinarily . . . may be considered as a part of the act if necessary to its construction,” *id.* ¶ 15 (quoting *Tri-State Generation & Transmission Ass’n, Inc. v. D’Antonio*, 2012-NMSC-039, ¶ 18, 289 P.3d 1232), but may not be used “to produce an ambiguity in a statute which is otherwise clearly drafted,” *id.* (quoting *Serrano v. State Dep’t of Alcoholic Beverage Control*, 1992-NMCA-015, ¶ 12, 113 N.M. 444, 827 P.2d 159). Because the Court found no ambiguity in the plain meaning of the body’s text, the Court concluded that arguments relying on the heading to establish ambiguity were foreclosed. *Id.* ¶¶ 16-18.

{15} The Court of Appeals also considered Cross-Respondent Padilla’s argument that absurdity would result from a strict application of the plain language of Section 10-16-17 to various provisions of the GCA. *Gutierrez*, 2020-NMCA-045, ¶¶ 21-22 (“If adherence to the plain meaning of a statute would lead to absurdity, we must reject that meaning and construe the statute according to the obvious intent of the Legislature.”) (brackets omitted) (citing *State v. Maestas*, 2007-NMSC-001, ¶ 16, 140 N.M. 836, 149 P.3d 933)). The Court reiterated our warning in *Helman* that the “beguiling simplicity” of the plain-meaning rule may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute’s meaning. In such a case, it can rarely be said that the legislation is indeed free from all ambiguity and is crystal clear in its meaning.

*Id.* ¶ 20 (quoting *Helman*, 1994-NMSC-023, ¶ 23) (internal quotation marks omitted).

{16} Notwithstanding *Helman*’s warning, the Court of Appeals hewed to its plain-meaning construction of Section 10-16-17 in rejecting Cross-Respondent’s argument. *Gutierrez*, 2020-NMCA-045, ¶¶ 22-23. The Court noted that Cross-Respondent’s argument pointed only to GCA provisions *other than Subsections (A)-(C)* to allege that absurdity would result from strict application of Section 10-16-17 to the GCA. *Gutierrez*, 2020-NMCA-045, ¶¶ 21-23 (“[W]e need not pass judgment on the applicability of the criminal penalty set out in Section 10-16-17 to the violations of other sections of the GCA, as those violations are not before us today.”). In the absence of an absurdity argument focused on violations of Subsections (A)-(C) themselves, the Court concluded that “we cannot avoid the clear language of Section 10-16-17.” *Gutierrez*, 2020-NMCA-045, ¶ 23.

{17} The Court of Appeals’ “adherence to the plain[-]meaning rule” was bolstered by the legislative history of Sections 10-16-3 and 10-16-17. *Gutierrez*, 2020-NMCA-045, ¶ 24. Because those sections were enacted together, the Court presumed that the Legislature “intended that a knowing and willful violation of [S]ection[] 10-16-3(A)-(C) give rise to the misdemeanor criminal penalty called for in Section 10-16-17.” *Gutierrez*, 2020-NMCA-045, ¶ 24. The Court also noted that the Legislature has added to or amended the GCA six times without

amending Section 10-16-17, “suggesting its continued intent to impose the criminal penalty set out in that section.” *Gutierrez*, 2020-NMCA-045, ¶ 24.

{18} The Court of Appeals concluded its statutory interpretation analysis by rejecting arguments that the penalty for a violation of Subsection (C) is limited to civil sanctions or penalties and that the rule of lenity should apply. *Gutierrez*, 2020-NMCA-045, ¶¶ 25-27. The Court rejected the first argument because no relevant provision in the GCA “limits the discretion of the attorney general or a district attorney to prosecute a knowing and willful violation of the GCA.” *Id.* ¶ 26. In rejecting the second argument, the Court again applied its plain-meaning construction of Section 10-16-17, noting that lenity “is reserved for those situations in which a reasonable doubt persists about a statute’s intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute.” *Gutierrez*, 2020-NMCA-045, ¶ 27 (quoting *State v. Ogden*, 1994-NMSC-029, ¶ 26, 118 N.M. 234, 880 P.2d 845).

{19} As discussed, the Court of Appeals reversed the district courts’ dismissals of the counts charging Petitioners under Subsection (A), remanded for reinstatement of those counts, and affirmed the dismissals of the counts charging Petitioners and Cross-Respondent under Subsections (B) and (C) based on those provisions being unconstitutionally vague. *Gutierrez*, 2020-NMCA-045, ¶¶ 38, 42, 43.

#### D. Certiorari Granted

{20} Following the consolidated appeal, Petitioners timely petitioned this Court for certiorari regarding the Court of Appeals’ reinstatement of their charges under Subsection (A). Concurrently, the State timely petitioned for certiorari regarding the Court of Appeals’ holding that Subsections (B) and (C) are unconstitutionally vague. This Court granted certiorari on the petitions and cross-petition and consolidated the cases.

## II. DISCUSSION

{21} The first issue raised in this appeal is one of statutory interpretation: whether the Legislature intended for violations of Subsections (A)-(C) of Section 10-16-3 to be subject to criminal penalty. Because we hold that the Legislature did not so intend, we do not reach the issue of whether those subsections are unconstitutionally vague.

### A. Standard of Review for Statutory Interpretation

{22} “We review questions of statutory . . . interpretation *de novo*.” *State v. Radosevich*, 2018-NMSC-028, ¶ 8, 419 P.3d 176 (internal quotation marks and citation omitted).

<sup>1</sup> We note that the Court of Appeals did subsequently analyze the plain language of Subsections (A)-(C) as part of its unconstitutionality analysis. See *Gutierrez*, 2020-NMCA-045, ¶¶ 31-42.



“The principal command of statutory construction is that the court should determine and effectuate the intent of the [L]egislature, using the plain language of the statute as the primary indicator of legislative intent.” *State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481, 212 P.3d 369 (internal quotation marks and citation omitted); see *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064 (“Under the plain[-]meaning rule statutes are to be given effect as written without room for construction.”). “If statutory language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity, or contradiction, the court should reject the plain[-]meaning rule in favor of construing the statute according to its obvious spirit or reason.” *State v. Adams*, 2022-NMSC-008, ¶ 16, 503 P.3d 1130 (internal quotation marks and citation omitted). We have said that

[w]hile . . . one part of [a] statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history and background of the legislation, or in an apparent conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty as to what the [L]egislature was trying to accomplish. In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute.

*Helman*, 1994-NMSC-023, ¶ 23.

{23} “Statutes that define criminal conduct should be strictly construed and doubts regarding their interpretation or construction should be resolved in favor of lenity.” *State v. Anaya*, 1997-NMSC-010, ¶ 30, 123 N.M. 14, 933 P.2d 223.

## B. Analysis

### 1. The plain language of Subsections (A)-(C) demonstrates legislative intent as expressions of ethical principles for the GCA rather than as criminal statutes within the scope of Section 10-16-17

{24} Petitioners and Cross-Respondent make multiple arguments supporting the contention that the Legislature did not intend for criminal charges to result from violations of the subsections under which they are charged. They assert that the Legislature understood that the text of Subsections (A)-(C) constitutes the aspirational language of ethical principles rather than elements of criminal statutes. They also argue that the Legislature understood that absurdity would result from a strict

application of Section 10-16-17 to certain provisions of the GCA. Petitioners and Cross-Respondent also contend that the heading of Section 10-16-3 indicates that Subsections (A)-(C) were not intended to be criminally enforceable. In addition, they argue that any persisting ambiguity as to the scope of the penalty provision should cause this Court to apply lenity.

{25} Quoting Section 10-16-17, the State argues that the Legislature’s enactment of that penalty provision authorizes imposition of a misdemeanor criminal sanction for the knowing and willful violation of “any of the provisions of” the GCA, including Subsections (A)-(C). Citing *State v. Ramos*, 1993-NMCA-089, ¶ 10, 116 N.M. 123, 860 P.2d 765, the State asserts that the GCA is the Legislature’s lawful expression under the police power of its substantial and significant interest in “defining the nature of [the State’s] relationship with its public servants.” The State further argues that a lack of statutory ambiguity in the body text of Sections 10-16-3 and -17 refutes and precludes arguments regarding the heading of Section 10-16-3. In addition, the State contends that the relevant statutes present no ambiguity sufficient to permit application of the rule of lenity.

{26} The core question before this Court is whether the Legislature intended for Section 10-16-17 to apply to Subsections (A)-(C) of Section 10-16-3. Resolution of that question begins with plain-meaning analysis of both statutes to determine if they can be enforced as written. *Davis*, 2003-NMSC-022, ¶ 6 (“We begin the search for legislative intent by looking first to the words chosen by the Legislature and the plain meaning of the Legislature’s language.” (internal quotation marks and citation omitted)). If ambiguity results from that analysis, we then look beyond the plain meaning of the statutory language to determine and effectuate legislative intent. *Ortiz v. Overland Express*, 2010-NMSC-021, ¶ 21, 148 N.M. 405, 237 P.3d 707.

{27} We agree with our Court of Appeals that the plain language of Section 10-16-17 appears to direct that all knowing and willful violations of the GCA, unless otherwise specified, are criminally punishable. See *Gutierrez*, 2020-NMCA-045, ¶ 13. However, as we discuss below, the plain language of Subsections (A)-(C) does not allow their enforcement as criminal statutes when considered in the light of fundamental principles of criminal law. The Court of Appeals appears to have limited its plain-meaning analysis of Subsections (A)-(C) to ascertaining the absence therein of *otherwise specified* language. See generally *Gutierrez*, 2020-NMCA-045, ¶¶ 14-17. Having so ascertained, the Court relied on its plain-meaning construction of Section 10-16-17 for its conclusion

without further consideration of the text of Subsections (A)-(C). See generally *Gutierrez*, 2020-NMCA-045, ¶¶ 20-27. This limited analysis and reliance on one provision caused the Court to ignore whether Subsections (A)-(C) could be enforced as criminal statutes.

{28} The importance of fully considering the texts of related provisions is demonstrated in *State v. Padilla*, 2008-NMSC-006, 143 N.M. 310, 176 P.3d 299, which turned on the relationship of the aggravated fleeing statute, NMSA 1978, § 30-22-1.1 (2003, amended 2022), to the Law Enforcement Safe Pursuit Act (LESPA), NMSA 1978, §§ 29-20-1 to -4 (2003).

{29} In *Padilla*, we considered “whether the Legislature intended the phrase ‘in accordance with the provisions of the LESPA’ found at the end of the aggravated fleeing statute to be an essential element of the crime of aggravated fleeing.” 2008-NMSC-006, ¶ 8 (brackets omitted). Under a plain-meaning analysis of the aggravated fleeing statute alone—without also analyzing the LESPA—the *Padilla* Court could have concluded that “the Legislature intended the phrase [in question] to be an essential element, . . . and [thus] a pursuit not [being] ‘in accordance’ with the LESPA would nullify an otherwise valid arrest and prosecution for aggravated fleeing.” *Id.* Such a law would be unusual in conditioning criminal liability on “the officer’s conduct in purs[uing] a suspect.” *Id.* ¶ 23. The *Padilla* Court recognized the Legislature’s authority to enact such a law, but nonetheless analyzed the LESPA as well, since “we would be remiss in our duties of judicial review if we did not demand a high level of confidence before concluding that the Legislature intended such an unorthodox result.” *Id.*

{30} Under that further analysis, the *Padilla* Court found that the text of the LESPA “included an enforcement mechanism within . . . itself” that represented the Legislature’s affirmative choice of an effective means to ensure compliance. *Id.* ¶¶ 25, 28. That internal enforcement mechanism, the *Padilla* Court concluded, supported that “[t]he Legislature did not intend to create an *additional* enforcement mechanism for compliance” via the aggravated fleeing statute. *Id.* ¶ 33 (emphasis added). Full consideration of the LESPA thus led this Court to hold that “the Legislature did not intend the phrase [in question] to be an essential element of the crime” of aggravated fleeing. *Id.* *Padilla* implicitly counsels that full consideration of the text of each provision is warranted where the analysis turns on the relationship of those provisions.

{31} Here, we similarly would be remiss if we did not fully consider the text of Subsections (A)-(C) before concluding



that the Legislature intended to criminalize those provisions. Applying *Helman*, the appearance of Section 10-16-17 as “absolutely clear and certain” could nonetheless mask or distort “what the [L]egislature was trying to accomplish” as to Subsections (A)-(C). See *Helman*, 1994-NMSC-023, ¶ 23.

{32} Accordingly, we analyze the plain language of Subsections (A)-(C) below, considering the nature of criminal statutes. As a general principle, criminal statutes “declare[] what conduct is criminal and prescribe[] the punishment to be imposed for such conduct.” 1 Wayne R. LaFave, *Substantive Crim. L.* § 1.2, at 11 (3d ed. 2018). “Typically, criminal liability is premised upon a defendant’s culpable conduct, the *actus reus*, coupled with a defendant’s culpable mental state, the *mens rea*.” *Padilla*, 2008-NMSC-006, ¶ 12 (citing 1 Wayne R. LaFave, *Substantive Crim. L.* § 1.2, at 11 (2d ed. 2003)). The *actus reus* is the “wrongful deed” or “forbidden act” that is defined by a criminal statute. *Actus reus*, *Black’s Law Dictionary* (11th ed. 2019). A basic characteristic of substantive criminal law is that a statute “will spell out what act . . . is required for its commission.” 1 LaFave, *supra*, § 1.2 at 11-12 (3d ed.).

{33} Under these principles, the plain language of Subsections (A)-(C) does not express conduct that would constitute a criminal *actus reus*. Subsection (A) requires that a “legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.” Subsection (A) offers no definition as to which *uses of the powers and resources of public office* would qualify as criminal conduct, either by not *advancing the public interest* or by *obtaining personal benefits or pursuing private interests*.

{34} Subsection (B) requires that a legislator or public officer or employee shall “at all times maintain[] the integrity and discharg[e] ethically the high responsibilities of public service.” Subsection (B) offers no definition as to what conduct would qualify as criminal in not *maintaining the integrity or discharging ethically the high responsibilities of public service, at all times*.

{35} Without specifying the governmental actors within its scope, Subsection (C) requires that “[a]t all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.” Subsection (C) offers no definition as to what conduct would qualify as criminal in not exercising relevant *reasonable efforts, at all times*.

{36} Each relevant subsection communicates a general goal or proscription without specifying a wrongful deed or forbidden act. We need not entertain hypotheticals to recognize that the plain language of each subsection does not spell out what act or omission is required for its violation and does not establish criminal elements that could inform clear jury instructions.

{37} “We presume that the [L]egislature acted with full knowledge of relevant statutory and common law,” *State v. Tufts*, 2016-NMSC-020, ¶ 7, 500 P.3d 600 (internal quotation marks and citation omitted), including the necessity of a criminal statute to provide a sufficiently defined *actus reus*. Criminal enforcement of provisions that do not meet this standard would indeed be absurd. We presume as well that the Legislature acted with full knowledge of “the rule that criminal statutes must be sufficiently clear and definite to inform a person of ordinary intelligence what conduct is punishable.” *Swafford v. State*, 1991-NMSC-043, ¶ 41, 112 N.M. 3, 810 P.2d 1223. While this rule also underlies unconstitutional vagueness analysis, our presumption of the Legislature’s knowledge of the rule should not be viewed as an analysis on vagueness but rather as bolstering our conclusion regarding the Legislature’s intent for Subsections (A)-(C). Based on the foregoing, we conclude under our plain-meaning interpretation of Subsections (A)-(C) that the Legislature did not intend for those provisions to be enforced as criminal statutes.

{38} However, as aspirational expressions of ethical principles, Subsections (A)-(C) are effective and unambiguous. Subsection (A) grounds its proscription in the ideal of “treat[ing one’s] government position as a public trust.” Subsection (B) grounds its proscription in the ideal of “conduct[ing] themselves in a manner that justifies the confidence placed in them by the people.” Subsection (C) grounds its proscription in the ideal of “[f]ull disclosure of real or potential conflicts of interest [as] a guiding principle for determining appropriate conduct.” Seen as ethical principles, these provisions provide general guidance for the purpose and application of the GCA generally, and thus these provisions are not surplusage. See *State v. Vest*, 2021-NMSC-020, ¶ 18, 488 P.3d 626 (“A statute must be construed so that no part of the statute is rendered surplusage or superfluous.” (internal quotation marks and citation omitted)).

{39} Our plain-meaning interpretation of Subsections (A)-(C) is not eroded by the plain language of Section 10-16-17. By way of analogy, if a provision of the GCA merely stated “be good” in its entirety, then no penalty provision, regardless of the clarity of its language, could transform that general aspiration into an *actus reus* for a proper criminal statute.

## 2. The heading of Section 10-16-3 supports that Subsections (A)-(C) are not criminal provisions

{40} Further, our plain-meaning interpretation of Subsections (A)-(C) is bolstered by the Legislature’s express use of “Ethical principles of public service” in the language of the heading of Section 10-16-3. Contrary to the State’s suggestion, we are not bound by our canons of statutory interpretation to ignore such relevant evidence, as we discuss below.

{41} First, as Petitioner Gutierrez cites, our “canons are not mandatory rules . . . [but] guides . . . designed to help [this Court] determine the Legislature’s intent as embodied in particular statutory language.” *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001); see also *Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996) (“Canons of construction . . . are simply rules of thumb which will sometimes help courts determine the meaning of legislation.” (internal quotation marks and citation omitted)).

{42} Second, a relevant canon expressed in *Tri-State*, cited by both the parties and the Court of Appeals, provides that “ordinarily [a section’s heading] may be considered as a part of the act *if necessary to its construction*.” 2012-NMSC-039, ¶ 18 (emphasis added) (internal quotation marks and citation omitted); see *Gutierrez*, 2020-NMCA-045, ¶ 15 (quoting *Tri-State*, 2012-NMSC-039, ¶ 18). However, the underlying authority for that proposition offers no bar to the use of a statutory title to help determine “the nature and extent of [an] enactment.” *State ex rel. State Corp. Comm’n v. Old Abe Co.*, 1939-NMSC-046, ¶ 27, 43 N.M. 367, 94 P.2d 105; see *generally id.* ¶¶ 26-28. To the contrary, the *Old Abe* Court stated that a “title is quite properly to be considered a part of an act, particularly where it is a constitutional requirement that every act have a title, as is true in this state.” *Id.* ¶ 27 (citing N.M. Const. art. IV, § 16).<sup>2</sup>

{43} Third, we look to the heading of Section 10-16-3 neither “to produce an ambiguity” nor “to establish a limitation that is not contained in the text”—two improper uses of the heading expressed by the Court of Appeals.

<sup>2</sup> We find no compelling reason to view the proper use of a section’s heading differently from that of a statutory title. Cf. NMSA 1978, § 12-2A-13 (1997) (“Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted.”).

*Gutierrez*, 2020-NMCA-045, ¶¶ 15-16 (internal quotation marks and citation omitted). Instead, we look to the express language in the heading of Section 10-16-3 as affirming our plain-meaning interpretation of Subsections (A)-(C) as ethical principles rather than criminal statutes.

{44} The remainder of the heading supports no contrary conclusion. We need not determine whether “certain official acts prohibited” refers to Subsections (A)-(C), since a *prohibition* need not be criminal and since that phrase refers at least to the prohibition on bribery in Subsection (D). See § 10-16-3. Also, the heading’s use of “penalty” refers at the least to Subsection (D)’s express penalty of a fourth-degree felony, and we find no basis to conclude

that the heading’s use of “penalty” applies as well to Subsections (A)-(C). See § 10-16-3. In sum, the language of the heading of Section 10-16-3 supports that Subsections (A)-(C) of Section 10-16-3 were not legislatively intended to be criminal statutes.

### III. CONCLUSION

{45} For the foregoing reasons, we hold that the Legislature intended for Subsections (A)-(C) of Section 10-16-3 to be applied within the GCA as ethical principles excepted from the scope of Section 10-16-17 rather than as criminal statutes. Under this holding, we determine no ambiguity exists within Subsections (A)-(C) of Section 10-16-3, and thus we have no need to apply the rule of lenity in the cases before us.

{46} We reverse the Court of Appeals’ determination that the Legislature intended to make violations of Subsections (A)-(C) of Section 10-16-3 subject to criminal liability. Accordingly, the district courts’ orders dismissing charges under Section 10-16-3(A)-(C) against Petitioners and Cross-Respondent are affirmed.

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

**C. SHANNON BACON, Chief Justice  
WE CONCUR:**

**MICHAEL E. VIGIL, Justice  
DAVID K. THOMSON, Justice  
BRIANA H. ZAMORA, Justice  
BRYAN P. BIEDSCHEID, Judge,  
Sitting by Designation**

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-017**

**Filing Date: November 22, 2022**

**No. A-1-CA-38738**

**CITY OF SANTA FE,**  
Petitioner-Appellee,  
v.

**ALBERT CATANACH; INFINITE INTEREST ENT., LLC; and CNSP, INC. d/b/a NMSURF,**  
Respondents-Appellants.

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

David K. Thomson and Bryan Biedscheid, District Judges

Erin K. McSherry, City Attorney  
Marcos D. Martinez,  
Senior Assistant City Attorney  
Santa Fe, NM

for Appellee

Catron, Catron & Glassman, P.A.  
Richard S. Glassman  
Santa Fe, NM

for Appellants

### ► Introduction of Opinion

In this appeal, we consider whether Petitioner-Appellee the City of Santa Fe (the City) complied with federal laws that govern how local governments handle applications relating to building, modifying, or relocating telecommunications towers. Respondents-Appellants Albert Catanach, Infinite Interests, ENT., LLC, and CNSP, Inc., d/b/a NMSURF (collectively, Applicant) submitted an application to the City related to a telecommunications tower. Nearly a year later, Applicant concluded the request had been “deemed granted” under federal law and so informed the City. The district court granted the City’s subsequent petition for preliminary injunction, denied Applicant’s motion to find the request “deemed granted,” and denied Applicant’s motion to reconsider. We affirm in part, reverse in part, and remand.

Katherine A. Wray, Judge  
WE CONCUR:  
Megan P. Duffy, Judge  
Jane B. Yohalem, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38738>

# NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-018

Filing Date: October 24, 2022

No. A-1-CA-39074

**SOPURKH KAUR KHALSA, SHAKTI PARWHA KAUR KHALSA, and EK ONG KAR KAUR KHALSA, Trustees of the YOGI BHAJAN ADMINISTRATIVE TRUST,**  
Plaintiffs-Appellees,  
v.  
**INDERJIT KAUR PURI,**  
Defendant-Appellant.

## APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Raymond Z. Ortiz, District Judge

Sanders & Westbrook, PC  
Maureen A. Sanders  
Albuquerque, NM

for Appellees

The Soni Law Firm  
Surjit P. Soni  
Pasadena, CA

The Bowles Law Firm  
Jason Bowles  
Albuquerque, NM

for Appellant

### ► Introduction of Opinion

Inderjit Kaur Puri (Bibiji) appeals the district court's order granting the Trustees of the Yogi Bhajan Administrative Trust's (the Trustees) motion for sanctions based on Bibiji's failure to comply with a court order to produce documents in aid of execution of an attorney fees judgment. Bibiji argues (1) the Trustees improperly served a subpoena, rendering the subpoena invalid; (2) the district court lacked authority to order discovery in aid of enforcement of a judgment in light of the Trustees' failure to issue or properly serve a document request pursuant to Rule 1-034 NMRA; (3) the district court erred by ordering Bibiji to produce privileged documents; and (4) the district court's sanctions award constituted an abuse of discretion and violated due process. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

Gerald E. Baca, Judge

Michael Bustamante, Judge, retired, sitting by designation

To read the full opinion, visit: <https://bit.ly/A-1-CA-39074>



# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-019**

**Filing Date: December 6, 2022**

**No. A-1-CA-39014 and No. A-1-CA-39799 (consolidated for purpose of opinion)**

**GRACIELA CONTRERAS,**

Plaintiff-Appellant,

v.

**FRED LOYA INSURANCE COMPANY d/b/a YOUNG AMERICA INSURANCE COMPANY,**

Defendant-Appellee.

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

Joshua A. Allison, District Judge

and

**MARIA VARELA-BURCIAGA,**

Plaintiff-Appellant,

v.

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,**

Defendant-Appellee.

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

Erin B. O'Connell, District Judge

Ferrance Law, P.C.  
David A. Ferrance  
Albuquerque, NM

Law Office of Robert J. Andreotti  
Robert J. Andreotti  
Santa Fe, NM

for Appellant Graciela Contreras

for Appellant Maria Varela-Burciaga

O'Brien & Padilla, P.C.  
Alicia M. Santos  
Albuquerque, NM

Stiff, Garcia & Associates, LLC  
John S. Stiff  
Edward F. Snow  
Albuquerque, NM

for Appellee Fred Loya  
Insurance Company

for Appellee State Farm Mutual Automobile  
Insurance Company

Jarmie & Rogers, P.C.  
Mark D. Standridge  
Las Cruces, NM

for Amicus Curiae NM Defense Lawyers Associa-  
tion (No. A-1-CA-39014)

# NEW MEXICO COURT OF APPEALS OPINION

## ► Introduction of Opinion

In these consolidated cases, Plaintiff Graciela Contreras and Plaintiff Maria Varela-Burciaga (collectively, Plaintiffs) each appeal from a district court order granting summary judgment in favor of, in Contreras's case, Defendant Fred Loya Insurance Company and, in Varela-Burciaga's case, Defendant State Farm Mutual Automobile Insurance Company (collectively, Defendants) on Plaintiffs' claims arising from Defendants' denial of uninsured and underinsured motorist (UM/UIM) benefits. Plaintiffs each argue that the district court erred by granting summary judgment based on the erroneous conclusion that the respective insurance company obtained from each of them a valid rejection of UM/UIM coverage. In addition, Plaintiff Contreras argues that the district court erred in dismissing her claims, alleging violations of the Unfair Practices Act (the UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). We reverse in *Contreras v. Fred Loya Insurance Co.*, No. A-1-CA-39014, and affirm in *Varela-Burciaga v. State Farm Mutual Automobile Insurance Company*, No. A-1-CA-39799.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Jennifer L. Attrep, Judge

To read the full opinion, visit: [https://bit.ly/A-1-CA-39014\\_A-1-CA-39799](https://bit.ly/A-1-CA-39014_A-1-CA-39799)

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-020**

**Filing Date: December 15, 2022**

**No. A-1-CA-39080**

**AQUIFER SCIENCE, LLC,**  
Applicant-Appellant/Appellant,  
v.  
**SCOTT A. VERHINES, New Mexico State Engineer,**  
Appellee/Appellee.

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

Clay Campbell, District Judge

Hinkle Shanor LLP  
Julie A. Sakura  
Dioscoro A. Blanco  
Santa Fe, NM

Rodey, Dickason, Sloan, Akin & Robb, P.A.  
Edward Ricco  
Albuquerque, NM

for Appellant

Jalbright Law, LLC  
Jeffrey H. Albright  
Albuquerque, NM

for Appellee County  
of Bernalillo

Paul Hultin  
Santa Fe, NM

New Mexico Environmental Law  
Center  
Maslyn Locke  
Santa Fe, NM

Durham, Pittard  
& Spalding, LLP  
Caren I. Friedman  
Rosalind B. Bienvenu  
Justin R. Kaufman  
Santa Fe, NM

for Appellees San Pedro Creek Estates Homeowners Association, Old Sandia Park Service Cooperative, Rosemary Amspaugh, Caryl Baron, Phyllis Bergman, Nathaneal Brown, Anne Strader, Carolyn K. Bryan, Margaret M. Carroll, Tom Christensen, Joanne Hilton, Beth Corwin, Richard Davis, Barbara Davis, Barbara S. Herrington, David J. Holcomb, Kathy McCoy, Dale Kennedy, Charles King, Karen Salmi, Marlyss Lesley, Frances Lusso, David Weaver, Jim Mullany, Marjorie Mullany, Jerry Page, Ricard Ragle, Doug Salmi, Carol Sanders-Reed, Julie Lynch Seimers, Barry Silbaugh, Janet Winchester-Silbaugh, Carolyn J. Simmons, Jerry A. Simmons, Sue Ann Slates, Robert Smith, Antoinette Smith, and Jan Wiste

### ► Introduction of Opinion

Appellant Aquifer Science, LLC (Aquifer Science) appeals the district court's judgment denying its request to appropriate water from the Sandia Underground Water Basin (Sandia Basin). Aquifer Science argues that (1) the district court's analysis of impairment to existing water rights was incomplete under guidelines promulgated by the State Engineer (the Guidelines) and not supported by substantial evidence; (2) the district court applied an unduly strict interpretation of the concept of "conservation of water" as used in NMSA 1978, Section 72-12-3(E) (2001, amended 2019); and (3) the district court improperly required Aquifer Science to obtain land-use authorization for the entire project as a condition for approval of its request to appropriate water.

Aquifer Science also appeals the district court's order granting costs to certain protesting parties as the prevailing parties below, arguing that (1) the cost bill submitted did not comply with the requirements of Rule 1-054(D)(4) NMRA; (2) the district court abused its discretion when it did not provide Aquifer Science additional time to lodge specific objections to the bill of costs; and (3) as a matter of law, post-judgment interest cannot be imposed on an award of costs. We affirm.

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

WE CONCUR:

J. Miles Hanisee, Chief Judge

Jennifer L. Attrep, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39080>

# NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-021

Filing Date: December 19, 2022

No. A-1-CA-39214

**LM INSURANCE CORPORATION, a foreign corporation; DENNIS HEAVNER,  
an individual; and BETH HEAVNER, an individual,**  
Plaintiffs-Appellees,

v.

**I DO ALBUQUERQUE d/b/a KELLER WILLIAMS ALBUQUERQUE, a foreign limited partnership; CLAY TRAFTON, an indi-  
vidual; and JOHN DOE CORPORATION,**  
Defendants-Appellants.

## APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Nancy J. Franchini, District Judge

Stalter Law LLC  
Kenneth H. Stalter  
Albuquerque, NM

Marrs Griebel Law, Ltd.  
Patrick Griebel  
Albuquerque, NM

for Appellees Dennis and Beth Heavner

Cozen O'Connor  
John K. Daly  
Benjamin J. Migliorino  
Denver, CO

for Appellee LM Insurance Corporation

Law Offices of Linnsey M. Amores  
Kristin L. Groman  
Linnsey M. Amores  
Scottsdale, AZ

for Appellants

### ► Introduction of Opinion

Defendants I Do Albuquerque d/b/a Keller Williams Albuquerque (Keller Williams) and Clay Trafton appeal the district court's judgment in favor of Plaintiffs LM Insurance Corporation, Dennis Heavner, and Beth Heavner (collectively, Plaintiffs), concluding that Defendants breached statutory duties of care and awarding damages as well as attorney fees and prejudgment interest. Defendants argue (1) the district court erred in finding that Defendants owed a duty to confirm the licensing status of the contractors Defendants recommend; (2) there was no evidence of causation between Defendants' failure to confirm the licensing status of the contractor and the fire; (3) the district court erred in awarding attorney fees based on the listing agreement; and (4) the district court improperly considered confidential settlement offers made during mediation as the basis to award prejudgment interest. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Katherine A. Wray, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39214>



# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-022**

**Filing Date: November 23, 2022**

**No. A-1-CA-36442**

**AMADO CHAVEZ, RAMONA HERNANDEZ TODD LOPEZ, as Personal Representative of the ESTATE OF EDGAR CHAVEZ, Deceased; and VICTOR CHAVEZ,**  
Plaintiffs-Appellees,  
v.  
**BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC, a foreign company which is the successor to BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, LLC,**  
Defendant-Appellant,

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

Francis J. Mathew, District Judge

Jaramillo Law Firm, PC  
David J. Jaramillo  
Albuquerque, NM

The Edwards Law Firm  
John Gsanger  
Corpus Christi, TX

Liles White PLLC

Kevin Liles  
Corpus Christi, TX

for Appellees

Jennings Haug Keleher McLeod  
Thomas C. Bird  
Benjamin F. Feuchter  
Albuquerque, NM

for Appellants

### ► **Introduction of Opinion**

This interlocutory appeal is again before us on remand from our Supreme Court in *Chavez v. Bridgestone Americas Tire Operations, LLC* (Chavez II), 2022-NMSC-006, 503 P.3d 332, where the Court instructed us to determine whether the district court may exercise specific personal jurisdiction over Defendant Bridgestone Americas Tire Operations, LLC (Bridgestone). See *id.* ¶ 5. For the reasons that follow, we answer this question affirmatively.

J. Miles Hanisee, Chief Judge

WE CONCUR:

Kristina Bogardus, Judge

Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-36442>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-023**

**Filing Date: November 7, 2022**

**No. A-1-CA-38144**

**WELLS FARGO BANK N.A., as Trustee for the Certificateholders of Banc of America Alternative Loan Trust 2003-8,  
Mortgage Pass-Through Certificates, Series 2003-8,**

Plaintiff-Appellee,

v.

**DAVID GRAHAM,**

Defendant-Appellant,

and

**DARLENE E. GURULE and PHOENIX MECHANICAL, L.L.C.,**

Defendants.

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

Emilio J. Chavez, District Judge

McCarthy & Holthus, LLP

Jason Bousliman  
Albuquerque, NM

for Appellee

Law Offices of Brian A. Thomas, P.C.

Brian A. Thomas  
Albuquerque, NM

for Appellant

## ► Introduction of Opinion

Defendant David Graham appeals the district court's grant of summary judgment in favor of Plaintiff Wells Fargo Bank, N.A. (the Bank) in this foreclosure action, relating to a mortgage (the 2003 Loan) taken out on property Defendant owns in Taos, New Mexico (the Property). Defendant contends that the 2003 Loan violates public policy and additionally that certain payments were not properly credited. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Zachary A. Ives, Judge

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-38144>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-024**

**Filing Date: November 2, 2022**

**No. A-1-CA-39401**

**BOBBY ROMERO, Personal Representative of the ESTATE OF FLOREN LUJAN JR.,**  
Plaintiff-Appellant,  
v.  
**NANCY TAFOYA,**  
Defendant-Appellee.

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

James Lawrence Sanchez, District Judge

Stalter Law LLC  
Kenneth H. Stalter  
Albuquerque, NM

for Appellant

Moses, Dunn, Farmer & Tuthill, P.C.  
Alicia L. Gutierrez  
Albuquerque, NM

for Appellee

### ► Introduction of Opinion

Plaintiff Bobby Romero, the personal representative of the Estate of Floren Lujan, Jr., appeals the district court's grant of summary judgment in favor of Defendant Nancy Tafoya. Plaintiff argues (1) NMSA 1978, Section 14-12A-9(B) (2003) (repealed 2021, effective Jan. 1, 2022) of the Notary Public Act, NMSA 1978, §§ 14-12A-1 to -26 (2003) (repealed 2021, effective Jan. 1, 2022) (recompiled as the Revised Uniform Law on Notarial Acts, NMSA 1978, §§ 14-14A-1 to -32 (2021, effective Jan. 1, 2022)), is not the exclusive remedy for claims of misconduct of a notary public; (2) the two-year statute of limitations governing official bonds, NMSA 1978, § 37-1-8 (1976), does not apply to his claim; and (3) no alternate grounds exist to affirm the district court. We hold the Notary Public Act does not provide the exclusive remedy for misconduct of a notary public and no alternative basis exists to affirm the district court. We reverse and remand.

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

\WE CONCUR:

Jennifer L. Attrep, Judge

Gerald E. Baca

To read the full opinion, visit: <https://bit.ly/A-1-CA-39401>

# NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-025

Filing Date: September 26, 2022

No. A-1-CA-39480

**STATE OF NEW MEXICO** ex rel. **CHILDREN, YOUTH & FAMILIES DEPARTMENT**,  
Petitioner-Appellee,

v.

**JAMES M.**,

Respondent-Appellant,

and

**FARRAH S.**,

Respondent,

**IN THE MATTER OF JOVAN M., JAMIA M., and JARROM M.**,  
Children.

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

Flora Gallegos, District Judge

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

Kelly P. O'Neill, Assistant Children's Court Attorney  
Albuquerque, NM

for Appellee

Susan C. Baker  
El Prado, NM

for Appellant

Victoria W. Doom  
Las Vegas, NM

Guardian Ad Litem



# NEW MEXICO COURT OF APPEALS OPINION

## ► Introduction of Opinion

James M. (Father) appeals the district court's order terminating his parental rights to his three children (Children). This case is subject to the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901 to 1963. ICWA sets "minimum Federal standards" for the removal of an Indian child from their family, for continued state custody of an Indian child, and, most relevant here, for the termination of parental rights to an Indian child. 25 U.S.C. § 1902.

Father raises two issues on appeal, which he contends require reversal of the district court's judgment terminating his parental rights. First, Father contends that ICWA and New Mexico state law require the district court at the adjudicatory hearing to find that Father abused or neglected Children by evidence beyond a reasonable doubt, rather than by clear and convincing evidence. We conclude that ICWA and New Mexico law together require that a district court's findings of abuse and neglect at an adjudication involving an Indian child be supported by clear and convincing evidence, not evidence beyond a reasonable doubt. We, therefore, find no error in the district court's findings at adjudication.

Father next contends that the district court's finding pursuant to ICWA, 25 U.S.C. § 1912(d), that the Children, Youth & Families Department (CYFD) made "active efforts" to reunite Father and Children and prevent the breakup of the Indian family was not supported by sufficient evidence at the termination of parental rights (TPR) hearing. We agree with Father that CYFD failed to present evidence sufficient to support the district court's finding beyond a reasonable doubt that the efforts CYFD made to assist Father complied with the "active efforts" requirement of ICWA. We reverse and remand on this basis for proceedings consistent with this opinion.

Jennifer L. Attrep, Judge  
WE CONCUR:  
Gerald E. Baca, Judge  
Katherine A. Wray, Judge

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-026**

**Filing Date: December 28, 2022**

**No. A-1-CA-39340**

**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**PHILLIP B. SALAZAR,**  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**  
Fred Van Soelen, District Judge

Hector H. Balderas, Attorney General  
Maris Veidemanis,  
Assistant Attorney General  
Santa Fe, NM  
  
for Appellee

Bennett J. Baur, Chief Public Defender  
Mary Barket, Assistant Appellate Defender  
Santa Fe, NM  
  
for Appellant

## ► Introduction of Opinion

Defendant Phillip Salazar appeals his conviction for kidnapping in the first degree (NMSA 1978, § 30-4-1 (2003)), claiming the district court made several evidentiary errors at trial. We conclude that the district court committed reversible error by preventing Defendant from impeaching the complaining witness with a prior omission inconsistent with her testimony at trial about her failure to disclose, during the investigation of the allegations against Defendant, the full extent of her relationship with Defendant. Because we remand for a new trial on this ground, we do not address Defendant's other claims of error.

Jennifer L. Attrep, Judge  
WE CONCUR:  
Gerald E. Baca, Judge  
Katherine A. Wray, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39340>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-027**

**Filing Date: December 29, 2022**

**No. A-1-CA-38966**

**TAL REALTY, INC.,**  
Petitioner-Appellee,

v.

**ASHOK KAUSHAL,**  
Respondent-Appellant.

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

Bryan Biedscheid, District Judge

Marrs Griebel Law, Ltd.  
Clinton W. Marrs  
Albuquerque, NM

for Appellee

Ferrance Law, P.C.  
David A. Ferrance  
Albuquerque, NM

for Appellant

### ► **Introduction of Opinion**

This appeal calls upon this Court to again interpret NMSA 1978, Section 39-5-18 (2007), which allows a party to redeem property sold pursuant to a foreclosure judgment by (1) paying the purchaser “the amount paid at sale, with interest from the date of sale at the rate of ten percent a year,” along with certain other expenses, or (2) initiating a judicial redemption by filing a petition for redemption and depositing the above-described amount with the district court clerk. Section 39-5-18(A)(1), (2). In this case, the issue presented is whether the statutory interest of ten percent per year accrues only until the redeeming party deposits the purchase price with the court, or whether interest continues to accrue until the district court enters a final judgment confirming the redemption. Here, the district court found that interest stopped accruing at the time the redeemer deposited funds with the district court. We affirm for the reasons set forth below.

Gerald E. Baca, Judge  
WE CONCUR:  
Megan P. Duffy, Judge  
Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38966>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-028**

**Filing Date: October 17, 2022**

**No. A-1-CA-38808**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**DALE BLANTON,**

Defendant-Appellant.

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

Christina P. Argyres, District Judge

Hector H. Balderas, Attorney General

Santa Fe, NM

Meryl E. Francolini,

Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Luz C. Valverde,

Assistant Appellate Defender

Albuquerque, NM

for Appellant

## ► Introduction of Opinion

Plaintiff Maureen A. Sanders brought a wrongful death lawsuit as personal representative of the Estate of Katherine Paquin after Paquin was killed by Christopher Blattner, an inmate who had been erroneously released from custody. Plaintiff sued the New Mexico Corrections Department (NMCD), NMCD Secretary Gregg Marcantel, and Bureau Records Chief Cathleen Catanach (collectively, Defendants) on the theory that Defendants had negligently released Blattner before he had completed the full term of his sentence—approximately three years early, according to Plaintiff. Defendants moved for summary judgment, arguing they were immune from suit under the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2020). Plaintiff argued that her claims for Defendants' negligence were actionable under two of the TCA's waivers of immunity: (1) the building waiver, § 41-4-6(A), and (2) the law enforcement waiver, § 41-4-12. The district court granted Defendants' motion.

We reverse the district court's ruling as to the building waiver but affirm the court's ruling as to the law enforcement waiver.

Zachary A. Ives, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38808>



# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-029**

**Filing Date: October 27, 2022**

**No. A-1-CA-39734**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**THOMAS C. FERGUSON,**

Defendant-Appellant.

## **APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

Matthew E. Chandler, District Judge

Hector H. Balderas, Attorney General

Santa Fe, NM

Charles J. Gutierrez,

Assistant Attorney General

Albuquerque, NM

for Appellee

Eric D. Dixon,

Attorney and Counselor At Law, P.A.

Eric D. Dixon

Portales, NM

for Appellant

### **► Introduction of Opinion**

Defendant Thomas Ferguson appeals his conviction of embezzlement, contrary to NMSA 1978, Section 30-16-8 (2007). Defendant argues the district court erred by (1) denying his motion for a directed verdict, (2) allowing the State to cross-examine him regarding prior convictions for receiving stolen property, (3) permitting the State to amend the date of the charged offense, and (4) instructing the jury to disregard defense counsel's comments during closing argument relating to the court's dismissal of a separate charge. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39734>

# NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-030

Filing Date: November 28, 2022

No. A-1-CA-36256

**MAUREEN A. SANDERS, as Personal Representative  
of the ESTATE OF KATHERINE PAQUIN,**  
Plaintiff-Appellant,

v.

**NEW MEXICO CORRECTIONS DEPARTMENT, GREGG MARCANTEL  
and CATHLEEN CATANACH,**  
Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY  
Valerie Huling, District Judge**

Kennedy Kennedy & Ives  
Adam C. Flores  
Laura Schauer Ives  
Albuquerque, NM

for Appellant

Butt, Thornton & Baehr, P.C.  
Agnes Fuentevilla Padilla  
Felicia Boyd  
Rheba Rutkowski  
Sarah L. Shore  
Albuquerque, NM

for Appellees

## ► Introduction of Opinion

Plaintiff Maureen A. Sanders brought a wrongful death lawsuit as personal representative of the Estate of Katherine Paquin after Paquin was killed by Christopher Blattner, an inmate who had been erroneously released from custody. Plaintiff sued the New Mexico Corrections Department (NMCD), NMCD Secretary Gregg Marcantel, and Bureau Records Chief Cathleen Catanach (collectively, Defendants) on the theory that Defendants had negligently released Blattner before he had completed the full term of his sentence—approximately three years early, according to Plaintiff. Defendants moved for summary judgment, arguing they were immune from suit under the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2020). Plaintiff argued that her claims for Defendants' negligence were actionable under two of the TCA's waivers of immunity: (1) the building waiver, § 41-4-6(A), and (2) the law enforcement waiver, § 41-4-12. The district court granted Defendants' motion.

We reverse the district court's ruling as to the building waiver but affirm the court's ruling as to the law enforcement waiver.

Megan P. Duffy, Judge

I CONCUR:

Jennifer L. Attrep, Judge

DISSENTING IN PART AND CONCURRING IN PART:

J. Miles Hanisee, Chief Judge

To read the full opinion, visit: <https://bit.ly/2023-NMCA-030-A-1-CA-36256>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-031**

**Filing Date: January 4, 2023**

**No. A-1-CA-39175**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**JACOB SCOTT,**

Defendant-Appellant.

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

James Waylon Counts, District Court Judge

Raúl Torrez, Attorney General  
Benjamin Lammons, Assistant Attorney General  
Santa Fe, NM

for Appellee

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

for Appellant

## ► Introduction of Opinion

Defendant Jacob Scott appeals his convictions, following a jury trial, for two counts of trafficking controlled substances, contrary to NMSA 1978, Section 30-31-20(B) (2006). Defendant argues the following: (1) law enforcement officers' testimony regarding information provided by a confidential informant (CI) violated the Confrontation Clause; (2) the admission of such testimony alternatively constituted inadmissible hearsay amounting to prejudicial constitutional error; (3) the district court erred in denying Defendant's motion to exclude as a discovery sanction evidence related to law enforcement's coordination with the confidential informant; and (4) the State violated Defendant's right to reasonable notice by changing its theory of the case on the morning trial was set to begin. For the reasons that follow, we affirm.

J. Miles Hanisee, Chief Judge

WE CONCUR:

Megan P. Duffy, Judge

Michael D. Bustamante, Judge retired, sitting by designation

To read the full opinion, visit: <https://bit.ly/A-1-CA-39175>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-032**

**Filing Date: January 18, 2023**

**No. A-1-CA-38836**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**MELISSA ORTEGA,**

Defendant-Appellant.

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

Cindy Leos, District Court Judge

Raúl Torrez, Attorney General  
Santa Fe, NM

John Kloss, Assistant Attorney General  
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Kathleen T. Baldrige, Assistant Appellate  
Defender  
Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant Melissa Ortega entered a conditional plea of guilty to a single count of attempted trafficking of a narcotic, contrary to NMSA 1978, Section 30-31-20(A)(3)(c) (2006). Defendant reserved her right to appeal the denial of her motion to suppress evidence obtained from her vehicle during the course of an investigatory stop on May 24, 2019. Defendant claims that there was no reasonable suspicion of illegal activity to justify the stop and therefore, her right to be secure against unreasonable searches and seizures under both the Fourth Amendment to the United State Constitution and Article II, Section 10 of the New Mexico Constitution were violated, requiring suppression of the evidence seized. We conclude that the police officer had reasonable suspicion that Defendant had committed the felony offense of aggravated fleeing a police officer six weeks earlier, on April 11, 2019, contrary to NMSA 1978, Section 30-22-1.1 (2003, amended 2022). Because the stop was justified by the officer's reasonable suspicion Defendant had committed a felony offense, we affirm.

Jane B. Yohalem, Judge

WE CONCUR:

Zachary A. Ives, Judge

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-38836>



# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-033**

**Filing Date: February 21, 2023**

**No. A-1-CA-39388**

**STATE OF NEW MEXICO ex rel. THOMAS MCGILL, JERRY POWERS, and HOWARD CALKINS,**  
Plaintiffs-Appellees,  
v.  
**JOHN BASSETT, individually and JOHN BASSETT, in his capacity as Mayor for the Town of Edgewood,**  
Defendant-Appellant.

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

Maria Sanchez-Gagne, District Court Judge

The Terry Firm, LLC  
Adrian Terry  
Edgewood, NM

for Appellees

Macke Law & Policy, LLC  
Daniel J. Macke  
Albuquerque, NM

for Appellant

### ► **Introduction of Opinion**

Defendant John Bassett, individually and in his capacity as mayor of the Town of Edgewood (Edgewood), appeals the district court's denial of his motion to set aside a default judgment and a partial summary judgment entered in favor of Plaintiffs Thomas McGill, Jerry Powers, and Howard Calkins. Bassett argues: (1) although he was served with the original complaint, Plaintiffs were required to serve the first amended complaint before entry of default judgment under Rule 1-005(A) NMRA because it added an additional Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to -14 (2007, as amended through 2015) claim; (2) Plaintiffs were also required to serve the first amended complaint under FATA's statutory service requirements before proceeding with the case and entry of the judgments, see § 44-9-5(B); and (3) constructive notice of the first amended complaint cannot substitute for Plaintiffs' requirement to serve Bassett under either Rule 1-005(A) or Section 44-9-5(B). Because Plaintiffs failed to serve the first amended complaint on Bassett as required under Rule 1-005(A) and Section 44-9-5(B), the district court did not have personal jurisdiction over him and it erred in granting default judgment and enforcing a partial summary judgment against him. We therefore reverse and remand for further proceedings.

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

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39388>

# NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-034

Filing Date: February 21, 2023

No. A-1-CA-39476

**FREEDOM MORTGAGE CORPORATION,**

Plaintiff-Appellee,

v.

**KEN STEVENS, Personal Representative of the ESTATE OF JESSICA M. SAXON, Deceased; UNITED STATES OF AMERICA  
by and through the INTERNAL REVENUE SERVICE,**

Defendants-Appellees.

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

Sarah V. Weaver, District Court Judge

Michael L. Danoff & Associates PC

Brett J. Danoff

Albuquerque, NM

for Appellee Stevens

Lorenz Law

Alice T. Lorenz

Albuquerque, NM

Risley Law Firm PC

Gary E. Risely

Farmington, NM

for Appellee Ashton

Higgins Law Firm

John F. Higgins

Albuquerque, NM

for Appellant

## ► Introduction of Opinion

MAK Investments LLC (MAK) appeals various district court orders arising from Robert Ashton's redemption of property purchased by MAK at a foreclosure sale. MAK contends the district court erred by (1) granting summary judgment that Ashton's redemption was valid, (2) dismissing MAK's petition for declaratory relief in which MAK asked the district court to declare Ashton's redemption invalid, and (3) reducing the amount of money Ashton needed to redeem the property. We affirm the district court's orders granting summary judgment in favor of Ashton and dismissing MAK's petition for declaratory relief, but reverse the district court's judgment reducing the redemption amount.

Kristina Bogardus, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Jane B. Yohalem, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39476>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-035**

**Filing Date: February 28, 2023**

**No. A-1-CA-38776**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**JANICE LUCERO,**

Defendant-Appellant.

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

Brett Loveless, District Court Judge

Raúl Torres, Attorney General  
Santa Fe, NM

John Kloss, Assistant Attorney General  
Albuquerque, NM

for Appellee

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

Luz C. Valverde, Assistant Appellate Defender  
Albuquerque, NM

## ► Introduction of Opinion

Defendant Janice Lucero entered a conditional plea of guilty in metropolitan court to a first offense of driving under the influence of intoxicating liquor or drugs (DWI), contrary to NMSA 1978, Section 66-8-102 (2010, amended 2016). The charge arose out of a single-car rollover accident in which Defendant was injured. With her conditional plea, Defendant reserved the right to appeal the metropolitan court's denial of her motion to suppress what Defendant claims are physician-patient communications privileged under Rule 11-504 NMRA. The communication Defendant seeks to suppress is a conversation she had with an emergency medical technician (EMT) for the purpose of diagnosis or treatment, during which Defendant disclosed, in answer to a question from the EMT, that she had consumed alcohol before driving. Defendant's communication to the EMT was overheard and recorded by a law enforcement officer who entered the ambulance where the conversation took place just after the EMT began questioning Defendant, and, according to Defendant, without her knowledge. The metropolitan court concluded based on the circumstances that "it was unreasonable for . . . Defendant to believe her communication with the [EMT] was private and therefore the confidentiality requirement of the Doctor-Patient privilege was not met." The district court affirmed the metropolitan court's decision. We conclude that the metropolitan court failed to apply the correct standard of law. We therefore reverse and remand to the metropolitan court to make the factual findings required under the correct principles of law.

Defendant also argues on appeal that she was denied due process of law by delay in the resolution of her appeal in the district court. Not persuaded by her due process argument, we affirm the district court's denial of Defendant's motion to dismiss.

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Kristina Bogardus, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38766>

# NEW MEXICO COURT OF APPEALS OPINION

**Opinion Number: 2023-NMCA-036**

**Filing Date: February 28, 2023**

**No. A-1-CA-39573**

**CITY OF LAS CRUCES,**

Plaintiff-Appellee,

v.

**TERESA CARBAJAL,**

Defendant-Appellant.

## **APPEAL FROM THE DISTRICT COURT OF DONA ANA COUNTY**

Conrad F. Perea, District Court Judge

City of Las Cruces  
Robert A. Cabello, Deputy City Attorney  
Las Cruces, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Allison H. Jaramillo, Assistant Appellate Defender  
Santa Fe, NM

for Appellant

### ► **Introduction of Opinion**

Today we are asked to determine whether a drug recognition expert (DRE) examination for drug use while driving is something that implicates a defendant's right to remain silent. Under the facts of this case, such an examination was a custodial interrogation, because it called, in part, for spoken responses by Defendant to spoken questions by the DRE investigator. The prosecutor's introduction of testimony and comments on Defendant's post-Miranda warning silence to show a consciousness of guilt was therefore plain error, requiring reversal. Concluding that the evidence was sufficient to sustain a conviction for driving under the influence (DUI), we reverse and remand for a new trial on the DUI charge. We also vacate the ninety-day suspended sentence imposed for driving without a license and remand for imposition of the fine authorized by the Las Cruces Municipal Code of Ordinances, Las Cruces, N.M. Code of Ordinances (LCMC), ch. 27, art. VI, § 27-12-6-12.6(A)(6) (2007); LCMC, § 27-12-14-4.

Jane B. Yohalem, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Kristina Bogardus, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39573>



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Rose Cowan is a graduate of University of Maryland School of Law, clerked for Judge Lawrence Fletcher-Hill, and handles copyright and trademark protection and enforcement as well as commercial litigation.

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Santiago Piza Cossio has joined Modrall Sperling's Transactions Department. Santiago received his J.D. from the University of New Mexico School of Law, and had previously obtained a Law Degree and a Master's Degree from the Sorbonne University (Paris, France). Prior to law school, he worked in the nonprofit sector as well as in finance and investing. Santiago currently assists with matters involving commercial transactions, real estate, and renewable energy development.



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

## Experienced 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 [HamiltonHinton@hhinton@cordelllaw.com](mailto:HamiltonHinton@hhinton@cordelllaw.com)

## Senior Trial Attorney

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



## Staff Attorneys – New Mexico State Bar Foundation Helplines

Are you tired of billable hours? Would you love not to have to go to court? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks helpline staff attorneys for its two legal helplines: Legal Resources for the Elderly Program (LREP) and the Modest Means Helpline. One position is full-time (40 hours/week) and one is part-time (30 hours/week). Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The positions include an excellent benefits package and competitive salary for legal work in the non-profit sector. Full Time (40 hours/week) Salary: \$60,000-\$65,000. Part Time (30 hours/week) Salary: \$45,000-\$50,000. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who are either seniors or who have moderate or low income. Additionally, the attorney will conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico (travel and some overnight stays required). Applicants must be licensed to practice law in New Mexico, and able to work as part of a busy team in a fast-paced environment. Excellent customer service and computer skills are required. Fluency in Spanish is a plus as is a demonstrable interest in issues affecting the senior community or the lower-income community. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

## Legal Assistant/Records Custodian State of New Mexico Early Childhood Education and Care Department Office of General Counsel

The New Mexico Early Childhood Education and Care Department, Office of the General Counsel, is seeking a Legal Assistant/Records Custodian. The Legal Assistant/Records Custodian will, under attorney guidance, manage all Inspection of Public Record (IPRA) requests submitted to the department following all legal requirements including all HIPAA, IPRA and other applicable state and federal laws in responding to each. This position will also be responsible for the coordination of legislative bill analysis and tracking during the legislative session and assist the Office of General Counsel with any other tasks as needed. Please go to [www.spo.nm.us/work-for-new-mexico](http://www.spo.nm.us/work-for-new-mexico) for additional details and to apply or contact Brendan Egan, Deputy General Counsel at [brendan.egan2@cecd.nm.gov](mailto:brendan.egan2@cecd.nm.gov).

## (2) Attorney Associates (U) (Full Time; At-Will)

#10115519 & #10115520

### Foreclosure Settlement Program

The Second Judicial District Court is accepting applications for two (2) Full Time At-Will Attorney Associate positions. These positions will be assigned to the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, and/or Managing Attorney. The Attorney Associates will facilitate settlement facilitation conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting of statistical data to Court administration. Communications occur telephonically, by email, by video conference and in-person. The Attorney Associates are independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associates will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law, or as a law clerk. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$45.442 hourly, plus benefits. Send application or resume supplemental form with proof of education and one (1) writing sample to [2ndjobapply@nmcourts.gov](mailto:2ndjobapply@nmcourts.gov) or to Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at [www.nmcourts.gov](http://www.nmcourts.gov). CLOSES: July 12, 2023 at 5:00 p.m.

## New Mexico Public Education Department – Attorney Position

The New Mexico Public Education Department (PED) is seeking an attorney to fill a position within its Office of General Counsel. Strong writing and interpersonal skills are essential. More details about positions and how to apply are provided on the State Personnel Office website at <http://www.spo.state.nm.us/>. Please check the website periodically for updates to the list of available positions.

## New Mexico Legal Aid – Current Job Opportunities

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. New Mexico Legal Aid has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. NMLA currently has the following job openings: Staff Attorney Positions: Native American Program – Santa Ana, NM; Generalists - Silver City, NM; Housing Stability Project – Statewide – Any NMLA Location Acequia/Land Grant Contracts and Housing Stability Program – Santa Fe, NM. Litigation and Casework Manager - Native American Program – Santa Ana, NM. Director of Native American Program – Santa Ana, NM. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

## Medical Malpractice Attorney

Hinkle Shanor LLP is seeking an attorney to join their Albuquerque office. The Albuquerque office of Hinkle Shanor is a busy office and heavily specialized in medical malpractice defense litigation. Candidates must have 5+ years of medical malpractice experience. Interested candidates should submit a resume and cover letter. Highly competitive salary and benefits. All inquiries will be kept confidential. Please email resumes and cover letters to [recruiting@hinklelawfirm.com](mailto:recruiting@hinklelawfirm.com).

## Deputy General Counsel

The New Mexico Judicial Branch is seeking a Deputy General Counsel for the Administrative Office of the Courts. The AOC Deputy General Counsel works closely with AOC General Counsel to provide legal support to court administration, Justices, Judges, and staff, as well as the Administrative Office of the Courts (AOC), and the Judiciary. The office location is in Albuquerque or Santa Fe, New Mexico. The salary range is 81\$K - \$101K Annually. To apply: [www.nmcourts.gov](http://www.nmcourts.gov) under Career Opportunities. Equal Opportunity Employer

### **Assistant Federal Public Defender-Trial Attorney in Las Cruces, NM**

The Federal Public Defender for the District of New Mexico is pleased to offer you an opportunity to join our amazing team as an Assistant Federal Public Defender-Trial Attorney in the Las Cruces office. The Federal Public Defender provides legal representation in federal criminal cases and related matters. The Federal Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. Our attorneys enjoy a full, comprehensive benefits package with Health, Vision, Dental and Life benefits, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$69,107 to \$180,756 determined by experience, qualifications, and budgetary constraints. AFPDs develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. Prior criminal defense or related experience preferred. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. How to Apply: In one PDF document, please submit a statement of interest, resume describing your trial and appellate work, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference 2023-08 in the subject line. Closing Date July 30, 2023. Writing samples will be required only from those selected for interview. For complete job announcement and more information about our office, please visit <https://nm.fd.org/>

### **Assistant Federal Public Defender-Trial Attorney in Albuquerque, NM**

The Federal Public Defender for the District of New Mexico is pleased to offer you an opportunity to join our amazing team as an Assistant Federal Public Defender-Trial Attorney in the Albuquerque office. The Federal Public Defender provides legal representation in federal criminal cases and related matters. The Federal Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. Our attorneys enjoy a full, comprehensive benefits package with Health, Vision, Dental and Life benefits, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$69,777 to \$182,509 determined by experience, qualifications, and budgetary constraints. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney, three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. How to Apply: Please submit a statement of interest, resume describing your trial and appellate work, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference 2023-07 in the subject line. Closing

Date July 30, 2023. Writing samples will be required only from those selected for interview. For complete job announcement and more information about our office, please visit <https://nm.fd.org/>

### **Community Development Director**

Under limited supervision of City Manager, performs a variety of professional, administrative, and managerial duties related to planning, directing, organizing, and controlling the Community Development Department including planning, zoning, building inspections, business licenses, and code enforcement. Qualifications include Bachelor's Degree in land use planning, urban planning, public administration, business administration, environmental design, civil engineering, or closely related field from an accredited four year college/university; five years of responsible experience performing the above duties of which two years in supervisory capacity in public government is preferred; OR equivalent combination of education/training/experience. Position is Exempt/Salary range: \$95,976.11 - \$ 131,754.48. Apply online and view full description at <https://roswellnmemployees.munisselfservice.com/employmentopportunities/default.aspx>

### **Full-Time Staff Attorney**

The Center for Biological Diversity's Climate Law Institute seeks a full-time staff attorney in New Mexico to address oil and gas production and pollution. This position is located in New Mexico, working remotely. The Climate Law Institute wages innovative legal and grassroots campaigns to protect people, wildlife and ecosystems from climate change and the fossil fuel industry. The New Mexico staff attorney will carry out regulatory and legal interventions to help New Mexico phase out oil and gas production as science demands. The successful candidate will work closely with a dynamic team of legal, science, organizing, and communications staff, as well as colleagues at allied organizations, and research and analyze potential legal and regulatory interventions on New Mexico oil and gas production. Licensed to practice law in New Mexico and familiarity with New Mexico environmental and administrative law; candidates who wish to relocate to New Mexico and take the New Mexico bar will be considered; Minimum three years legal experience. The Center for Biological Diversity deeply values, and is committed to sustaining and promoting, both biological and cultural diversity. We welcome, embrace and respect diversity of people, identities and cultures. For more information and to apply, please visit: <https://www.biologicaldiversity.org/about/jobs/>.

### Join our Team!

Enchantment Legal, a leading law firm specializing in family law, business law, and estate planning, is seeking a talented and motivated Attorney to join our team. We offer a competitive salary and a supportive work environment where you can thrive and grow in your practice. Requirements: Juris Doctor (J.D.) degree and active NM state bar membership; Excellent communication and interpersonal skills; Trial experience preferred, but recent graduates are encouraged to apply. If you are passionate about the law and ready to make a difference in the lives of our clients, we want to hear from you! Please send your resume and cover letter to Jake at [jake@enchantmentlegal.com](mailto:jake@enchantmentlegal.com). We look forward to reviewing your application. Enchantment Legal is an equal opportunity employer committed to diversity and inclusion.

### Attorney

Lasater & Martin, a busy civil defense law firm with offices in Colorado, Texas and New Mexico seeks a 3+ year attorney with experience in construction defect litigation for our New Mexico office. We litigate matters ranging from construction defect, product, general and premises liability to professional and municipal liability defense, so this attorney would have the opportunity to work on a wide range of interesting cases. Lasater & Martin offers a competitive salary and benefits, a flexible and family-friendly environment/workload, and a unique office atmosphere that facilitates professional growth. A NM license is required. Please send a resume and writing sample to Carli M. Marshall, Esq., at [carli@lasaterandmartin.com](mailto:carli@lasaterandmartin.com).

### State of New Mexico – General Counsel

The State of New Mexico seeks to hire an Associate or Deputy General Counsel for the Office of the Governor and General Counsel for several state agencies, including: the Energy, Minerals and Natural Resources Department, the Environment Department, the Department of Information Technology, and the Department of Military Affairs. Minimum qualifications include a Juris Doctorate degree from an accredited school of law, admission to the New Mexico Bar, and five years of relevant experience in the practice of law. Salary will be commensurate with experience. Please submit a cover letter, resume, recent writing sample, and list of references to [donicia.herrera@state.nm.us](mailto:donicia.herrera@state.nm.us). The State of New Mexico is an equal opportunity employer.

### Full-Time Attorney

NM Divorce & Custody Law, LLC seeks a full-time attorney to join our team. The ideal candidate will have at least three years' experience in the practice of law. The candidate will manage their own case load with staff support and will have a strong desire to practice in family law (divorce, child custody & visitation, child support, grandparent visitation, kinship guardianship, modifications, etc.). Our ideal candidate must be responsive to clients and respectful of fellow co-workers. It is expected that each member of our team will be highly organized and reliable, and possess good judgment and communication skills. We expect our attorneys to own their work product. The candidate must be able to prioritize deadlines and case commitments. Most importantly, the attorney that joins our office will understand that we don't just serve clients as knowledgeable and assertive advocates – we also have a responsibility to manage client expectations and to make good decisions on how to get the best possible result for the client without incurring unnecessary expense. The team at NM Divorce & Custody Law, LLC operates within a positive and friendly work environment. We understand that success in one's career means that one must maintain a healthy balance between one's home and work life. To that end, the new attorney will benefit from a reasonable billable hour requirement and a flexible work schedule. We offer competitive pay, generous paid time off, and a generous benefits package that includes health, dental, and vision insurance, a matching Simple IRA, and ½ day work days on Fridays. Please send a cover letter and resume [tlh@nmdivorcecustody.com](mailto:tlh@nmdivorcecustody.com). All replies will be maintained as confidential.

### Skilled Paralegal

Our well-established Santa Fe law firm is seeking a skilled paralegal with at least five years of experience working in plaintiffs' personal injury law. We offer a highly competitive salary, beginning at \$90,000. The ideal candidate should be passionate about helping injured clients, knowledgeable regarding insurance claims, possess sharp writing skills, and be capable of multitasking and managing deadlines in a fast-paced environment. Responsibilities include: managing a sizable client caseload; handling client communications and inquiries; drafting persuasive demand letters; and litigation tasks, including discovery and document production, drafting pleadings, and calendaring. To apply, email your resume, cover letter, and references to [santafefirm@gmail.com](mailto:santafefirm@gmail.com).

### Legal Assistant

Jennings Haug Keleher McLeod, an AV Rated mid-size law firm, is seeking a full-time legal assistant in its Albuquerque Office. Candidates should have at least 5 years of experience in civil litigation and insurance defense. Candidates must be able to e-File in state and federal courts and be familiar with the Federal, State and Local Rules and the Rules of Civil Procedure. Candidates should have a solid understanding of legal administrative concepts and processes, the ability to support multiple attorneys, clear and professional communication with colleagues and clients, proficiency with Microsoft office, working knowledge of document management software, excellent secretarial and organizational skills, and attention to detail. The firm offers a competitive salary and benefits with a professional working environment. Please see [www.jhkmlaw.com](http://www.jhkmlaw.com) for further information about the firm. Please e-mail resume and cover letter to Penimah Silva at [pcs@jhkmlaw.com](mailto:pcs@jhkmlaw.com).

### Full-Time Paralegal

Durham, Pittard and Spalding, LLP is looking for a full-time paralegal for their office in Santa Fe. We handle appeals and serve as appellate counsel at trial, providing strategic litigation support for plaintiffs' trial lawyers throughout the country in a wide array of personal injury and wrongful death cases. Duties/Responsibilities include: drafting pleadings, correspondence, and other documents; maintaining firm calendar; communicating with clients, courts, and attorneys; preparing for trial; preparing appellate briefs for filing; and managing caseload. Preferred Skills/Abilities include: working knowledge of New Mexico trial and appellate procedure (state and federal); paralegal degree/certificate, or bachelor's degree with commensurate experience; ability to multitask; familiarity with e-filing procedures; attention to details and organization; experience using Microsoft Office Suite, Westlaw, PACER, Odyssey, re:Search NM, and case management software; familiarity with Texas trial and appellate procedure plus. Benefits include health, dental, 401(k) plan, and PTO. Collegial and cooperative working environment. Please email cover letter, resume, and salary requirements to [kblackburn@dpslawgroup.com](mailto:kblackburn@dpslawgroup.com).

### Legal Secretary

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



**Part Time Legal and Related Research Assistant**

Small New Mexico law firm with challenging commercial and IP litigation practice looking for part time legal and related research assistant. Must have legal training—either law school graduate or paralegal training. The ideal candidate will be able to perform legal research using Lexis or Westlaw, have basic knowledge of court systems and be intellectually curious. This position is remote only with variable and flexible hours. Send resumes to tjones@squireslegal.com.

**Full-Time Paralegal**

Egolf + Ferlic + Martinez + Harwood LLC seeks a full-time paralegal in our Santa Fe office. The Firm is based in downtown Santa Fe and represents clients throughout the state. The ideal candidate will show initiative, demonstrate attention to detail, excel at organization, and work well under pressure. They must be able to communicate well with others, while also being able to work independently. Litigation experience is a plus! For the right candidate, the Firm is willing to train individuals with related experience or education. The Firm offers a competitive salary and benefits package that includes healthcare, life insurance, and retirement plan. Interested candidates should submit a resume to Annette@EgolfLaw.com

**Office Space**

**Office Suites-No Lease-All Inclusive-** Office Suites-NO LEASE-ALL INCLUSIVE- virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead in a professional environment. 2 convenient locations-Journal Center and Riverside Plaza. 505-796-9600/ officealternatives.com.

**Office Building for Sale**

3,640sf in the heart of Downtown Albuquerque with Off-street/secure parking, Within walking distance to court houses, Refrigerated air, 7 offices, Conference room, Reception, Break area, and 2 Bathrooms. Located at 715 Tijeras Ave. NW. For more information call Clay J. Azar at Metro Commercial Realty 505-480-9777.

**Downtown Albuquerque Office For Lease-**

824 Gold, SW, older red brick, well maintained, corner lot, fenced parking in rear, all utilities and janitorial services included. Go see it. \$1,800 monthly. If interested, call (505) 753-2727 and leave message.

**Miscellaneous**

**Want to Purchase**

Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201

**Search for Will**

Searching for a Will and or Family Trust for Kimberly W. Brown, deceased, late of Albuquerque New Mexico. If you prepared either and or have the originals or copies please contact Edward J. Roibal, Attorney, 505-247-4404 or email ed@roibal.com.

**For Sale**

Modern roll top desk in excellent condition, \$350 OBO. Jon at Jacobs Law Firm, 505-881-4388.

**2023 Bar Bulletin  
Publishing and Submission Schedule**

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

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

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

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



**Volunteer  
Attorney Program**  
*A Program of New Mexico Legal Aid*



*New Mexico Legal Aid's Volunteer Attorney Program  
will be launching the*  
**VAP Pro Bono Collaborative ECHO in September!**

VAP Pro Bono Collaborative ECHO will create an innovative learning community that will eventually become a statewide collaboration dedicated to providing pro bono legal services to low income, rural New Mexicans.

**VAP Pro Bono Collaborative ECHO participants will:**



Engage in a virtual community with their peers where they share support, guidance and feedback;

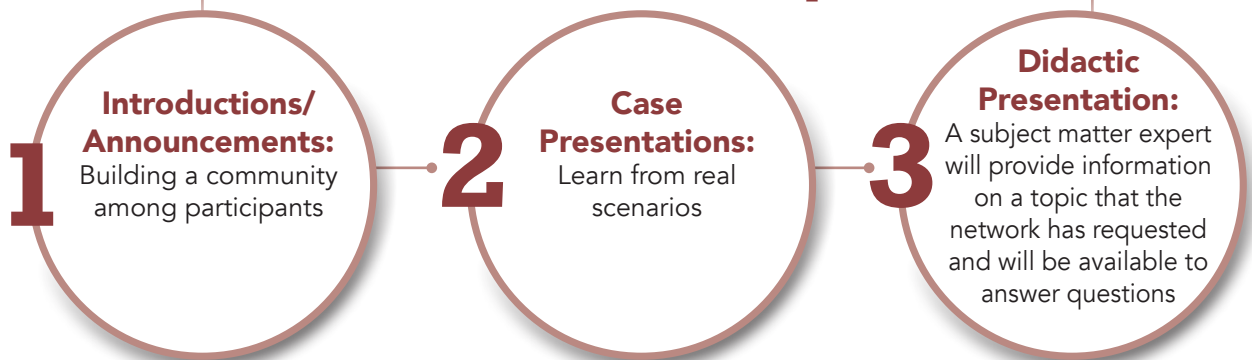


Build a collective understanding of how to disseminate and implement best practices across diverse disciplines;



Use an All Teach/All Learn framework to expand the pro bono community in New Mexico.

**The VAP Pro Bono Collaborative ECHO sessions  
will include three critical pieces:**



The continuous loop of learning, mentoring and peer support will make these sessions unique, with a long-lasting impact far beyond that of a webinar, CLE or single meeting!

All sessions will be held virtually via Zoom.  
Participants will earn one CLE credit for attending each session.



**Be a part of this innovative pro bono community!**  
Send an email to: [VAPECHO@nmlegalaid.org](mailto:VAPECHO@nmlegalaid.org) to receive updates  
and launch information about the VAP Pro Bono Collaborative ECHO.



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