

# BAR BULLETIN

August 23, 2023 • Volume 62, No. 16



*Fifteen Pyramids*, by Dean G. Loumbas (see page 4)

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## Meetings

**August**

**25  
Immigration Law Section**  
Noon, virtual

**September**

**7  
Elder Law Section**  
Noon, virtual

**12  
Business Law Section**  
11 a.m., virtual

**12  
Tax Section**  
9 a.m., virtual

**13  
Animal Law Section**  
Noon, virtual

**15  
Appellate Section**  
Noon, virtual

**19  
Solo and Small Firm Section**  
9 a.m., virtual

**26  
Intellectual Property Law Section**  
Noon, virtual

## Workshops and Legal Clinics

**August**

**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:** Dean Loumbas is a speech-language pathologist residing and working in San Francisco. Loumbas' paintings have been published as cover art for the *Journal of Pediatric and Adolescent Medicine*, the *Journal of Academic Medicine* and the *Journal of Speech-Language Pathology*. His current work redefines the solid form by presenting geometric shapes in close relationships which create horizons and abstract 'landscapes' that takes the viewer on multiple journeys through numerous visual and spatial transformations. For more information and additional work, email [dlou33@cs.com](mailto:dlou33@cs.com).

# Notices

## COURT NEWS

### New Mexico Supreme Court Notice of Judicial Portrait Unveiling Ceremony

All members of the New Mexico Bench and Bar are cordially invited to attend the official unveiling judicial portrait ceremony of the Honorable Justice Judith K. Nakamura and the Honorable Justice Barbara J. Vigil on Aug. 24 at 3 p.m. (MT) at the New Mexico Supreme Court via livestream video at the following YouTube link: <https://www.youtube.com/live/QHlyvKB1Tog?feature=share>.

### Rule-Making Activity

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

### Supreme Court Law Library

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

### 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](mailto: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

## Professionalism Tip

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

I will be mindful of time schedules of lawyers, parties, and witnesses.

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.

### Twelfth Judicial District Court Notice of Reassignment of Cases

Pursuant to NMSC 23-109, a mass reassignment of all cases previously assigned to the Twelfth Judicial District Court, Division I, Steven Blankinship, have been automatically reassigned to Judge Stephen P. Ochoa, effective July 25. Pursuant to Rules 1-088.1 and Rule 5-106, NMRA, any party who wishes to exercise their right to excuse Judge Ochoa must do so within 10 days from Aug. 23.

### 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](http://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](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question. No question is too big or too small.

### Invitation to New Equity in Justice Book Club Meetings

Join the Equity in Justice Book Club, led by Dr. Amanda Parker and Equity and Justice Commission Chair Torri Jacobus, for five new Book Club meetings this Fall discussing Matthew Desmond's "Poverty, by America." The dates are Sept. 5, Sept. 19, Oct. 3, Oct. 10 and Oct. 24. Please visit <https://form.jotform.com/232184486200047> to register.

### New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

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

### NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on 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 Distinguished Achievement Award and Alumni Promise Award Honorees Announcement**

The UNM School of Law and the UNM School of Law Alumni/ae Association are proud to announce the 2023 Distinguished Achievement Award and Alumni Promise Award honorees. The Distinguished Achievement Award honorees are (Hon) Judith K. Nakamura (Ret.), Benny Naranjo, and Alicia Gutierrez. The Alumni Promise Award honoree is Larissa Lozano. The 2023 UNM School of Law and UNM School of Law Alumni/ae Association Distinguished Achievement Award Dinner will be held on Oct. 20 at the UNM Student Union Building in the ballrooms. The reception will begin at 5:30 p.m., followed by dinner and award presentations at 6:30 p.m. Tickets may be purchased on the UNM School of Law website at <https://lawschool.unm.edu/>. Funds go toward UNM School of Law scholarships.

### **Law Library Hours**

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m.-8 p.m. (MT) Monday through Thursday and 8 a.m.-6 p.m. (MT)

on Fridays. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see [lawlibrary.unm.edu](http://lawlibrary.unm.edu).

### **OTHER NEWS**

#### **Equal Access to Justice Notice of Invitation to Celebration for Justice Chavez**

Equal Access to Justice invites you to celebrate the Honorable Justice Edward Chavez on Sept. 20 from 8:30 to 10:30 a.m. at the State Bar of New Mexico. Marking the start of Equal Access to Justice's 35th anniversary, this special breakfast reception will feature presentations from leaders in our community and celebrate Justice Chavez. Join us for this memorable morning gathering to learn about the roots of legal aid in New Mexico and its continued relevance in our community today from keynote speaker, Justice Chavez. Reconnect with old friends, meet new colleagues and be inspired to participate in the future of civil legal aid. To register for this event, please visit [www.eaj-nm.org](http://www.eaj-nm.org) or call 505-339-8096. This event is sponsored by Rodey Law and Modrall Sperling.

— *Featured* —

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# Recognizing Excellence

## State Bar of New Mexico Presents 2023 Annual Awards

The State Bar of New Mexico presents the Annual Awards to those who have distinguished themselves or made exemplary contributions to the State Bar or legal profession over the last year. The following were recognized for excellence and service on July 27 during the 2023 Annual Meeting.



Annual Awards Committee Chair, Allison H. Block-Chavez (left) and State Bar President, Benjamin I. Sherman (right) with Annual Award winners Justice Edward L. Chávez, Chief Magistrate Judge Emeritus Lorenzo F. Garcia, Ella Joan Fenoglio, Mary Galvez, Joy Applewhite, David J. Stout, Jerred Weingarten, James Lucero, Sam Noble and Shasta N. Inman



### MARY GALVEZ MA, CMC, NMG, CSA Distinguished Bar Service - Nonlawyer Award

A Nationally Certified Master Guardian (NMG), Certified Senior Advisor (CSA) and Certified Manager of Care (CMC), Mary has been providing guardianship and care management services in New Mexico for over 20 years. She has extensive professional experience serving the elderly and disabled population in New Mexico. She owns and operates Guardianship and Care Management Services LLC, a local agency which serves as Guardian, Court Visitor, Care Manager, and Healthcare Power of Attorney. Mary is also a trained mediator.

Mary serves on the board of the New Mexico Guardianship Association. She is the New Mexico Affiliate Representative to the National Guardianship Association and also serves as a Board Trustee for the Center for Guardianship Certification. She is a member of the New Mexico Supreme Court WINGS Committee and previously served on the Ad-Hoc Rules and Guardianship Rules and Forms Committee. Mary co-chairs the Guardianship Discussion Group, a monthly education program for guardians in New Mexico.



### JOY APPLEWHITE Excellence in Well-Being Award

Joy Applewhite is an Assistant Public Defender with the Law Offices of the Public Defender in the Hobbs office. Joy joined LOPD in August 2021 after earning her law degree at American University Washington College of Law in May 2021. Since her childhood, helping others has been a core belief for Joy. In her adult years, Joy realized the importance of taking care of oneself to ensure her cup was full to help others. As a public defender, the necessity to practice wellness amplified in light of vicarious trauma and heavy caseloads. In response, Joy has created a wellness room in the Hobbs office for wellness breaks. Joy also serves on

the LOPD Wellness Committee that focuses on providing various defender wellness resources and creating peer support groups for the LOPD community. In challenging times, Joy reminds herself to take it one day at a time because this too shall pass.



## DAVID J. STOUT

### Judge Sarah M. Singleton Distinguished Service Award

David Stout is a proud 1982 graduate of the University of New Mexico School of Law. As a young lawyer he was fortunate to have worked with lawyers who set a high bar for both the practice of law and professional service, lawyers who believed it was important to give back to the profession and to the wider community. Over the years Stout has been consistently inspired by the dedication and service of other lawyers and more recently by younger lawyers and law students. He is continually amazed by their tireless efforts and personal sacrifice, all with a goal to make our profession, our community, and our society better for all. The inspiration they provide is a reminder why, no matter how we may be feeling at any

given moment – angry, frustrated, or just plain tired - it is always a great day to be a lawyer.



## JUSTICE EDWARD L. CHÁVEZ

### Justice Pamela B. Minzner Professionalism Award

Justice Edward L. Chávez, a native New Mexican, is a product of the New Mexico public school system. He graduated from Santa Fe High School, Eastern New Mexico University, and received his Juris Doctorate from UNM in 1981. He served on the New Mexico Supreme Court from March 7, 2003, until his retirement on March 9, 2018. He was Chief Justice from January 2007 through early April 2010.

In addition to being the Supreme Court liaison to several other committees, boards, and commissions, he was the Court's representative on the Disciplinary Board, Board of Bar Examiners, Language Access Advisory Committee, Lawyer Succession and Transition

Committee, Client Protection Fund, Commission on Professionalism, and the Code of Judicial Conduct Committee. He participated in the Judicial Wellness committee and has done volunteer work for Roadrunner Foodbank and all three branches of government since his retirement.



## JUDICIAL BRANCH IT STAFF

### Outstanding Legal Organization Award

*Accepting the award, from left to right, Second Judicial District Court IT Specialist Manager James Lucero, Network Systems Administrator Senior with the Administrative Office of the Courts (AOC) Judicial Information Division Sam Noble, AOC JID Systems and Network Manager Jerred Weingarten with State Bar of New Mexico President Benjamin I. Sherman.*

Throughout the pandemic the judicial branch's information technology staff worked tirelessly and creatively to expand and maintain critical services. Statewide Judicial Information Division (JID) staff, and IT staff based in courts around the state all played critical roles, expanding video hearing capabilities, setting up remote work access and tools

for all judges and employees statewide, supporting electronic access to courts for the public, and maintaining networks to ensure no state court closed its doors. These IT professionals also assisted in updating court websites, creating email filing capabilities for the general public, updating legal forms, and streamlined phone systems to better serve the public during the pandemic. Despite supply chain challenges and the scarcity of new equipment, the IT staff maintained critical existing services and added essential components to function in the new, virtual environment. These measures were so effective that many continue to this day.





## SHASTA N. INMAN

### Outstanding Young Lawyer of the Year Award

Shasta N. Inman (she/her) is a solo attorney in Albuquerque, practicing across central New Mexico in child welfare and adult guardianship matters and serving as court-appointed guardian ad litem in family law cases (including contested custody, kinship guardianships, and grandparent visitation). Outside of her “day job,” Shasta has previously been active in the State Bar’s Children’s Law & Elder Law Sections, and she served as Chair of the SBNM Young Lawyers Division in 2021. Her chair year culminated in the Western States Regional Summit co-sponsored by the American Bar Association YLD, bringing together over 60 young lawyers from NM and surrounding states for an in-person conference (without any

known COVID-19 transmissions!). On the national stage, Shasta is the NM young lawyer representative to the ABA’s House of Delegates, and she served this year as ABA YLD Assembly Speaker (the Chief Policy Officer of the Division).



## ELLA JOAN FENOGLIO

### Robert H. LaFollette Pro Bono Award

Ella Joan Fenoglio was born in Indianapolis with parents who were active in church committees, school activities, Boy and Girl Scouts and even the neighborhood volunteer fire department. She majored in Spanish in college and increased her fluency as an exchange student in Bogota, Colombia. She received a Masters in Community Organization from Case Western Reserve in Cleveland.

Ella Joan then moved to Albuquerque, being attracted to the UNM School of Law, known for its clinical program and people-oriented curriculum. She has indeed been able to use her Spanish all these years as a lawyer, partnering with the NM Immigration Law Center, ABQ

Faithworks and the Social Justice Committee of La Mesa Presbyterian Church. She volunteers with the Albuquerque Friends Meeting (Quakers) in their work with the homeless and unhoused.

Ella Joan is honored to be chosen for this award and accepts on behalf of the many lawyers in New Mexico who give so much to their communities.



## CHIEF MAGISTRATE JUDGE EMERITUS

### LORENZO F. GARCIA

### Seth D. Montgomery Distinguished Judicial Service Award

Lorenzo F. Garcia commenced his judicial career as a state trial judge in 1978. He served two terms and, thereafter, was elevated to the Court of Appeals. He has extensive service on the Supreme Court as a Designated Justice.

In 1992 he was appointed to the U.S. District Court and shortly thereafter, became Chief Magistrate Judge, a position he held for 25 years. He currently serves on a national recall panel assisting federal judicial districts throughout the country as Chief Magistrate Judge Emeritus.

Garcia is a graduate of UNM where he served on the Law Review and National Resources Journal. He practiced law as a partner, with the prestigious Jones, Snead law firm, and was previously honored by the State Bar as the State’s Outstanding Attorney.

He was named Outstanding Judge by the Albuquerque Bar Association, and Outstanding Federal Jurist by the American Board of Trial Advocates.

The School of Law honored Judge Garcia with its Distinguished Achievement Award and included him in the list of 60 judges and attorneys, who in the last 60 years made the greatest contributions to the law, law school and state.

## Past Presidents

We were lucky to have 9 past presidents of the State Bar attend the Annual Meeting.



*From left to right: Arturo Jaramillo, Hon. Henry Alaniz, Mary Torres, Erika Anderson, President Benjamin Sherman, Carolyn Wolf, David Hernandez, Scotty Holloman, Dennis Jontz and Jerry Dixon*

## President's Award

Each year, the president chooses an individual or individuals to honor for their service to the State Bar. President Benjamin Sherman chose to recognize Keya Koul for her mentorship and encouragement in his leadership roles in Bar service.





# 2024 JUDICIAL CLERKSHIP PROGRAM

## Eligibility

Law students meeting the following criteria are eligible to apply:

- The applicant must be a first- or second-year law student at an accredited U.S. law school. If the applicant attends the University of New Mexico School of Law, the applicant must be a second-year law student.
- The applicant must be in academic good standing with their law school.
- The applicant must be available for the 10-week program beginning May 20, 2024- June 26, 2024. The time commitment is depending on the work of the chambers but it averages 30 hours a week. It is the student's first work priority. Any work or schooling conflicts must be disclosed to the application committee.
- The applicant must be willing to comply with the Rules of Judicial Conduct that apply to the judicial chambers where they work.
- The applicant must be able to attend the Judicial Clerkship Bootcamp dates October 26, 2023, November 16, 2023, January 25, 2024, and February 22, 2024.
- The applicant must be from an underrepresented group based on gender, race or ethnicity, disability, low-income, first-generation college student status, veteran status, or identity as LGBTQ+.

## Application

Applicants for the Judicial Clerkship Program are required to submit the following materials for consideration:

- a. Cover letter/personal statement: Applicants' personal statements should include general autobiographical information and set forth the reasons why the applicant wants to participate in the program and why they should be selected. Applicants' letters should address aspects of identity that are most significant to the applicant and meet the criteria of the program, narratives that shaped the applicants' life, career aspirations, and/or personal motivation. The applicant should also identify any ties to New Mexico or interest in practicing in New Mexico after law school. **Applicants should not refer to GPA or class rank on their resume or cover letter.** The cover letter is limited to two pages.
- b. Professional resume or curriculum vitae: The resume/cv is limited to 2 pages.
- c. Letter of reference: Limited to one, preferably a law professor
- d. One writing sample: One legal research writing sample should demonstrate the applicant's research and writing skills. The writing sample must not exceed five pages double-spaced in Times New Roman font or similar, not larger than 14-point font. The writing sample may be an excerpt from a larger document and may be a writing sample used during a law school academic course. Applicants should edit or polish their writing sample to show their best work.
- e. Proof of academic standing: Applicants must submit proof of academic standing. This must be submitted on behalf of the applicant's law school to [amanda.parker@sbnm.org](mailto:amanda.parker@sbnm.org). Applicants are not permitted to submit academic transcripts or refer to GPA or class rank.

## Deadline

Application must be submitted in ONE PDF and sent to the State Bar of New Mexico Equity in Justice Program Director, Dr. Amanda Parker at [amanda.parker@sbnm.org](mailto:amanda.parker@sbnm.org) by September 5 at 5:00pm MST.



State Bar of New Mexico  
Committee on Diversity  
in the Legal Profession



State Bar of New Mexico  
Young Lawyers Division



STATE OF NEW MEXICO EXECUTIVE OFFICE SANTA FE, NEW MEXICO

# Proclamation

**WHEREAS**, paralegals provide a vital link between lawyers and the clients they represent; and

**WHEREAS**, paralegals make invaluable contributions through the drafting and analysis of legal documents, case planning, research, client interviews, and the development of legal pleadings; and

**WHEREAS**, due to the rapidly evolving nature of our legal system, the responsibilities of New Mexico’s paralegals are constantly growing and expanding, including providing pro-bono services to the underserved; and

**WHEREAS**, the Paralegal Division of the State Bar of New Mexico, which was created in 1995, represents the paralegal profession and works toward enhancing professional development; and

**WHEREAS**, the goals of the Paralegal Division include providing efficient administration to accommodate growth, and development of paralegals through education; and

**WHEREAS**, the Paralegal Division supports the delivery of legal services in an economic and efficient manner.

**NOW THEREFORE**, I, Michelle Lujan Grisham, Governor of the State of New Mexico, do hereby proclaim August 26, 2023 as:

## “Paralegal Day”

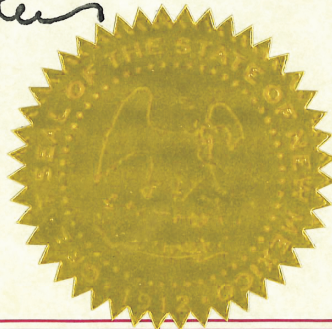
throughout the state of New Mexico.

Attest:

Maggie Toulouse Oliver  
Secretary of State

Done at the Executive Office this  
27<sup>th</sup> day of April 2023.

Witness my hand and the Great Seal  
of the State of New Mexico.

  
Michelle Lujan Grisham  
Governor



## Child Support Awareness Month:

### *Ensuring a Bright Future for New Mexico's Children*

As August approaches, the nation gears up to observe Child Support Awareness Month, a time dedicated to shedding light on a critical income support program that touches the lives of millions of children and families. For New Mexico, this month holds added significance as it marks an opportunity to celebrate recent strides in the state's child support program, ensuring that all children have the resources they need to thrive.

New Mexico Child Support plays a pivotal role in providing much-needed financial support to families, lifting children out of poverty, and fostering a stable environment for their growth and success. Sarah Coffey, Victim Services Managing Attorney at New Mexico Legal Aid, emphasizes the transformative impact of child support on low-income families. She notes, "If a mom has a six-month-old baby, it's really hard to work and deal with that. They have no income. So often, without child support, they're facing complete poverty, and child support is one of the best ways to lift children out of poverty."

Indeed, child support has the power to break the cycle of poverty, especially when parents with appropriate incomes fulfill their financial responsibilities. By ensuring consistent child support payments, the program creates a stable foundation for children, enabling them to thrive in various aspects of life. Sarah Coffey explains, "Child support helps kids have their basic needs met, which allows them to have optimal learning environments, be able to be a kid and focus on things kids should be focused on."

New Mexico Legal Aid plays a crucial role in supporting families, especially those who have experienced domestic violence. Financial abuse often becomes a tool to exert control over survivors, keeping them trapped in harmful situations. Coffey highlights the importance of recognizing and addressing this aspect of domestic violence, stating, "With domestic violence victims, a lot of times financial abuse is a huge part of it. And one of the ways that abusers keep their survivors in the family is to use finances to control that."

To ensure that child support reaches those who need it most, the New Mexico Child Support Enforcement Division operates as a state-operated branch, providing essential assistance to parents and guardians. Applying for child support is a relatively straightforward process, with a priority placed on delivering support to entitled New Mexicans.

Child support is a pivotal part of this support network, alongside numerous other resources available throughout the state. Coffey urges those seeking help to take the first step and reach out. "There are resources throughout the state that can get people away from violent situations, even if it feels insurmountable," she assures. "The first step is to reach out and ask for help."

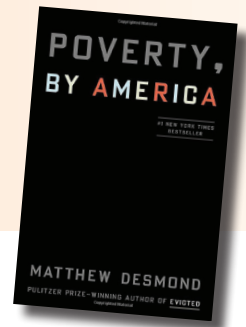
Child Support Awareness Month serves as a powerful reminder of our shared responsibility to uplift families, especially those facing challenging circumstances. By working together, we can empower New Mexico's families and ensure a brighter, more secure future for our children.

Read the full story and learn more at [NewMexicoLegalAid.org](https://NewMexicoLegalAid.org)



Please join us for the next  
Equity in Justice Book Club pick!

## Poverty, by America by Matthew Desmond



Discussions will be led by Dr. Amanda Parker,  
Equity in Justice Director at the State Bar of New Mexico  
and Torri Jacobus, Chair of the Equity and Justice Commission.

From Amazon:

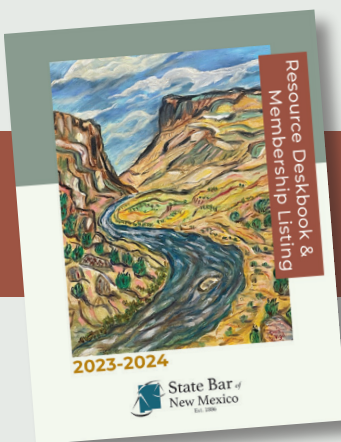
Elegantly written and fiercely argued, this compassionate book gives us new ways of thinking about a morally urgent problem. It also helps us imagine solutions. Desmond builds a startlingly original and ambitious case for ending poverty. He calls on us all to become poverty abolitionists, engaged in a politics of collective belonging to usher in a new age of shared prosperity and, at last, true freedom. antiracism in society and in our professional and personal lives.

**When:** Every other Tuesday from 12-1:30 p.m.

**Dates:** September 5, 19, October 3, 10, and 24

**Sign-up here for the zoom link and updates:**

<https://form.jotform.com/232184486200047>



Check your mail for your copy of the

# 2023-2024

## Resource Deskbook & Membership Listing

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

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

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

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



State Bar of  
New Mexico  
Est. 1886

# Disciplinary Quarterly Report

Report by Disciplinary Counsel

Reporting Period: April 1, 2023 – June 30, 2023

## Final Decisions

Final Decisions of the NM Supreme Court ..... 0

## Summary Suspensions

Total number of attorneys summarily suspended ..... 0

Total number of attorneys summarily suspended (reciprocal) ..... 0

## Administrative Suspensions

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

## Disability Inactive Status

Total number of attorneys removed from disability inactive states ..... 0

## Charges Filed

Charges were filed against an attorney for allegedly failing to represent a client competently, failing to represent a client diligently, failing to maintain a normal client-lawyer relationship with a client of diminished capacity (minor), knowingly disobeying court-ordered obligations, and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to represent the client competently, failing to represent the client diligently, failing to communicate with the client, charging an unreasonable fee, not preparing a representation agreement with the client, and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to represent clients competently, failing to make reasonable efforts to correct any misunderstanding that parties had regarding attorney's role during a surreptitious recording, engaging in conduct involving dishonesty, deceit or misrepresentation, and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly using means that have no substantial purpose other than to embarrass a third party, and/or engaging in conduct that is prejudicial to the administration of justice.

## Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law ..... 0

## Reciprocal Discipline

Total number of reciprocal discipline filed ..... 0

## Reinstatement from Probation

Petitions for reinstatement filed ..... 0

## Formal Reprimands

Total number of attorneys formally reprimanded ..... 0

## Informal Admonitions

Total number of attorneys admonished ..... 3

## Letters of Caution

Total number of attorneys cautioned ..... 9

Attorneys were cautioned for the following conduct: (3) excessive or improper fees, (2) improper statements about judge's integrity; (1) ex parte contact with the Court; (2) failure to communicate, lack of diligence, lack of competence; (1) ex parte contact with represented party

## Complaints Received

| <i>Allegations</i> .....                                  | <i>No. of Complaints</i> |
|---|--------------------------|
| Trust Account Violations .....                            | 0                        |
| Conflict of Interest .....                                | 1                        |
| Neglect and/or Incompetence .....                         | 75                       |
| Misrepresentation or Fraud .....                          | 14                       |
| Improper Withdrawal.....                                  | 3                        |
| Fees.....   | 9                        |
| Improper Communications.....                              | 0                        |
| Failure to Communicate .....                              | 7                        |
| Ex Parte Contact with the Court.....                      | 4                        |
| Lawyer Acting as Witness .....                            | 0                        |
| Prosecutorial Misconduct.....                             | 10                       |
| Advertising Violations.....                               | 0                        |
| Improper Statements about Judge.....                      | 1                        |
| Improper Means.....                                       | 2                        |
| Criminal Conduct.....                                     | 2                        |
| UPL .....   | 0                        |
| Improper Trial Publicity.....                             | 0                        |
| Lack of Fairness to Opposing Party/Counsel.....           | 3                        |
| Contact with Represented Party .....                      | 4                        |
| Specifically prohibited Conflicts .....                   | 5                        |
| Meritless Claims or Defenses .....                        | 1                        |
| Engaged in Conduct Prejudicial to Admin. Of Justice ..... | 0                        |
| Lack of Diligence.....                                    | 14                       |
| Failure to Follow Client Instructions.....                | 1                        |
| Other.....  | 1                        |
| Total number of complaints received .....                 | 180*                     |

\*Denotes total number of complaints received through 6/30/2022. May differ from the total number reflected in allegations due to reporting timing.

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-009**  
No: S-1-SC-37698 (filed March 16, 2023)

**IN THE MATTER OF  
VICTOR R. MARSHALL,**  
An Attorney Suspended from  
the Practice of Law in the  
Courts of the State of  
New Mexico

Anne L. Taylor,  
Chief Disciplinary Counsel  
Jane Gagne,  
Assistant Disciplinary Counsel  
Albuquerque, NM

for the New Mexico Disciplinary  
Board

The Baker Law Group  
Jeffrey L. Baker  
Renni Zifferblatt  
Albuquerque, NM

for Respondent

## OPINION

### PER CURIAM.

#### I. INTRODUCTION

{1} This Court suspended Respondent Victor Marshall indefinitely from the practice of law in New Mexico in accordance with Rule 17-206(A)(3) NMRA following his violations of Rules 16-301 NMRA, 16-802 NMRA, and 16-804(D) NMRA. The Disciplinary Counsel of the New Mexico Supreme Court alleged that Marshall did not abide by this Court's order and Rule 17-212 NMRA, prompting a Show Cause Hearing. During the hearing and in his briefing, Marshall did not contest Disciplinary Counsel's allegations, and his behavior during the Show Cause Hearing violated the standards of conduct before the Court. As a result, we held him in contempt both for the allegations against him brought by Disciplinary Counsel and for his behavior before this Court during the Show Cause Hearing. Consistent with our order of January 13, 2022, a precedential opinion filed with this opinion documents our analysis and the corresponding disposition concerning Disciplinary Council's allegations against Marshall. See *In re Victor R. Marshall (Marshall I)*, 2023-NMSC-006, \_\_\_ P.3d \_\_\_, (S-1-SC-37698, Mar. 13, 2023).

{2} One of the obligations imposed on Marshall by this Court due to his actions was to pay a \$2,000 fine to the State Bar of New Mexico Client Protection Fund. Today, we write here to explain our contempt ruling and to revisit our precedent setting a \$1,000 limit to fines imposed for contempt. See *Seven Rivers Farm, Inc. v. Reynolds*, 1973-NMSC-039, ¶ 42, 84 N.M. 789, 508 P.2d 1276. We analyze our state's precedent, statutes, and relevant constitutional provisions to determine that this limit no longer applies.

#### II. BACKGROUND

##### A. Factual Background

{3} Marshall originally appeared before this Court after the Disciplinary Board's hearing panel adopted the hearing committee's conclusions that Marshall violated Rules 16-301, 16-802, and 16-804(D) by making unsubstantiated statements about Judge James Wechsler in public pleadings. See *Marshall I*, 2023-NMSC-006, ¶¶ 8-9, \_\_\_ P.3d \_\_\_. After hearing the matter, we concluded Marshall had in fact made the unsubstantiated statements about Judge Wechsler, and accordingly we suspended Marshall, for no less than one year but indefinitely, from practicing law. Due to his suspension, Marshall was required to comply with Rule 17-212. Rule 17-212(A) and (B) require that the suspended lawyer send letters to the lawyer's clients, relevant courts, and opposing counsel informing

them of the lawyer's suspension. Rule 17-212(A) and (B) further require that the suspended lawyer's letters be on a form prescribed or approved by Disciplinary Counsel. Rule 17-212(C) prohibits suspended lawyers from engaging in the practice of law. Finally, Rule 17-212(D) mandates that a suspended lawyer must file an affidavit of compliance with the New Mexico Supreme Court within ten days after the effective date of suspension. {4} Marshall submitted an affidavit in an attempt to establish his compliance. However, Disciplinary Counsel found that the affidavit was deficient as follows: (1) the notices to the courts were not on the form prescribed by Disciplinary Counsel, (2) the affidavit contained no copies of letters to clients, and (3) the affidavit contained no copies of letters to opposing counsel. The notices asked the lower courts to stay proceedings, which, according to Disciplinary Counsel, "constitutes the practice of law, in direct violation of this Court's January 13, 2022, order suspending [Marshall] from the practice of law." Accordingly, Disciplinary Counsel filed a motion requesting this Court to enter an order for Marshall to show cause as to why he should not be held in contempt of Court for failing to comply with Rule 17-212.

{5} In responding to this Court's April 18, 2022, order to show cause, Marshall filed the response himself rather than through his counsel and did not contest the facts alleged by Disciplinary Counsel. Instead, Marshall argued that Disciplinary Counsel's motion was unconstitutional, that Disciplinary Counsel's motion was factually and legally deficient, and that his own actions were warranted because he had an obligation to protect his clients. This Court scheduled a hearing on the matter for May 25, 2022.

{6} Disciplinary Counsel attended the hearing in person, and Marshall and his attorney Jeffrey Baker appeared at the hearing through video. The Court began the hearing by asking Baker to clarify his role in the proceedings. Confusion existed because Baker continued to represent Marshall, Baker attended the hearing and had not withdrawn as counsel, and yet Marshall purportedly acting pro se had filed multiple pleadings with the Court. Baker indicated that he still represented Marshall and that Marshall submitted pleadings to the Court because Marshall was "in the best position to be able to tell the Court what he did, when he did it, [and] why he did it" due to his personal knowledge of the situation. The Court informed Baker that one cannot be pro se and represented by counsel at the same time because the posi-



tions are incongruous. The Court further inquired as to whether Baker planned to advocate for his client during the hearing. Baker stated that he intended for his role during the hearing to be limited and intended to ask the Court for permission for Marshall to address the Court.

{7} The Court informed Marshall that he could present to the Court; however, because Marshall was not a licensed attorney at the time of the hearing, he would be required to make his presentation under oath. Marshall asked to confer with his attorney and stated that the requirement was a “curveball” to his plan to present that day. The Court allowed a brief conference. Once the Court was back in session, Baker indicated that Marshall wanted to address the Court. The following exchange then occurred between Marshall and Chief Justice C. Shannon Bacon.

**MARSHALL:** As we notified the Court Clerk earlier this week, I am the one who is going to be presenting. We received no objection from anyone. So, of course, I am prepared to address the Court’s questions. Mr. Baker is not.

**MARSHALL:** In addition, I believe that I actually am entitled to represent myself . . . and to speak in my own defense against the contempt charge. But the bottom line is, um, we can’t proceed on thirty seconds notice under the Court’s terms. We would need to adjourn, and I’ll confer with my counsel and can figure out what to do.

**CHIEF JUSTICE:** Mr. Marshall, [Marshall inaudibly interrupts Chief Justice] Mr. Marshall. I don’t think you’re listening. You can present to the Court. I made that clear. But your presentation to the Court will be made under oath because you are not currently a licensed lawyer. But you can make the presentation, it just has to be under oath.

**MARSHALL:** Will it be subject to cross-examination, rebuttal, or any of the usual evidentiary safeguards?

**CHIEF JUSTICE:** No sir . . . , you are presumably going to contest factual allegations. You are either representing yourself, which I don’t believe is true because Mr. Baker has not withdrawn, [or] just like any other client who would make [a] presentation to the Court, it would be done under oath because we don’t have your license to control your behavior. Control is probably too harsh a word. But Mr. Baker as an officer

of the Court has a license that requires him . . . to proceed in a certain manner, and an oath requires you to proceed in a certain manner. So, if you would like to make the argument before the Court today, that is fine, but it will be under oath. If you decline to be put under oath, Mr. Baker will be making the argument to the Court. That is the choice before you.

**MARSHALL:** Justice, let me point out the obvious due process and confrontation problems involved in this procedure where you say they won’t be subject to the rules of civil procedure, or rebuttal, uh, or by the way, witnesses. I would note for the record . . .

**CHIEF JUSTICE:** Mr. Marshall, Mr. Marshall. If you are going to make arguments before the Court, it will be under oath, and I am prepared to put you under oath, and then when it’s your turn, you can make whatever argument you’d like to the Court subject to the clock running twenty minutes.

**CHIEF JUSTICE:** So, if you want to say anything else to the Court right now, anything at all, it needs to be done under oath. Are you consenting to be put under oath, Mr. Marshall?

**MARSHALL:** Justice, no. I’m reserving my objections to this procedure, this snap procedure, for federal court. And rather than . . .

**CHIEF JUSTICE:** [Marshall inaudibly attempts to talk over Chief Justice] Mr. Marshall, all I needed was a no, you are not, you cannot continue to argue your case without being put under oath. Mr. Baker . . . [Marshall inaudibly interrupts Chief Justice.]

**CHIEF JUSTICE:** Mr. Baker . . . [Marshall inaudibly interrupts Chief Justice.]

**CHIEF JUSTICE:** Mr. Marshall, I’m gonna ask you to stop. Mr. Baker, will you please say something [so] that you occupy our [Marshall attempts to interrupt Chief Justice inaudibly] screen please.

**MARSHALL:** [Marshall interrupts Chief Justice] I do have a due process and first amendment right to speak briefly in my own defense, and I will say the following. Neither I nor Mr. Baker are prepared or able to proceed

under the procedures which you just outlined about five minutes ago. And therefore, your honor, I will seek redress in the federal court. I would ask the Court to adjourn the hearing so that we can get meaningful federal court review because this is a violation of due process. It is a violation . . .

**CHIEF JUSTICE:** Mr. Marshall . . .

**MARSHALL:** [Marshall interrupts Chief Justice] Your honor, I’m . . . we will not proceed because we can’t proceed given what’s happened.

**CHIEF JUSTICE:** Mr. Marshall, the Court is taking a recess.

{8} The Court then took a recess. Upon returning to the hearing, the Court informed Marshall that the Court had muted his microphone due to his behavior, which “was incredibly disruptive and lacked any sense of decorum.” The Court then reiterated that Marshall could have given a presentation if he had agreed to do so under oath, that Marshall and Baker were given plentiful due process and notice in this case, and that the parties had every opportunity to adequately prepare for the hearing. Thus, the Court determined that the hearing would proceed. The Court gave Baker an opportunity to speak on behalf of Marshall, but he declined to do so and agreed that the matter would be decided on the briefing. Disciplinary Counsel indicated she would like an opportunity to reply to Marshall’s written response to the Motion for Order to Show Cause. Consequently, the Court gave Disciplinary Counsel two options: (1) file a response, or (2) agree that the matter could be decided on the briefing previously filed by the parties. Disciplinary Counsel accepted that the Court should decide the matter on the briefing. The Court then went into conference.

{9} After conferencing the matter, the Court held Marshall in contempt of Court both for the rule violations alleged by Disciplinary Counsel and for his behavior before the Court during the Show Cause Hearing. The Court announced its decision to the parties in open court. As a remedial sanction, we required Marshall to comply with the provisions of Rule 17-212, as directed by Disciplinary Counsel, within one week of the hearing. The Court added six months to Marshall’s indefinite suspension consistent with *In re Salazar*, 2019-NMSC-010, ¶¶ 2, 21, 443 P.3d 555, as a punitive sanction. Further consistent with *Salazar*, *id.* ¶ 45, the Court struck all of the pleadings filed by Marshall in this proceeding because they were not filed by his counsel. Finally, we fined Marshall \$2,000 for his conduct before the Court

and notified Marshall that he faced consequences including permanent disbarment if he did not comply with the Court's ruling within ten days of the hearing. We discuss the terms of both contempt sanctions in more detail in the following section of this opinion.

### III. DISCUSSION

#### A. The Contempt Power of the Court

{10} “[T]he power to punish for contempt is inherent in the courts and its exercise is the exercise of the highest form of judicial power.” *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, ¶ 17, 63 N.M. 156, 315 P.2d 223. New Mexico courts possess statutory authority to “preserve order and decorum, and for that purpose to punish contempts by reprimand, arrest, fine or imprisonment, being circumscribed by the usage of the courts of the United States” pursuant to NMSA 1978, Section 34-1-2 (1851). In fulfilling this mandate, courts are vested with the “power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.” *Anderson v. Dunn*, 19 U.S. 204, 227 (1821). Further, a court’s authority to compel orderliness and compliance exists even in the absence of express statutory authority. *Id.* Therefore, while a state legislature may institute reasonable regulatory measures, it may not “substantially impair or destroy the implied power of the court to punish for contempt.” *Greenwood*, 1957-NMSC-071, ¶ 18.

#### B. Categories of Contempt

{11} Contempts of court are classified as civil or criminal and direct or indirect. *Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. “The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised.” *Id.* (internal quotation marks and citation omitted). However, we have noted that “[c]ontempts are frequently neither completely civil nor strictly criminal.” *State v. Pothier*, 1986-NMSC-039, ¶ 4, 104 N.M. 363, 721 P.2d 1294. “In either event, a defendant has disobeyed an order from the court and is therefore punished.” *Id.* “It is not the fact of punishment, but rather its character and purpose, that often serve to distinguish between the two classes of cases.” *Jencks v. Goforth*, 1953-NMSC-090, ¶ 20, 57 N.M. 627, 261 P.2d 655 (internal quotation marks and citation omitted). “If it is for civil contempt, the punishment is remedial to coerce [a] defendant to perform the act ordered by the court. But if it is for criminal contempt, the sentence is punitive; to vindicate the authority of the court.” *Pothier*, 1986-NMSC-039, ¶ 4.

{12} “Civil contempts are remedial and may use fines, imprisonment, or other sanctions as coercive measures to compel the contemnor to comply in the future

with an order of the court.” *Sanchez*, 2011-NMSC-031, ¶ 25. Because civil contempt sanctions are not punitive in nature, once the contemnor complies, the sanctions end. *Id.* Thus, “[a] civil contempt defendant carries the keys of his prison in his own pocket. He can end the sentence and discharge himself of contempt at any moment by doing what he has previously refused to do.” *Id.* (internal quotation marks and citation omitted).

{13} On the other hand, “[c]riminal contempt proceedings are instituted to punish completed acts of disobedience that have threatened the authority and dignity of the court and are appropriate even after the contemnor is no longer acting contemptuously.” *Id.* ¶ 26. This Court and the United States Supreme Court identify criminal contempt as a “crime in the ordinary sense; it is a violation of the law.” *Id.* (quoting *Pothier*, 1986-NMSC-039, ¶ 11 (quoting *Bloom v. Illinois*, 391 U.S. 194, 201 (1968))). “A criminal contempt defendant is therefore entitled to due process protections of the criminal law, the specific nature of which will depend on whether the criminal contempt is categorized as direct or indirect.” *Sanchez*, 2011-NMSC-031, ¶ 26.

{14} “Direct contempt is contemptuous conduct in the presence of the court, and indirect contempt is an act committed outside the presence of the court.” *Pothier*, 1986-NMSC-039, ¶ 8. “[D]irect contempts in the presence of the court traditionally have been subject to summary adjudication, to maintain order in the courtroom.” *Int’l Union, United Mineworkers of Am. v. Bagwell*, 512 U.S. 821, 832 (1994) (internal quotation marks and citation omitted). Conversely, “[w]hen the judge has not personally witnessed the defendant’s contemptuous behavior in the course of a court proceeding, the contempt is classified as indirect criminal contempt and must be resolved through more traditional due process procedures.” *Sanchez*, 2011-NMSC-031, ¶ 28.

{15} We acknowledge that the classifications of contempt charges as “civil” or “criminal” are somewhat paradoxical as these classifications do not relate to the underlying charges in the proceedings or the type of court in which the contempt occurs. Instead, as stated above, the classifications relate to the “character and purpose” of the contempt, either remedial or punitive. *Goforth*, 1953-NMSC-090, ¶ 20 (internal quotation marks and citation omitted). Therefore, going forward, to depict the nature of contempt charges more accurately, we advise that “civil” contempt should more precisely be referred to as “remedial” contempt, and “criminal” contempt should be referred to as “punitive” contempt. *See, e.g., Colo. R. Civ. P. 107(a)*

(4)-(5) (classifying contempt sanctions as “punitive” and “remedial” rather than “criminal” and “civil”).

#### C. Indirect Contemptuous Conduct

{16} The facts giving rise to Disciplinary Counsel’s Motion for Order to Show Cause were not contested in Marshall’s pleadings and remained uncontested before this Court. Accordingly, we announced our decision to hold Marshall in contempt of Court to the parties at the Show Cause Hearing. We concluded that Disciplinary Counsel presented clear evidence to the Court that Marshall violated Rule 17-212(A) and (B) and this Court’s order of suspension. The affidavit Marshall filed in rebuttal fell far short of that which is required by Rule 17-212(A) and (B). We explained to the parties at the hearing that Marshall received notice of the allegations of disobedient conduct that gave rise to our holding of contempt. Further, we “set a hearing sufficiently far in advance for the parties to prepare.” Thus, it was “clear to the Court from both the pleadings and the proceedings before the Court . . . that . . . Marshall clearly knew of the duties imposed by the Court’s order and of the rules that are laid out in Rule 17-212.”

{17} We recognized that “Marshall had the ability to comply with both the Court’s order and the rule,” yet he failed to do so. In addition, we considered Marshall’s conduct to be “willful,” even though willfulness is not a requirement for contempt. Marshall’s contempt for violation of Rule 17-212 of the Court’s order of suspension was indirect. *See Sanchez*, 2011-NMSC-031, ¶ 28. The purpose of this finding of indirect contempt was both remedial and punitive. Our remedial sanction required Marshall to comply with the provisions of Rule 17-212, as instructed by Disciplinary Counsel, within one week of the Show Cause Hearing. Holding that it was not appropriate for Marshall to pay fines to the “damaged party,” the public in this case, the Court further added six months to Marshall’s indefinite suspension consistent with *In re Salazar*, 2019-NMSC-010, ¶¶ 2, 21, as a punitive sanction of his indirect contempt. Also consistent with *In re Salazar*, *id.* ¶ 45, we struck all of the pleadings filed by Marshall in this proceeding as they were not filed by his counsel.

#### D. Direct Contemptuous Conduct

{18} There was “no question that . . . Marshall’s conduct before the New Mexico Supreme Court . . . was contemptuous. In fact, it was aggressive and outrageous.” Thus, the Court penalized Marshall’s direct contempt of Court, as his behavior “was inconsistent with any sense of decorum before a tribunal in the State of New Mexico.” *See Sanchez*, 2011-NMSC-031, ¶ 27. We

fined Marshall \$2,000 as a punitive sanction of his direct contempt by continual interruption of the Court and disregard of the Court's instructions. Moreover, we informed Marshall that if he did not timely pay the fee to the Client Protection Fund, there would be additional contempt proceedings forthcoming, which could include "a penalty up to and or including permanent disbarment." We hold that this punishment is appropriate in light of Marshall's conduct before the Court.

{19} This Court acknowledges that our prior precedent set in *Seven Rivers*, 1973-NMSC-039, ¶ 42, imposes a \$1,000 limit for punitive contempt fines absent a trial by jury. Going forward, we clarify that this limit no longer exists for contempt charges. Some states have statutory limits imposing a maximum penalty for contempt of court of \$5,000.<sup>1</sup> Our Legislature has not used its regulatory authority to fix a maximum monetary penalty for punitive contempt. However, our Court established a \$1,000 maximum penalty for punitive contempt fines in *Seven Rivers*, 1973-NMSC-039, ¶ 42. Even so, this Court acknowledged in *Seven Rivers* that "where . . . the sole punishment of the criminal [or punitive] contemnor is a fine we are free to make our own determination as to what is a 'petty' and what is a 'serious' offense." *Id.* Additionally, we remarked that "a fine which might once have been considered severe or burdensome, such as \$1,000[], might now be felt to be mild. We do not consider the fine imposed here to be very substantial or burdensome." *Id.* ¶ 37. It is important to view this statement in the context of when *Seven Rivers* was decided—1973.

{20} A fine of \$1,000 in 1973 is approximately equivalent to \$6,705.20 in 2022 and \$6,738.06 in 2023. See CPI Inflation Calculator, available at <https://www.officialdata.org/us/inflation/1973?amount=1000> (last visited Mar. 10, 2023). It follows that the classification of a \$1,000 fine as a "serious" offense invoking the right by jury trial in 1973 cannot stand nearly thirty years later for direct punitive contempt. This is especially the case where, as here, the

contemptuous conduct occurred in front of the Court, generally omitting the need for a fact-finding process. *Bagwell*, 512 U.S. at 832. We decline to place an express limit on contempt fines today. Instead, we adhere to New Mexico precedent and federal precedent granting courts the power to determine whether an offense is serious under the circumstances of the case.

{21} Our conclusion here is in accord with United States Supreme Court precedent, which has provided that limits on punishment for contempt and whether a right to trial by jury is implicated depend on whether a contempt offense is classified as "petty" or "serious." *Bloom*, 391 U.S. at 198. The United States Supreme Court has accepted the view that "criminal [or punitive] contempt is a petty offense unless the punishment makes it a serious one." *Id.* The Court provides that "dispensing with the jury in the trial of contempts subjected to severe punishment represents an unacceptable construction of the Constitution . . ." *Id.* Furthermore, "when the legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, we are to look to the penalty actually imposed as the best evidence of the seriousness of the offense." *Id.* at 211.

{22} Rule 42(b) of the Federal Rules of Criminal Procedure provides that "the court (other than a magistrate judge) may summarily punish a person who commits criminal [or punitive] contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies . . ." Remarketing on this principle, the United States Supreme Court stated, "This rule reflects the common-law rule which is widely if not uniformly followed in the States." *Bloom*, 391 U.S. at 209.<sup>2</sup> New Mexico is one of the states that historically has followed this approach. See, e.g., Rule 2-110(B)(2), (C) NMRA (2016); Rule 3-110(B)(2), (C) NMRA (2016); Rule 5-112(B)(2), (C) NMRA (2016); Rule 8-110(B)(2), (C) NMRA (2016). It is important to note that the United States Supreme Court has not expressly created

an exception to the constitutional right to jury trials in direct punitive contempt cases but has clarified, "It is old law that the guarantees of jury trial . . . do not apply to petty offenses." *Bloom*, 391 U.S. at 210. In doing so, the United States Supreme Court seemingly classifies contemptuous conduct occurring before a court as a "petty" offense, absent a severe punishment. See *id.* (recognizing "a strong temptation to make exception to the rule we establish today for disorders in the court room" but deciding that "no special rule is needed" because the right to a jury trial "do[es] not apply to petty offenses"). The United States Supreme Court has deemed imprisonment exceeding six months a "serious" contempt punishment. *Bagwell*, 512 U.S. at 826-27. There is no analogous limit placed on a punitive contempt fine.

#### IV. CONCLUSION

{23} Contempt charges formerly classified as either "civil" or "criminal" should instead be regarded as "remedial" or "punitive" to more accurately reflect the distinctions between the different types of contempt. Marshall faced both remedial and punitive contempt sanctions as a result of both his indirect contemptuous conduct and his direct contemptuous conduct exhibited at the Show Cause Hearing. To the extent that our precedent instructs a \$1,000 maximum for direct, punitive contempt fines absent a jury trial, we hold that this mandate no longer stands.

#### {24} IT IS SO ORDERED.

**C. SHANNON BACON, Chief Justice**  
**MICHAEL E. VIGIL, Justice**  
**DAVID K. THOMSON, Justice**  
**JULIE J. VARGAS, Justice**  
**BRIANA H. ZAMORA, Justice**

<sup>1</sup> S.D. Codified Laws § 21-34-6 (2023) (allowing for a maximum fine of \$5,000); Wis. Stat. Ann. § 785.04(2) (2021) (same); Wash. RCW 7.21.040(5) (2011) (same).

<sup>2</sup> *Bloom*, 391 U.S. at 209, quoted historical Rule 42(a), which at the time provided that "criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." This principle is reflected in what is now Rule 42(b).

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-010**

No: S-1-SC-39546 (filed April 10, 2023)

INDIGENOUS LIFEWAYS, NEW MEXICO SOCIAL JUSTICE EQUITY INSTITUTE,  
and THREE SISTERS COLLECTIVE,  
Petitioners,

v.

NEW MEXICO COMPILATION COMMISSION ADVISORY COMMITTEE,  
Respondent,  
and

MICHELLE LUJAN GRISHAM, in her official capacity as Governor  
of the State of New Mexico,  
Intervenor-Real Party in Interest.

## ORIGINAL PROCEEDING

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for Amici Curiae Retake Our Democ-  
racy and Indivisible Albuquerque

## OPINION

### VIGIL, Justice.

#### I. INTRODUCTION

{1} The New Mexico Constitution prohibits its logrolling<sup>1</sup> by directing: “If two or more [constitutional] amendments are initiated by the legislature, they shall be so submitted as to enable the electors to vote on each of them separately.” N.M. Const. art. XIX, § 1. A constitutional amendment proposed by the Legislature and approved by the electorate in the 2020 general election

made a number of changes governing the New Mexico Public Regulation Commission (Commission or PRC). N.M. Const. art. XI, §§ 1-2. Those changes included alterations to the selection, qualifications, and terms of Commission members, *id.* § 1, and revision to the PRC’s constitutionally assigned responsibilities, *id.* § 2. The issue we address here is whether the amendment is void because it violates the constitutional prohibition against logrolling.

{2} Petitioners are three nonprofit organizations who represent the rights of Native Americans. Petitioners ask this Court to

declare the ratification of the constitutional amendment a nullity and to issue a writ of mandamus directing Respondent Advisory Committee of the New Mexico Compilation Commission (Advisory Committee) to remove the amendment from the Constitution. The Advisory Committee responds that Petitioners’ challenge is untimely and improperly raised against the committee through a petition for writ of mandamus, but takes no position on the merits. Governor Michelle Lujan Grisham, who was granted leave to intervene in these proceedings, joins the Advisory Committee’s timeliness arguments and additionally argues that the amendment is constitutional.

{3} After hearing oral arguments, we denied the petition for writ of mandamus, holding that the petition was timely, but that the amendment did not violate Article XIX, Section 1.

#### II. BACKGROUND

{4} During the 2019 legislative session, the Legislature passed a senate joint resolution proposing to make several changes to the sections of our Constitution that create and govern the PRC. *See* 2019 N.M. Laws, Constitutional Amendment 1 (Amendment 1). Amendment 1 would change the method of selecting Commission members. *Id.* § 1(A)-(B). Previously, Article XI, Section 1 provided that the PRC was to consist of “five members elected from districts provided by law for staggered four-year terms beginning on January 1 of the year following their election.” N.M. Const. art. XI, § 1 (1996, amended 2020). The Legislature proposed to amend the section to provide that, beginning on January 1, 2023, the PRC would consist of three members appointed by the Governor with the advice and consent of the Senate. Amendment 1, § 1(A)-(B). Commission members would be selected from a list of nominees submitted to the Governor by a nominating committee, and would serve six-year, staggered terms. *Id.* § 1(B)-(C). Additionally, the Legislature proposed to amend provisions addressing the removal, qualifications, and continuing education requirements of Commission members. *Id.* § 1(D)-(E).

{5} The Legislature also proposed to amend the PRC’s constitutionally defined responsibilities. *Id.* § 2. When originally created, the PRC was tasked with regulating a variety of public service companies, including public utilities, transportation companies, telecommunications compa-

<sup>1</sup> “The legislative practice of including several propositions in one . . . proposed constitutional amendment so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had been submitted separately. Many state constitutions have single-subject clauses that prohibit this practice.” Logrolling, *Black’s Law Dictionary* (11th ed. 2019).

nies, business corporations, and insurance companies. N.M. Const. art. XI, § 2 (1996, amended 2020). In 2012, voters approved an amendment to remove business corporations and insurance companies from within the PRC's purview. See 2012 N.M. Laws, Constitutional Amendment 3, § 1; N.M. Const. art. XI, § 2 (1996, amended 2012). Amendment 1 would further refine the PRC's responsibilities to include the regulation of public utilities and "other public service companies in such manner as the legislature shall provide." Amendment 1, § 2; N.M. Const. art. XI, § 2.

{6} The proposed changes to Article XI, Sections 1 and 2 were submitted to the electorate in a single-ballot question. See N.M. Sec'y of State, 2020 General Election Voter Guide at 6, (Nov. 3, 2020) (2020 Voter Guide), <https://www.sos.state.nm.us/wp-content/uploads/2020/09/2020-Voter-Guide-English-FINAL.pdf> (last visited March 22, 2023). The question was identified as Constitutional Amendment 1, with the following title:

Proposing To Amend The Constitution Of New Mexico To Provide That The Public Regulation Commission Consist Of Three Members Appointed By The Governor From A List Of Professionally Qualified Nominees Submitted To The Governor By A Nominating Committee As Provided By Law And That The Commission Is Required To Regulate Public Utilities And May Be Required To Regulate Other Public Service Companies.

*Id.* In accordance with NMSA 1978, Section 1-16-7(B) (2019) and The Form of Ballot Question, 1.10.16.8(H) NMAC, this language tracked verbatim the title of the senate joint resolution proposing Amendment 1. Compare 2020 Voter Guide, with Amendment 1.

{7} Amendment 1 was subject to widespread scrutiny and debate before the election. The Secretary of State also prepared and published the 2020 Voter Guide, which recited Amendment 1's ballot title, described the amendment's purpose, summarized some of the arguments for and against the amendment, and reproduced a redline version of Article XI, Sections 1 and 2 showing the proposed changes. 2020 Voter Guide at 6-16.

{8} During the 2020 legislative session, the Legislature passed a comprehensive set of implementing laws in anticipation of Amendment 1's approval. See 2020 N.M. Laws, 2d Sess., ch. 9, §§ 15-23. Amendment 1 was ratified at the November 2020

general election, with a sound majority voting in favor of the amendment. See N.M. Sec'y of State, 2020 General Election Official Results, <https://electionresults.sos.state.nm.us/Default.aspx?eid=2782> (last visited March 22, 2023) (follow the "State-wide Offices & Questions" hyperlink). Following Amendment 1's approval, the amendment was compiled into the New Mexico Constitution. See N.M. Const. art. XI, §§ 1-2.

### III. DISCUSSION

{9} Petitioners filed the petition at issue after the 2020 general election, shortly before the changes in the PRC were to take effect on January 1, 2023. Petitioners seek a writ of mandamus against the Advisory Committee directing the committee to advise and approve the removal of Amendment 1 from the Constitution. As grounds for this requested relief, Petitioners argue that Amendment 1 is null and void and that its purported ratification is a nullity because the amendment was submitted to voters in violation of the constitutional prohibition against logrolling in Article XIX, Section 1. Petitioners advance two theories for this claimed constitutional violation.

{10} First, Petitioners argue that Amendment 1 logrolled multiple independent measures into a single-ballot question, accusing the Legislature of "piggybacking the repeal of fundamental democratic rights on unrelated measures likely to be popular with voters." Petitioners thus claim that the amendment violates the single-measure rule explicit in Article XIX, Section 1. Second, Petitioners assert that the ballot title identifying Amendment 1 was misleading. Petitioners argue that this allegedly misleading title violates a requirement of ballot clarity or accuracy that they ask this Court to recognize as implicit within Article XIX, Section 1.

{11} Before reaching the merits of Petitioners' challenge, we address a question raised by the Advisory Committee about the propriety of mandamus relief. We also address the Advisory Committee's and the Governor's arguments about the timeliness of the petition.<sup>2</sup> Concluding that there is no procedural bar to our consideration of the petition, we then address the petition on its merits.

#### A. Procedural Issues

##### 1. Jurisdiction in mandamus

{12} Our Constitution grants this Court original jurisdiction in "mandamus against all state officers, boards and commissions" and the power to issue extraordinary writs in the exercise of its jurisdiction. N.M. Const. art. VI, § 3. "This Court on several occasions has recognized that

mandamus is an appropriate means to prohibit unlawful or unconstitutional official action." *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 19, 120 N.M. 562, 904 P.2d 11. We may exercise our jurisdiction in mandamus when a petition

presents a purely legal issue concerning the non-discretionary duty of a government official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.

*State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 11, 127 N.M. 272, 980 P.2d 55. "Although relief by mandamus is most often applied to compel the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law, the writ may also be used in appropriate circumstances in a prohibitory manner to prohibit unconstitutional action." *State ex rel. Sugg v. Toulouse Oliver*, 2020-NMSC-002, ¶ 7, 456 P.3d 1065 (internal quotation marks and citations omitted).

{13} Petitioners' objective is to excise Amendment 1 from the Constitution; to that end, they seek a declaration that the amendment is null and void and its ratification is a nullity for failure to comply with Article XIX, Section 1. The petition thus satisfies all three prerequisites for the exercise of our mandamus jurisdiction: (1) it presents a fundamental constitutional question of great public importance, (2) that may be answered on the basis of virtually undisputed facts, and (3) which, given the timing of the petition, demands a swift resolution. See *Sandel*, 1999-NMSC-019, ¶ 11.

{14} The Advisory Committee, however, questions whether an exercise of our mandamus jurisdiction is appropriate, arguing that Petitioners have not shown that the committee possesses a clear, existing, and nondiscretionary duty to advise and approve removal of Amendment 1 if the amendment was indeed improperly ratified. We also question whether the Advisory Committee would be able to afford Petitioners meaningful relief. Petitioners' sole citation for the existence of such a duty is *State ex rel. League of Women Voters v. Advisory Comm. to the N.M. Compilation Comm'n*, 2017-NMSC-025, ¶¶ 17-18, 401 P.3d 734 (LOWV). But LOWV does not support the duty Petitioners urge in this case. In *LOWV*, we recognized the Advi-

<sup>2</sup> We do not reach an additional argument raised by amici regarding the potential for appointments to the nominating committee to be made in violation of the emoluments clause, N.M. Const. art. IV, § 28. This argument is not relevant to the issues raised in the parties' briefs. See Rule 12-320(A) NMRA.

sory Committee's nondiscretionary duty to advise and approve the *compilation* of duly ratified constitutional amendments. *Id.* ¶ 18. However, this duty is clearly distinguishable from a duty to advise and approve the *removal* of a constitutional amendment that is compiled but later determined to have been unduly ratified. *See id.* ¶.

{15} Nevertheless, we need not resolve this question. We do not doubt this Court's power to order that an improperly ratified amendment is a nullity. *See State ex rel. Clark v. State Canvassing Bd.*, 1995-NMSC-001, ¶¶ 1, 28, 119 N.M. 12, 888 P.2d 458 (issuing a writ of mandamus to the State Canvassing Board, directing the board to "treat the purported ratification" of an amendment found in violation of Article XIX, Section 1 "as a nullity"). Further, although Petitioners may have failed to identify the governmental entity with the duty to implement our ruling, this Court is not precluded from granting necessary relief. Our rules recognize that "[i]f the petitioner is entitled to a writ or relief other than that requested in the petition, the petition shall not be denied, and the Court shall grant the writ or relief to which the petitioner is entitled." Rule 12-504(C)(4) NMRA. Thus, this Court has, in the past, added a party to a mandamus proceeding "for the purpose of implementing our ruling." *State ex rel. Cisneros v. Martinez*, 2015-NMSC-001, ¶ 6 & n.1, 340 P.3d 597 (joining the Secretary of the Department of Finance and Administration as a party to implement the Court's order).

{16} We note that the Governor has already intervened and zealously participated in these proceedings. Amendment 1 tasks the Governor with appointing the three new members of the PRC. If this Court deemed it necessary, the Court could issue a writ to the Governor prohibiting those appointments. *Sugg*, 2020-NMSC-002, ¶ 7. In light of the Governor's active defense of Amendment 1, we see no reason to delay consideration of the petition.

## 2. Timeliness of the petition

{17} The Advisory Committee and the Governor argue that the petition is untimely, because it is barred by the thirty-day limitations period of the Election Code, NMSA 1978, § 1-14-3 (1971), or by the equitable doctrine of laches. We hold that the petition is timely.

### a. The Election Code

{18} According to NMSA 1978, Sections 1-16-1 and -2(A)(1) (2019), the election of any ballot question involving a legislatively-proposed constitutional amendment "shall be called, conducted and canvassed in accordance with the Election Code." Section 1-14-3 provides that "[a]ny action to contest an election . . . shall be filed no

later than thirty days from issuance of the certificate of nomination or issuance of the certificate of election to the successful candidate." We have explained that challenges to "the whole process or any part" of an election, or claims which "seek to alter the certified result of the election," are to be construed as election contests subject to the procedures of the Election Code. *Dinwiddie v. Bd. of Cnty. Comm'rs*, 1985-NMSC-099, ¶ 7, 103 N.M. 442, 708 P.2d 1043. This procedural exclusivity "accords with the need for speedy resolution of election contests; contestants are not permitted to proceed under the rules of civil procedure because the procedure set forth in those rules takes too much time." *Gunaji v. Macias*, 2001-NMSC-028, ¶ 26, 130 N.M. 734, 31 P.3d 1008.

{19} The Advisory Committee argues that Petitioners challenge only the procedures used in presenting Amendment 1 to the electorate and reasons that the petition therefore presents an untimely election contest barred by the limitations of the Election Code. We disagree with this characterization of this petition. "A legal challenge to governmental action is not converted into an election contest simply because the action at issue followed an election." *Glaser v. LeBus*, 2012-NMSC-012, ¶ 11, 276 P.3d 959. Petitioners do not challenge the processes used in calling, conducting, or canvassing the 2020 general election or seek to alter the certified result. Rather, Petitioners challenge only whether Amendment 1 satisfies the requirements for voter ratification of a constitutional amendment under Article XIX, Section 1. We cannot fairly characterize Petitioners' challenge to Amendment 1 as an election contest. *See LOWV*, 2017-NMSC-025, ¶ 14 (explaining that a petition for a writ of mandamus which does not seek to alter the certified results of any election, but "clarity about the meaning and effect of the uncontested certified results of the elections" does not present an election contest under Section 1-14-3).

{20} In addition, Section 1-14-3 may not apply to a writ of mandamus proceeding brought to this Court in its original jurisdiction under Article VI, Section 3 of the New Mexico Constitution. Pursuant to our jurisdiction and power of superintending control, "this Court possesses unquestioned power to make rules touching pleading, practice and procedure." *State v. Arnold*, 1947-NMSC-043, ¶ 7, 51 N.M. 311, 183 P.2d 845; *see also id.* ¶ 11 (concluding that rules affecting the time and manner of taking an appeal "are procedural and within this [C]ourt's rule making power"). "Since the Constitution provides for separate and equal branches of government in New Mexico, any legislative measure which affects pleading, practice or

procedure in relation to a power expressly vested by the Constitution in the judiciary, such as quo warranto [or mandamus], cannot be deemed binding." *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16, 88 N.M. 244, 539 P.2d 1006. Our original jurisdiction and power in mandamus is not subject to a thirty-day limit. *See* Rule 12-504 (governing petitions for extraordinary writs).

{21} We will not construe this petition for writ of mandamus challenging the ratification of a constitutional amendment as an election contest subject to the thirty-day limitations of the Election Code. Thus, we reaffirm that "the issue of whether logrolling or joinder of multiple amendments indeed has taken place is . . . a justiciable constitutional question, notwithstanding the absence of any challenge to the constitutionality until after the voters have approved the amendment." *State ex rel. Chavez v. Vigil-Giron*, 1988-NMSC-103, ¶ 7, 108 N.M. 45, 766 P.2d 305.

### b. Laches

{22} The Governor additionally argues that the petition is barred by laches. Laches is an equitable defense that prevents "litigation of a stale claim where the claim should have been brought at an earlier time and the delay has worked to the prejudice of the party resisting the claim." *Garcia v. Garcia*, 1991-NMSC-023, ¶ 30, 111 N.M. 581, 808 P.2d 31. We agree that the doctrine of laches may, in appropriate circumstances, bar a challenge made under Article XIX, Section 1. *See, e.g., Miller v. Burk*, 188 P.3d 1112, 1125 (Nev. 2008) (applying laches to a challenge to the clarity of an amendment's ballot brought twelve years after an election).

{23} "However, laches is not favored and should be applied only where a party has been guilty of inexcusable neglect in enforcing [the party's] rights." *State ex rel. Dep't of Hum. Servs. v. Davis*, 1982-NMSC-139, ¶ 4, 99 N.M. 138, 654 P.2d 1038. Moreover, we hesitate to apply laches to bar a challenge to the ratification of a constitutional amendment. "Caution in the application of laches to bar a constitutional claim is invoked . . . because it would be the epitome of inequity to allow an unconstitutional law to remain in effect merely because someone slumbered on his or her rights." 27A Am. Jur. 2d *Equity* § 119 (2019).

{24} We also see no reason to apply laches to the current petition. When Petitioners filed the petition, the PRC's nominating committee was preparing a list of nominees for submission to the Governor, but the major changes worked by Amendment 1 were yet to take effect. Although Petitioners have not articulated a reason for the nearly two-year delay in bringing this petition, the Governor also has not

identified any real prejudice caused by the delay. “[T]he party asserting the defense [of laches] must demonstrate prejudice, and for such purposes, prejudice cannot be inferred merely from the passage of time.” *Brown v. Taylor*, 1995-NMSC-050, ¶ 12, 120 N.M. 302, 901 P.2d 720 (internal quotation marks and citation omitted). Accordingly, we reject the Governor’s laches defense and proceed to consider the merits of the petition.

### B. The Single-Measure Rule or Logrolling

{25} The substantive issue at the heart of this case is whether the Legislature violated Article XIX, Section 1. Petitioners claim that Amendment 1 included at least seven independent measures. Petitioners particularly question the rationality of joining a measure that changed Commission members from elected to appointed officials with the other measures that, for example, reduced the number of Commission members or narrowed the PRC’s area of constitutional responsibility.

{26} Article XIX, Section 1 is designed “to prevent ‘logrolling,’ a legislative practice of joining together two or more independent measures so those who support any one measure will feel obliged to vote for the others in order to secure passage of the measure they favor.” *Chavez*, 1988-NMSC-103, ¶ 6. “[T]he particular vice in logrolling . . . lies in the fact that such is inductive of fraud, and that it becomes uncertain whether either two or more propositions could have been carried by vote had they been submitted singly.” *City of Raton v. Sproule*, 1967-NMSC-141, ¶ 17, 78 N.M. 138, 429 P.2d 336 (internal quotation marks and citation omitted). The single-measure rule of Article XIX, Section 1 thus guards against the evils of logrolling, “ensur[ing] that the voters are provided with the means to fully and accurately express their will on each and every issue that is presented to them as guaranteed by the New Mexico Constitution.” *State Canvassing Bd.*, 1995-NMSC-001, ¶ 27.

{27} Our Court has articulated a rational basis standard for assessing whether an amendment is single or multiple, as “[t]he separation of powers doctrine . . . dictates that strong deference should be shown to the legislature.” *Chavez*, 1988-NMSC-103, ¶¶ 7, 12. Under this standard, “a constitutional amendment, which embraces several subjects or items of change, will

be upheld as valid, and may be submitted to the electorate as one general proposition, if all the subjects or items of change contained in the amendment are germane to one general object or purpose.” *Sproule*, 1967-NMSC-141, ¶ 19.

{28} In *Sproule*, we warned of the “tendency to rephrase, or to enlarge upon the language of the rule, in order to demonstrate that the result reached under the particular facts of the case is consistent with a logical and correct application of the rule to those facts.” *Id.* ¶ 20. The effects of this tendency are evident in the parties’ arguments, as each of the parties emphasizes a different rephrasing of our standard to support their respective positions. Petitioners, for example, emphasize language in *State Canvassing Board* suggesting that the various changes in a measure must share a “rational linchpin of interdependence” or be part of “an interlocking package necessary to effectuate” the desired reform. 1995-NMSC-001, ¶ 16. The Governor, on the other hand, emphasizes language in *Chavez* suggesting that the various changes need only be “germane to an overarching theme” and joined by a “rational linchpin.” 1988-NMSC-103, ¶ 14. While we find such rephrasing illustrative of our standard, we nevertheless reaffirm that the standard remains one of a rational basis, requiring only that “the subjects or items of change contained in the amendment [be] germane to one general object or purpose.” *Sproule*, 1967-NMSC-141, ¶ 19.

{29} We will not invalidate an amendment under the single-measure rule simply because of “[t]he fact that two points of change are involved, the fact that either might have been presented to the electorate separately, [or] the fact that there may be reasons why an elector might have desired one change, and not the other.” *Id.* ¶ 21. “Rather, the question to be answered is whether the legislature reasonably could have determined that a proposed amendment embraces but one object.” *Chavez*, 1988-NMSC-103, ¶ 9. This is because, “as the branch of government empowered to initiate constitutional amendments, the legislature should be afforded substantial deference to determine both the overall object of a proposed amendment and the changes incidental to and necessarily connected with the object intended.”<sup>3</sup> *Id.* ¶ 6 (internal quotation marks and citation omitted).

{30} Our analysis of whether an amendment embraces multiple measures is highly fact-dependent. *State Canvassing Bd.*, 1995-NMSC-001, ¶ 12. For example, in *Sproule*, this Court held that changes made by an amendment “in regard to special elections and the provisions enlarging the number of voters at both regular and special elections” were properly submitted in a single ballot because the changes were germane to “elections for the purpose of incurring municipal indebtedness.” 1967-NMSC-141, ¶ 22 (emphasis omitted). Similarly, in *Chavez*, we held that an amendment making sweeping changes to “the qualifications and merit selection of judges, their numbers, their districting, and the selection of their chief administrative officers” was a single measure because those various changes were all germane to the object or purpose of judicial reform. 1988-NMSC-103, ¶ 14.

{31} In contrast, we held an amendment void for violating the single-measure rule in *State Canvassing Board*, 1995-NMSC-001, ¶¶ 24, 28. The amendment in *State Canvassing Board* joined a popular measure reaffirming an existing public right to conduct a state lottery with a controversial measure creating a private right to wager on slot machines and other video games of chance. *Id.* ¶¶ 17-23. Even though both measures were relevant to the overarching theme of gambling, the distinctions between “the rights created, the means of implementation, and the subject matter” of a public lottery and private gambling revealed that the two measures were not rationally joined. *Id.* ¶ 24. Additionally, the *State Canvassing Board* Court noted that the ballot measure submitting the amendment was misleading, as the language “serve[d] to highlight the state lottery aspect of the amendment while downplaying the fact that the amendment create[d] a private right to wager on video games of chance.” *Id.* ¶ 26. Thus, Justice Ransom emphasized in his specially concurring opinion that in the discharge of the Court’s constitutional duties “we must believe that neither the legislature nor the people in fact thought a mere advisory vote in support of a state-operated lottery should be dependent upon the grant of a private constitutional right to video gaming.” *Id.* ¶ 30 (Ransom, J., specially concurring). Under the circumstances, we held that the two changes were not germane to a single object or purpose and should have been

<sup>3</sup> Petitioners urge this Court to apply a “heightened scrutiny” to Amendment 1 because the amendment removed the right of voters to elect Commission members. Petitioners do not supply authority for that heightened scrutiny, however, and we similarly have found no support for applying a more restrictive standard. Application of such heightened scrutiny also would be contrary to the rational basis review applied by this Court in *Sproule* and *Chavez*, as both of these opinions involved amendments affecting the rights of voters. See *Chavez*, 1988-NMSC-103, ¶ 5 (explaining that the amendment established “a method other than by partisan election to select and retain” judicial officers); *Sproule*, 1967-NMSC-141 ¶¶ 15, 22 (describing the amendment’s effects on the right to vote in elections to incur municipal indebtedness).

submitted to the electorate in separate ballot questions. *Id.* ¶ 24.

{32} In the present case, we determine that the several changes made by Amendment 1 are all germane to one general object or purpose. We are struck by the many similarities between the amendment at issue in *Chavez* and the amendment at issue here. Amendment 1 and the *Chavez* amendment both made multiple changes to the selection, retention, and qualifications of public officials and both amendments limited the rights of voters to select the officials in question. See *Chavez*, 1988-NMSC-103, ¶ 5 (listing the changes made by the *Chavez* amendment as including “a method other than by partisan election to select and retain” judges, additional professional requirements for members of the judiciary, and an increase in the number of judges and judicial districts). While Amendment 1 also narrows the PRC’s area of constitutional responsibility, we view this additional change as still germane to the Legislature’s object or purpose of reforming the PRC.

{33} Of course, we acknowledge that each of the several changes proposed by Amendment 1 could have been submitted separately to the voters. We also acknowledge that some voters may have preferred one change and opposed another. We express no opinion on the merits or wisdom of the changes made by Amendment 1. See *State Canvassing Bd.*, 1995-NMSC-001, ¶ 27 (suggesting that, in considering whether an amendment violates Article XIX, Section 1, a court should not reach “any decision regarding the legality or desirability of” an amendment). We conclude only that the Legislature’s choice to join the various changes together in a single-ballot measure was not irrational. “[I]t comports better with the doctrine of separation of powers to decide what rationally may be joined rather than what rationally may be separated.” *Chavez*, 1988-NMSC-103, ¶ 11.

{34} We also do not see any of “the problems inherent in the vice of logrolling” in Amendment 1 that motivated our Court in *State Canvassing Board*, 1995-NMSC-001, ¶¶ 24, 26, to invalidate the multiple measures at issue in that case. The *State Canvassing Board* Court concluded that the amendment there “logrolled . . . two independent objects by piggybacking the passage of one on the popularity of the other.” *Id.* ¶ 26. In contrast, Amendment 1 does not surreptitiously ride a controversial measure on the back of a popular one. The entirety of Amendment 1 was widely debated before the election, and all of the chief effects of the amendment—including and especially the transition to appointed Commission members and the reduction of the PRC’s responsibilities—were well known to the public. See 2020 Voter

Guide at 6-16 (explaining the effects of, as well as the arguments for and against, Amendment 1); N.M. Legis. Council Serv., *Summary of Arguments for and Against the Constitutional Amendments Proposed by the Legislature in 2019 and 2020* at 3-10 (July 2020), [https://www.nmlegis.gov/Publications/New\\_Mexico\\_State\\_Government/Constitutional\\_Amendment/Constitutional\\_Amendments\\_2020.pdf](https://www.nmlegis.gov/Publications/New_Mexico_State_Government/Constitutional_Amendment/Constitutional_Amendments_2020.pdf) (same) (last visited March 22, 2023). We note that the many changes made to the judiciary in the amendment challenged in *Chavez* were subject to similar widespread and open debate. 1988-NMSC-103, ¶ 3. Further, and as discussed more fully below, we believe that the title of Amendment 1 sufficiently communicated the purpose of the amendment and was not misleading, so there is little chance that the voters were “lured . . . into casting their votes” in favor of Amendment 1 based solely on the popularity of a separate measure. *State Canvassing Bd.*, 1995-NMSC-001, ¶ 26.

{35} We therefore hold that Amendment 1 does not violate the single-measure rule in Article XIX, Section 1 of the New Mexico Constitution.

#### C. The Ballot Title

{36} Petitioners also challenge Amendment 1 based on its ballot title. Arguing that Article XIX, Section 1 embraces an implicit requirement of ballot accuracy, Petitioners assert that Amendment 1’s title misled voters because it did not specify that Commission members would no longer be elected, detail various aspects of the PRC’s membership that were changing, or list the PRC’s previous area of responsibility. The Governor “does not dispute that New Mexico law supports some sort of implicit accuracy requirement,” but argues that the title does not need to “educate the voters on every detail and necessary consequence of ratifying the proposed amendment.”

{37} New Mexico appellate courts have not recognized a separately enforceable requirement of ballot title accuracy under Article XIX, Section 1. This Court in *State Canvassing Board* agreed “that a ballot title should be intelligible, and impartial . . . and ‘be free from any misleading tendency whether of amplification, of omission, or of fallacy.’” 1995-NMSC-001, ¶ 25 (quoting *Plugge v. McCuen*, 841 S.W.2d 139, 140 (Ark. 1992), *overruled on other grounds by Bailey v. McCuen*, 884 S.W.2d 938, 942 (Ark. 1994)). However, the *State Canvassing Board* Court spoke of this requirement only in the context of its holding on the single-measure rule, explaining that “the title of the amendment, while technically proper, exacerbated the problems inherent in the vice of logrolling.” 1995-NMSC-001, ¶ 26. Petitioners have not given us sufficient reasons for departing from

that approach. Thus, we consider only whether Amendment 1’s ballot language was misleading insofar as it is pertinent to our ruling on Petitioners’ logrolling claim.

{38} In submitting an amendment to electors for ratification, voters must be provided with such information about the amendment as to allow the voters “to make an intelligent choice, fully aware of the consequences of their vote.” 16 Am. Jur. 2d *Const. Law* § 38 (2009); see also *Bailey*, 884 S.W.2d at 942 (“[A] ballot title must be intelligible, honest, and impartial so that it informs the voters with such clarity that they can cast their ballots with a fair understanding of the issues presented.”); *Kahalekai v. Doi*, 590 P.2d 543, 552-53 (Haw. 1979) (requiring a ballot to be in “such form and language as not to deceive or mislead the public”); *Dacus v. Parker*, 466 S.W.3d 820, 825-26 (Tex. 2015) (“[T] he ballot must identify the measure by its chief features, showing its character and purpose.” (emphasis omitted)). A ballot title submitting a constitutional amendment to the electorate thus “cannot either ‘fly under false colors’ or ‘hide the ball’ as to the amendment’s true effect.” *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). However, in due deference to the principle of separation of powers, we agree that “the form and manner of submitting the question of a constitutional amendment to the people [is to be] left to the judgment and discretion of the legislature,” which judgment must not be overturned except when the ballot title is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006) (internal quotation marks and citation omitted).

{39} In view of this deferential standard, we conclude that Amendment 1’s title did not mislead voters so as to “exacerbate[] the problems inherent in the vice of logrolling.” *State Canvassing Bd.*, 1995-NMSC-001, ¶ 26. In *State Canvassing Board*, we explained that the wording “and certain games of chance” in that amendment’s title misled voters because the wording “does not alert the voter as to the nature or scope of the second prong of the amendment regarding video gaming.” *Id.* In contrast, the title of Amendment 1 alerts voters as to the nature and scope of the proposed changes to Article XI, Sections 1 and 2. Amendment 1’s title specifies that the amendment provides for a PRC that will “consist of three members appointed by the Governor.” 2020 Voter Guide at 6. The title also indicates that the PRC will have responsibility over “public utilities” and other public service companies that it “may be required to regulate.” *Id.* The title thus informs voters as to the two main changes made by Amendment 1, both of which are germane to the



central purpose of reforming the PRC.

{40} As Petitioners note, this language does not explicitly state that Commission members were previously elected. The title also does not identify other implications of the amendment, such as the fact that Commission members may not reside in different state districts. The title also does not list the PRC's previous areas of constitutionally assigned responsibilities. But the Legislature's decision to omit these details is not unreasonable and does not render the ballot title misleading. Rather, the title accurately characterizes the chief purpose and effects of Amendment 1. We deem this sufficient under the circumstances.

{41} As in *Chavez*, we emphasize,

It is incumbent upon members of the public to educate and familiarize themselves with the contents and effect of proposed amendments before expressing themselves at the polls. This is a non-delegable responsibility which is magnified, rather than diminished, by the complexity of amendments presented to them. Where information placed before

the electorate is neither deceptive nor misleading, and they are given sufficient time within which to familiarize themselves with the contents and effect of proposed amendments, they will be deemed to have cast informed ballots.

1988-NMSC-103, ¶ 10 (text only)<sup>4</sup> (quoting *Kahalekai*, 590 P.2d at 553). The electorate was given ample time to consider the changes proposed by Amendment 1. The electorate was also provided with accurate information about Amendment 1's potential effects in other official supplementary materials, such as the Secretary of State's 2020 Voter Guide. See 2020 Voter Guide at 6-16; see also N.M. Const. art. XIX, § 1 (requiring the Secretary of State to "provide notice of the content and purpose of legislatively approved constitutional amendments . . . to inform electors about the amendments in the time and manner provided by law"). Finally, Petitioners have not presented any evidence suggesting that voters were misled about the nature or scope of Amendment 1. See *Miller*, 188 P.3d at 1124-25 (noting that the challeng-

ers to an amendment had not provided any evidence of voter misunderstanding, "[o]ther than pointing to the ballot question's language and posing hypotheticals"). Thus, Petitioners give us no reason to doubt that the electorate cast informed votes.

{42} Accordingly, we defer to the Legislature's judgment and discretion in fixing the title of Amendment 1. This conclusion supports our holding that the amendment embraced a single measure under Article XIX, Section 1.

#### IV. CONCLUSION

{43} Petitioners have not shown that the 2020 ballot measure proposing to amend the constitutional provisions governing the PRC violated the logrolling prohibition in Article XIX, Section 1. In accord with our prior order, we therefore deny the petition for writ of mandamus.

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

**MICHAEL E. VIGIL, Justice**

**WE CONCUR:**

**C. SHANNON BACON, Chief Justice**

**DAVID K. THOMSON, Justice**

**JULIE J. VARGAS, Justice**

**BRIANA H. ZAMORA, Justice**

<sup>4</sup> The "text only" parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-011**  
No: S-1-SC-38802 (filed March 30, 2023)

**STATE OF NEW MEXICO,**  
Plaintiff-Respondent,  
v.  
**TITO LOPEZ,**  
Defendant-Petitioner.

**ORIGINAL PROCEEDING ON CERTIORARI**

Cristina T. Jaramillo, District Judge

Bennett J. Baur, Chief Public Defender  
Steven James Forsberg,  
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for Petitioner

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Santa Fe, NM

for Respondent

## OPINION

### ZAMORA, Justice.

{1} In this opinion, we address whether the tolling provision contained in Rule 7-506.1(D) NMRA of the Rules of Criminal Procedure for the Metropolitan Courts applies to cases that are dismissed without prejudice by the court in addition to cases voluntarily dismissed by the prosecution. In the metropolitan court, “[t]he trial of a criminal citation or complaint shall be commenced within one hundred eighty-two (182) days after” the date of arraignment or after the date of one of six other events enumerated in the rule, whichever occurs last. Rule 7-506(B) NMRA. However, “[i]f a citation or complaint is dismissed without prejudice and the charges are later refiled,” “[t]he time between dismissal and refiled shall not be counted as part of the unexpired time for trial under Rule 7-506.” Rule 7-506.1(D). We hold that this tolling provision applies with equal force to cases dismissed by the court and to cases voluntarily dismissed by the prosecution and conclude that, with the benefit of the tolling provision here, the time for the State to bring Defendant Tito Lopez to trial did not expire before Defendant entered into his conditional plea agreement. We therefore affirm Defendant’s conviction.

#### I. BACKGROUND

{2} On January 19, 2018, Defendant was arraigned in the metropolitan court on

charges including aggravated driving while intoxicated (DWI) and reckless driving. As applied to this case, Rule 7-506(B) required Defendant’s trial to commence within 182 days of arraignment, which would have run on July 20, 2018, assuming that no extensions of time were granted under Rule 7-506(C) and that no tolling was warranted under Rule 7-506.1(D).

{3} The case was initially set for trial on April 30, 2018, but was continued to June 4, 2018, because Defendant had not received a police lapel video. The arresting officer did not appear on June 4, and the State could not explain his absence. The State requested a continuance, and Defendant moved to dismiss. The metropolitan court dismissed the case without prejudice because the State was not prepared for trial.

{4} On June 14, 2018, the State filed a notice of refiled of the dismissed complaint. Several days later, the metropolitan court sent a notice of jury trial to the parties, setting trial for July 18, 2018, but on the following day issued sua sponte a new notice to the parties resetting trial for July 24, 2018, with instructions to disregard the previous setting.

{5} On July 23, 2018, one day before the scheduled trial date, Defendant filed a motion to dismiss with prejudice for failure to prosecute under Rule 7-506(B), arguing that the State’s deadline to try Defendant was July 20. At the July 24 trial setting, Defendant argued that the tolling provision of Rule 7-506.1(D) applies only to

voluntary dismissals, and that to apply the tolling provision in circumstances where the court dismisses a case as a sanction against the State would lead to an absurd result because the State would benefit from its own mistake. The State argued that the tolling provision of the rule does not itself differentiate between voluntary and court-ordered dismissals and that applying the tolling provision equally to court-ordered dismissals and voluntary dismissals would not affect the substantial rights of Defendant. The metropolitan court agreed with the State and concluded that the 182-day rule was tolled for ten days under Rule 7-506.1(D)—stating that “time between dismissal [on June 4] and refiled [on June 14] shall not be counted as part of the unexpired time for trial” and accordingly ruled that the extended deadline to bring Defendant to trial was July 30, 2018. Defendant then entered a conditional plea, reserving the right to challenge the tolling issue on appeal.

{6} Defendant timely appealed to the district court, which affirmed the metropolitan court. The district court reasoned that because any dismissal without prejudice can be refiled and because Rule 7-506.1 applies to “both voluntary dismissals and refiled proceedings,” the provisions of the rule addressing refiled complaints apply to a dismissal without prejudice “regardless of whether it is initiated by the State or the court.”

{7} Defendant appealed to the Court of Appeals which affirmed the district court, agreed with the analysis of the district court, and concluded that Defendant “failed to demonstrate error by the district court.” *State v. Lopez*, A-1-CA-38049, mem. op. ¶ 4 (N.M. Ct. App. Apr. 5, 2021) (nonprecedential). We granted certiorari to address whether the metropolitan court’s dismissal of the case without prejudice tolled the trial deadline under Rule 7-506.1(D).

#### II. DISCUSSION

##### A. Standard of Review

{8} The outcome of this appeal turns on the proper interpretation of Rule 7-506.1(D), a legal question that we review de novo. *See State v. Sanchez*, 2020-NMSC-017, ¶ 12, 476 P.3d 889.

##### B. The Tolling Provision of Rule 7-506.1(D) Applies to All Criminal Cases Dismissed Without Prejudice in the Metropolitan Court

{9} Defendant argues that the tolling provision of Rule 7-506.1(D) is not intended to apply to dismissals without prejudice by the court because the overall purpose of the metropolitan court rules and the

court's authority to dismiss cases without prejudice as a sanction against the state would be undermined if the tolling provision applied to court-ordered dismissals without prejudice. The State counters that the plain language of Rule 7-506.1(D) applies to all dismissals without prejudice "and is not in any way limited to voluntary dismissals filed by the State." We agree with the State.

{10} We interpret our rules of procedure "by seeking to determine the underlying intent of the enacting authority." *State v. Villanueva*, 2021-NMCA-016, ¶ 42, 488 P.3d 680. "When construing our procedural rules, we use the same rules of construction applicable to the interpretation of statutes. We begin by examining the plain language of the rule as well as the context in which it was promulgated, including the history of the rule and the object and purpose." *Sanchez*, 2020-NMSC-017, ¶ 12 (internal quotation marks and citations omitted). Our plain language review is not mechanical, however, as "[w]e interpret the Rules of Criminal Procedure with logic and common sense to avoid absurd results." *Walker v. Walton*, 2003-NMSC-014, ¶ 11, 133 N.M. 766, 70 P.3d 756.

{11} Rule 7-506.1, titled "Voluntary dismissal and refiled proceedings," provides in Rule 7-506.1(D):

If a citation or complaint is dismissed without prejudice and the charges are later refiled, the case shall be treated as a continuation of the same case, and the trial on the refiled charges shall be commenced within the unexpired time for trial under Rule 7-506 NMRA, unless the court, after notice and a hearing, finds the refiled complaint should not be treated as a continuation of the same case. The time between dismissal and refiled shall not be counted as part of the unexpired time for trial under Rule 7-506 NMRA.

Under the rules of construction, "we first turn to the plain meaning of the words at issue, often using the dictionary for guidance." *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830. "The plain language of the statute is the primary indicator of legislative intent." *State v. Olsson*, 2014-NMSC-012, ¶ 18, 324 P.3d 1230. The term "dismissal" is not defined in our Rules of Criminal Procedure, nor does our case law directly define the term in this context. *Black's Law Dictionary* broadly defines "dismissal without prejudice" as a "dismissal that does not bar the plaintiff from refiled the lawsuit within the limitations period." *Dismissal*, *Black's Law Dictionary*, 589-90 (11th ed. 2019). This definition includes dismissals initiated by either party or the court in a criminal case. See *id.*

{12} Additionally, our rules and case law reflect that dismissals without prejudice are commonly understood to include both voluntary dismissals initiated by the prosecution and dismissals ordered by the court. See Rule 7-506.1(A) ("The prosecution may dismiss a citation or criminal complaint by filing a notice of dismissal . . . Unless otherwise stated in the notice, the dismissal is without prejudice."); *Walker*, 2003-NMSC-014, ¶¶ 1, 3 (explaining that a metropolitan court judge dismissed a case without prejudice because witness interviews had not been completed at the time of the scheduled trial date). Moreover, our appellate courts have referred to "dismissals without prejudice" in the civil context as inclusive of both dismissals ordered by a court, see *Sunwest Bank of Albuquerque v. Nelson*, 1998-NMSC-012, ¶¶ 1, 5-9, 125 N.M. 170, 958 P.2d 740, and dismissals initiated by a plaintiff, see *Becenti v. Becenti*, 2004-NMCA-091, ¶¶ 2, 5, 136 N.M. 124, 94 P.3d 867. We presume this Court was aware of existing rules and case law when we amended Rule 7-506.1(D). Cf. *State v. Thompson*, 2022-NMSC-023, ¶ 18, 521 P.3d 64 ("We . . . presume that the Legislature is well informed and aware of existing statutory and common law."). Thus, from a textual perspective, it is clear that the term "dismissed without prejudice" as used in Rule 7-506.1(D) was intended to apply to both voluntary and involuntary dismissals.

{13} Beyond the plain meaning of the term "dismissed without prejudice" as it appears in Rule 7-506.1(D), we also examine the rule in its entirety, "constru[ing] each part in connection with every other part to produce a harmonious whole and consider[ing] the practical effects of our interpretation." *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 41, 147 N.M. 512, 226 P.3d 611 (internal quotation marks and citation omitted). Rule 7-506.1(A) and (B) by their terms apply only to voluntary dismissals initiated by the state. Rule 7-506.1(A) sets out the procedure for the prosecution to dismiss a citation or criminal complaint, referring to those dismissals as "[v]oluntary dismissal[s]." The bail bond provisions of Rule 7-506.1(B) follow suit, referring specifically to "notice[s] of dismissal under Paragraph A of this rule." In contrast, Rule 7-506.1(C) and (D) of the rule do not distinguish between dismissals by the state and court-ordered dismissals in delineating the form and procedure to be followed by the state in refiled a citation or complaint that has been "dismissed without prejudice."

{14} In general, courts "presume differences in language . . . convey differences in meaning" when interpreting statutes. *Henson v. Santander Consumer USA Inc.*, 582 U.S.79, 86 (2017); see also Antonin Scalia & Bryan A. Garner, *Reading Law:*

*The Interpretation of Legal Texts* 170 (Thomson/West 2012) (observing that, under the presumption of consistent usage, "a material variation in terms suggests a variation in meaning"); *State v. Jade G.*, 2007-NMSC-010, ¶ 28, 141 N.M. 284, 154 P.3d 659 ("[W]hen the Legislature includes a particular word in one portion of a statute and omits it from another portion of that statute, such omission is presumed to be intentional."). The textual differences between the specific provisions of Rule 7-506.1(A) and (B) and the generic provisions of Rule 7-506.1(C) and (D) strongly suggest that the former were meant to apply only to voluntary, state-initiated dismissals without prejudice while the latter were meant to apply more broadly to all dismissals without prejudice. Were the tolling provision of Rule 7-506.1(D) intended to apply only to voluntary dismissals without prejudice, it presumably would have contained language to that effect, such as the language of Rule 7-506.1(B) referring to a citation or complaint that is voluntarily dismissed without prejudice by the state "under Paragraph A of this rule."

{15} The title of Rule 7-506.1, "Voluntary dismissals and refiled proceedings," does not affect our conclusion that Rule 7-506.1(D) applies to both voluntary and court-ordered dismissals without prejudice for two reasons. First, we will only use the title of an act if it is necessary to the act's construction. See *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039, ¶ 18, 289 P.3d 1232. Second, even if we were to consider the title of Rule 7-506.1, the title refers to voluntary dismissals and refiled proceedings. The coordinating conjunction "and" links independent ideas. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 236 (2011); see also *N.Y. Legal Assistance Grp. v. Bd. of Immigr. Appeals*, 987 F.3d 207, 217 (2d Cir. 2021) ("A coordinating [con]junction like 'and' is typically used for linking independent ideas." (internal quotation marks and citation omitted)). Thus, the title of Rule 7-506.1 addresses the independent procedures of voluntary dismissals and refiled proceedings; "voluntary dismissals" does not qualify or modify "refiled proceedings." These independent procedures may overlap: refiled proceedings may include cases refiled after dismissal by the court, not just after voluntary dismissal by the prosecution. The plain language of Rule 7-506.1(D), when read in the context of the rest of the rule, indicates that we intended to apply the tolling provision to all dismissals without prejudice, including those ordered by the metropolitan court.

{16} The history of Rule 7-506.1(D) further supports our conclusion that a case dismissed without prejudice under this rule includes dismissals ordered by

the court in addition to those initiated by the state. In *Walker*, this Court considered the application of Rule 7-506(D) (1999) to a dismissal without prejudice ordered by the metropolitan court. 2003-NMSC-014, ¶¶ 3, 12. At that time, Rule 7-506(D) (1999) stated,

If criminal charges are dismissed without prejudice and later refiled, the trial on the refiled charges shall be commenced within the unexpired time for trial pursuant to Paragraph E of this rule, unless the court, after notice and a hearing, finds good cause for the trial to commence within one hundred eighty-two (182) days.

Rule 7-506(E) (1999) mandated that a case be dismissed with prejudice if it was not brought to trial within 182 days of the defendant's arrest or filing of a complaint or citation against the defendant, whichever occurred later. In *Walker*, the metropolitan judge dismissed the case without prejudice after the state was unprepared for jury trial for the second time. 2003-NMSC-014, ¶¶ 1-3. The state subsequently filed a notice of refiling and a complaint identical to the original. *Id.* ¶ 4. The defendant then filed a notice of excusal of the original judge. *Id.* ¶ 5. A second metropolitan court judge held that the notice of excusal was invalid for reasons including that it was not timely filed. *Id.*; see also Rule 7-106(D) NMRA (1999) (setting out timing for filing an excusal). This Court held that the refiled charges were to be considered a continuation of the original charges under Rule 7-506(D) NMRA (1999) and that the time for the defendant to file his notice of excusal had therefore expired. *Id.* ¶¶ 12-13. Although *Walker* concerned the predecessor to the rule at issue in this case, its holding rested on the premise that a dismissal without prejudice ordered by the metropolitan court was governed by Rule 7-506(D) (1999). See *Walker*, 2003-NMSC-014, ¶ 12. Rule 7-506(D) (1999) is substantially similar to Rule 7-506.1(D) except for the additional tolling provision, the last sentence of Rule 7-506.1(D).

{17} Despite subsequent amendments and technical changes, the substance of current Rule 7-506.1(D) is the same as prior versions of the rule—that is, when charges are refiled after a dismissal without prejudice, the default rule is that the case is treated as though it were the same case as the one originally filed. Compare Rule 7-506(D) (1999) with Rule 7-506.1(D); see also *Walker*, 2003-NMSC-014, ¶ 12. Nothing in the amendments to the rule since *Walker* was decided suggests that the rules committee or this Court intended to exclude dismissals by the metropolitan court from this continuity rule. Cf. *State v.*

*Chavez*, 2008-NMSC-001, ¶ 21, 143 N.M. 205, 174 P.3d 988 (“This Court presumes that the Legislature is aware of existing case law and acts with knowledge of it.”). Thus, just as *Walker* applied Rule 7-506(D) (1999) to a dismissal without prejudice ordered by the metropolitan court, we conclude that this Court intended to apply Rule 7-506.1(D), including the tolling provision added to this rule in 2017, to dismissals of that type as well.

{18} Defendant argues that it would be absurd to apply the tolling provision of Rule 7-506.1(D) to involuntary dismissals without prejudice because to do so would effectively render a dismissal without prejudice a mere “de fact[o] continuance,” benefitting the prosecution for its own mistake. This would require a metropolitan court judge to resort to the drastic step of dismissing a case *with prejudice* in order to punish a “dilatory prosecution.” We are unpersuaded. Dismissals without prejudice remain an effective sanction even if the 182-day rule is tolled under Rule 7-506.1(D) because they serve as a cautionary warning to the state that more severe sanctions may be in order if it continues to be unprepared for trial. Our Court of Appeals emphasized this same concept in the context of local discovery rules in *State v. Seigling*, 2017-NMCA-035, ¶ 23, 392 P.3d 226. In *Seigling*, the district court excluded witnesses and suppressed all audio and video evidence after the state failed to satisfy the discovery requirements of LR 2-400(D) (2014). *Id.* ¶¶ 6-7. On the state's appeal, the Court of Appeals rejected the defendant's argument that the local rule conflicted with *State v. Harper*, 2011-NMSC-044, ¶ 21, 150 N.M. 745, 266 P.3d 25, which requires courts to consider lesser sanctions before excluding witnesses or dismissing a case without prejudice for violating discovery orders. *Seigling*, 2017-NMCA-035, ¶ 23. The Court reasoned that the local rule “clearly contemplate[d] that dismissals without prejudice will be utilized” by the district court and would “warn[] the [s]tate that further failures to adhere to the requirements of the local rule may result in the [s]tate being disallowed from prosecuting [the d]efendant.” *Id.* As *Seigling* appropriately recognized, dismissals without prejudice can be a useful deterrent against dilatory prosecutions by putting the state on notice that any further delay in trial caused by the state would likely result in a harsher sanction, including the outright dismissal of the case with prejudice. See *id.*

{19} Rather than accepting the State's interpretation of Rule 7-506.1(D) as absurd, we submit that adopting Defendant's reading of Rule 7-506.1(D) and excluding involuntary dismissals without prejudice from the tolling provision of Rule

7-506.1(D) could lead to the unwanted result of insulating the state from the refiling requirements of Rule 7-506.1(C) for court-ordered dismissals. This Court interprets “identical words used in different parts of the same act as having the same meaning.” *Jade G.*, 2007-NMSC-010, ¶ 28 (brackets, internal quotation marks, and citation omitted). By their plain language, Rule 7-506.1(C) and (D) both apply to citations or complaints that are “dismissed without prejudice.” See Rule 7-506.1(C) (providing the procedure for refiling complaints after “a citation or complaint is dismissed without prejudice”); Rule 7-506.1(D) (“If a citation or complaint is dismissed without prejudice and the charges are later refiled, the case shall be treated as a continuation of the same case, and the trial on the refiled charges shall be commenced within the unexpired time for trial under Rule 7-506 NMRA.”). If the phrase “dismissed without prejudice” is interpreted to *exclude* court-ordered dismissals without prejudice under Rule 7-506.1(D), there would be no principled reason to *include* such dismissals without prejudice within the ambit of Rule 7-506.1(C). We reject this inconsistent reading of Rule 7-506.1(C) whereby the refiling requirements would apply to the prosecution's voluntary dismissals without prejudice but not to court-ordered dismissals without prejudice.

{20} We conclude that giving effect to the plain language of Rule 7-506.1(D) by including court-ordered dismissals in the tolling provision of the rule would not lead to an absurd or unjust result but rather is necessary to promote a consistent reading of the language of the rule. Therefore, we hold that the tolling provision of Rule 7-506.1(D) applies equally to dismissals without prejudice ordered by the metropolitan court as it does to dismissals filed by the prosecution.

### C. The Time for Trial Under Rule 7-506 Did Not Expire Before Defendant Entered His Guilty Plea

{21} Having determined that the time for trial under Rule 7-506 is tolled between a dismissal without prejudice by the metropolitan court and the refiling of the complaint, we conclude that the time to bring Defendant to trial had not expired before he entered into the conditional plea agreement. The metropolitan court dismissed the complaint against Defendant without prejudice on June 4, 2018. At that point, the deadline to bring Defendant to trial was July 20, 2018. The State refiled the complaint against Defendant on June 14, 2018. The ten days between dismissal and refiling did not count toward the unexpired time for trial under Rule 7-506. See Rule 7-506.1(D). Therefore, the deadline to bring Defendant to trial was July 30, 2018. The July 24 trial setting was within

the unexpired time to bring Defendant to trial, and the conditional plea agreement was therefore timely.

### III. CONCLUSION

{22} We hold that the tolling provision of Rule 7-506.1(D) applies to cases that

are dismissed without prejudice including cases dismissed by the metropolitan court and cases voluntarily dismissed by the prosecution. We affirm Defendant's conviction because the time to bring him to trial had not expired prior to entry of his conditional guilty plea.

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

# 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: 7/18/2023**

**No. A-1-CA-39758**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**CHRISTOPHER F. MCCASLAND,**

Defendant-Appellant.

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

Drew D. Tatum, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Charles J. Gutierrez, Assistant Attorney General

Albuquerque, NM

for Appellee

Border Law Office

Dean E. Border

Albuquerque, NM

for Appellant

## ► Introduction of Opinion

Defendant Christopher McCasland was convicted of receiving stolen property (NMSA 1978, § 30-16-11(A) (2006)), on the theory that he unlawfully retained a television he stole from a brewery. Defendant argues on appeal that his conviction must be reversed because the crime of receiving stolen property (by retaining the property) cannot be committed by the person who stole the property. Defendant further argues the State failed to present sufficient evidence that the television found in his possession was the same television stolen from the brewery. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Kristina Bogardus, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39758>

# MEMORANDUM OPINION

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**Filing Date: 7/19/2023**

**No. A-1-CA-40591**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**TESAIN WATSON,**

Defendant-Appellant.

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

Steven Blankinship, District Court Judge

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

Defendant Tesain Watson appeals the district court's calculation of presentence confinement credit in relation to charges that Defendant acquired while on probation in a different case (Case One). Defendant argues that her probation was revoked in Case One based on the charges in the current case (Case Two), and as a result, the time she spent confined in Case One after her probation violation should have also been credited toward her sentence in Case Two. Finding no error, we affirm.

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

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40591>

# MEMORANDUM OPINION

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**Filing Date: 7/19/2023**

**No. A-1-CA-39648**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ERASMO RAMOS VEGA,**

Defendant-Appellant.

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

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Walter Hart, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kathleen T. Baldrige,

Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Erasmo Ramos Vega appeals from his convictions for aggravated assault upon a peace officer (deadly weapon), in violation of NMSA 1978, Section 30-22-22 (1971), and resisting, evading or obstructing an officer, in violation of NMSA 1978, Section 30-22-1 (1981). Defendant claims on appeal: (1) it was fundamental error for the district court to fail to instruct the jury on the deadly weapon element of aggravated assault upon a peace officer; (2) there was insufficient evidence to establish aggravated assault with a deadly weapon upon a peace officer; (3) it was fundamental error for the district court to fail to instruct the jury on resisting, evading or obstructing an officer, a lesser included offense of aggravated assault upon a peace officer; and (4) defense counsel's failure to request instructions on resisting, evading or obstructing an officer and on whether the knife was a deadly weapon was ineffective assistance of counsel. We affirm.

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39648>



# MEMORANDUM OPINION

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**Filing Date: 7/20/2023**

**No. A-1-CA-39606**

**JOSE FABIAN HERNANDEZ,**

Petitioner-Appellant,

v.

**NEW MEXICO RACING COMMISSION,**

Respondent-Appellee.

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

Lisa C. Ortega, District Court Judge

Chavez Law Offices, PA

Gene N. Chavez

Albuquerque, NM

for Appellant

Park & Associates, LLC

Alfred A. Park

Geoffrey D. White

Albuquerque, NM

for Appellee

## ► Introduction of Opinion

Petitioner Jose Fabian Hernandez appeals the district court's order dismissing his petition for a temporary restraining order (TRO) and preliminary injunction. The petition asked the district court to enjoin the New Mexico Horse Racing Commission (the Commission) from enforcing penalties imposed as a result of an initial administrative ruling while an administrative appeal remained pending before the Commission. In dismissing the petition, the district court stated that Petitioner had failed to exhaust his administrative remedies. Petitioner argues the district court incorrectly determined that he had failed to exhaust his administrative remedies, pointing out that he requested the Commission to stay the initial ruling and contending there are no other administrative remedies available to stay the penalties while his administrative appeal is pending. We affirm the district court's dismissal based on the doctrine of finality.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39606>

# 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: 7/25/2023**

**No. A-1-CA-38234**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**OLIVER DELGADILLO-VASQUEZ,**

Defendant-Appellant.

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

Brett R. Loveless, District Court Judge

Raúl Torrez, Attorney General  
Laurie Blevins, Assistant Attorney General  
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Joelle N. Gonzales,  
Assistant Appellate Defender  
Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Following a jury trial, Defendant Oliver Delgadillo-Vasquez was convicted of eight different charges, including one count of sexual criminal sexual penetration of a minor (CSPM) in the first degree (child under 13), contrary to NMSA 1978, Section 30-9-11(D) (2009), as charged in Count 1; one count of kidnapping in the first degree (victim not freed in safe place and/or physical injury or sexual offense committed), contrary to NMSA 1978, Section 30-4-1 (2003), as charged in Count 3; three counts of CSPM in the second degree (child age thirteen to eighteen), contrary to NMSA 1978, Section 30-9-11(E)(1) (2009), as charged in Counts 4 through 6; one count of bribery of a witness, contrary to NMSA 1978, Section 30-24-3 (1997), as charged in Count 8; one count of aggravated stalking, contrary to NMSA 1978, Section 30-3A-3.1 (1997), as charged in Count 9; and one count of residential burglary, contrary to NMSA 1978, Section 30-16-3(A) (1971), as charged in Count 10. **View full PDF online.**

Shammara H. Henderson, 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-38234>

# 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: 7/26/2023**

**No. A-1-CA-39088**

**KATHLEEN M.V. OAKEY, Personal Representative of the Estate of Tawana Lucero, Deceased,**  
Plaintiff-Appellant,

v.

**DOCTOR ON CALL, LLC; DOCTOR ON CALL 2, LLC; DOCTOR ON CALL 3, LLC; DOCTOR ON CALL 4, LLC; DOCTOR ON CALL, P.C.; JOHN VIGIL, M.D.; JOHN TYSON, M.D.; and MAY MAPLE PHARMACY, INC.,**  
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT  
OF BERNALILLO COUNTY  
Joshua A. Allison, District Court Judge

Fine Law Firm  
Mark Fine  
Albuquerque, NM

Fuqua Law & Policy, P.C.  
Scott Fuqua  
Santa Fe, NM

for Appellant

Law Offices of Mary T. Torres  
Mary T. Torres  
Albuquerque, NM

Conklin, Woodcock & Ziegler, P.C.  
Christa M. Hazlett Kathy L. Black  
Albuquerque, NM

for Appellees

## ► Introduction of Opinion

Plaintiff Kathleen Oakey, personal representative of the estate of Tawana Lucero (the Estate), brought claims against the “Doctor on Call” business entities<sup>1</sup> and John Vigil, MD (collectively, Doctor on Call), as well as a prescribing physician and a pharmacy, alleging that Ms. Lucero’s death was caused by excess medication prescribed by a physician employed by Doctor on Call. The Estate appeals the district court’s final judgment in favor of Doctor on Call. We affirm.

Jennifer L. Attrep, Chief Judge  
WE CONCUR:  
J. Miles Hanisee, Judge  
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39088>

# MEMORANDUM OPINION

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**Filing Date: 7/26/2023**

**No. A-1-CA-39894**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**CARLOS LOPEZ,**

Defendant-Appellant.

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

Matthew Chandler, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Erica Schiff, Assistant Attorney General

Albuquerque, NM

for Appellee

Patrick J. Martinez & Associates

Patrick J. Martinez

Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Carlos Lopez appeals his convictions for driving while intoxicated (DWI) in violation of NMSA 1978, Section 66-8-102(A) (2016) and possession of alcoholic beverages in open containers in a motor vehicle in violation of NMSA 1978, Section 66-8-138(B) (2013). Defendant contends that we must reverse both convictions because (1) the district court erred when it denied his motion for a directed verdict; (2) the district court abused its discretion when it admitted an officer's body camera footage capturing video from a surveillance camera video and a breath alcohol card; and (3) cumulative error deprived him of a fair trial. We affirm.

Zachary A. Ives, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39894>

# MEMORANDUM OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-39553**

**VINCENT P. CHAPA, RAY CASALDUC,  
and GORDON A. FOSTER,**

Plaintiffs-Appellants,

v.

**BOARD OF COUNTY COMMISSIONERS  
OF BERNALILLO COUNTY, RUDY MORA,  
and MANUEL GONZALES III,**

Defendants-Appellees.

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

Francis J. Mathew, District Court Judge

Youtz & Valdez, P.C.

Shane C. Youtz

Stephen Curtice

James A Montalbano

Albuquerque, NM

for Appellants

Kennedy, Moulton & Wells, P.C.

Deborah D. Wells

Albuquerque, NM

for Appellees

## ► Introduction of Opinion

Defendants Board of Commissioners of Bernalillo County, Rudy Mora, and Manuel Gonzales III (collectively, Defendants) rehired as school resource officers Plaintiffs Vincent Chapa, Ray Casalduc, and Gordon Foster (collectively, Plaintiffs), who were retired law enforcement officers. These rehires were based on agreements between Defendants and the Bernalillo County Deputy Sheriff's Association (the Association).<sup>1</sup> The Association later withdrew its agreement to the rehire arrangement, and Defendants reassigned Plaintiffs to different, lower-paying positions. Plaintiffs brought discrimination and retaliation claims against Defendants under the New Mexico Human Rights Act (NMHRA), NMSA 1978, §§ 28-1-1 to -15 (1969, as amended through 2023), and the New Mexico Whistleblower Protection Act (NMWPA), NMSA 1978, §§ 10-16C-1 to -6 (2010). The district court granted summary judgment in Defendants' favor, Plaintiffs appeal, and we affirm.

Katherine A. Wray, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39553>

# MEMORANDUM OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-40111**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**VINCENTE C. GARCIA a/k/a VINCENTE GARCIA,**

Defendant-Appellant.

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

Alisa A. Hart, District Court Judge

Raúl Torrez, Attorney General

Laurie Blevins, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Allison H. Jaramillo, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Following a jury trial, Defendant was convicted on twelve counts: five counts of criminal sexual penetration of a minor (CSPM) in the second degree (child age thirteen to eighteen), contrary to NMSA 1978, Section 30-9-11(E)(1) (2009); three counts of criminal sexual contact of a minor (CSCM), contrary to NMSA 1978, Section 30-9-13 (2003); one count each of possession, distribution, and manufacture of child pornography, contrary to NMSA 1978, Section 30-6A-3(A), (C), (E) (2016); and one count of aggravated battery (great bodily harm), contrary to NMSA 1978, Section 30-3-5(A), (C) (1969). Defendant argues (1) the two-month charging period violated his right to due process; (2) the district court erred in refusing to exclude late-disclosed evidence; (3) the district court erred in admitting evidence, which he contends the State failed to properly authenticate; (4) there was insufficient evidence to sustain any of his convictions; and (5) certain convictions violate double jeopardy. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40111>

# MEMORANDUM OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-40062**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**MATTHEW S. BAISLEY,**

Defendant-Appellant.

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

Steven Blankinship, District Court Judge

Raúl Torrez, Attorney General  
Santa Fe, NM

Meryl E. Francolini, Assistant Attorney General  
Albuquerque, NM

for Appellee

Harrison, Hart & Davis, LLC  
Daniel J. Gallegos  
Nicholas T. Hart  
Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Matthew Baisley appeals his jury conviction for attempted first degree murder, contrary to NMSA 1978, Section 30-28-1 (1963), and NMSA 1978, Section 30-2-1(A)(1) (1994); and aggravated assault with a deadly weapon, contrary to NMSA 1978, Section 30-3-2(A) (1963). Defendant appeals, arguing that several district court rulings prevented meaningful presentation of his defense, including exclusion of an expert as a discovery sanction, denial of a continuance to call an unsubpoenaed witness, and an order prohibiting testimonial hearsay on Defendant's blood alcohol content (BAC) level through an expert. Moreover, Defendant argues that counsel was ineffective in failing to secure a toxicology expert for trial, and that his conviction was unsupported by sufficient evidence with respect to the intent requirement. We affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40062>

# MEMORANDUM OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-39181**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ABRAHAM R. OTERO,**

Defendant-Appellant.

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

James Waylon Counts, District Court Judge

Raúl Torrez, Attorney General

Van Snow, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Charles D. Agoos, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant Abraham Otero appeals his conviction of criminal sexual penetration (CSP) of a minor (child thirteen to sixteen), contrary to NMSA 1978, Section 30-9-11(G)(1) (2009). On appeal, Defendant raises four issues: (1) the district court failed to enter a mistrial when it was informed about “culturally insensitive” remarks made during jury deliberations; (2) the State presented insufficient evidence to establish that Defendant knew Victim (M.M.) was under sixteen years of age; (3) allowing a medical provider to testify about M.M.’s age violated the Confrontation Clause; and (4) the district court committed reversible error by granting the prosecution’s motion to amend the indictment. After careful consideration of Defendant’s issues, we affirm.

Gerald E. Baca, Judge

WE CONCUR:

Jennifer L. Attrep, Chief 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-39181>



# MEMORANDUM OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-39955**

**CHRISTINE SIMPSON,**

Petitioner-Appellee,

v.

**BRANDON HARRIS,**

Respondent-Appellant.

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

Debra Ramirez, District Court Judge

Weed Law Firm L.L.C.

I. Darlene Weed

Bernalillo, NM

for Appellee

Mark Keller Law Office

Terri Keller

Albuquerque, NM

for Appellant

## ► **Introduction of Opinion**

Brandon Harris (Respondent) appeals from the issuance of an order for protection against him. Respondent claims: (1) the district court erred in not granting his motion to set aside the default order of protection, pursuant to Rule 1-060 NMRA; (2) the district court erred in not granting Respondent a hearing on his motion to set aside; and (3) the district court erred in not recusing the hearing officer. Because we conclude that Respondent has not demonstrated that the district court erred, we affirm.

Gerald E. Baca, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39955>

# FORMAL OPINION

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

**Filing Date: 7/19/2023**

**No. A-1-CA-40466**

**STATE OF NEW MEXICO,**  
Plaintiff-Appellant,

v.

**CAROLYN ARCHULETA,**  
Defendant-Appellee.

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

Britt M. Baca Miller, District Court Judge

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

for Appellant

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

for Appellee

## ► Introduction of Opinion

The State appeals the district court's order dismissing the charges against Defendant Carolyn Archuleta without prejudice after finding Defendant was incompetent to proceed to trial but not dangerous under the New Mexico Mental Illness Code (NMMIC), NMSA 1978, Section 31-9-1.2(B) (1999) and Rule 5-602.2(D) NMRA. The State argues that the district court erred when determining that the New Mexico Rules of Evidence applied to the dangerousness hearing and excluded the State's evidence of other criminal complaints to establish dangerousness. Unpersuaded, we hold that the district court correctly held that the New Mexico Rules of Evidence apply to dangerousness hearings under Section 31-9-1.2 and Rule 5-602.2. We therefore affirm.

Jacqueline R. Medina, Judge

WE CONCUR:

Jane B. Yohalem, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-40466>

# FORMAL OPINION

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

**Filing Date: 7/25/2023**

**No. A-1-CA-39622**

**FOUR HILLS PARK GROUP, LLC**  
**d/b/a FOUR HILLS PRIVATE COMMUNITY,**

Plaintiff-Appellee,

v.

**LEOPOLO MASABARAKIZA,**

Defendant-Appellant.

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

Jason M. Jaramillo, Metropolitan Court Judge

Vance, Chavez & Associates, LLC

James A. Chavez

Albuquerque, NM

for Appellee

New Mexico Legal Aid, Inc.

Thomas Prettyman

Albuquerque, NM

for Appellant

## ► Introduction of Opinion

In this appeal, we interpret two sections of the Mobile Home Park Act, NMSA 1978, §§ 47-10-1 to -23 (1983, as amended through 2007), to determine what is required when serving a notice of nonpayment of rent on a mobile home park resident. Defendant Leopolo Masabarakiza appeals from the metropolitan court's order granting restitution of the mobile home space to Plaintiff Four Hills Park Group, LLC, as well as the court's denial of Defendant's two counterclaims. Defendant argued below that Four Hills violated the requirements for serving notice found in Section 47-10-3(B) when it posted a notice of nonpayment of rent on his door but did not send a copy of the notice by certified mail. See *id.* ("If service is made by posting the notice, a copy of the notice shall also be sent by certified mail to the mobile home tenant."). The metropolitan court held that the Mobile Home Park Act does not require certified mailing of a nonpayment notice because the Act contains a specific and separate provision concerning nonpayment of rent, Section 47-10-6, which allows for notice by service or posting. **View full PDF online.**

Megan P. Duffy, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39622>

# FORMAL OPINION

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

**Filing Date: 7/25/2023**

**No. A-1-CA-38779**

**PROCESS EQUIPMENT  
& SERVICE COMPANY, INC.,**

Protestant-Appellee,  
v.

**NEW MEXICO TAXATION  
REVENUE DEPARTMENT,**  
Respondent-Appellant,

**IN THE MATTER OF THE PROTEST OF  
THE DENIAL OF REFUND ISSUED  
UNDER LETTER ID NO. L0040880432.**

**APPEAL FROM  
THE ADMINISTRATIVE HEARING OFFICE**  
Brian Van Denzen, Hearing Officer

Gallagher & Kennedy, P.A.  
Gene F. Creely, II  
Frank V. Crociata  
Santa Fe, NM

Spencer Fane, LLP  
Scott Woody  
Phoenix, AZ

for Appellee

Raúl Torrez, Attorney General  
David E. Mittle, Special Assistant Attorney General  
Santa Fe, NM

for Appellant

## ► Introduction of Opinion

The opinion filed on May 16, 2023, is hereby withdrawn, and this opinion is substituted in its place, following Appellant's timely motion for rehearing, which this Court has denied. Process Equipment & Service Company, Inc. (PESCO) sought a state tax credit for the 2014 and 2016 tax years under the Technology Jobs and Research and Development Tax Credit Act (the Act), NMSA 1978, §§ 7-9F-1 through 7-9F-13 (2000, as amended through 2019). The New Mexico Taxation and Revenue Department (TRD) denied PESCO's applications for these tax credits. PESCO protested TRD's denial, and an independent administrative hearing was held before Chief Hearing Officer (CHO) of the Administrative Hearing Office (AHO). Following the hearing, the CHO concluded that PESCO met the requirements for a tax credit under the Act for both years. **View full PDF online.**

Gerald E. Baca, Judge

I CONCUR:

Megan P. Duffy, Judge

CONCURRING IN PART AND DISSENTING IN PART:

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

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38779>

# FORMAL OPINION

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

**Filing Date: 7/25/2023**

**No. A-1-CA-39807**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**MICHAEL NIETO,**

Defendant-Appellant.

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

Cindy Leos, 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

Mary Barket, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

A jury convicted Defendant Michael Nieto of battery upon a peace officer, contrary to NMSA 1978, Section 30-22-24 (1971); aggravated assault upon a peace officer (deadly weapon), contrary to NMSA 1978, Section 30-22-22 (1971); aggravated fleeing a law enforcement officer, contrary to NMSA 1978, Section 30-22-1.1 (2003, amended 2022); reckless driving, contrary to NMSA 1978, Section 66-8-113 (1987); resisting, evading or obstructing an officer (arrest), contrary to NMSA 1978, Section 30-22-1 (1981); and leaving the scene of an accident (property damage), contrary to NMSA 1978, Section 66-7-202 (1978), based on an encounter with police officers on June 16, 2019, in Albuquerque, New Mexico. The district court dismissed Defendant's reckless driving conviction on double jeopardy grounds. Defendant claims on appeal that several of his six remaining convictions are based on the same conduct and violate double jeopardy. Defendant also challenges the sufficiency of the evidence to support his conviction for leaving the scene of an accident. We agree that Defendant's convictions for resisting, evading or obstructing an officer and for aggravated fleeing a police officer violate double jeopardy and must be vacated. Otherwise, we affirm.

Jane B. Yohalem, Judge

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-39807>

# FORMAL OPINION

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

**Filing Date: 7/26/2023**

**No. A-1-CA-38912**

**EZEQUIEL RODRIGUEZ, SR.,**

Plaintiff-Appellant,

v.

**EUGENIO SANCHEZ; EZ OILFIELD SERVICES,  
INC.; UNITED STATES OF AMERICA,  
DEPARTMENT OF THE TREASURY; INTERNAL  
REVENUE SERVICE; and NEW MEXICO  
TAXATION AND REVENUE DEPARTMENT,**

Defendants-Appellees.

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

William G.W. Shoobridge, District Court Judge

Law Offices of Marshall J. Ray, LLC

Marshall J. Ray  
Albuquerque, NM

for Appellant

Newell Law Firm, LLC  
Michael Newell  
Christan Quiroz Valencia  
Lovington, NM

for Appellees Eugenio Sanchez and EZ Oilfield  
Services, Inc.

## ► Introduction of Opinion

Plaintiff Ezequiel Rodriguez, Sr. (Seller) sued his business partner, Defendant Eugenio Sanchez (Purchaser), for breach of contract after the parties' contract for Purchaser to buy out Seller's interest in their business went unperformed because Purchaser was unable to obtain financing that Seller would accept. Following a bench trial, the district court determined that Purchaser obtaining bank financing was a condition precedent to an enforceable contract and entered judgment in favor of Purchaser. Seller appeals, challenging the district court's conclusions that the contract was unenforceable and that no equitable relief was available to Seller. We affirm.

Megan P. Duffy, 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-38912>

# FORMAL OPINION

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**Filing Date: 7/31/2023**

**No. A-1-CA-39691**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**DAHN LEIDY a/k/a DAHN R. LEIDY,**

Defendant-Appellant.

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

Bruce C. Fox, District Court Judge

Raúl Torrez, Attorney General

Maris Veidemanis, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mary Barket, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant Dahn Leidy was tried on multiple alternative theories of child abuse relating to injuries sustained by her son. The jury acquitted Defendant under the State's principal theory of child abuse—that she inflicted her son's injuries—but convicted her under one of the State's alternatives—that she permitted her son to be endangered. Defendant appeals her two convictions for child abuse by endangerment (resulting in great bodily injury) and her one conviction for child abuse by endangerment (no great bodily injury). See NMSA 1978, § 30-6-1(D)(1), (E) (2009). Among other claims of error, including instructional error, Defendant challenges the sufficiency of the evidence supporting her convictions. Because there is insufficient evidence to sustain Defendant's convictions under the alternative upon which the jury convicted her, we reverse Defendant's convictions.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

J. Miles Hanisee

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39691>



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# CHRISTOPHER A. HOLLAND

**Chris has re-joined Sutin, Thayer & Browne.**

We are pleased to welcome Chris back into the Firm after his five years' service as Chief Counsel of the New Mexico National Guard. He currently represents corporate and institutional clients in litigation, government contracts, employment law, and environmental and land use law. Chris, rated an AV Preeminent practitioner through Martindale-Hubbell, has been recognized in various practice areas by *Chambers USA*, *Best Lawyers in America* and *Southwest Super Lawyers*.



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[elizabeth@giddenslaw.com](mailto:elizabeth@giddenslaw.com)



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## 2023 Attorney In Memoriam Recognition

The State Bar of New Mexico Senior Lawyers Division is honored to host the annual Attorney In Memoriam Ceremony. This event honors New Mexico attorneys who have passed away during the last year (November 2022 to present) to recognize their work in the legal community. If you know of someone who has passed and/or the family and friends of the deceased (November 2022 to present), please contact [memberservices@sbnm.org](mailto:memberservices@sbnm.org).



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### 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.

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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.

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## 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>.

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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: 1011171: 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>

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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](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

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The City Attorney shall serve as the chief general counsel for the City of Hobbs. They shall give their opinion to and on legal questions, verbally or in writing, to the Mayor, City Commission, City Manager or department heads, whenever requested. They shall advise, when applied to, any officer, department head or employee as to the conduct of his or her office, and they shall prepare or approve all bonds and other writings or documents affecting the interest of the City. They shall have the right to be heard upon all questions or motions before the City Commission amending, repealing or any way affecting any provision of this code or other ordinance enforced or enacted by the City Commission, when the legality of such action or proposed action shall be called in question. They shall also serve as the legal advisor for the City's advisory boards. They shall strategize and create training opportunities for departments designed to lower instances of litigation. MINIMUM QUALIFICATIONS: Education and Experience: Graduation from an ABA accredited school of law with a Juris Doctor degree. Seven (7) years of experience as a practicing attorney performing complex legal work, or five (5) years of experience as a practicing attorney as in-house counsel for a municipality; A license to practice law in the State of New Mexico and the United States District Court for the District of New Mexico; member in good standing of the State Bar of New Mexico; Prior experience defending a government entity/government employee in federal and state court preferred; Other combinations of experience and education, including any experience prosecuting criminal cases under a court licensure exemption, that meet the minimum requirements may be substituted. LICENSING AND CERTIFICATIONS: Valid state issued driver's license; Current admission to the State Bar of New Mexico; Current admission to the United States District Court for the District of New Mexico; Ability to gain admission to the United States Court of Appeals for the Tenth Circuit within six months of hire. Apply Online: <https://www.governmentjobs.com/careers/hobbsnm/jobs/4149341/city-attorney?pagetype=jobOpportunitiesJobs>. The City of Hobbs is an equal opportunity employer and drug/smoke free workplace

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McCoy Leavitt Laskey LLC, an AV-rated law firm with nine offices nationally, seeks an associate attorney with a minimum two years' experience for civil litigation practice (catastrophic fire and explosion cases, products liability, and general civil defense) at its Albuquerque office. Available position is considered regular and full time. Competitive salary, great working environment, and excellent benefits. Please email résumé and cover letter to [NMresume@mlllaw.com](mailto:NMresume@mlllaw.com), or mail to: McCoy Leavitt Laskey LLC, 317 Commercial St. NE, Ste. 200, Albuquerque, NM 87102. All replies will be kept confidential.

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McCoy Leavitt Laskey LLC, an AV-rated law firm with nine offices nationally, seeks a legal assistant with civil defense experience at its Albuquerque office. Duties include case management; calendar management; records requests, collection and organizing; court filings; deposition scheduling; document organization and management; data entry, including entering time and billing codes; limited transcribing of dictation; trial support, etc. Available position is considered regular and full time. Competitive salary, great working environment, and excellent benefits. Please email résumé and cover letter to [NMresume@mlllaw.com](mailto:NMresume@mlllaw.com), or mail to: McCoy Leavitt Laskey LLC, 317 Commercial St. NE, Ste. 200, Albuquerque, NM 87102. All replies will be kept confidential.

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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](mailto:e_info@abrfirm.com).

### **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>.

## **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](mailto:inontherapy@gmail.com); Maria Elena Alvarez MA, LPCC; License CCHM 0204361

## **Office Space**

### **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](http://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.

### **Office Space Available**

Private offices and workstations available in downtown coworking space. This plug and play office is move in ready for you to start working immediately with receptionist, security, weekday cleaning, parking, copier, phone, and internet already set up! Plaza 500 is located in the WaFd Bank Building at 201 Third St, Suite 500, SW, 87102. Call or text 505-373-6312 or [gortez@heritagerec.com](mailto:gortez@heritagerec.com)

## **Miscellaneous**

### **Want to Purchase**

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

### **Practice Available**

Sole Practitioner Retiring. General civil litigation practice available. Great opportunity to jumpstart a solo firm or add business to existing small firm. Call Charles at (505) 404-9377.



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



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

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

**The VAP Pro Bono Collaborative ECHO Launch Topic is  
Kinship Guardianship, new rules and filing a petition.**

**Topic:** New Kinship/Guardianship rules and filing a petition

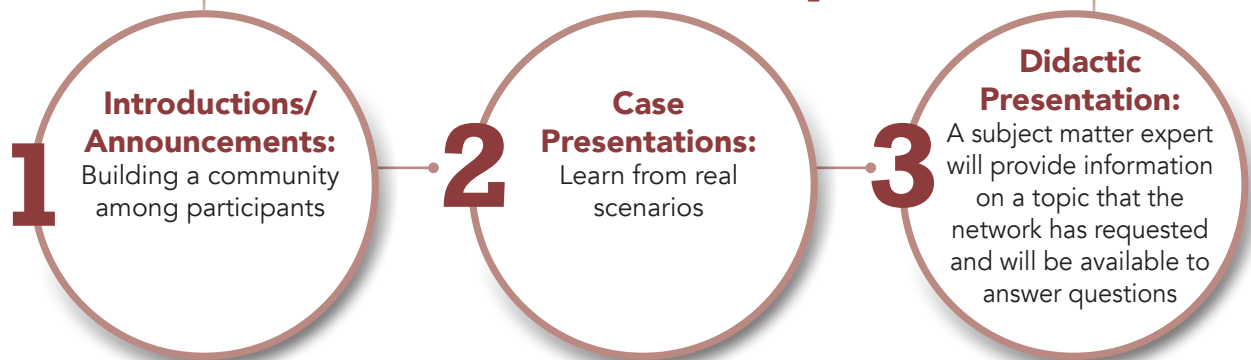
**Presenter:** Michelle Garcia, Deputy Director, New Mexico Legal Aid

**Launch Date:** September 28, 2023

**Time:** 11:30 a.m.-1:00 p.m. in New Mexico.

**EARN 1 GENERAL CLE CREDIT FOR  
PRESENTATION AND CASE DISCUSSION!!!**

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



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

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



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



Barnhouse  
Keegan  
Solimon  
& West LLP

*Attorneys at Law*

Is pleased to announce

# Veronique Richardson

has become a partner of the firm



Veronique Richardson is a member of the Pueblo of Laguna. She brings with her a wealth of knowledge in handling general counsel work for tribal governments, administrative law experience in representing clients before the New Mexico Tax and Revenue, New Mexico Department of Workforce Solutions, the New Mexico Office of the State Engineer and advising clients on matters related to economic development, transactional matters and employment law matters. She has also gained a wealth of litigation experience in tribal courts, state courts, federal court, and various circuit court of appeals. Additionally, Ms. Richardson's experience in the field of water law has lent her the opportunity to work closely with tribes, state, federal, and local agencies and governments. As part of Veronique's legal career, she has been and continues to remain committed to serving her clients, the larger Native American community as well as the local tribal communities. Ms. Richardson is licensed in New Mexico, the U.S. District Court for the District of New Mexico, the Southern Ute Tribe, and in the Pueblo of Laguna Tribal Court.

Veronique Richardson holds a JD degree and Certificate in Indian Law from the University of New Mexico School of Law and a BA in Ethnic Studies and Native American Studies from the University of California at Berkeley. She is an alumna of Pre-Law Summer Institute (PLSI) at the UNM School of Law and served as a PLSI Teaching Assistant and moot court judge. Ms. Richardson currently serves on the Fountain Valley School Board of Trustees, where she is also an alumna. She is the school's first Native American Board of Trustee.

Ms. Richardson can be reached at (505) 842-6123 or via email at [vrichardson@indiancountrylaw.com](mailto:vrichardson@indiancountrylaw.com)

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

*Representing clients in all aspects of law affecting native people*