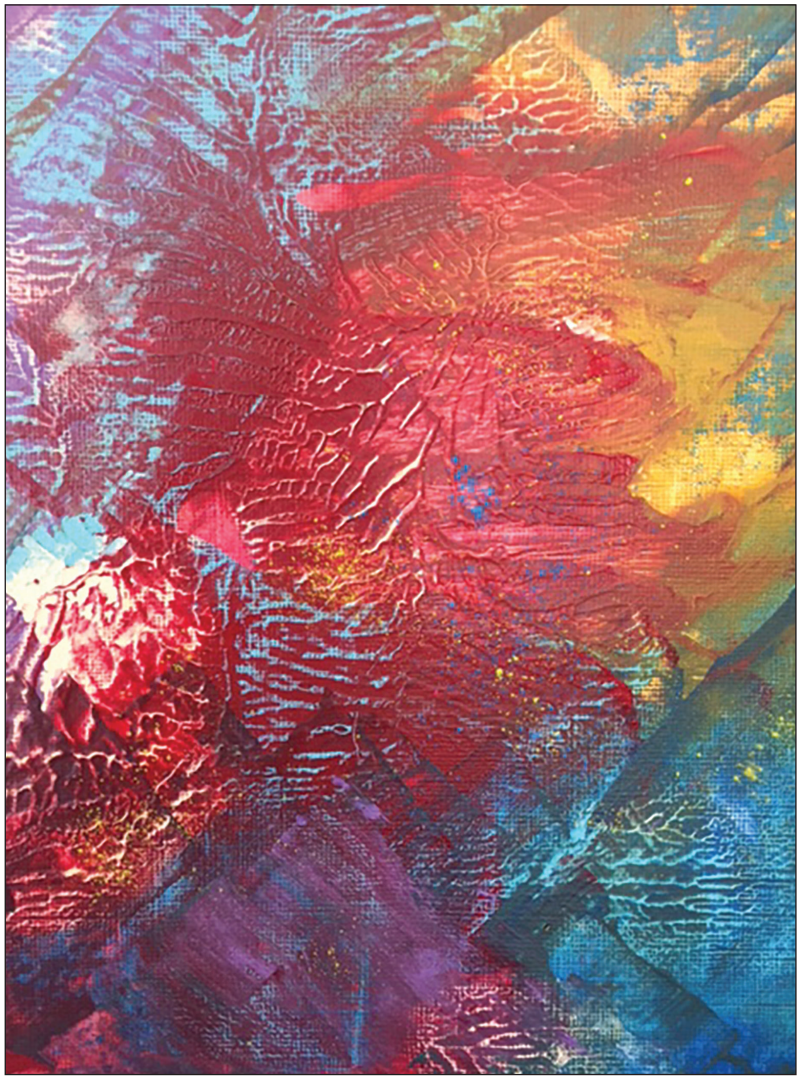
Official Publication of the State Bar of New Mexico

Bar Bulletin

August 9, 2023 • Volume 62, No. 15



Untitled, by Randall Biggers (see page 6) www.randallvbiggersart.com

Inside This Issue

McClain v McClain, 539 S.W.3d 170 (Tenn. Ct. App. 2017).

GATEKEEPING AND PARENTAL ALIENATION:
A CAUTIONARY TALE

MACÍAS-MAYO LAW

In September 2017, an appeals court in Tennessee affirmed that Richard McClain should be stripped of his role as primary residential parent to the two McClain teenagers and upheld a lower court's decision to grant exclusive custody to the children's mother.

This was the latest chapter in a 16-year custody fight in which Mr. McClain had "won" the first 8 rounds: maintaining primary physical custody and minimizing the co-parenting time his ex-wife was entitled to.

The basis of the courts' reversal of the basic tenets of the McClains' previous parenting plan was "severe parental alienation in which the father had actively supported the children's alienation from the mother without reasonable cause". McClain v McClain, 539 S.W.3d 170 p2 (Tenn. Ct. App. 2017).

Parental alienation and negative gatekeeping are behaviors that put children at serious risk for poor long term divorce outcomes.

Children of broken relationships inevitably fare better when they enjoy quality relationships with both parents. But rancor, vindictiveness, hurt, and anger at ex-partners are common in many custody disputes. The transcript of the McClain case paints a brutal picture of unchecked marital resentment and its inevitable effect on children.

There are often valid reasons for gatekeeping, including physical and psychological abuse, or evidence of an alcohol or substance addiction. A parent acting to protect a child's exposure to any of those is fully justified. But when no such reasons exist, alienating behaviors are no less than child abuse.

LEARN MORE ABOUT GATEKEEPING AND PARENTAL ALIENATION ON OUR BLOG AT WWW.MACIASMAYOLAW.COM

125 Lincoln Avenue | Suite 223 | Santa Fe, NM | 505.795.7117 | www.maciasmayolaw.com

State Bar of New Mexico
Est. 1886

THANK YOU

to our 2023 Annual Meeting Sponsors and Exhibitors!

THE BAR PLAN

NUSENDA CREDIT UNION

State Bar of New Mexico Paralegal Division

TEXAS TECH UNIVERSITY School of Law

ASHTON HORTON MULLINS

ATKINSON & KELSEY, P.A. DIVORCE & FAMILY LAW

BRIONES Business Law Consulting

Clio

DIXON · SCHOLL · CARRILLO · P.A. Attorneys at Law

Law Firm Websites.net

LexisNexis

MACÍAS-MAYO LAW

MODRALL SPERLING

ROBERT CASWELL INVESTIGATIONS

MONTGOMERY & ANDREWS LAW FIRM

RODEY LAW 1883 140th 2023 ANNIVERSARY

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

DISTRICT ATTORNEY 2ND JUDICIAL STATE OF NEW MEXICO DISTRICT ATTORNEY NEW MEXICO

PARNALL LAW

MINDSET™

SPENCE

USI AFFINITY

ARAG

Zia Trust, Inc.
The Advisors' Trust Company®

Immanuel Lutheran School
ILS

Administrative Office of the Courts

HINKLE SHANOR LLP
SINCE 1888

LightHouse
Your Beacon in the World of Technology™

BANK OF ALBUQUERQUE
Powered by BOK Financial

Gabrielle Montoya
CLNC & Associates

Chavez
FAMILY CLEANING

fastcase®
Smarter legal research.

LETHERER
INSURANCE CONSULTANTS, INC.
PROFESSIONAL LIABILITY SPECIALISTS

Clockwork
Process Service

Supreme Court
Law Library

PEARL® INSURANCE

MacKenzie
LIFE CARE PLANNING

NMALA
A Chapter of the Association of Legal Administrators

NM SCHOOL OF LAW

New Mexico
Court Reporters

HERITAGE
ASCENT

Second Judicial
District Court

Volunteer Attorney Program
A Program of New Mexico Legal Aid

Singleton Schreiber, LLP

The Solutions Group

CENTER FOR CIVIC VALUES
PROVIDING EDUCATION AND RESOURCES FOR PUBLIC PARTICIPATION IN THE LAW

Your participation and support help make this event possible!

State Bar of New Mexico
Est. 1886

The *Bar Bulletin* (ISSN 1062-6611) is published twice a month by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227
Fax: 505-828-3765 • address@sbnm.org

August 9, 2023 • Volume 62, No. 15

www.sbnm.org

Table of Contents

Meetings

August

11
Health Law Section
Noon, virtual

15
Public Law Section
9 a.m., virtual

17
Public Law Section
Noon, virtual

21
Children's Law Section
Noon, virtual

22
Intellectual Property Law Section
Noon, virtual

25
Immigration Law Section
Noon, virtual

September

7
Elder Law Section
Noon, virtual

12
Business Law Section
11 a.m., virtual

13
Animal Law Section
Noon, virtual

15
Appellate Section
Noon, virtual

Workshops and Legal Clinics

August

15
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, Virtual
For more details and to register, call 505-797-6005

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

September

5
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, Virtual
For more details and to register, call 505-797-6005

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

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

October

4
Divorce Options Workshop
6-8 p.m., virtual

10
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, Virtual
For more details and to register, call 505-797-6005

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

Notices

Court News

New Mexico Supreme Court

Rule-Making Activity

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

Supreme Court Law Library

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

N.M. Administrative Office of the Courts

Learn About Access to Justice in New Mexico in the "Justice for All" Newsletter

Learn what's happening in New Mexico's world of access to justice and how you can participate by reading "Justice for All," the New Mexico Commission on Access to Justice's monthly newsletter! Email atj@nmcourts.gov to receive "Justice for All" via email or view a copy at https://accesstojustice.nmcourts.gov/.

Fifth Judicial District Court

Notice of Mass Case Reassignment

Gov. Michelle Lujan Grisham has appointed Efren Cortez to fill the judgeship vacancy in the Fifth Judicial District Court, Lea County, Division III. Effective Aug. 19, a mass reassignment of cases occurred pursuant to Rule 23-109 and Rule 1-088.1, NMRA. Judge Efren Cortez will be assigned all cases previously assigned to Judge William Shoobridge and/or Division III of Lea County District Court. Pursuant to 1.088.1(C), parties who have not yet exercised a peremptory excusal will have 10 days from Sept. 13 to file their peremptory excusal.

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will be punctual in convening all hearings, meetings and conferences.

Eighth Judicial District Court Judicial Nominating Commission

Announcement of Candidates

The Eighth Judicial District Court Judicial Nominating Commission convened on July 18 at the Eighth Judicial District Court located at 105 Albright St., Taos, N.M. to interview applicants for the position in the Eighth Judicial District Court in Raton, N.M. due to the retirement of the Honorable Judge Melissa Kennelly, effective June 30. The Commission recommends **Ben Andrew Mondragon**, **Elizabeth A. Musselman** and **Steven Anthony Romero** to Gov. Michelle Lujan Grisham for the position in the Eighth Judicial District Court.

Thirteenth Judicial District Court

Notice of Mass Reassignment of Cases

Thirteenth Judicial District Court Chief Judge James A. Noel provides notice of the following case reassignments. All PQ cases in Valencia County (D-1314) currently assigned to Judge Allen R. Smith, which are in Adjudicated Case- Report Review Status shall be reassigned to Judge George P. Eichwald. This reassignment of cases is effective July 10. Pursuant to 1.088.1, parties who have not yet exercised a peremptory excusal will have 10 days from Aug. 9.

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 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

Employee Assistance Program

Q3 Free Webinars

The Solutions Group will be running three free webinars in the third quarter of 2023. Visit www.solutionsbiz.com to view the following upcoming webinars.

- Winning Practices for Boosting Children's Confidence (Sept. 13)

Equity in Justice Program

Have Questions?

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

New Mexico Lawyer Assistance Program

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended

as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pam.moore@sbnm.org or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

NM LAP Committee Meetings

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

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.

Other News

Equal Access to Justice

Newly Released Annual Report

View Equal Access to Justice's 2022-23 Annual Report online at www.eaj-nm.org. See the impact made possible by the many attorneys, solo practitioners, law firms and community members who continue to invest in our community through their generous support of civil legal services. For 35 years, Equal Access to Justice has been helping break down barriers to justice, by providing unrestricted, noncompetitive grants to New Mexico Legal Aid, the New Mexico Center on Law and Poverty and DNA People's Legal Services.

— Featured —

Member Benefit

fastcase
Smarter legal research.

Fastcase is a free member service that includes cases, statutes, regulations, court rules and constitutions. This service is available through www.sbnm.org. Fastcase also offers free live training webinars. Visit www.fastcase.com/webinars to view current offerings. Reference attorneys will provide assistance from 8 a.m. to 8 p.m. ET, Monday–Friday. Customer service can be reached at 866-773-2782 or support@fastcase.com. For more information, contact Christopher Lopez, clopez@sbnm.org or 505-797-6018.

Legal Education

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

10 **Twenty-Eighth Annual National Federal Habeas Corpus Seminar**
11.5 G, 6.2 EP
Live Program
The Administrative Office of the U.S. Courts
www.uscourts.gov

10 **Living in a Cloud-based World - The Next Generation of Digital Evidence**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

11 **The Mindful Approach to Addressing Mental Health Issues in the Legal Field**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.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

18 **The Special Immigrant Juvenile Classification Act**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

18 **Virtual Magic: Making Great Legal Presentations Online**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

24 **Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

September

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

20 **It's Always the Little Things: Best Office Practices and Procedures**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

October

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

4 **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

18 **Avoid Getting Hacked Off: Cybersecurity Best Practices**
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. Include course title, credits, location/course type, course provider and registration instructions.

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-007
No: S-1-SC-38713 (filed March 13, 2023)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
ANTHONY C. SENA,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Fred Van Soelen, District Judge

Hector H. Balderas, Attorney General
Charles J. Gutierrez,
Assistant Attorney General
Santa Fe, NM

for Petitioner

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

for Respondent

OPINION

THOMSON, Justice.

{1} Given our Constitution's limited timetable for considering and passing legislation, it is no surprise that two bills relating to the same issue may pass and be signed into law during the same legislative session. *See* N.M. Const. art. IV, § 5(A) ("Every regular session of the legislature convening during an odd-numbered year shall remain in session not to exceed sixty days, and every regular session of the legislature convening during an even-numbered year shall remain in session not to exceed thirty days."). When this happens, this Court may be tasked with deciding whether those two laws can be reconciled.

{2} In 2007, two bills addressing the monitoring and parole of convicted sex offenders passed within days of each other and were signed into law on the same day. Defendant Anthony Sena, who pleaded no contest to the offense of child solicitation by electronic communication device, asks us to hold these laws irreconcilable.[1] Consequently, he seeks application of the preexisting standard parole term to his sentence and not the extended parole term enacted in the 2007 legislation. We disagree that these bills are irreconcilable and conclude that the extended parole term applies to those convicted of this crime. In this opinion, we reaffirm that our role is to read statutes harmoniously if possible and that the proper test for a court to apply when reconciling legislation and discerning legislative intent in these circumstances is that of *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022. For these reasons, we reverse the Court of Appeals opinion and affirm the district court's imposition of the extended parole term on Defendant's crime. *See State v. Sena*, 2021-NMCA-047, ¶¶ 24, 33, 495 P.3d 1163.

I. BACKGROUND

{3} Defendant entered a conditional plea to "child solicitation by electronic communication device," contrary to NMSA 1978, Section 30-37-3.2(C) (2007) (CES), having been accused of luring via a website an undercover officer posing as a young teenage girl into meeting at a house for a sexual encounter in October 2015. The district court sentenced Defendant to three years in the Department of Corrections. Because CES is included in the current sex offender parole statute, NMSA 1978, § 31-21-10.1(I)(6) (2007), the court imposed on Defendant a five- to twenty-year indeterminate period of sex offender parole and not the standard parole term applicable to other criminal offenders. *Compare* § 31-21-10.1(A)(1), (I)(6), *with* NMSA 1978, § 31-21-10(D) (2009) (mandating a two-year period of parole for an inmate who is convicted of a third-degree felony).

{4} The parole term that applies to Defendant turns on whether two bills passed in the 2007 legislative session—Senate Bill 735 (S.B. 735, 48th Leg., 1st Sess. (N.M. 2007))[2] (SB 735) and Senate Bill 528 (S.B. 528, 48th Leg., 1st Sess. (N.M. 2007))[3] (SB 528)—can be reconciled insofar as they apply to the crime of CES. The Court of Appeals concluded that these bills could not be reconciled and felt bound by its previous decision in *State v. Ho*, 2014-NMCA-038, ¶ 13, 321 P.3d 147. *Sena*, 2021-NMCA-047, ¶¶ 23-24. The Court of Appeals reversed the district court and ordered the district court to impose the standard parole term. *Id.* ¶¶ 33, 34. Because the analysis in *Ho*, 2014-NMCA-038, ¶¶ 13-14, focused solely on sex offender registration provisions—not the parole statute—we determine its application to this case inappropriate. In doing so, we remind the courts below that when confronted with reconciling two pieces of legislation passed in the same session, the well-established test in *Smith*, 2004-NMSC-032, ¶¶ 7, 13, 25, is the more appropriate way to discern legislative intent. We begin by discussing the legislative history of SB 735 and SB 528 and the Court of Appeals decision in this case.

A. Legislative History of SB 735 and SB 528

{5} The offense of CES was created with the enactment of SB 735. *See* 2007 N.M. Laws, ch. 68, §§ 1-5. The title of the SB 735 enactment stated its purpose:

> Relating to sex offenders; creating a new criminal offense known as child solicitation by electronic communication device; adding the offense of child solicitation by electronic communication device to sex offender registration requirements; *providing an extended period of parole for the offense of child solicitation by electronic communication device.*

Id. (emphasis added).

{6} The SB 735 enactment focused on three main legislative policy directives: (1) creating the offense of CES under NMSA 1978, Section 30-37-3.2, (2) adding CES to the Sex Offender Registration and Notification Act (SORNA) under NMSA 1978,

[1] Four other cases concerning the same issue have been held in abeyance pending the outcome of this case.
[2] Available at https://www.nmlegis.gov/Sessions/07%20Regular/final/SB0735.pdf (last visited Mar. 3, 2023).
[3] Available at https://www.nmlegis.gov/Sessions/07%20Regular/final/SB0528.pdf (last visited Mar. 3, 2023).

Section 29-11A-3(E)(11) (2007, amended 2013) and NMSA 1978, Section 29-11A-5(E)(8) (2007),[4] and (3) requiring those convicted of CES to serve a mandated five- to twenty-year period of sex offender parole under Section 31-21-10.1(A).

{7} From the same session came the enactment of SB 528, whose title reads:

> Relating to sex offenders; creating a new crime of aggravated criminal sexual penetration; increasing penalties for sex offenses against minors; responding to Jessica's Law; imposing lifetime parole supervision for certain sex offenders; clarifying standard of proof; clarifying definitions; increasing period of parole for criminal sexual contact of a minor in the fourth degree.

See 2007 N.M. Laws, ch. 69, §§ 1-9.

{8} The SB 528 enactment focused on different policy objectives than those of the SB 735 enactment, including (1) creating the new offense of aggravated criminal sexual penetration under NMSA 1978, Section 30-9-11(C) (2007, amended 2009), (2) adding the offense of aggravated criminal sexual penetration to SORNA under Sections 29-11A-3(E)(1) (2007) and 29-11A-5(D)(1), and (3) amending the sex offender parole statute by (a) mandating sex offender parole for those convicted of that new offense under Section 31-21-10.1(A), (b) creating a two-tiered structure for sex offender parole, allowing a potential period of lifetime parole for the most severe sex offenses under Section 31-21-10.1(A)(2), and (c) requiring GPS monitoring for offenders on sex offender parole under Section 31-21-10.1(E). Importantly, SB 528 made no mention of CES or the extended parole requirements for this crime.

{9} As introduced, each bill restated the existing law in full, as required by our Constitution. *See* N.M. Const. art. IV, § 18 ("No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full."). SB 735 and SB 528 passed the Senate within two days of each other and passed the House on the same day, and the Governor signed them into law on the same day. *See* SB 735 Legislation Actions;[5] SB 528 Legislation Actions.[6]

{10} When multiple amendments to the same statutory section are enacted during the same legislative session, as in this case, our statutes set forth the procedure for constructing and compiling them into law. NMSA 1978, § 12-1-8 (2019). In accordance with the version of this statute that was in effect at the time of the two enactments, § 12-1-8(A) (1977),[7] the New Mexico Compilation Commission compiled the last-signed bill, SB 528, into NMSA 1978 in the statute that governs sex offender parole and included the text of the SB 735 enactment and notations of its passage in the annotations. *See* § 31-21-10.1 (compiler annotations, "2007 amendments") (noting that the SB 735 enactment defined "sex offender" to include someone convicted of CES whereas the SB 528 enactment defined "sex offender" to include someone convicted of aggravated criminal sexual penetration, and explaining that the parole statute was set out as amended by the SB 528 enactment because SB 528 was the last-signed bill). The Compilation Commission followed the same procedure when compiling the two bills into SORNA. *See* § 29-11A-3 (2007) (compiler annotations, "2007 amendments").

{11} Then, in 2013, the Legislature passed a comprehensive amendment exclusive to SORNA. The title of the act reads,

> Relating to sex offenders; requiring additional registration information; requiring sex offenders to register and update information within five business days; providing for verification of registration; providing for electronic updates; including additional offenders on the sex offender internet web site; requiring that certain crimes be committed with sexual intent before they are deemed a sex offense; providing for information to be available on the sex offender internet web site; reiterating state preemption of the field of sex offender registration by prohibiting law enforcement from requiring additional registration or from imposing other restrictions; providing definitions; *reconciling multiple amendments to the same sections of law in Laws 2007*.

2013 N.M. Laws, ch. 152, §§ 1-6 (2013 SORNA Amendment) (emphasis added). This amendment reconciled portions of the SB 735 and SB 528 enactments that involve sex offender registration. *See Ho*, 2014-NMCA-038, ¶ 13. Relevant to the Court of Appeals holding in *Ho*, the amendment added CES as a registrable offense under SORNA effective July 1, 2013. *Ho*, 2014-NMCA-038, ¶¶ 13-14; 2013 SORNA Amendment, § 1. As a result, the current version of SORNA lists CES as a registrable offense for those convicted on or after July 1, 2013. Section 29-11A-3(I)(11). Significantly, while the 2013 SORNA Amendment comprehensively altered SORNA in the manner described, it did not modify the sex offender parole statute or the parole requirements for CES.

{12} In that same year, the Legislature also amended the compilation statute, providing that

> if the New Mexico compilation commission, after consultation with the legislative council service, determines that the provisions of one or more of the earlier signed acts can be reconciled with the act that is to be compiled, those provisions shall be incorporated in the last-signed act and compiled in the NMSA.

2013 N.M. Laws, ch. 176, § 1; § 12-1-8(A) (2013). The amendment allowed the Compilation Commission to not only compile recently enacted legislation but also to revisit laws passed before the effective date of the new compilation process to determine if those laws can be reconciled with the compiled act. 2013 N.M. Laws, ch. 176, § 2 ("Multiple amendments to the same section of law that were enacted before the effective date of this act may be reconciled and compiled in accordance with the provisions of Section 1 of this act." (appearing in compiler annotations under "Temporary provisions" of the 2013 statute

[4] SORNA is part of New Mexico's Law Enforcement Code and is not part of the Criminal Procedure Code. See NMSA 1978, §§ 29-11A-1 to -10 (1995, as amended through 2013). The express purpose of SORNA is to protect communities by requiring resident sex offenders "to register with the county sheriff," "requiring the establishment of a central registry for sex offenders," and "providing public access to information regarding certain registered sex offenders." Section 29-11A-2(B)(1), (3), (4).

[5] Available at https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=735&year=07 (last visited Mar. 3, 2023).

[6] Available at https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=528&year=07 (last visited Mar. 3, 2023).

[7] The language of Section 12-1-8(A) (1977) reads in full:

[I]f two or more acts are enacted during the same session of the legislature amending the same section of the NMSA, regardless of the effective date of the acts, the act last signed by the governor shall be presumed to be the law and shall be compiled in the NMSA. The history following the amended section shall set forth the section, chapter and year of all acts amending the section. A compiler's note shall be included in the annotations setting forth the nature of the difference between the acts or sections.

but not in the text of the statute)). This, as the Court of Appeals correctly noted, granted the Compilation Commission authority to reconcile and compile statutes in accordance with this Court's opinion in *Smith*. *See Sena*, 2021-NMCA-047, ¶¶ 17-18 (recognizing that expansion of the Compilation Commission's authority in 2013 "put into statute the ruling of the New Mexico Supreme Court in [*Smith*]" (internal quotation marks and citation omitted)); § 12-1-8(A) (2013). In 2016, in consultation with the legislative council service, the Compilation Commission reconciled and compiled the SB 735 and SB 528 enactments into the sex offender parole statute. *See* 2007 N.M. Laws, ch. 68, § 4; 2007 N.M. Laws, ch. 69, § 4. *Compare* § 31-21-10.1(I) (2007 Historical NMSA 1978), *with* § 31-21-10.1(I) (2016 Historical NMSA 1978) (adding a person guilty of CES as a "'sex offender'" to the 2007 statutory text). As a result, the current sex offender parole statute defines those convicted of CES as sex offenders, based on the undisturbed legislative enactment of SB 735 passed in 2007. *See* § 31-21-10.1(I)(6) (compiler annotations, "2007 Multiple Amendments"). With this legislative history in mind, we turn to an examination of the Court of Appeals decision.

B. The Court of Appeals Decision

{13} In a split decision, the Court of Appeals reversed the district court's application of the extended parole term instead of the standard parole term. *Sena*, 2021-NMCA-047, ¶¶ 33-34. The majority relied heavily on its earlier decision in *Ho*, which concluded that the SB 528 and SB 735 enactments are irreconcilable as they applied to the SORNA registration requirement. *Sena*, 2021-NMCA-047, ¶¶ 23, 24; *see Ho*, 2014-NMCA-038, ¶¶ 1, 13. Treating the analysis of the registration requirement as analogous to the parole requirement, the Court of Appeals summarily concluded that there "is no principled reason why the Legislature would view SB 735 and SB 528 as irreconcilable for the purpose of SORNA [in 2013, as held by *Ho*, 2014-NMCA-038, ¶ 13] but reconcilable for the purpose of sex offender parole." *Sena*, 2021-NMCA-047, ¶¶ 23-24 (internal quotation marks and citation omitted). The majority also focused on provisions in SB 528 that did not exist in SB 735 to reach the decision that the bills are irreconcilable. *Sena*, 2021-NMCA-047, ¶ 25 ("We cannot presume that the Legislature, in establishing such expansive revisions to sex offender supervision, did not additionally consider the number and nature of offenses to which such heightened requirements and resources must be applied, arriving at the list of covered offenses set forth in SB 528 and not SB 735."). The majority ultimately concluded that "SB 735 was ineffective in amending the sex offender parole statute to include the crime of [CES]." *Sena*, 2021-NMCA-047, ¶¶ 1, 33.

{14} The dissent disagreed with the application of *Ho* and determined that the better analysis is contained in *Smith*. *Sena*, 2021-NMCA-047, ¶¶ 37, 41 (Yohalem, J., dissenting). The dissent did not view *Ho* as dispositive of legislative intent as to sex offender parole in 2007 because *Ho*'s reasoning turned on intent derived from the 2013 SORNA-exclusive amendment, not the sex offender parole statute. *Sena*, 2021-NMCA-047, ¶¶ 36, 40 (Yohalem, J., dissenting). In addition, the dissent properly took issue with interpreting the intent of the Legislature in 2013 as addressing legislative intent of sex offender parole legislation passed six years earlier. *See id.* ¶ 36. The dissent concluded, and we agree, that the 2007 statute which is the current version of the sex offender parole statute, § 31-21-10.1, correctly states the legislative intent behind the 2007 amendments to the sex offender parole statute, which is to apply the extended parole term to those convicted of CES. *See Sena*, 2021-NMCA-047, ¶ 41 (Yohalem, J., dissenting).

II. DISCUSSION

A. Standard of Review

{15} We review "questions of statutory construction" de novo. *Tran v. Bennett*, 2018-NMSC-009, ¶ 16, 411 P.3d 345 (citing *Chatterjee v. King*, 2012-NMSC-019, ¶ 11, 280 P.3d 283). The main purpose of statutory interpretation is to give effect to the intent of the Legislature. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 11, 142 N.M. 248, 164 P.3d 947 (citing *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶ 34, 140 N.M. 77, 140 P.3d 498); *State ex rel. Klineline v. Blackhurst*, 1988-NMSC-015, ¶ 12, 106 N.M. 732, 749 P.2d 1111. To glean legislative intent, reviewing courts should look only to the plain language of the statute unless the meaning of the language is ambiguous. *Riegger*, 2007-NMSC-044, ¶ 11. We must "'construe the entire statute as a whole so that all the provisions will be considered in relation to one another.'" *Id.* (quoting *Cobb*, 2006-NMSC-034, ¶ 34).

{16} We begin by reorienting the statutory reconciliation analysis away from *Ho* and toward our holding in *Smith*.

B. *Smith* Is the Controlling Analysis

{17} We adopt the view of the dissent in *Sena* that "this case is governed by [this Court's] decision in *Smith*, 2004-NMSC-032[, which] requires our courts to construe amendments to the same statutory section enacted in a single legislative session to give effect to each, if at all possible." *Sena*, 2021-NMCA-047, ¶ 37 (Yohalem, J., dissenting); *Smith*, 2004-NMSC-032, ¶ 13 (citing *State v. Rue*, 1963-NMSC-090, ¶ 15, 72 N.M. 212, 382 P.2d 697; *State v. Herrera*, 1974-NMSC-037, ¶¶ 9-10, 86 N.M. 224, 522 P.2d 76; NMSA 1978, § 12-2A-10(A) (1997)). In *Smith*, this Court overturned a split decision of the Court of Appeals that held successive amendments to a DWI statute as irreconcilable. 2004-NMSC-032, ¶¶ 1, 7. *Smith* established that when a court approaches questions of legislative intent, it should not begin with the premise that statutes are irreconcilable. *See id.* ¶ 13 ("At the outset, we believe the [lower court's] majority relies on a faulty premise, namely, that the three amendments to the DWI statute are irreconcilable."). The *Smith* Court urged against a mechanical analysis and adopted the requirement "to look to see what the Legislature was trying to accomplish in its passage of the three bills at issue." *Id.* ¶¶ 7, 25 (internal quotation marks and citation omitted). Moreover, the *Smith* Court established that if statutes have distinct purposes that may be read harmoniously, courts must give effect to each. *See id.* ¶ 13. This is especially true because,

> [g]iven the dynamic and sometimes frenzied way in which bills are introduced, passed, and signed into law during a single legislative session, we [must not] place an impractical burden on both the legislature and the governor, [by requiring] them to reconcile all bills in advance of their passage or signature . . . .

Id. ¶ 20.

{18} In *Smith*, the Court held that even though the three amendments involved the DWI statute, each had a distinct purpose. *Id.* ¶¶ 13, 17. These separate purposes were clear from the titles (namely, one amendment regarding felony sentencing, another regarding intergovernmental agreements, and the last addressing lowering the legal blood alcohol levels for commercial drivers), and each served the general purpose of strengthening the DWI statute. *See id.* ¶¶ 14-17 (looking at the title of each bill and determining that each bill served both a distinct purpose and the common purpose "to make specific, independent improvements to the DWI statute"). Reliance on the title of a statute to aid in the analysis is appropriate because a title may be considered part of the act if the title is necessary to the statute's construction. *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039, ¶ 18, 289 P.3d 1232; 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Constr.*, § 18:7, at 78-79 (7th ed. 2009) (stating that "the title of a statute may be used as an aid to construe the statute even though it is not dispositive on the issue of legislative intent"); *State ex rel. Sedillo v. Sargent*, 1918-NMSC-042, ¶

10, 24 N.M. 333, 171 P. 790 ("The title of the act plainly shows the legislative intent, and, reading the act in connection with the title, [the intent] is clearly apparent."). Using *Smith* as the proper guide, we analyze the question whether the SB 735 and SB 528 enactments serve distinct purposes as they relate to sex offender parole.

C. Reconciling the SB 735 and SB 528 Enactments

{19} Like *Smith,* this case involves multiple amendments with distinct purposes that each serve to strengthen the statute at issue. The SB 735 enactment made CES—and thus Defendant's acts—illegal and subject to an extended parole requirement. *See* 2007 N.M. Laws, ch. 68 (containing, in the title of the act, "Creating a new criminal offense known as child solicitation by electronic communication device; . . . providing an extended period of parole for the offense of child solicitation by electronic communication device"). The SB 528 enactment focused on goals unrelated to the specific charge of CES, namely creating the offense of aggravated criminal sexual penetration, including a second tier of sex offender parole that imposes lifetime parole for the most serious sex offenses, requiring electronic monitoring, and increasing parole requirements for criminal sexual contact of a minor in the fourth degree. *See* 2007 N.M. Laws, ch. 69 (containing, in the title of the act, "Creating a new crime of aggravated criminal sexual penetration; increasing penalties for sex offenses against minors; . . . imposing lifetime parole supervision for certain sex offenders; . . . increasing period of parole for criminal sexual contact of a minor in the fourth degree"). The fact that the two bills as enacted addressed parole requirements for sex offenders does not demonstrate conflicting intentions of the Legislature because each bill's purpose is distinct in its efforts to make specific independent improvements to the sex offender parole statute. *See Smith*, 2004-NMSC-032, ¶ 17; 2007 N.M. Laws, ch. 68; 2007 N.M. Laws, ch. 69. Therefore, for this reason alone, we conclude that the SB 735 and SB 528 enactments are reconcilable, and we give effect to the extended parole requirements provided in the SB 735 enactment.

{20} Next, we reject any suggestion that *Ho* or the 2013 SORNA Amendment that forms the basis of its analysis changes the outcome of this case. *See Sena*, 2021-NMCA-047, ¶¶ 23-24. We strongly caution against the continued application of *Ho* to determine whether these two bills are reconcilable. First, the holding in *Ho* is limited in its scope in that it involves only sex offender registration requirements for those convicted of CES and does not implicate parole. *See* 2014-NMCA-038, ¶ 14. Second, by applying *Ho* as broadly as the Court of Appeals does in this case, one must conclude that in 2013 the Legislature impliedly repealed the 2007 enactment of the extended parole requirement for CES, making the passage and signing of SB 735 an absolute nullity, something we decline to do.

{21} In *Ho*, the Court of Appeals held that a convicted sex offender who pleaded guilty to CES in 2012 was not required to abide by SORNA registration requirements imposed by the 2013 SORNA Amendment. 2014-NMCA-038, ¶¶ 1, 3, 14. The *Ho* Court began by faithfully applying the test for discerning legislative intent pronounced in *Smith,* concluding initially that the SB 528 and SB 735 enactments are likely reconcilable. *Id.* ¶¶ 11-12 ("Absent the 2013 amendment, we would apply *Smith* and conclude that SB 735 and SB 528 are reconcilable because they have different purposes and the substantive changes they made . . . are not at odds . . . , [and] we would conclude further that the Legislature intended both SB 528 and SB 735 to be valid."). Later, however, the *Ho* Court lost its bearings by focusing not on what was contained in the SB 735 and SB 528 enactments but on a portion of the 2013 SORNA Amendment's title, "reconciling multiple amendments to the same sections of law in Laws 2007," and on the effective date for the registration requirement. *Ho*, 2014-NMCA-038, ¶¶ 6, 11, 13-14 (internal quotation marks and citation omitted) ("But we cannot ignore the import of the 2013 amendment to Section 29-11A-3(I), the existence of which requires a different outcome."); 2013 N.M. Laws, ch. 152 (title). The *Ho* Court concluded that the 2013 SORNA Amendment evidenced the Legislature's recognition that the SB 528 and SB 735 enactments were irreconcilable as to making CES a registrable offense for convictions that occurred before 2013. *See* 2014-NMCA-038, ¶ 13.

{22} The Court of Appeals decision to simply carry forward *Ho*'s holding regarding registration and render the SB 735 enactment's parole requirements ineffective was error. *See Sena*, 2021-NMCA-047, ¶¶ 23-24. To begin, the Court of Appeals gives too much weight to the broad statement in *Ho* that the Legislature "viewed the 2007 amendments as irreconcilable." *Ho*, 2014-NMCA-038, ¶ 13; *see Sena*, 2021-NMCA-047, ¶¶ 23-24. The use of "reconciling" in the 2013 SORNA Amendment title does not imply that the Legislature views the SB 735 and SB 528 enactments as irreconcilable. In fact, the wording in the amendment can be read reasonably to simply express the desire of the Legislature to reconcile those portions of two statutes that can be reconciled. More importantly, there is nothing in SORNA, and specifically in the 2013 SORNA Amendment, that addresses the extended parole requirements for CES, and we refuse to add such an amendment through the expansion of *Ho.* When a statute's terms have a plain meaning, the court's analysis is at its end. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1743 (2020); *see also Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978) ("It is not for us to speculate, much less act, on whether Congress would have altered its stance had the specific events of this case been anticipated."). The 2013 SORNA Amendment's plain wording reveals no effect on the parole statute and has no role in the outcome of this case.

{23} We take specific issue with the conclusion of the Court of Appeals majority that "[t]here is no principled reason why the Legislature would view SB 735 and SB 528 as irreconcilable for the purpose of SORNA [in 2013, as held by *Ho*] but reconcilable for the purpose of sex offender parole." *Sena*, 2021-NMCA-047, ¶ 24 (first alteration in original) (internal quotation marks omitted). The principled reason to hold the two enactments reconcilable for the purpose of parole is that the parole requirements are not only a distinct aspect of the SB 735 enactment but, in many ways, are the core of the legislation. We presume that if the Legislature chose to alter this distinct aspect of the SB 735 enactment, it would have done so expressly. *See King v. Burwell*, 576 U.S. 473, 497 (2015) (holding that because the creation of the tax credit was a fundamental purpose of the Affordable Care Act, if Congress intended to limit the provision of tax credits it would have done so expressly).

{24} The United States Supreme Court described the importance of understanding the core policy of legislative enactments as it reviewed an agency decision that loosened filing requirements for new competitors under the common carrier section of the Federal Communications Act. *MCI Telecomm. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 221 (1994). The Court held that the agency exceeded agency authority, concluding that the rate-filing requirements were "the heart" of the act and that if Congress had intended such an allowance, it would have said so expressly. *See id.* at 229-30, 234 ("For the body of a law, as for the body of a person, whether a change is minor or major depends to some extent upon the importance of the item changed to the whole. Loss of an entire toenail is insignificant; loss of an entire arm tragic. The tariff-filing requirement is, to pursue this analogy, the heart of the common-carrier section of the Communications Act."). The Court reasoned that the filing requirements were "Congress's chosen means of preventing unreasonableness" in rate charges, so it was unlikely, given the importance of rate monitoring

to the purposes of the act, that Congress would have delegated the authority to subtly change the requirements. *Id.* at 230-31.

{25} Similarly, the parole requirements in the SB 735 enactment are at the heart of the purpose of the amendment which, as outlined in its title, is threefold: to create the offense of CES, to amend registration requirements, and to outline parole requirements for the offense. *See* 2007 N.M. Laws, ch. 68, §§ 1-5 (title). The parole requirements outlined in SB 735 were the Legislature's chosen method of dealing with those who commit CES. *See id.* § 4. Given the importance of the parole requirements in the 2007 enactment, it is unlikely that the Legislature would revoke them through the 2013 SORNA Amendment, a statute that nowhere references sex offender parole terms. Therefore, because we presume that the Legislature deals with major aspects of statutes expressly, we do not construe the 2013 SORNA Amendment to have rendered the parole requirements of the SB 735 enactment ineffective by implication. *Smith*, 2004-NMSC-032, ¶ 22; *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) (citing *Hill*, 437 U.S. at 189) ("[R]epeals by implication are not favored."). We emphasize that legislative intent to repeal a prior statute "'must be clear and manifest.'" *United States v. Borden Co.*, 308 U.S. 188, 198 (1939) (quoting *Red Rock v. Henry*, 106 U.S. 596, 601-02 (1883)). Because there is no express intent by the Legislature to alter much less repeal the extended parole requirement in Section 31-21-10.1 as it was created in 2007, we disagree with the Court of Appeals analysis concluding that the requirement was implicitly repealed."[8]

{26} Finally, sanctioning an interpretation that the SB 528 enactment comprehensively amended the SB 735 enactment rendering it ineffective is rebutted by the procedural history of the legislation: SB 528 and SB 735 were introduced in the Senate within a week of each other and were passed by the Senate within two days of each other. *See* SB 735 Legislation Actions; SB 528 Legislation Actions. Both SB 735 and SB 528 were passed by the House on the same day and were signed into law by the Governor on the same day. *See* SB 735 Legislation Actions; SB 528 Legislation Actions. An interpretation that the Legislature intended the SB 528 enactment to supersede the SB 735 enactment assumes that the Legislature acted superfluously in enacting SB 735. Given the improbability of the Legislature undertaking the legislative process to pass a bill and render it ineffective two days later and the lack of any express legislative intent to support this contention, we conclude that the SB 528 enactment did not comprehensively amend the SB 735 enactment, and we give effect to both amendments.

{27} Conclusion

{28} Applying *Smith*, we conclude that the SB 735 and SB 528 enactments are reconcilable, and we give effect to the parole requirements provided in the SB 735 enactment. The 2013 SORNA Amendment and *Ho* play no role in our analysis. Pursuant to *Smith*, the SB 735 and SB 528 enactments must be read harmoniously because each has distinct purposes, and accordingly, the Court of Appeals should have given effect to both. Therefore, we reverse the Court of Appeals and affirm the sentence of the district court.

{29} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

BRIANA H. ZAMORA, Justice

[8] Because the SB 735 enactment was published in the compiler annotations to Section 31-21-10.1 upon its passage in 2007, whereupon the Compilation Commission accordingly recompiled it into statutory text in 2016, CES has required an extended sex offender parole term since 2007. Due process notice requirements were met, and the statute was in effect at the time Defendant committed the crime, and thus Defendant's argument on this point fails. See Smith, 2004-NMSC-032, ¶¶ 31-32 (concluding that due process notice requirements were met because the increased penalty provisions in one amendment to the DWI statute were "in force at the time Defendants committed their repeat DWI offenses" and because "all three amendments to [the DWI statute] were noted and printed in the compilation").

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-008
No: S-1-SC-38452 (filed March 13, 2023)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
DERRICK ROMERO,
Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY
Melissa A. Kennelly, District Judge

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

for Appellant

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

for Appellee

OPINION

BACON, Chief Justice.

{1} The primary issue in this case concerns a district court's inherent common law authority to correct a sentence that is illegal due to clear error. Defendant-Appellee Derrick Romero (Appellee) pleaded guilty to second-degree criminal sexual penetration (CSP), contrary to NMSA 1978, Section 30-9-11(E)(1) (2009). In the first judgment and sentence (J&S), the district court erred in ordering that Appellee serve two years of parole, resulting in an unlawfully short period of mandatory parole. Thirteen days later, the district court ostensibly corrected the sentencing error by entering a second amended J&S, which replaced Appellee's parole period of two years with five-to-twenty years. Both of these parole periods were illegal sentences, however, as NMSA 1978, Section 31-21-10.1(A)(2) (2007), requires a sex offender convicted of CSP in the second degree to serve an "indeterminate period of supervised parole for . . . not less than five years and up to the natural life of the sex offender."

{2} Appellee challenged the revised parole period of five-to-twenty years in his Amended Petition for Writ of Habeas Corpus. The district court relied on *State v. Torres*, 2012-NMCA-026, ¶ 37, 272 P.3d 689, which acknowledged Rule 5-801(A) NMRA (2009), a former rule applicable to the district courts both in *Torres* and here, as having "abrogated the common law principle that a district court retained inherent jurisdiction to correct illegal sentences." Under this abrogation conclusion in *Torres*, the district court here determined that it had had no jurisdiction to correct the illegal parole sentence in the first J&S and accordingly granted Appellee's habeas petition, thereby vacating the second amended J&S and reinstating the original two-year parole period. Here, Plaintiff-Appellant State of New Mexico (State) appeals that grant.

{3} The State argues that this Court should either remand for imposition of the statutory five-years-to-life parole period, reverse the district court under a holding that NMSA 1978, Section 39-1-1 (1917) provided a separate statutory basis from Rule 5-801 for the second amended J&S, or overrule *Torres* to hold that district courts retain their common law authority to correct illegal sentences. In addition, the State argues that none of these outcomes would create a basis for Appellee to withdraw his plea.

{4} We hold that historical changes leading to Rule 5-801 (2009) (former Rule 5-801)[1] did not remove a district court's common law jurisdictional authority to correct an illegal sentence. Thus, we overrule *Torres* in that regard. Under this holding, we reverse the district court's grant of the writ of habeas corpus and remand to the district court to impose the statutorily required parole sentence. We further direct the Rules of Criminal Procedure for State Courts Committee to clarify the length of time in which a district court retains the relevant jurisdiction to correct an illegal sentence in accordance with this opinion. Finally, under *Boykin v. Alabama*, 395 U.S. 238 (1969), and Rule 5-303 NMRA, we hold that Appellee is entitled to an opportunity for plea withdrawal.

I. FACTUAL AND PROCEDURAL BACKGROUND

{5} Appellee was charged by criminal information in 2010, and he pleaded guilty to CSP in the second degree ("use of force or coercion on a child thirteen to eighteen years of age"), contrary to Section 30-9-11(E)(1). On May 17, 2011, the district court conducted a hearing on the plea agreement. At the outset of the plea hearing, the prosecutor at the judge's prompting recited "[t]he agreement as to sentencing." Notably, the only mention of parole in this recitation consisted of the agreement that probation would run concurrent with parole.

{6} Subsequent to the recitation of plea terms, the district court conducted a colloquy with Appellee which demonstrated the plea was knowing and voluntary, and the court accepted the plea agreement.

[1] Subsection A of former Rule 5-801 and of its predecessor Rule 5-801 NMRA (1992) allows that a district court "may correct an illegal sentence at any time" pursuant to habeas corpus proceedings while Subsection B of both rules specifies procedures for "motions to reduce a sentence." But the title and text of the two successor amendments, Rule 5-801 NMRA (2014) and the current Rule 5-801 NMRA (2016), limit these more recent rules solely to procedures for "motions to reduce a sentence." The committee commentary on all four rule amendments identifies Rule 35 of the Federal Rules of Criminal Procedure as the historic reference for a district court's authority to "modify a sentence."

No mention was made as to the length of the parole period until after the parties and court accepted the announced terms of the plea agreement. The court's oral pronouncement of the sentence specified an incorrect parole period of two years, whereas the applicable statute required a parole period of five years to life for the offense of CSP in the second degree. *See* § 31-21-10.1(A)(1)-(2).

{7} The district court filed the Plea and Disposition Agreement on May 18, 2011. Under the "TERMS" heading, the agreement states, "This agreement is made subject to the following [six] conditions." As in the oral recitation of the plea terms, the six written conditions only mention parole in the context of the agreement for probation to run concurrent with parole. Appellee's signature appears below those conditions. A subsequent page of the agreement under "DISTRICT COURT APPROVAL" specifies "a mandatory TWO (2) YEARS on parole on the second degree felony count."

{8} Also on May 18, 2011, the district court entered its order of Judgment, Partially Suspended Sentence and Commitment (original J&S). The original J&S included that Appellee had "been convicted by a plea and disposition agreement" and that Appellee's nine-year sentence of incarceration would "be followed by a TWO (2) YEAR parole period."

{9} Thirteen days later, on May 31, 2011, the district court entered the second amended J&S,[2] which included the ostensible correction that Appellee's nine-year sentence of incarceration would "be followed by a FIVE (5) to TWENTY (20) YEAR parole period."

{10} In 2018,[3] Appellee filed a petition for writ of habeas corpus followed by two amended petitions. The district court held a hearing on the second amended habeas petition on December 3, 2019.

{11} On June 22, 2020, the district court granted Appellee's petition. As discussed further subsequently herein, the court's decision and order relied on the abrogation conclusion in *Torres*, 2012-NMCA-026, in determining that "the district court had no jurisdiction under former Rule 5-801(A) to amend the [original J&S] for the purpose of increasing the parole period to conform with the law." In support of its decision, the district court quoted *Torres*, 2012-NMCA-026, ¶ 17: "'[I]t is apparent that the Rules Committee intended to strictly limit the district court's jurisdiction to correct illegal sentences to only habeas corpus-based motions [filed by the person in custody or under restraint] under Rule 5-802 [NMRA].'" The district court concluded that it "must grant the [p]etition and reinstate the original illegal sentence," relying on *Torres*, 2012-NMCA-026, ¶ 39, and *State v. Tafoya*, A-1-CA-34599, mem. op. ¶ 19 (N.M. Ct. App. July 23, 2019) (nonprecedential) ☐ cases remanded to the district courts for reinstatement of illegal sentences. Under that conclusion, the district court order granted the petition, invalidated and voided the second amended J&S, and reinstated the original J&S.

{12} The State timely appealed pursuant to Rule 5-802(N)(1) and Rule 12-102(A)(3) NMRA.

II. DISCUSSION

{13} We begin by analyzing the holding in *Torres* that former "Rule 5-801(A) . . . abrogated the common law principle that a district court has inherent and unlimited jurisdiction to correct illegal sentences." 2012-NMCA-026, ¶ 37. We then apply our conclusion therein to the district court's grant of Appellee's petition for writ of habeas corpus. Finally, we analyze whether changes to his parole sentence entitle Appellee to an opportunity to withdraw his plea.

A. *Torres* is overruled regarding abrogation of a district court's jurisdiction to correct an illegal sentence

{14} Because the district court relied heavily on *Torres* in granting Appellee's petition, we first address whether the jurisdictional holding in *Torres* was correctly decided. "[T]he question of whether a [district] court has jurisdiction in a particular case is a question of law that we review de novo." *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300. "We have the ultimate authority to fashion, adopt, and amend rules of procedure by virtue of the authority granted to this Court in Article III, Section 1 and Article VI, Section 3 of the New Mexico Constitution." *State v. Pieri*, 2009-NMSC-019, ¶ 19, 146 N.M. 155, 207 P.3d 1132. Therefore, because *Torres* had the effect of modifying a district court's jurisdiction under former Rule 5-801, we may properly address its continued validity.

{15} The State makes two arguments that the *Torres* Court erred in concluding that a district court's common law jurisdiction to correct illegal sentences was abrogated by historic changes to Rule 5-801. *See Torres*, 2012-NMCA-026, ¶ 17. First, the State argues that *Torres* "minimized important developments in [federal] Rule 35," Fed. R. Crim. P. 35 (Rule 35), supporting the proposition that "New Mexico courts retained at least a limited authority to fix obvious errors until the time for taking an appeal expired." Second, the State argues that *Torres* "improperly held that Rule [5-]801 abolished a well-established provision of the common law by implication," violating the *express abrogation* requirement established in *Sims v. Sims*, 1996-NMSC-078, ¶ 23, 122 N.M. 618, 930 P.2d 153.

{16} In opposition, Appellee makes two arguments that *Torres* need not be overruled. First, erroneously claiming that the State's argument focuses on "changes in the federal clerical error rule," Appellee argues that *Torres* is inapplicable to that issue "because the illegal sentence [here] was not clerical." We note that this mischaracterization conflates the State's *clear error* argument with a *clerical error* argument that has not been made. A clerical error argument would fall under the purview of Rule 5-113(B) NMRA, not Rule 5-801. Because Appellee's first argument does not address the State's position, we do not consider it further. *State v. Guerra*, 2012-NMSC-014, ¶ 21, 278 P.3d 1031 ("[T]he appellate court does not review unclear or undeveloped arguments."). Second, Appellee implicitly argues under stare decisis that the relevant holding in *Torres* abides with this Court's intent in promulgating Rule 5-801 and that the State's claim under *Sims* does not meet the State's burden to overturn the settled precedent of *Torres*.

{17} Holding "that the district court did not have jurisdiction to correct [the d]efendant's illegal sentence," our Court of Appeals in *Torres* "therefore remand[ed] to the district court to reinstate [the d]efendant's sentence as originally imposed." 2012-NMCA-026, ¶ 1. In support of its holding, the *Torres* Court provided a jurisdictional analysis of Rule 5-801(A) that included "the context of its history and background." *Torres*, 2012-NMCA-026, ¶ 17. That jurisdictional analysis resulted in the following erroneous conclusion in *Torres*: "Since the amendments of 1984, federal case law and legislation have made clear that it was Congress's specific intent to remove any historical common law jurisdiction the federal district courts once enjoyed with respect to correction of illegal sentences" pursuant to Rule 35. *Torres*, 2012-NMCA-026, ¶ 24. The *Torres* Court compounded its error by further concluding that, because our Rule 5-801(A) "has closely tracked" Rule 35(a), the New Mexico rule "reflects a clear intent to strictly limit the district court's jurisdiction to habeas corpus proceedings to correct an illegal sentence." *Torres*, 2012-NMCA-026, ¶ 27. We now summarize the *Torres* Court's historical analysis and explain the errors in both conclusions.

{18} The *Torres* Court traced the relationship of Rule 5-801 and its predecessor Rule

[2] A first amended J&S was entered on May 24, 2011, to correct the date of transport to the Department of Corrections.

[3] We omit intervening procedural history that is not relevant to this proceeding.

57.1 SCRA (1986) to Rule 35, focusing on four significant historical rules changes. First, *Torres* noted the 1944 adoption of federal Rule 35, which codified existing common law regarding a district court's authority to set aside or alter its final judgment. 2012-NMCA-026, ¶ 18 (citing *Duggins v. United States*, 240 F.2d 479, 483 (6th Cir. 1957); *Gilmore v. United States*, 131 F.2d 873, 874 (8th Cir. 1942)). The Court stated that this authority included "indefinite jurisdiction . . . 'to correct sentences when the judgment was void, because these sentences were invalid and not final dispositions.'" *Id.* (quoting *United States v. Rico*, 902 F.2d 1065, 1067 (2d Cir. 1990)).

{19} Second, *Torres* noted this Court's 1980 adoption of Rule 57.1 "to be virtually identical to federal Rule 35, thereby codifying existing New Mexico common law." 2012-NMCA-026, ¶ 20. The Court recognized that, like federal law, our common law had been interpreted "as including an inherent jurisdiction to correct illegal sentences." *Id.*

{20} Third, *Torres* noted the federal adoption of the Sentencing Reform Act of 1984 (SRA), which included "repeal[of] the indefinite jurisdiction principle embodied in Rule 35(a) altogether." *Torres*, 2012-NMCA-026, ¶ 21. The Court stated that "the underlying purpose of the [SRA] 'was to impose on the new sentencing system a requirement that the sentence imposed . . . would remain constant, immune from later modification.'" *Id.* (quoting *United States v. Cook*, 890 F.2d 672, 674-75 (4th Cir. 1989)). Importantly, the *Torres* Court quoted and relied on *United States v. Jordan*, 915 F.2d 622, 627-28 (11th Cir. 1990), for the proposition that the SRA, rather than merely limiting the relevant jurisdiction of a district court, "'*explicitly foreclosed* [the Rule 35(a)] route for obtaining judicial review of an allegedly illegal sentence' at any time." 2012-NMCA-026, ¶ 22 (alteration in original) (emphasis added). Importantly, as we discuss subsequently herein, the advisory committee commentary on the 1991 amendments to Rule 35 implicitly rejected this interpretation in *Jordan*.

{21} Fourth, *Torres* noted this Court's 1986 "adopt[ion of] the recommendation of the Rules Committee to repeal [Rule] 57.1(a), which had previously allowed for indefinite jurisdiction over illegal sentences." *Torres*, 2012-NMCA-026, ¶ 23. *Torres* correctly recognized that our relevant order also constituted a "comprehensive overhaul of Rule 57 [SCRA (1986)]," which included "explicitly open[ing habeas corpus as an] avenue for review of 'illegal' sentences under the scope of the rule." *Torres*, 2012-NMCA-026, ¶ 23. However, our order did not expressly limit correction of clearly illegal sentences to habeas proceedings, nor did it expressly remove a district court's jurisdiction for such correction.

{22} We conclude that the erroneous conclusions in *Torres* discussed previously—that Congress specifically intended to *remove* a federal district court's common law jurisdiction to correct an illegal sentence and that this Court followed suit for state district courts—stem from three main errors. First, the *Torres* Court did not properly consider either the 1991 amendments to Rule 35 or the circuit court cases on which those amendments relied. *See Torres*, 2012-NMCA-026, ¶¶ 18, 21-22. Second, the *Torres* Court misread *United States v. Washington*, 549 F.3d 905, 917 (3d Cir. 2008), regarding congressional abrogation of a district court's common law jurisdiction. *See* 2012-NMCA-026, ¶ 24. Third, the *Torres* Court recognized but then improperly ignored the express abrogation rule in *Sims*, 1996-NMSC-078, ¶ 23. *Torres*, 2012-NMCA-026, ¶¶ 29-30. We discuss these errors in turn.

{23} Contrary to the relevant erroneous conclusion in *Torres*, the 1991 amendments recognized that the SRA did *not* foreclose "the ability of the sentencing court to correct a sentence imposed as a result of an obvious . . . clear error, if the error is discovered shortly after the sentence is imposed." Fed. R. Crim. P. 35 advisory comm. notes (1991). The 1991 amendments "effect[ively] codifie[d]" the holdings of *Cook*, 890 F.2d 672, 675, and *Rico*, 902 F.2d 1065, 1069, that the district court retained "the inherent authority . . . to correct a sentence," notwithstanding the SRA's repeal of a district court's *indefinite* jurisdiction to correct a sentence. Fed. R. Crim. P. 35 advisory comm. notes (1991).

{24} In *Cook*, the Fourth Circuit "recognize[d] the inherent power in a [district] court to correct an acknowledged and obvious mistake," distinguishing the SRA's focus on "*appellate* review of sentences." 890 F.2d at 674-75 (emphasis added). Similarly in *Rico*, the Second Circuit found "no mention in the legislative history [of the SRA] of any diminution in the district court's inherent power to correct sentences . . . [and] no indication that [Congress] intended to repudiate this long-standing authority of district courts." 902 F.2d at 1067. In affirming *Cook* and *Rico*, the 1991 amendments implicitly rejected the contrary 1990 holding of the Eleventh Circuit on which *Torres* relied. *See Torres*, 2012-NMCA-026, ¶ 22 (quoting *Jordan*, 915 F.2d at 627-28).

{25} By not properly considering the 1991 amendments to Rule 35, the *Torres* Court reached its erroneous conclusion regarding the scope of the SRA's repeal of the federal rule. *See Torres*, 2012-NMCA-026, ¶ 22. In turn, the *Torres* Court misinterpreted the scope of this Court's 1986 order. *See id.* ¶ 23. To the extent that this Court's 1986 order followed the SRA's lead, our repeal of Rule 57.1(a) similarly did not remove a district court's inherent authority to correct a sentence.

{26} The *Torres* Court also erred in reading *Washington* as supporting the proposition that Congress abrogated the relevant power of a district court. *See* 2012-NMCA-026, ¶¶ 24, 29 (citing *Washington*, 549 F.3d at 911, 917). *Washington* did not involve a district court's power to correct a sentence that would constitute *clear error* but rather concerned a district court's power to correct a sentence that was *procured by fraud*. *See* 549 F.3d at 912, 914. The Third Circuit in *Washington* reversed the district court's finding, upon discovery of the defendant's true identity, that the court "had the inherent power to vacate judgments procured by fraud." *Id.* at 909 (internal quotation marks and citation omitted). The *Washington* Court concluded that any such inherent power to correct a sentence resulting from fraud had been abrogated by Congress, whereas the 1991 amendments to Rule 35 recognized the narrow corrective power of a district court in "cases in which an obvious error or mistake has occurred in the sentence." *Washington*, 549 F.3d at 914, 916. The foregoing makes clear that the inherent power of a district court considered in *Washington* is distinct from the inherent power considered by *Torres* and by this Court, and thus *Washington* does not support the holding in *Torres*.

{27} The *Torres* Court ultimately erred in not following "our long-standing rule that 'only if a statute so provides with *express language or necessary implication* will New Mexico courts be deprived of their inherent equitable powers.'" 2012-NMCA-026, ¶ 29 (emphasis added) (quoting *Sims*, 1996-NMSC-078, ¶ 30). In *Sims*, we explained:

> The comprehensiveness of [a New Mexico court's] equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction."

1996-NMSC-078, ¶ 30 (citation omitted).

{28} The *Torres* Court acknowledged that the purported abrogation of a district court's "inherent common law jurisdiction . . . over correction of illegal sentences" was "not expressly stated" in changes to the rule. *Torres*, 2012-NMCA-026, ¶¶ 29-30. Despite the absence of express abrogation

language, the *Torres* Court nonetheless held "that the Rules Committee meant to defeat the broad jurisdiction embodied in the common law by repeatedly narrowing Rule 5-801(A)." *Torres*, 2012-NMCA-026, ¶ 30. To the extent that the *Torres* Court concluded from such narrowing that the relevant inherent authority of sentence correction was abrogated by *necessary implication* under *Sims*, we clarify that our changes to Rule 5-801(A), as we have discussed, did not foreclose that authority. *See Torres*, 2012-NMCA-026, ¶¶ 29-30. Accordingly, there was no such necessary implication of abrogation. Under *Sims*, the *Torres* Court erred in concluding that our changes to Rule 5-801 implicated abrogation of the relevant common law jurisdiction where such a principle appeared neither in our express language nor as a necessary implication of those changes. *See Torres*, 2012-NMCA-026, ¶ 29.

{29} Applying the foregoing analysis, we hold that historical changes to Rule 5-801(A) did not remove a district court's common law jurisdictional authority to correct a sentence that is illegal due to clear error. *Torres* is overruled to the extent that it holds otherwise. Under our holding, we do not reach the State's argument that Section 39-1-1 provided a separate statutory basis from Rule 5-801 for the district court to amend its sentence. Additionally, we direct the Rules of Criminal Procedure for State Courts Committee to clarify the time period during which a district court retains such jurisdiction in accordance with this opinion.[4]

B. The district court had jurisdiction thirteen days after the original J&S to correct the illegal sentence of parole, but the district court on remand must impose the parole sentence required by Section 31-21-10.1(A)(2)

{30} We next apply our holding above to the district court's grant of the writ of habeas corpus. This Court reviews the legal conclusions of a district court in a habeas proceeding de novo. *Lukens v. Franco*, 2019-NMSC-002, ¶ 15, 433 P.3d 288.

{31} Under our holding, we reverse the district court's grant of the writ of habeas corpus, as the district court had jurisdiction thirteen days after the original J&S to correct the clearly illegal parole sentence of two years. However, while reversal here would otherwise reinstate the second amended J&S, we cannot reinstate the parole sentence therein of five-to-twenty years as it also constitutes a clearly illegal sentence. *See* § 31-21-10.1(A)(2) (requiring that a sentence for second-degree CSP "shall include . . . an indeterminate period of supervised parole for a period of . . . not less than five years and up to the natural life of the sex offender").

{32} An illegal sentence is void and a nullity. *See State v. Peters*, 1961-NMSC-160, ¶ 5, 69 N.M. 302, 366 P.2d 148 ("The . . . sentence . . . being unauthorized by law . . . was null and void, and [the district court] was warranted in disregarding it as mere surplusage."); *see also Rico*, 902 F.2d at 1067 ("[U]nder common law a district court was free at any time to correct sentences when the judgment was void, because these sentences were invalid and not final dispositions." (internal quotation marks omitted)). In *State v. Miller*, 2013-NMSC-048, ¶ 36, 314 P.3d 655, we explained in the plea context that a "court must . . . be mindful of our sentencing statutes and cannot impose an illegal sentence. If the sentence in an accepted plea is illegal, [it] cannot be imposed by a court." *Id.*; *see State v. Mares*, 1994-NMSC-123, ¶ 10, 119 N.M. 48, 888 P.2d 930 ("This Court has long held that the [district] court may impose only sentences which are authorized by law."); *State v. Lucero*, 1944-NMSC-036, ¶ 17, 48 N.M. 294, 150 P.2d 119 ("[W]e conclude that the sentence . . . was in excess of punishment warranted by law . . . and is therefore void."); *see also Sneed v. Cox*, 1964-NMSC-250, ¶ 8, 74 N.M. 659, 397 P.2d 308 ("[S]entences which are unauthorized by law are null and void."), abrogated on other grounds as recognized by *State v. Sublett*, 1968-NMCA-001, ¶ 22, 78 N.M. 655, 436 P.2d 515.

{33} Under these precedents, we are unauthorized to reinstate the clearly illegal sentence of parole in the second amended J&S. Instead, we remand to the district court for imposition of the parole period required by Section 31-21-10.1(A)(2).

{34} We note that the district court order cited two cases in support of the proposition that reinstatement of an illegal sentence can be proper, neither of which is persuasive here. The order first cites *Torres*, 2012-NMCA-026, ¶ 39, wherein the Court of Appeals remanded for reinstatement of the defendant's illegal prior sentence under the very abrogation principle which we overrule in this opinion. The order also cites *Tafoya*, A-1-CA-34599, mem. op. ¶ 19, which is an unpublished memorandum opinion. This Court subsequently quashed the State's petition for writ of certiorari in *Tafoya* based on mootness and specifically "ordered that the Court of Appeals [m]emorandum [o]pinion . . . SHALL NOT be cited as persuasive authority." *State v. Tafoya*, S-1-SC-37872, Dispositional Order to Quash ¶ 16 (N.M. Sept. 2, 2021). In sum, these cases do not provide compelling support for a court's reinstatement of an illegal sentence.

{35} Citing *Lopez v. LeMaster*, 2003-NMSC-003, ¶ 17, 133 N.M. 59, 61 P.3d 185, Appellee argues that while "New Mexico courts have broad authority to order discretionary relief through . . . writs of habeas corpus . . . , an order increasing a criminal sentence is not among the remedies available in a collateral habeas corpus proceeding." As *Lopez* states explicitly, however, "[a] court may not ignore statutes, rules, and precedents when fashioning such a remedy." *Id.* Under this foundational principle, we are not at liberty to ignore the parole sentence required by Section 31-21-10.1(A)(2). Contrary to Appellee's characterization, imposition of the statutorily required parole period constitutes replacing the nullity of the illegal parole sentence in the second amended J&S, not increasing an otherwise valid sentence.

C. Appellee is entitled to an opportunity for plea withdrawal

{36} Finally, we analyze whether a change to his parole sentence entitles Appellee to an opportunity to withdraw his plea under his constitutional right to due process. We analyze this issue under the Fourteenth Amendment to the United States Constitution, which Appellee argues under federal due process cases without specifying additional due process rights under the New Mexico Constitution.

{37} The parties disagree as to whether Appellee accepted the plea knowingly and voluntarily. The State points to the district court "confirm[ing] that [Appellee] understood the range of possible penalties associated with his plea." Relatedly, the State argues that Appellee has not shown prejudice, that "the district court established that he entered the agreement knowingly and voluntarily," and that, under *United States v. Timmreck*, 441 U.S. 780, 785 (1979), "habeas relief is unavailable when 'all that is shown is a failure to comply with the formal requirements' of the federal counterpart to Rule 5-303." In response, Appellee argues that "[p]rejudice from an increased sentence is self-evident" and that "[t]he record in this case does not reflect any affirmative, voluntary, knowing, and intelligent waiver by [Appellee] of his

[4] We note the principle adopted by the 1991 amendments to Rule 35 that the time for correcting [obvious arithmetical, technical, or other clear errors] should be [restricted to] the time for appealing the sentence to reduce the likelihood of jurisdictional questions in the event of an appeal and to provide the parties with an opportunity to address the court's correction of the sentence, or lack thereof, in any appeal of the sentence. Fed. R. Crim. P. 35 advisory comm. notes (1991).

fundamental due process rights." We infer from his waiver argument that Appellee contends that imposition of the more onerous sentence constituted a violation of fundamental due process. To the extent that the State suggests Appellee abandoned this issue on appeal, we invoke our right to review an issue involving the fundamental rights of a party. *See* Rule 12-321(B)(2)(d) NMRA.

{38} The parties also dispute whether the two-year parole sentence was among the terms of the negotiated plea agreement and thus would constitute part of the benefit of Appellee's bargain. The State argues that "[t]he plea agreement unambiguously did not address the length of parole" and that the two-year parole sentence was a finding made by the district court separate from and subsequent to the parties' negotiated plea agreement. The State further argues that correction of Appellee's parole sentence did not violate due process where parole periods are statutorily mandated and "cannot be the subject of bargaining." In response, Appellee asserts that "the terms of the written plea agreement expressly included a two-year parole sentence" and argues that "the imposition of an enhanced parole sentence violates the binding plea agreement between the State and [Appellee]." Appellee also argues that the "parole sentence was clearly part of the bargain in light of the disproportionate impact the [five- to twenty-year parole] sentence had on the overall agreement."

{39} The parties' foregoing due process arguments fall under the

> two separate, though closely related, constitutional challenges that may be made [when seeking relief from a guilty plea]: (1) that the plea of guilty was not made voluntarily and with full knowledge of the consequences, and (2) that [the] defendant did not receive the benefit of the bargain [the defendant] made with the [s]tate when [the defendant] pled guilty.

People v. Whitfield, 840 N.E.2d 658, 663, 673 (Ill. 2005) (holding that the defendant's "constitutional right to due process and fundamental fairness was violated" where he was never advised at the plea hearing that mandatory parole would be imposed and where subsequent imposition thereof resulted in a more onerous sentence). A due process challenge to the plea being knowing and voluntary "derives from *Boykin*, . . . 395 U.S. [at 242-43 & n.5]," whereas a due process "'benefit of the bargain' claim finds its roots in *Santobello v. New York*, 404 U.S. 257, 262 . . . (1971)." *Whitfield*, 840 N.E.2d at 663-64 ("*Boykin* and *Santobello* deal with two different aspects of a plea—its acceptance and its implementation."). Because *Boykin* and *Santobello* govern the parties' arguments, we provide the applicable principles of both cases despite the parties' failure in this appeal to apply *Boykin*.

{40} In *Boykin*, the United States Supreme Court held that the record for acceptance of a guilty plea must affirmatively show that the plea was "intelligent and voluntary."[5] 395 U.S. at 242, 243 n.5 (identifying "a defendant's guilty plea [that] is not equally voluntary and knowing" as a "violation of due process and . . . therefore void"). The *Boykin* Court noted that a defendant's "waiver of . . . three important federal [constitutional] rights"—the privilege against self-incrimination, the right to trial by jury, and the right to confront one's accusers—cannot be presumed from a silent record. *Id.* at 243. "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure [the accused] has a full understanding of what the plea connotes and of its consequence." *Id.* at 243-44. In New Mexico, "Rule 5-303 NMRA essentially codified *Boykin* . . . and requires an affirmative showing on the record that a guilty plea was voluntary and intelligent." *State v. Yancey*, 2019-NMSC-018, ¶ 12, 451 P.3d 561 (brackets, internal quotation marks, and citations omitted).

{41} In *Santobello*, the United States Supreme Court noted that "'plea bargaining[]' is an essential component of the administration of justice" but one which "presuppose[s] fairness in securing agreement between an accused and a prosecutor." 404 U.S. at 260-61. The *Santobello* Court stated that as a "safeguard[] to insure the defendant what is reasonably due" under a plea agreement, a "constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 262. We note that this Court has quoted the latter language in *Santobello* in multiple cases. *See, e.g.*, *State v. King*, 2015-NMSC-030, ¶ 18, 357 P.3d 949; *Pieri*, 2009-NMSC-019, ¶¶ 15, 33.

{42} The parties' arguments "require[] us to evaluate constitutional principles, statutes, and the rules of criminal procedure. Our review of these matters is de novo." *Yancey*, 2019-NMSC-018, ¶ 11. Whether a plea is knowing and voluntary under these authorities "must be assessed from the totality of the circumstances." *Id.* ¶ 1 (citing *United States v. Rollings*, 751 F.3d 1183, 1188 (10th Cir. 2014)); *accord Garcia v. State*, 2010-NMSC-023, ¶ 50, 148 N.M. 414, 237 P.3d 716.

1. The two-year parole sentence was not a term of the plea agreement, and correction of that sentence does not deprive Appellee of the benefit of his bargain

{43} We begin our discussion by clarifying the critical distinction between a plea agreement and an accepted plea. "A plea agreement is a unique form of contract the terms of which must be interpreted, understood, and approved by the [district] court." *Mares*, 1994-NMSC-123, ¶ 12. A plea agreement is negotiated between the defendant and the prosecution, and the parties may "negotiate the terms of a plea agreement to the full extent allowed by law." *Id.* ¶ 11; *see id.* ¶ 17 ("[A] plea agreement may be the product of negotiation between the prosecutor and the defense."); *see State v. Taylor*, 1988-NMSC-023, ¶ 23, 107 N.M. 66, 752 P.2d 781 ("A defendant may enter into an agreement with the state to plead guilty to any proper condition and the state may recommend a particular sentence to the court."), *overruled on other grounds by Gallegos v. Citizens Ins. Agency*, 1989-NMSC-055, ¶ 28, 108 N.M. 722, 779 P.2d 99. "[T]he district court judge [shall] not be a participant in any plea negotiations[, and] '[t]he judge's role is explicitly limited to acceptance or rejection of the bargain agreed to by counsel for the state, defense counsel, and [the] defendant.'" *Miller*, 2013-NMSC-048, ¶ 12 (quoting Rule 5-304 NMRA (2010), comm. cmt.).[6]

{44} While "a [district] court has broad discretion to accept or reject a plea agreement," *Mares*, 1994-NMSC-123, ¶ 10, the court cannot accept the agreement until additional process under Rule 5-303 ensures that the defendant has entered into the plea knowingly and voluntarily. The

[5] We recognize "knowing" and "intelligent" as synonymous and interchangeable for purposes of pleas. See United States v. Dominguez, 998 F.3d 1094, 1102 n.5 (10th Cir. 2021) ("In . . . our precedent, the two terms 'knowing' and 'intelligent' frequently have traveled together, even though we have not made a meaningful effort to attribute distinct meanings to them."), cert. denied, 142 S. Ct. 2756 (2022).

[6] Consistent with committee commentary on the 2010 amendment, the body of the 2022 amendment further provides that the "judge who presides over any phase of a criminal proceeding shall not participate in plea discussions" while allowing that a judge not so presiding "may be assigned to participate in plea discussions to assist the parties in resolving a criminal case in a manner that serves the interests of justice." Rule 5-304(A)(1) NMRA (2022).

requirements of Rule 5-303(F) include that the court "address[] the defendant personally in open court, informing the defendant of and determining that the defendant understands . . . the nature of the charge to which the plea is offered . . . and the maximum possible penalty provided by law for the offense to which the plea is offered." Rule 5-303(F)(1)-(2). Under Rule 5-303(G), "The court shall not accept a plea of guilty . . . without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement."

{45} Under these authorities, several principles emerge that are relevant to the parties' arguments here. First, the parties' broad latitude to negotiate the terms of a plea agreement cannot result in a term that is contrary to law. *See Mares*, 1994-NMSC-123, ¶ 11. Accordingly, even if the parties here had negotiated a two-year parole sentence, their authority to negotiate would not have rendered that illegal sentence lawful or enforceable. Second, the applicable rule in this case required the district court to play no role in determining the negotiated terms of a plea agreement, notwithstanding the court's broad latitude to accept or reject those terms. Rule 5-304 (2010), comm. cmt. Thus, a term that is established in the first instance by the court is presumptively not a term of the plea agreement. Third, the negotiated terms of a plea agreement do not necessarily include all components of the accepted plea. For example, parties could solely negotiate the term of incarceration and leave all other sentencing determinations to the district court, subject to the court assuring the defendant's understanding of the terms and consequences of the plea where a defendant pleads guilty. *See* Rule 5-303(F). Finally, the knowing and voluntary requirement under Rule 5-303(F)-(G) cannot be circumvented or waived for a plea of guilty. *Cf.* Rule 5-303(J). Where the advisement requirements of Rule 5-303 are not satisfied, such a lack of due process "presumptively affects [the] defendant's substantial rights and renders the plea unknowing and involuntary." *State v. Garcia*, 1996-NMSC-013, ¶¶ 22-23, 121 N.M. 544, 915 P.2d 300 ("[T]he defendant must understand the consequences of his plea at the time the plea is taken." (emphasis omitted)).

{46} The record in this case is clear that, contrary to Appellee's representation, the negotiated terms of the plea agreement did not include the length of the parole period and that the two-year parole period was established in the first instance by the district court. At the plea hearing, the length of the parole period was not included in the terms of the plea agreement as read by the prosecution, and the two-year parole period was announced initially by the court during the subsequent Rule 5-303 colloquy. Similarly in the Plea and Disposition Agreement, the length of the parole period is not listed in the six terms of the plea agreement signed by Appellee. The two-year parole sentence appears for the first time in the district court's subsequent findings supporting that the accepted plea was knowing and voluntary.

{47} Because the two-year parole sentence was not a term of the plea agreement, correction of that illegal sentence does not constitute a change to the plea agreement. It follows logically that imposition of a more onerous indeterminate parole sentence does not deprive Appellee of the benefit of his bargain, as he did not bargain concerning the length of parole. Accordingly, neither the district court's purported parole sentence correction of five-to-twenty years nor imposition on remand of the five-years-to-life parole period can be construed as a broken promise of the prosecution. Because *Santobello* governs such broken promises of a plea agreement, the parties' arguments under *Santobello* are inapposite.

{48} Appellee attempts nonetheless to bring the district court's sentencing error within that scope, quoting *United States v. Walker*, 98 F.3d 944, 946 (7th Cir. 1996), for the proposition that "'*Santobello* itself involved a breach of a plea agreement by the prosecutor rather than by the judge, but the remedial implications are similar.'" Appellee's argument does not avail, first and foremost because, as just discussed, the district court's purported sentence correction did not involve a breach of the plea agreement. Further, we decline any implicit invitation to extend *Santobello* to encompass errors by a sentencing court at a plea hearing. *See Pieri*, 2009-NMSC-019, ¶ 28 ("It is now clear that *Santobello* only requires that the State fulfill the promises it makes in plea agreements.").

2. Appellee is entitled to an opportunity to withdraw his plea under *Boykin* and Rule 5-303

{49} The record is clear that the accepted plea in this case involved Appellee's knowing and voluntary plea to a maximum possible penalty that included a parole sentence of two years. Under this record, imposition by the district court of either indeterminate parole period—whether of five-to-twenty years in the second amended J&S or of five years to life on remand—has not occurred under a knowing and voluntary plea. Stated differently, the record does not affirmatively show that Appellee understood that the range of possible penalties associated with his plea included either of the indeterminate parole sentences.

{50} Based on the foregoing, we agree with Appellee that he was denied due process, but for reasons other than those offered by the parties. The fundamental flaw with the process that Appellee received is that he was completely deprived of his right to a knowing and voluntary plea when his sentence was changed in the second amended J&S to include more onerous consequences than those explained at the plea hearing. Under *Boykin* and Rule 5-303, due process required an additional hearing at which Appellee would have been advised of the increased consequence, a five- to twenty-year parole sentence, with an opportunity for Appellee to withdraw his plea. *See State v. Jones*, 2010-NMSC-012, ¶ 52, 148 N.M. 1, 229 P.3d 474 ("A plea bargain stands or falls as a unit." (brackets, internal quotation marks, and citation omitted)); *see also Garcia*, 1996-NMSC-013, ¶¶ 23-24 (granting plea withdrawal as a proper remedy where the record did not clearly demonstrate substantial compliance with Rule 5-303).

{51} On remand, due process similarly requires imposition of the statutorily mandated parole sentence to occur in an additional Rule 5-303 hearing, wherein the district court shall advise Appellee as to his increased maximum possible penalty and Appellee shall have an opportunity to withdraw his plea. Without such additional process, Appellee's plea under our ruling herein cannot be knowing and voluntary.

{52} We reject the State's argument that the district court's colloquy established that Appellee "understood the range of possible penalties associated with his plea." The record here demonstrates that the maximum possible penalty was never explained to Appellee, and thus the district court's finding that Appellee's plea was knowing cannot satisfy the requirements of Rule 5-303. We also agree with Appellee that prejudice here is "self-evident" where Appellee's plea consequences increase under either indeterminate parole period.

{53} In addition we reject the State's argument under *Timmreck*, 441 U.S. at 785, as the constitutional considerations implicated here constitute much more than merely "'a failure to comply with the formal requirements'" of due process. In *Timmreck*, the United States Supreme Court found only a technical violation of Rule 11 of the Federal Rules of Criminal Procedure where the district court at the plea hearing "failed to describe the mandatory special parole [period] of at least [three] years" because the defendant's ultimate sentence of ten years of imprisonment plus five years of parole was still "within the maximum [fifteen years of imprisonment] described to him" at the plea hearing. *Id.* at 782-83. Where the changed sentence did not

involve more onerous consequences, the *Timmreck* Court found no error which "resulted in a complete miscarriage of justice or in a proceeding inconsistent with the rudimentary demands of fair procedure." *Id.* at 784 (internal quotation marks and citation omitted). In contrast here, the five- to twenty-year parole period implicated more onerous consequences than the maximum possible penalty in the district court's plea advisement and in its Plea and Disposition Agreement, and thus the due process violation was substantive and not merely technical.

III. CONCLUSION

{54} We hold that *Torres* is overruled regarding abrogation of a district court's common law jurisdictional authority to correct an illegal sentence. Under this holding, we reverse the district court and remand for imposition of the statutorily required parole sentence. We direct the Rules of Criminal Procedure for State Courts Committee to clarify the length of time that a district court retains jurisdiction to correct an illegal sentence in accordance with this opinion. Finally we hold, consistent with the additional Rule 5-303 hearing required by due process, that Appellee is entitled to an opportunity for plea withdrawal.

{55} IT IS SO ORDERED.

C. SHANNON BACON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 6/30/2023

No. A-1-CA-39367

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JODIE JOHNSON, JR.,
Defendant-Appellant,

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

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

for Appellee

Bennett J. Baur, Chief Public Defender
Carrie Cochran, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

Following a jury trial, Defendant Jodie Johnson, Jr. appeals his convictions of four counts of battery against a household member, contrary to NMSA 1978, Section 30-3-15 (2008); and one count of false imprisonment, contrary to NMSA 1978, Section 30-4-3 (1963), perpetrated against Defendant's then-wife (Victim). Defendant contends that the district court erred when it admitted evidence of uncharged bad acts under Rule 11-404(B) NMRA and Rule 11-403 NMRA. The evidence admitted involved prior acts of domestic violence by Defendant against Victim and forced prostitution of Victim by Defendant before and during their marriage. Defendant argues that this evidence is propensity evidence that should have been excluded by the district court under Rule 11-404(B) and, even if admissible under Rule 11-404(B)(2), the district court abused its discretion by failing to exclude it under Rule 11-403 because its probative value is substantially outweighed by unfair prejudice. We conclude that the district court did not abuse its discretion in admitting this evidence. Defendant also appeals his sentence. **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
Jennifer L. Attrep, Chief Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39367**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/5/2023

No. A-1-CA-39839

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CHRISTOPHER JOSEPH MARTINEZ,
Defendant-Appellant,

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Angela Jewell, District Court Judge, Pro Tem

Raúl Torrez, Attorney General
Lindsay Stuart, Assistant Attorney General
Santa Fe, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

Defendant appeals from the district court's order finding that Defendant had violated the terms of his probation. We affirm.

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39839**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/6/2023

No. A-1-CA-39617

ALLEN HURT, MD, individually; BRIARWOOD CLINIC, LLC; and AMERICAN MEDICAL GROUP, INC.,
Plaintiffs-Appellees,
v.
JUSTIN WILLIAMS, individually; PARAMOUNT FINANCIAL SERVICES, LLC; and EAGLE STAR RANCH, LLC,
Defendants-Appellants,

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Mark Sanchez, District Court Judge

Giddens & Gatton Law, P.C.
George Dave Giddens
Albuquerque, NM

Nickay Manning Law Firm, LLC
Nickay B. Manning
Corrales, NM

for Appellees

Holland & Hart LLP
Larry J. Montaño
Santa Fe, NM

Frazier & Ramirez Law
Sean S. Ramirez
Albuquerque, NM

for Appellants

▶ Introduction of Opinion

Allen Hurt, MD., Briarwood Clinic, LLC, and American Medical Group, Inc. (collectively, Plaintiffs) sued Justin Williams and his company, Eagle Star Ranch, LLC (collectively, Defendants) based on false and misleading statements made by Defendants during the course of the parties' venture to provide medical laser treatment services at Briarwood Clinic. The dispute went to arbitration, where Plaintiffs prevailed, and the district court denied Defendants' motion to vacate or modify the arbitration award. Defendants appeal the district order's denying their motion to vacate or modify the arbitration award. Defendants argue (1) the arbitrator decided issues outside the scope of the arbitration agreement, (2) the arbitrator impermissibly issued sanctions preventing Defendants from presenting evidence or cross-examining witnesses at the arbitration hearing, (3) the arbitrator exhibited partiality, and (4) the award was based on an erroneous assessment of damages. We affirm.

Kristina Bogardus, Judge
WE CONCUR:
Zachary A. Ives, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39617**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/6/2023

No. A-1-CA-40393

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
PHELISHA L.,
Respondent-Appellant,
and
MARK M.,
Respondent,

IN THE MATTER OF MARK M., SEAN M., CHESTON M., AND NURIYAH M.,
Children

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Marie C. Ward, District Court Judge

Children, Youth & Families Department
Mary McQueeney,
Chief Children's Court Attorney
Santa Fe, NM
Kelly P. O'Neill, Children's Court Attorney
Albuquerque, NM

for Appellee

Cravens Law LLC
Richard H. Cravens, IV, Et al.
Albuquerque, NM

for Appellant

▶ Introduction of Opinion

Respondent-Appellant Phelisha L. (Mother) appeals the district court's judgment terminating her parental rights to her four children (Children), asserting various errors on the part of New Mexico Children, Youth and Families Department (CYFD) as well as the district court. For the reasons that follow, we affirm.

J. Miles Hanisee, Judge
WE CONCUR:
Zachary A. Ives, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40393**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/10/2023

No. A-1-CA-39806

CARLOS PHILLIPS,
Plaintiff-Appellant,
v.
NEW MEXICO DEPARTMENT OF INFORMATION TECHNOLOGY,
Defendant-Appellee,

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Francis J. Mathew, District Court Judge

Western Agriculture,
Resource and Business Advocates, LLP
Jared R. Vander Dussen
A. Blair Dunn
Albuquerque, NM

for Appellant

Todd Baran, General Counsel
Santa Fe, NM

for Appellee

▶ Introduction of Opinion

Plaintiff Carlos Phillips appeals the district court's grant of Defendant New Mexico Department of Information Technology's motion for judgment on the pleadings under Rule 1-012(C) NMRA. We reverse.

Megan P. Duffy, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Michael D. Bustamante, Judge, retired, sitting by designation

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39806**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/12/2023

No. A-1-CA-39375

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GARY GREGOR,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY
Mary Marlowe Sommer, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Van Snow, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

After a jury trial, Defendant Gary Gregor was convicted of four counts of first-degree kidnapping, contrary to NMSA 1978, Section 30-4-1 (2003); three counts of criminal sexual penetration of a minor under the age of thirteen (CSPM), a first-degree felony, contrary to NMSA 1978, Section 30-9-11(D)(1) (2007, amended 2009); and three counts of criminal sexual contact of a minor under the age of thirteen (CSCM), a third-degree felony, contrary to NMSA 1978, Section 30-9-13(C)(1) (2003). On appeal Defendant argues that (1) double jeopardy principles require us to vacate two of his CSPM convictions and one of his CSCM convictions and (2) insufficient evidence supports his convictions for kidnapping, CSPM, and CSCM. We conclude that Defendant's first argument has merit under New Mexico double jeopardy precedent, including State v. Serrato, 2021-NMCA-027, 493 P.3d 383, which controls our analysis here and which we decline the State's invitation to overrule. Serrato requires that three of Defendant's nine convictions be vacated. However, six of Defendant's convictions stand because we reject Defendant's arguments that the evidence is insufficient.

Zachary A. Ives, Judge
WE CONCUR:
Shammara H. Henderson, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39735**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/13/2023

No. A-1-CA-39570

CANDI A. GEBLER,
Plaintiff-Appellant,
v.
VALENCIA REGIONAL EMERGENCY COMMUNICATIONS CENTER, BOARD OF DIRECTORS OF VALENCIA REGIONAL EMERGENCY COMMUNICATIONS CENTER, SHIRLEY VALDEZ, DOES 1-5, EMPLOYEES ON DUTY 1-5, and ENTITIES, CORPORATIONS, PARTNERSHIPS 1-5,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
James A. Noel, District Court Judge

Rios Law Firm, P.C.
Linda J. Rios
Michael G. Solon
Albuquerque, NM

for Appellant

Montgomery & Andrews, P.A.
Randy S. Bartell
Kaleb W. Brooks
Santa Fe, NM

for Appellees

▶ Introduction of Opinion

Plaintiff Candi Gebler appeals from the dismissal by summary judgment of her personal injury action, contending that the district court erred when it concluded that Defendants were immune from suit under the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -27 (1976, as amended through 2020). Plaintiff argues that Defendant Valencia Regional Emergency Communications Center (the VRECC) is not a "local public body" within the meaning of Section 41-4-3(C) of the TCA, and thus, its employees are not public employees within the meaning of Section 41-4-3(F). Alternatively, Plaintiff argues that if the TCA applies, she can yet maintain her action under Section 41-4-6. We affirm.

Michael D. Bustamante, Judge, retired, sitting by designation.
WE CONCUR:
Zachary A. Ives, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39570**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/13/2023

No. A-1-CA-39735

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GARY GREGOR,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF RIO ARRIBA COUNTY
Mary Marlowe Sommer, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Van Snow, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

The opinion filed on July 12, 2023, is hereby withdrawn, and this opinion is substituted in its place. After a jury trial, Defendant Gary Gregor was convicted of four counts of first-degree kidnapping, contrary to NMSA 1978, Section 30-4-1 (2003); three counts of criminal sexual penetration of a minor under the age of thirteen (CSPM), a first-degree felony, contrary to NMSA 1978, Section 30-9-11(D)(1) (2007, amended 2009); and three counts of criminal sexual contact of a minor under the age of thirteen (CSCM), a third-degree felony, contrary to NMSA 1978, Section 30-9-13(C)(1) (2003). On appeal Defendant argues that (1) double jeopardy principles require us to vacate two of his CSPM convictions and one of his CSCM convictions and (2) insufficient evidence supports his convictions for kidnapping, CSPM, and CSCM. We conclude that Defendant's first argument has merit under New Mexico double jeopardy precedent, including State v. Serrato, 2021-NMCA-027, 493 P.3d 383, which controls our analysis here and which we decline the State's invitation to overrule. Serrato requires that three of Defendant's ten convictions be vacated. However, seven of Defendant's convictions stand because we reject Defendant's arguments that the evidence is insufficient.

Zachary A. Ives, Judge
WE CONCUR:
Shammara H. Henderson, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39735**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/13/2023

Nos. A-1-CA-39868 & A-1-CA-40157
(consolidated for purpose of opinion)

(No. A-1-CA-39868)

ARGIPINA BUSTAMANTE,
Plaintiff-Appellee,
v.
ST. THERESA HEALTHCARE AND REHABILITATION CENTER, LLC, Et al.
Defendants-Appellants.

(No. A-1-CA-40157)

BARRY GREEN, ESQ.,
Plaintiff-Appellee
v.
PEAK MEDICAL FARMINGTON, LLC, Et al.
Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Kathleen McGarry Ellenwood
and Bryan Biedscheid, District Court Judges

Pitman, Kalkhoff, Sicula & Dentice, SC
Jeffrey A. Pitman
Benjamin E. Reyes
Santa Fe, NM

for Appellees

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Jocelyn Drennan
Denise Chanez
Patrick Coronel
Albuquerque, NM

for Appellants

▶ Introduction of Opinion

In this consolidated opinion, we consider two district courts' determinations about the threshold arbitrability questions within nearly identical arbitration agreements between healthcare facilities and wrongful death estates. Defendants in these related cases include sixteen different healthcare facilities and their affiliates who appeal the denial of their motions to compel arbitration in claims of wrongful death, negligence, joint and several liability, and punitive damages brought by Plaintiffs as the personal representatives of the wrongful death estates of Agripina Bustamante and Antolino Jacquez. Defendants argue that the district courts erred in making "gateway" or "threshold" determinations about the arbitrability of the claims—contrary to the expressed intent of the parties in the arbitration agreements—and furthermore, any subsequent findings of substantive unconscionability were in error. As the district courts exceeded their authority to make threshold arbitrability determinations under these contracts, we reverse those determinations and remand to be submitted to arbitration.

J. Miles Hanisee, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39868_A-1-CA-40157**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/17/2023

No. A-1-CA-40179

NEW MEXICO DEPARTMENT OF HEALTH,
Appellant-Respondent,
v.
ABBY MAESTAS,
Appellee-Petitioner.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Kathleen McGarry Ellenwood, District Court Judge

Miller Stratvert P.A.
Dan A. Akenhead
Laura R. Ackermann
Kelsey D. Green
Albuquerque, NM

for Respondent

Sommer, Udall, Hardwick & Jones, P.A.
Jack N. Hardwick
Santa Fe, NM

for Petitioner

▶ Introduction of Opinion

This case arises from an arbitration award directing Respondent New Mexico Department of Public Health (DOH) to reinstate Petitioner Abby Maestas and ordering DOH to pay Maestas back pay. Following the district court's confirmation of the arbitration award, Petitioner filed a motion to compel DOH to pay the full amount of back pay, arguing that DOH improperly deducted unemployment compensation and disability payments from the back pay award. Petitioner filed a petition for writ of certiorari review seeking reversal of the district court's order denying her motion. Petitioner argues that DOH was not permitted to deduct her unemployment compensation and disability payments from her award, because NMSA 1978, Section 10-9-18(F) (2009) conflicts with 1.7.12.23 NMAC, the regulation DOH relied on to make the deductions. We take this opportunity to restate that we do not treat NMSA 1978, Section 44-7A-29 (2001) of the New Mexico Uniform Arbitration Act (Arbitration Act), NMSA 1978, §§ 44-7A-1 to -32 (2001), as an exclusive list of orders that may be appealed. We further construe the petition for writ of certiorari as a direct appeal. **View full PDF online.**
Jacqueline R. Medina, Judge
WE CONCUR:
Zachary A. Ives, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40179**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/17/2023

No. A-1-CA-39110

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CHRISTOPHER CORY COBLE,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
Daniel A. Bryant, District Court Judge

Raúl Torrez, Attorney General
Emily Tyson-Jorgenson, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
MJ Edge, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

Defendant Christopher Coble appeals his conviction for escape from a community custody release program, contrary to NMSA 1978, Section 30-22-8.1(C) (1999). Defendant challenges the validity of the conviction, raising two claims of error relating to the jury instructions in this case. Defendant argues the jury should have been instructed on willfulness as an essential element of escape from a community custody release program. Because we conclude that willfulness is not an element of the charged offense, this claim of error fails. Defendant additionally asserts that his escape was occasioned by duress and that the absence of a duress instruction was the result of his trial counsel's ineffectiveness or, alternatively, amounted to fundamental error. Because escape from a community custody release program is a continuing offense and any alleged duress subsided during the period of time Defendant was at large, Defendant was not entitled to a duress instruction. Thus, trial counsel did not render ineffective assistance by failing to request a duress instruction, nor did the district court commit fundamental error. We accordingly affirm.

Jennifer L. Attrep, Chief Judge
WE CONCUR:
Shammara H. Henderson, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39110**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/17/2023

No. A-1-CA-39633

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
LEONA LOUISE GARCIA PACHECO,
Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY
Jill M. Martinez, Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Leland M. Churan, 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

Having granted the State's motion for rehearing and considered Defendant's response, we withdraw the opinion filed May 30, 2023, and substitute the following in its place. Defendant Leona Garcia Pacheco appeals the metropolitan court's conviction for driving while under the influence of intoxicating liquor (DWI), impaired to the slightest degree, contrary to NMSA 1978, Section 66-8-102(A) (2016). 1 On appeal, Defendant asserts that the metropolitan court improperly admitted and relied on a breath test result based on a single usable breath sample and that its admission was not harmless. We have previously affirmed the suppression of breath test results when an officer obtained only a single usable breath sample, based on the regulation in effect at that time. See State v. Ybarra, 2010-NMCA-063, ¶ 1, 148 N.M. 373, 237 P.3d 117; see also 7.33.2.12(B)(1) NMAC (3/14/2001) (the 2001 Regulation). The regulation relied on in Ybarra, however, has since been amended, and the State maintains that the current regulation, 7.33.2.15 NMAC (the Current Regulation), does not require the breath test to be excluded. **View full PDF online.**

Katherine A. Wray, Judge
WE CONCUR:
Zachary A. Ives, Judge
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39633**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/17/2023

No. A-1-CA-38737

RACHEL LAY,
Worker-Appellant,
v.
CC JONES TRUCKING
and RETENTION MANAGEMENT SERVICES,
Employer/Insurer-Appellees.

APPEAL FROM THE
WORKERS' COMPENSATION ADMINISTRATION
Shanon S. Riley, Workers' Compensation Judge

Dorato & Weems LLC
Derek Weems
Albuquerque, NM

for Appellant

Hoffman Kelley Lopez, LLP
Jeffrey L. Federspiel
Albuquerque, NM

for Appellees

▶ Introduction of Opinion

Rachel Lay (Worker) appeals the Workers' Compensation Judge's (WCJ) order denying her application for bad faith or unfair claims processing against CC Jones Trucking and Retention Management Services (Employer/Insurer). The application was founded on Employer/Insurer's denial of and/or failure to timely authorize medical care requested from December 2018 through February 2019. Worker asserted that Employer/Insurer's conduct violated the terms of a prior agreement and order that required Employer/Insurer to (1) approve all care requested by Worker's authorized healthcare provider within fourteen days and (2) follow a specific procedure before a request could be denied. Worker argues that WCJ erroneously determined that Employer/Insurer had a reasonable basis to deny the requested care without following the procedure set forth in the order. We reverse and remand for reconsideration of Worker's bad faith and unfair claims processing claims.

Megan P. Duffy, Judge
WE CONCUR:
Zachary A. Ives, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-38737**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 7/17/2023

No. A-1-CA-39867

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSEPH A. ZAMORA,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY
Stanley Whitaker, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Erica Schiff, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

Defendant Joseph A. Zamora appeals his convictions of vehicular homicide, contrary to NMSA 1978, Section 66-8-101 (2016); and leaving the scene of the accident resulting in death, contrary to NMSA 1978, Section 66-7-201(C) (1989). Defendant raises three issues on appeal: (1) there is insufficient evidence to prove that he knew there was an accident; (2) his trial attorney provided ineffective assistance of counsel and; (3) his two separate convictions violate his right to be free from double jeopardy. There is a presumption of correctness in the rulings or decisions of the district court, and the party claiming error bears the burden of showing such error. See State v. Aragon, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211. We conclude, after thorough and careful review of the briefing, the authorities cited therein, and the record of the case before us, that Defendant has not demonstrated an error on the part of the district court that requires reversal. See id. ("In conducting our review, we examine the evidence in the light most favorable to affirmance.").

Kristina Bogardus, Judge
WE CONCUR:
Megan P. Duffy, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39867**

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.

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.

13th DISTRICT ATTORNEY
BARBARA ROMO
Cibola | Sandoval | Valencia
www.13th.nmdas.com

For more information and to register, please visit
www.13th.nmdas.com

Pro Bono Spotlight

Volunteer Attorney Program

Volunteer Attorney Program
A Program of New Mexico Legal Aid

NEW MEXICO LegalAid

LSC America's Partner for Equal Justice
LEGAL SERVICES CORPORATION

VAP Spotlight

The Volunteer Attorney Program at New Mexico Legal Aid (VAP) would like to congratulate all of their volunteers for fantastic efforts this year. VAP Pro Bono attorneys have assisted over **150 low income New Mexicans** by giving advice and counsel at three Teleclinics and our in person REAL ID fair. In addition to the advice and counsel given at the legal fairs, **the Direct Rep attorneys have assist 88 low income New Mexicans logging in over 350 Pro Bono hours!!!** And that is just in the first half of the year alone! We have many more legal fairs planned for the remainder of 2023!!!

VAP Good Story

VAP Pro Bono attorney Allan Wainwright saves the day! Client who cared for her Grandma, contracted COVID and was hospitalized. While she was hospitalized her neighbors took over Grandma's care and had Grandma change her will and sign over the family home. Grandma died while Client was in the hospital and the neighbors sold everything! VAP attorney Allan Wainwright was able to get Client a hefty settlement and attorney's fees!!!

In addition, VAP is launching an exciting new project, the VAP Pro Bono Collaborative ECHO Project on September 28, 2023 with a presentation on Kinship/Guardianship. Stay tuned for more information!

Contact us

If you would like to volunteer with the Volunteer Attorney Program of New Mexico Legal Aid, we would love to connect you with our low-income pro se clients!

To volunteer for brief advice and counsel consultations through our upcoming **Teleclinics or Fairs**, please contact Isabella (Bella) Zayani at nediaz@nmlegalaid.org.

To volunteer for brief, limited, or extended representation, through our **direct representation track**, please contact Becky O. O'Gawa at rebeccao@nmlegalaid.org.

Volunteer Attorney Program, New Mexico Legal Aid, Inc.
505 Marquette NW, Suite 1820 Albuquerque, NM 87102
P.O. Box 25486 Albuquerque, NM 87125-5486
www.newmexicolegalaid.org

James E. Thomson
— 1936-2023 —

An honest man here lies at rest
As e'er God with his image blest.
The friend of man, the friend of truth;
The friend of Age, and guide of Youth:
Few hearts like his with virtue warm'd,
Few heads with knowledge so inform'd:
If there's another world, he lives in bliss;
If there is none, he made the best of this.
— *Robert Burns*

May his memory be a blessing.

"Lefty" Thomson (to those who knew him well) was born in New Jersey and moved to Albuquerque in 1950. While attending Highland High School, he met the love of his life and wife of 64 years. He received a business degree at the University of New Mexico before graduating from Case Western Reserve School of Law. The majority of his career was spent in Santa Fe as a sole practitioner in a small office on Staab Street. He described his career as a litigator as one of "mixed success" in his humble and humorous way. He was a gentleman lawyer, a loving husband and the best parent four children could ask for.

Classified

Positions

Entry Level and Experienced Attorneys

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

Associate Attorney – Commercial

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

Associate Attorney

Mann Morrow, PLLC is seeking a highly motivated and experienced associate attorney to join our civil litigation firm in Las Cruces, NM. The ideal candidate will have 3-5 years of experience in civil litigation, as well as a strong work ethic and the ability to independently manage their own cases. Responsibilities: 1. Conduct legal research and analysis; 2. Draft pleadings, motions, and other legal documents; 3. Interview clients and witnesses; 4. Prepare for and participate in depositions, hearings, and trials. Qualifications: 1. Juris Doctor degree from an accredited law school; 2. New Mexico bar admission; 3. 3-5 years of experience in civil litigation; 4. Strong research and writing skills; 5. Excellent oral and written communication skills; 6. Ability to work independently and as part of a team. Benefits: 1. Competitive salary and benefits package; 2 Opportunity to work with a team of experienced attorneys. If you are interested in this position, please send your resume, references, and cover letter to christina.munoz@mannmorrow.com. We look forward to hearing from you!

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/.

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

Associate Attorney

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

Litigation Attorney

Priest & Miller LLP is seeking an experienced litigation attorney to join our team. Priest & Miller is a dynamic defense firm that handles complex cases involving claims of medical negligence, wrongful death, catastrophic injury, and oil and gas accidents. We are seeking attorneys with 3+ years of experience and who will thrive in a collaborative, flexible and fast paced environment. We offer highly competitive salaries and a generous benefits package. All inquiries will be kept confidential. Please email your resume to Resume@PriestMillerLaw.com.

Lateral Partner/Senior Associate Attorney

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

Full-time Associate Attorney

Quinones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a full-time Associate Attorney with minimum 5 years of Legal defense experience preferred, but not mandatory. Please send resume to quinoneslaw@cybermesa.com

Bernalillo County Hiring 20 Prosecutors

Are you ready to work at the premiere law firm in New Mexico? The Bernalillo County District Attorney's Office is hiring 20 prosecutors! Come join our quest to do justice every day and know you are making a major difference for your community. We offer a great employment package with incredible benefits. If you work here and work hard, you will gain trial experience second to none, collaborating with some of the most seasoned trial lawyers in the state. We are hiring at all levels of experience, from Assistant District Attorneys to Deputy District Attorneys. Please apply to the Bernalillo County District's Attorney's Office at: https://berncoda.com/careers-internships/. Or contact us at recruiting@da2nd.state.nm.us for more information.

Domestic Relations Hearing Officer

The Fourth Judicial District & Magistrate Court in Las Vegas, NM is currently recruiting for the following Full Time, At-Will position: Domestic Relations Hearing Officer; Job ID: 10111171: General Statement of Duties. This position is under the supervision of the presiding Chief District Judge. The successful candidate will serve as a domestic relations hearing officer pursuant to Rule 1-053.2 NMRA, for matters pending in the Fourth Judicial District Court. The domestic relations hearing officer shall provide services in domestic relations proceedings necessary to review petitions for indigency; conduct hearings on all petitions and motions, both before and after entry of the decree; in a child support enforcement division case, carry out the statutory duties of a child support hearing officer; carry out the statutory duties of a domestic violence special commissioner and utilize the procedures as set forth in Rule 1-053.1 NMRA; assist the court in carrying out the purposes of the Domestic Relations Mediation Act, Sections 40-12-1 to -6 NMSA 1978; and prepare recommendations for review and final approval by the district court. For full job description and to apply go to: https://www.nmcourts.gov/careers.aspx

Full-Time Associate Attorney

Egolf + Ferlic + Martinez + Harwood, LLC, located in downtown Santa Fe, seeks an organized and detail oriented associate attorney to join its land and water team with a focus on water rights, renewable energy development, and real estate. The ideal candidate will have excellent research and writing skills and want to work in a dynamic and supportive team environment. Candidate must be a team player, self-starter, possess strong time management skills, be a good human, and appreciate the importance of the Oxford comma. New Mexico licensure is required; a clerkship or 2 plus years of litigation or permitting experience is desired. The Firm offers a competitive salary, bonus, and benefits package with opportunities for future growth. Resumes and writing samples should be sent to Annette@EgolfLaw.com.

Part Time / Full Time Tribal Prosecutor

The Pueblo of Isleta is seeking a part time to full time Assistant Tribal Prosecutor. The Assistant Tribal Prosecutor will assist in prosecuting individuals accused of violating criminal laws within the boundaries of the Pueblo of Isleta in Tribal Court, Metropolitan Court and State District Court. This position is grant funded for a term of five (5) years. The Assistant Tribal Prosecutor will participate in litigating bench and jury trials as well as utilizing a plea bargaining process that will protect the interests of both the pueblo and the victims of crime by ensuring a balanced criminal justice system. Please send resume and letter of interest to poiemployment@isletapueblo.com or visit the Pueblo of Isleta Careers webpage https://www.isletapueblo.com/careers/ to download and complete an application.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney ($70,196.00) to a Senior Trial Attorney ($82,739.00), based upon experience. These positions are located in the Lovington, NM office. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 37 states, is currently seeking an experienced litigation attorney for an immediate opening in its offices in Albuquerque and Santa Fe, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers a $50K signing bonus, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter indicating which office(s) you are interested in to Hamilton Hinton at hhinton@cordelllaw.com

Plaintiff Firm Seeking 3+ Year Litigation Associate

Collins & Collins, P.C. is seeking an associate with a minimum of 3 years civil litigation experience. Responsibilities include: 1) Assisting in all aspects of civil litigation including motion practice and hearings, 2) legal research and writing, 3) incoming and outgoing discovery drafting, review and analysis, and 4) deposition and trial preparation assistance. Salary is dependent upon experience. Benefit package is provided. For more information, please send a resume, cover letter and writing sample to info@collinsattorneys.com.

UNM Law Library Postdoctoral Fellow

The UNM School of Law Library is currently accepting applications for a Postdoctoral Fellow (PdF). PdFs generally work 40 hr/week responding to reference requests, supporting legal research courses, assisting with faculty research requests, and learning about the library's overall functions and practices. They will also create research guides, lead research training sessions to clinics and student groups, participate in outreach to various patron groups, and serve on library committees. To apply, please submit a cover letter, resume, and contact information for three professional references to migliore@law.unm.edu. MLS or equivalent from an American Library Association-accredited library program or J.D. from an American Bar Association-accredited law school and serious interest in pursuing a career in law librarianship required. For a full list of duties, responsibilities, and requirements, visit lawlibrary.unm.edu/about/postdoc.html or email migliore@law.unm.edu

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City and represents the City in legal proceedings in court and before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Current open positions include: Property and Finance Division: The City is seeking attorneys to bring code enforcement actions, advise on real estate matters, and serve as general counsel to various City departments; IPRA: The City is seeking an attorney to advise on the interpretation of and compliance with the Inspection of Public Records Act; Litigation Division: The City seeking attorneys to join the Litigation Division, which defends claims brought against the City. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Salary will be based upon experience. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

City of Albuquerque Managing Attorney for APD

The City of Albuquerque Legal Department is hiring a Managing City Attorney for the APD Compliance Division. The work includes management, oversight, and development of Assistant City Attorneys, paralegals, and staff. Other duties include but are not limited to: administrative hearings; civil litigation; arbitrations; reviewing and providing advice regarding policies, trainings and contracts; reviewing uses of force; drafting legal opinions; and reviewing and drafting legislation, ordinances and executive/administrative instructions as they relate to the United States v. City of Albuquerque, 14-cv-1025. Attention to timelines, detail, and strong writing and speaking skills are essential. Five (5) + years' experience including (1) + years of management experience is preferred. Applicants must be an active member of the State Bar of New Mexico in good standing. Please apply online at www.cabq.gov/jobs and include a resume and writing sample with your application.

Children's Court Mediation Program Request for Letters of Interest Mediators

The Administrative Office of the Courts (AOC) invites all mediators with specialized training in mediation of child abuse and neglect cases to respond to this Request for Letters of Interest in order to be considered for a contract to provide specialized mediation services for the Children's Court Mediation Program (CCMP). Mediators of the Children's Court Mediation Program offer a non-adversarial and collaborative process to assist the Children, Youth and Families Department (CYFD) and the courts to work with families facing child abuse and neglect charges in an effort to address long-term challenges that impact children, including behavioral health issues, domestic violence, and poverty. Specially trained, professional mediators assist the participants to reach agreements regarding placement, visitation, treatment, permanency and post-adoption agreements to support permanency, child safety and child well-being. Letters of Interest: Letters of Interest should contain all information necessary to respond to the qualifications and specific duties included in this Request. The AOC will accept Letters of Interest submitted pursuant to this Request until October 31st, 2023 at 5:00 PM. Submissions received after this time will not be considered. Responsive Letters of Interest and attachments (resume, copies of certifications), or questions about this Request, must be submitted before 5:00 PM on October 31, 2023 to: Josh Pando, Statewide ADR Program Manager Sr., Children's Court Mediation Program, Administrative Office of the Courts, 111 Lomas Blvd, Suite 300, Albuquerque, NM 87102; Phone: (505) 470-0573; Email: aocjrp@nmcourts.gov. CCMP Mediator Minimum Qualifications: A certificate of completion for 40 hours of basic mediation training; A certificate of completion for 40-hour training on Family mediation training (preferable); Ability to complete an internal CCMP new mediator training; Two (2) years of experience mediating cases or two (2) years of work experience involving custody, visitation and family issues; and, Demonstrated competence and professionalism to fulfill the Contractor Requirements, described below. CCMP Mediator Contract Scope of Work – Requirements; Serve as a neutral third-party mediator in abuse and neglect cases throughout the state of New Mexico, as assigned by a Statewide Coordinator. Comply with Children's Court Mediation policies and procedures. Comply with billing requirements, including the accurate completion and timely submission of invoices. Comply with documentation and record keeping requirements, including data collection, reporting, case management activities, as well as record retention and destruction schedules. Pay for and retain professional liability insurance for the contract term. Attend scheduled mediator meetings and participate in co-mediation and mentoring activities, as assigned by the Statewide Coordinator. Cooperate and collaborate with the Statewide Program Manager and Statewide Coordinator regarding personal, professional and programmatic development, including assessments. Complete twelve (12) hours of mediator continuing education during the contract term. Training must relate to child welfare, domestic relations, domestic violence, behavioral health, conflict and communication or advanced mediation skills. Comply with and ensure compliance with the New Mexico Mediation Association Code of Ethical Conduct and the Model Standards of Conduct for Mediators prepared by the American Arbitration Association (AAA), American Bar Association (ABA), the Association for Conflict Resolution (ACR), and New Mexico Statute and Court Rules. Be proficient in using Zoom teleconference software and/or be willing to be trained. Obtain access to the Internet, an e-mail address for communications, Microsoft Word, Excel and Adobe Acrobat. CCMP Mediator Compensation: $85.00/HR for Pre-mediation, Mediation, Follow-up; $25.00/HR for Program Meetings and Pre-Approved Trainings; Pre-Approved travel shall be compensated pursuant to the current regulation or New Mexico Supreme Court Administrative Order.

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: Generalists - Silver City, NM; Managing Attorney Santa Fe, Taos and Las Vegas Offices. Coordinator – Echo Project Volunteer Attorney Program. Litigation and Casework Manager - Native American Program – Santa Ana, NM. Director of Native American Program – Santa Ana, NM. Executive Administrative Assistant. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - https://newmexicolegalaid.isolvedhire.com/jobs/

Attorney IV
Governor Exempt (GOVEX)
Pay Grade 30, Salary Range $48,869 – $120,955

This is an attorney position within the Office of General Counsel ("OGC") of the New Mexico Public Regulation Commission. OGC acts as legal counsel to the Commission itself, providing advice concerning adjudicatory and rulemaking matters. Specific job dues include: Forming and executing policy; Providing external legal representation of the Commission; Researching and drafting legal documents; Analysis of complex legal maters ; Working with a team; Independently managing caseload. Working Conditions: Office setting with exposure to Visual/ Video Display terminal (VDT) and extensive personal computer and telephone usage with extended periods of sitting. Must be able to lift 25 lbs. Some travel may be required, working overtime and adherence to strict deadlines. Minimum qualifications; Juris Doctorate degree from an accredited school of law and five (5) years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license (Rules 15-301.1 and 15-301.2 NMRA). For more information on limited practice licenses, please visit http://nmexam.org/limited-license/. Ideal Candidate: Minimum 3 years' experience in Utility Law. Experience working for a Commission. Experience in Administrative Law. The ideal candidate will also have experience in the following: Working for appointed officials, like Commissioners; Regulatory law; Bill analysis; Rulemaking proceedings; Open Meetings Act compliance; Employment Requirements; Must possess and maintain a valid New Mexico Driver's License. Employment is subject to a preemployment background investigation and is conditional pending results. Working Conditions: Office setting, some travel, overtime, and strict deadlines. To Apply, Please send a cover letter, resume, and wring sample to prc-humanresourcesbureau@state.nm.us.

Metropolitan Redevelopment Attorney

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

Attorney

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

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@rileynmlaw.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

City of Albuquerque Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is $25.54 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to $26.80 per hour. Competitive benefits provided and available on first day of employment. Please apply at https://www.governmentjobs.com/careers/cabq.

Legal Secretary/Assistant
Well established commercial civil litigation firm seeking experienced Legal Secretary/ Assistant. Requirements include current working knowledge of State and Federal District Court rules and filing procedures, calendaring, trial preparation, document, and case management; ability to monitor, organize and distribute large volumes of information; proficient in MS Office, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal-use software; has excellent clerical, computer, and word processing skills. Competitive Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to e_info@abrfirm.com.

Services

Immigration Clinical Assessments
Spanish speaking Licensed Professional Clinical Counselor accepting new clients. Mental health intake assessment, diagnosis and treatment plan. Send email for rate and questions. Email: inontherapy@gmail.com; Maria Elena Alvarez MA, LPCC; License CCHM 0204361

Office Space

620 Roma NW
The building is located a few blocks from the federal, state and metropolitan courts. Monthly rent of $550 includes utilities (except phones), internet access, fax, copiers, front desk receptionist and janitorial service. You will have access to a law library, four conference rooms, a waiting area, off-street parking. Several office spaces are available. Call (505) 243 3751 for an appointment.

For Sale or Rent
Available starting August 1, 2023, small adobe office building on St. Francis in Santa Fe. Flexible zoning allows office, retail, residence, and live/work use. Currently used as a live/work space for one attorney. Two plus offices in 900+ sf are perfect for a solo practitioner plus paralegal or two-person firm plus one or two staff. Two parking spots in front with additional parking available in the backyard (currently used as a garden). Beautiful property. Lovingly cared for. Available for sale <$500K or rent <$3000/month. Please call or text 505-440-4948.

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.

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

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.**

LawPay®

AN AFFINIPAY SOLUTION

+

State Bar of New Mexico
Est. 1886

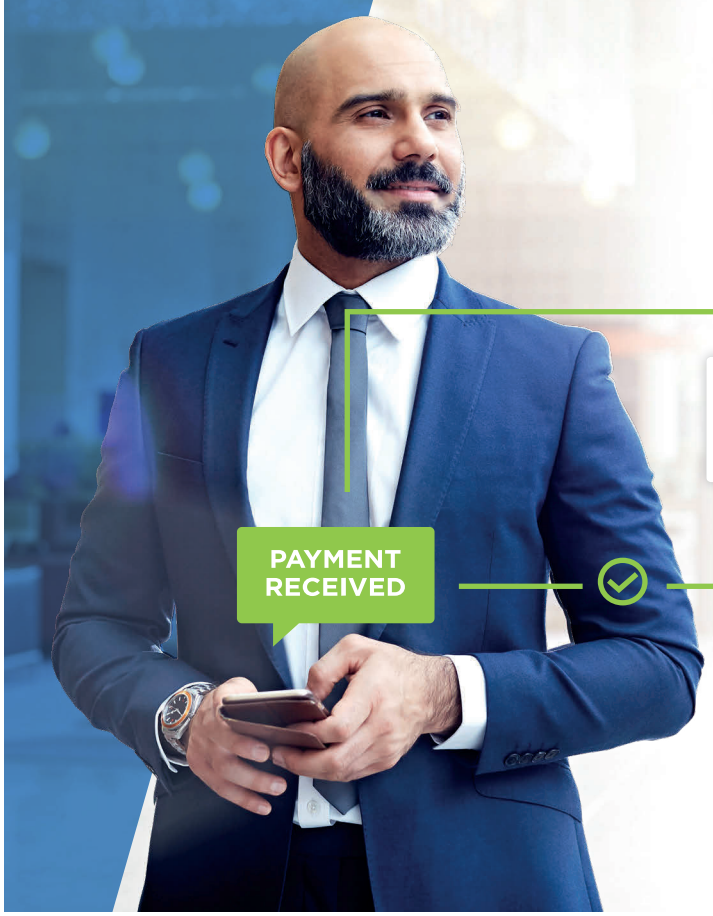
Member Benefit Provider

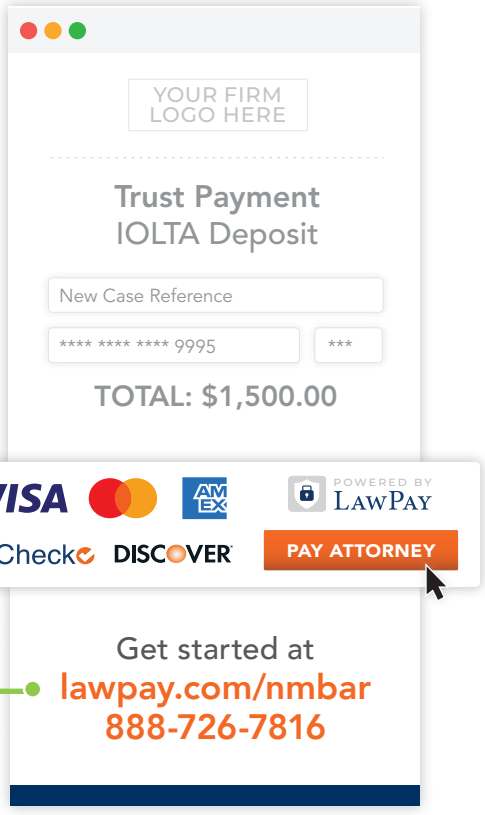
"**I love LawPay!** I'm not sure why I waited so long to get it set up.

– Law Firm in Ohio

Trusted by more than 150,000 professionals, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- **22% increase in cash flow with online payments**
- **Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**
- **62% of bills sent online are paid in 24 hours**





Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA.