

# BAR BULLETIN

## DIGITAL ISSUE

January 24, 2024 • Volume 63, No. 1-D



Untitled, by Jonathan Miller (see page 3)

rattlesnakelaw.com

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### SPECIAL INSERT



*Highlighting*  
**PRO BONO**  
in New Mexico

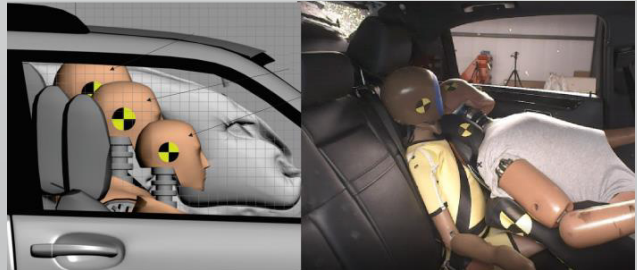
# IS YOUR CASE AT A RECOVERY DEAD-END?

Maybe not because you may have a **CRASHWORTHINESS** case.

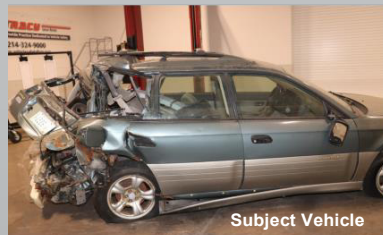


## Crashworthiness

focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



If you have any questions about a potential case, please call Todd Tracy. Vehicle safety system defects may have caused your client's injury or death.



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## Meetings

**January**

**26**  
**Immigration Law Section**  
Noon, virtual

**February**

**6**  
**Appellate Section**  
Noon, virtual  
**9**  
**Cannabis Law Section**  
9 a.m., virtual

**13**  
**Business Law Section**  
11 a.m., virtual

**13**  
**Bankruptcy Section**  
Noon, Bankruptcy Court & virtual

**18**  
**Children's Law Section**  
Noon, virtual

**23**  
**Immigration Law Section**  
Noon, virtual

## Workshops and Legal Clinics

**January**

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

**30**  
**Common Legal Issues for Senior Citizens Workshop**  
11 a.m.-noon, virtual  
For more details and to register, call  
505-797-6005

**February**

**7**  
**Divorce Options Workshop**  
6-8 p.m., virtual

**13**  
**Common Legal Issues for Senior Citizens Workshop**  
11 a.m.-noon, virtual  
For more details and to register, call  
505-797-6005

**21**  
**Consumer Debt/Bankruptcy Workshop**  
6-8 p.m., virtual

**March**

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

**About Cover Image and Artist:** Jonathan Miller has been a member of the State Bar of New Mexico since 1988. While based in Albuquerque, he travels all over New Mexico and has appeared in every judicial district. He started taking pictures as a way to stretch to and from his travels to court. Jonathan is a graduate of Albuquerque Academy, Cornell University and the University of Colorado law school. He does have an MFA through the American Film Institute. He recently took his first professional photography class through Cornell's online program. His photos have been displayed on Facebook, Instagram and LinkedIn.

# Notices

Please email notices desired for publication to [notices@sbnm.org](mailto:notices@sbnm.org).

## COURT NEWS New Mexico Supreme Court Rule-Making Activity

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

## Supreme Court Law Library

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

## 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>.

## First Judicial District Court Notice of Vacancy

A vacancy on the First Judicial District Court will exist Feb. 1 due to the retirement of the Hon. Judge Sylvia LaMar, effective Jan. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information about election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Camille Carey, Chair of the First Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be

## Professionalism Tip

### With respect to other judges:

I will be courteous, respectful and civil in my opinions.

## Changes Coming in 2024!

Some exciting changes are coming to the Bar Bulletin distribution in 2024! The Bar Bulletin will continue to publish on the second and fourth Wednesday of each month. The first issue of each month will continue to be distributed as both a printed and digital version to Bar Bulletin subscribers who are currently receiving a printed copy. The second issue of each month will be exclusively digital and will be emailed to Bar Bulletin subscribers. The digital version of all issues of the Bar Bulletin will continue to be posted on the State Bar of New Mexico website at <https://www.sbnm.org/News-Publications/Bar-Bulletin/Current-Issue>.

obtained from the Judicial Selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for Feb. 1 at 5 p.m. (MT). Applications received after that time will not be considered. The First Judicial District Court Judicial Nominating Commission will convene at 9:30 a.m. (MT) on Feb. 22 to interview applicants for the position at the First Judicial District Court to evaluate the applicants. The Committee meeting is open to the public and members of the public may have the opportunity to provide feedback related to the applicants.

## First Judicial District Court Judicial Nominating Commission Notice of Proposed Changes to the Rules Governing Judicial Nominating Commissions

The New Mexico Supreme Court's Equity and Justice Commission's Subcommittee on Judicial Nominations has proposed changes to the Rules Governing New Mexico Judicial Nominating Commissions. These proposed changes will be discussed and voted on during the upcoming meeting of the First Judicial District Court Judicial Nominating Commission. The Commission meeting is open to the public beginning at 9:30 a.m. (MT) on Feb. 22 at the First Judicial District Court, located at 225 Montezuma Ave, Santa Fe, N.M. 87501. Please email Beverly Akin ([akin@law.unm.edu](mailto:akin@law.unm.edu)) if you would like to request a copy of the proposed changes.

## Second Judicial District Court Notice of Reassignment of Cases

Pursuant to Rule 1-088.1 NMRA, the Second Judicial District Clerk of Court hereby serves notice that a mass reassignment of all cases assigned to the Honorable Benjamin Chavez, Division XIX, will be automatically reassigned to the Honorable Marie Ward, Division XIV, effective Jan. 21. Individual notices will not be sent out. Any party may file a peremptory excusal within ten (10) days the completion of this publication which; the final publication will occur on Feb. 15.

## Notice of Vacancy

A vacancy on the Second Judicial District Court will exist Jan. 21 due to the retirement of the Honorable Judge Benjamin Chavez, effective Jan.20. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information about election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Camille Carey, Chair of the Second Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for Jan. 29 at 5 p.m. (MT). Applications received after that time will not be considered. The Second Judicial District Court Judicial Nominating Com-

mission will convene at 9:30 a.m. (MT) on Feb. 12 to interview applicants at the State Bar Center. The Committee meeting is open to the public and members of the public who wish to be heard about any of the candidates will have an opportunity to be heard.

## U.S. District Court for the District of New Mexico

### Notice to Federal Bench & Bar Association Members

The 2024 Bench & Bar Spending Plan has been approved in the amount of \$47,200.00 for 8 identified projects. To view the detailed spending plan, please see the "Attorney Information" page on the Court's website at <https://www.nmd.uscourts.gov/>.

## STATE BAR NEWS

### License Renewal and MCLE Compliance Due Feb. 1, 2024

State Bar of New Mexico annual license renewal and Minimum Continuing Legal Education requirements are due Feb. 1, 2024. For more information, visit [www.sbnm.org/compliance](http://www.sbnm.org/compliance). To complete your annual license renewal and verify your MCLE compliance, visit [www.sbnm.org](http://www.sbnm.org) and click "My Dashboard" in the top right corner. For questions about license renewal and MCLE compliance, email [license@sbnm.org](mailto:license@sbnm.org). For technical assistance accessing your account, email [techsupport@sbnm.org](mailto:techsupport@sbnm.org).

### Equity in Justice Program Have Questions?

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

### New Mexico 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. Join the meeting via Zoom at <https://bit.ly/attorneysupportgroup>.

### NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on April 4, July 11 and Oct 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.

### New Mexico Well-Being Committee Meetings

The New Mexico Well-Being Committee The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness. The Well-Being Committee will meet the following dates at 3:00 p.m. (MT) in 2024: Jan. 30, March 26, May 28, July 30, Sept. 24 and Nov 26. Email Tenessa Eakins at [Tenessa.Eakins@sbnm.org](mailto:Tenessa.Eakins@sbnm.org) or Amanda Gandara at [Amanda.gandara@sbnm.org](mailto:Amanda.gandara@sbnm.org) for the Zoom link

— *Featured* —

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**[landing.clio.com/nmbar](https://landing.clio.com/nmbar)**

### The Solutions Group Employee Assistance Program

Presented by the New Mexico Lawyer Assistance Program, the Solutions Group, the State Bar's Employee Assistance Program (EAP), extends its supportive reach by offering up to four complimentary counseling sessions per issue, per year, to address any mental or behavioral health challenges to all SBNM members and their direct family members. These counseling sessions are conducted by licensed and experienced therapists. In addition to this valuable service, the EAP also provides a range of other services, such as management consultation, stress management education, webinars, critical incident stress debriefing, video counseling, and a 24/7 call center. The network of service providers is spread across the state, ensuring accessibility. When reaching out, please

make sure to identify yourself with the NMLAP for seamless access to the EAP's array of services. Rest assured, all communications are treated with the utmost confidentiality. Contact 505-254-3555 to access your resources today.

### New Mexico State Bar Foundation Pro Bono Opportunities

The New Mexico State Bar Foundation and its partner legal organizations gratefully welcome attorneys and paralegals to volunteer to provide pro bono service to underserved populations in New Mexico. For more information on how you can help New Mexican residents through legal service, please visit [www.sbnm.org/probono](http://www.sbnm.org/probono).

### UNM SCHOOL OF LAW Law Library Hours

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

### Call for Nominations for the Alumni/ae Association Distinguished Achievement Awards

The nomination process for the Alumni/ae Association Distinguished Achievement Awards will begin and end earlier for next year. To nominate someone you think deserving of the Distinguished Achievement Award, please go to [https://forms.unm.edu/forms/daad\\_nomination](https://forms.unm.edu/forms/daad_nomination). Closing date for 2024 award nominations will be Feb. 15.



**Send in  
your articles!**

Have your authored work read by over **8,000** attorneys, judges and other legal professionals when you send in articles for the *Bar Bulletin*! The *Bar Bulletin* is not only a place for information—it's a place for discourse and a hub for sharing your ideas on the legal topics of the day and beyond!

For information on how to submit articles and guidelines for submissions, please visit [www.sbnm.org/News-Publications/Bar-Bulletin/Submit-An-Article](http://www.sbnm.org/News-Publications/Bar-Bulletin/Submit-An-Article).

**We look forward to publishing your articles and compositions!**



**State Bar of  
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## Bar Admission Rules

### Rule 15-309

#### 15-309. Reinstated license method.

**A. Description.** As further specified in this rule, a person who was previously admitted to practice law in New Mexico on a non-limited license may apply for admission under this method of licensure if the applicant (1) withdrew from the practice of law before January 1, 2017, (2) transferred to inactive status under Rule 24-102.2(E) NMRA and has remained inactive for a period of two (2) years or more, (3) was suspended from the practice of law under Rule 24-102 NMRA and is required to submit an application to the board under Rule 24-102(F) NMRA, or (4) was ordered by the Supreme Court to reapply for licensure through the board.

**B. Application deadlines.** An application for a license under this rule may be submitted at any time.

**C. Qualifications.** An applicant for a license under this rule shall submit an application for this method of licensure as prescribed by the board, and shall prove the applicant:

- (1) meets the qualifications set forth in Rule 15-202 NMRA;
- (2) satisfies all applicable requirements for an active status attorney in New Mexico;
- (3) has the requisite character and fitness to practice law in New Mexico; and
- (4) if referred to the board under Rule 24-102(F)(2) NMRA:
  - (a) has remedied all deficiencies that led to the suspension;
  - (b) is current on dues owed to the State Bar of New Mexico
  - (c) has satisfied all mandatory continuing legal education credits under Rules 18-101 to -303 NMRA;
  - (d) has complied with any other requirements imposed by the Supreme Court, including, but not limited to, enrollment in and attendance of specific continuing legal education classes or bar review courses; and
  - (e) has paid the fee described in Rule 24-102(F)(1) NMRA.

**D. Character and fitness.** The board shall make a determination about the character and fitness of an applicant as set forth in Rule 15-205 NMRA for any applicant who has submitted an application for a license under this rule. An applicant shall pay any fees and costs associated with evaluating the applicant's character and fitness.

**E. Procedure for issuance.** On the board's receipt from an applicant of (a) a completed application for a license under this rule, (b) the required fees and costs, and (c) documents required by Paragraph C, then

- (1) the board shall evaluate the applicant's character and fitness as described in Rule 15-205 NMRA; and
- (2) on the board's determination that the applicant has the requisite character and fitness, is qualified, and has complied with any requirements for that applicant set by the Supreme Court, the board shall recommend to the Supreme Court that the applicant be reinstated, and the Clerk of the Supreme Court shall summarily issue the applicant a certificate of reinstatement to active status unless otherwise ordered by the Supreme Court.

**F. Fees and costs.** The following fees and costs must be paid by the applicant on submission of the application for a license under this rule, and shall not offset fees and costs required to apply for another method of licensure:

- (1) **Application fee.** An application fee according to a published schedule of application fees promulgated by the board and approved by the Supreme Court; and
- (2) **Investigation costs.** Investigation costs according to the schedule of pass-through costs promulgated by the board as described in Rule 15-204(B) NMRA.

**G. Specific ongoing requirements.** An applicant approved for a license under this rule shall comply with the requirements of Rule 15-206 NMRA and Rule 15-207 NMRA.

**H. Limitations.** A person practicing law under a license issued under this rule is not subject to any limitation, unless otherwise ordered by the Supreme Court.

**I. Expiration.** A license issued under this rule does not expire.

**J. Suspension of license.** A license issued under this rule is only subject to suspension as described in the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

**K. Revocation.** A license issued under this rule is only subject to revocation as described in Rule 15-201(F) NMRA and the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

[Adopted by Supreme Court Order No. S-1-RCR-2023-00036, effective December 31, 2023.]

**Committee commentary.** — This rule only permits reinstatement in the specified instances. An attorney suspended under the Rules Governing Discipline, Rules 17-101 to -316 NMRA, must seek reinstatement as described in those rules. An attorney who withdrew from the State Bar of New Mexico on or after December 31, 2016, must apply for admission under another method of licensure. See Rule 24-102.2(G) NMRA.

An attorney suspended under Rule 24-102 NMRA is not required to submit an application to the board if it is that attorney's first suspension under that rule. See Rule 24-102(F)(2).

[Adopted by Supreme Court Order No. S-1-RCR-2023-00036, effective December 31, 2023.]

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

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## CLERK'S CERTIFICATE OF ADMISSION

---

On September 20, 2023:  
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# Opinions

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

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## Effective November 24, 2023

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From the New Mexico Supreme Court

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-028**

No: S-1-SC-39139 (filed September 25, 2023)

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

Petitioner-Respondent/Cross-Petitioner,

v.

**DOUGLAS B.,**

Respondent-Petitioner/Cross-Respondent,  
and

**SARA E.,**

Respondent-Cross Respondent/Cross-Petitioner.

**IN THE MATTER OF ABIGAIL B.,**

Child.

**ORIGINAL PROCEEDING ON CERTIORARI**

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Court Attorney  
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Cross-Petitioner

## OPINION

### THOMSON, Justice.

{1} The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-1963, places procedural safeguards on removal of Indian children from Indian families. See 25 U.S.C. §§ 1902, 1911. One such safeguard is a requirement that a Qualified Expert Witness (QEW) testify and that the QEW

be qualified to provide certain categories of testimony. 25 U.S.C. § 1912(e). These categories generally cover two areas: (1) the likelihood of continued custody by the parent or Indian custodian resulting in serious emotional or physical damage to the child (serious damage) and (2) the prevailing social and cultural standards of the Indian child's tribe (cultural standards). 25 C.F.R. § 23.122(a) (2023).<sup>1</sup> This opinion clarifies whether the two categories of QEW testimony are analyzed inde-

pendently or jointly and what expertise is required. Next, we examine the particular qualifications of the QEW in this case. Finally, we determine the proper remedy in this case—remand or dismissal.

{2} We affirm the Court of Appeals, concluding first that courts must independently analyze qualification in the two categories of required QEW testimony under ICWA and that the testimony can come from one or multiple experts. Second, our evidentiary rules governing expert testimony are sufficient to guide a court tasked with qualifying a QEW. Applying that standard, we hold that the QEW in this case was qualified to testify as to the cultural standards of the tribe. However, the same QEW was not qualified to testify regarding serious damage to the child. Finally, we hold that remand for a new adjudicatory hearing is the appropriate remedy in this case.

#### I. BACKGROUND

{3} In October 2018, the Children, Youth, and Families Department (CYFD) received a referral after a young girl (Child) revealed to a source that she was self-harming and wanted to kill herself. Child also reported that her parents, Douglas B. (Father) and Sara E. (Mother) (collectively, Parents), fought constantly, that they were violent toward one another, and that Father was an alcoholic. Family members expressed concern about "severe domestic violence" and about Parents abusing alcohol and methamphetamine. CYFD took custody of Child and placed her with her paternal aunt.

{4} Although Parents initially refused to provide information about Child's ancestry, CYFD discovered that Child was eligible for membership through Mother in the Wichita and Affiliated Tribes of Oklahoma (Child's Tribe), and Child's Tribe intervened in the case. After placing Child with her aunt, the district court held a series of adjudicatory hearings to determine whether Child was abused or neglected and whether to keep Child in CYFD custody under her aunt's care.

{5} Kyli Ahtone was proffered by CYFD to testify as a QEW in one of the adjudicatory hearings.<sup>2</sup> Ms. Ahtone testified that she holds a bachelor's degree in Criminal Justice and was raised as a member of the Apache Tribe of Oklahoma on her tribe's reservation. Child's Tribe had employed Ms. Ahtone for the last five years as an

<sup>1</sup> The Code of Federal Regulations is updated annually. For ease of reference, this opinion cites the current edition of the regulations as there has been no substantive change to the regulations cited in this opinion since 2016.

<sup>2</sup> It is not clear from the record whether CYFD proffered Ms. Ahtone as its QEW or simply as a witness who is an expert on ICWA. We analyze Ms. Ahtone's qualifications assuming she was proffered as a QEW and suggest that CYFD clarify this issue on remand to the district court.



ICWA caseworker, and her job was to monitor state cases involving children from Child's Tribe to ensure ICWA compliance. Ms. Ahtone handled many ICWA cases throughout her five years working for Child's Tribe, but she was unable to provide an exact number. She was qualified as an ICWA expert more than fifty times in Oklahoma and other states, but she did not recall whether she had "ever qualified as an expert in New Mexico before." She regularly attended Child's Tribe's ceremonies, events, and rituals and informed the district court that while her tribe's cultural norms and those of Child's Tribe were "very similar," there were a few ways in which they differed.

{6} CYFD proffered Ms. Ahtone as a QEW on this foundation without specifying the category of testimony for which she was proffered. Father objected, arguing that Ms. Ahtone was not properly qualified as a QEW because she was not a member of Child's Tribe. CYFD responded that while the QEW could be a member of Child's Tribe, a QEW could also be a person not from Child's Tribe, but one who "ha[s] substantial experience in the delivery of child and family services to Indian people." This experience, CYFD argued, could include "knowledge of prevailing social and cultural standards as well as childrearing practices of the Child's Tribe or Indian cultures."

{7} Before it qualified Ms. Ahtone as an expert, the district court allowed CYFD to lay additional foundation. Ms. Ahtone repeated that she had attended numerous ICWA trainings. She provided more specifics to her previous testimony, adding for example that she met quarterly with the foster care review board, and noted that when she had any questions regarding Child's Tribe's culture, she referred to the board. She also stated that she raises her own children in her tribe's culture and "raise[s] them as [she was] raised to follow [tribal] traditions."

{8} CYFD then turned to questions regarding Ms. Ahtone's understanding of the familial and cultural expectations of Child's Tribe. Ms. Ahtone appeared confused by these questions. When asked about expectations for family organization and operation, she stated, "we live as a regular family, the only thing different about us is that, for us, we believe in different things." CYFD attempted to rephrase and asked what duties family members owed to each other and about cultural views concerning arguing and disagreement. Ms. Ahtone answered that she "would probably have to go off of [her] own family" and that these sorts of issues had not come up at the foster review board meetings. She disclosed, "For [Child's Tribe], I've never really been asked that question. I've usually

just gone on [whether] I've known [Child's Tribe's] customs."

{9} CYFD then moved on to question Ms. Ahtone about her understanding of her own tribe's expectations around the use of alcohol and drugs. She responded, "growing up we did not have this type of situation within our family . . . , but . . . I had witnessed this within [other] families" and added, "usually our families would handle these situations [for] ourselves," and "our parents gave up their children to grandparents for grandparents to raise the children."

{10} The district court asked Ms. Ahtone whether she had anything in writing from Child's Tribe that certified her as an expert in ICWA related matters. Ms. Ahtone stated that she was not sure and would have to look through her records. If Child's Tribe had not certified her as an expert, she believed there were members of Child's Tribe on the foster care review board who could testify instead. The record does not show that the district court ever received clarification on this issue, but the court ultimately qualified Ms. Ahtone as a QEW over Parents' objections. The district court's decision relied in part on her previous involvement in this case, her experience testifying as an ICWA expert in the past, and the court's finding that she was designated by Child's Tribe as an ICWA expert. The district court did not clearly distinguish her qualifications to testify about each of the two categories of QEW testimony required by ICWA.

{11} In a written judgment, the district court held that the return of Child to Parents was likely to result in serious harm to Child and was not in Child's best interest. It noted that "[a]ctive efforts ha[d] been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and [that] such efforts ha[d] been unsuccessful," and it ordered continued custody by CYFD. The judgment did not mention the cultural standards testimony required of a QEW under ICWA nor did it provide a reason why cultural standards testimony may not be required in this instance. Parents each appealed.

{12} In a consolidated opinion, the Court of Appeals reversed. *State ex rel. CYFD v. Douglas B.*, 2022-NMCA-028, ¶¶ 1-2, 511 P.3d 357. It held that serious damage to the child and cultural standards of the Indian child's tribe are subjects requiring QEW testimony and that qualifications of an expert on these subjects must be analyzed independently. *Id.* ¶¶ 17-18. It affirmed the district court's qualification of Ms. Ahtone as an expert on cultural standards. *Id.* ¶ 29. However, it concluded that the district court abused its discretion in qualifying Ms. Ahtone as an expert on

serious damage to the child. *Id.* ¶ 35. In the absence of reliable testimony by a QEW, the Court of Appeals reversed the district court's abuse and neglect adjudication. *Id.* ¶ 35. The Court of Appeals remanded the case to the district court for proceedings applying its interpretation of the QEW requirements under *State ex rel. CYFD v. Marlene C. (In re Esther V.)*, 2011-NMSC-005, 149 N.M. 315, 248 P.3d 863. *Douglas B.*, 2022-NMCA-028, ¶ 37. Father filed a petition for certiorari while Mother and CYFD filed separate cross-petitions, all of which this Court granted.

## II. DISCUSSION

### A. Standard of Review

{13} Interpretation of ICWA and its relationship to New Mexico law presents a question of law that we review de novo. *Esther V.*, 2011-NMSC-005, ¶ 14. "Our overarching goal when interpreting ICWA is to effectuate Congress's intent." *Id.* ¶ 15. In discerning legislative intent, "we look first to the plain language of the statute, giving the words their ordinary meaning." *Flores v. Herrera*, 2016-NMSC-033, ¶ 8, 384 P.3d 1070 (internal quotation marks and citation omitted). "The text of ICWA is the primary indicator of congressional intent, and to the extent that the language of the statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Esther V.*, 2011-NMSC-005, ¶ 15 (internal quotation marks and citation omitted).

### B. The Two Categories of QEW Testimony Required by ICWA

{14} ICWA was designed in part to respond to the fact that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies." 25 U.S.C. § 1901(4). "States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(5). In recognition of these issues, ICWA imposes procedural safeguards for removal of an Indian child from an Indian family, including a statutory requirement for QEW testimony:

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

25 U.S.C. § 1912(e). In promulgating regulations to implement § 1912(e), the Bureau of Indian Affairs (BIA) offered insight into the considerations behind the two testimony requirements by stating, “In passing ICWA, Congress wanted to make sure that Indian child-welfare determinations are not based on a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family.” Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38777, 38829 (Dec. 12, 2016) (codified at 25 C.F.R. pt. 23) (alteration in original) (internal quotation marks and citation omitted).

{15} The BIA regulations (Regulations) link the two categories of testimony by noting that the question whether continued custody by a parent or Indian custodian “is likely to result in serious emotional or physical damage to the child is one that should be examined in the context of the prevailing cultural and social standards of the Indian child’s Tribe.” *Id.* There are, however, “certain circumstances where a qualified expert witness need not have specific knowledge of the prevailing social and cultural standards of the Indian child’s Tribe in order to meet the statutory standard.” *Id.* at 38829-30. Ultimately, “the [Regulations] still provide[] State courts with discretion to determine what qualifications are necessary in any particular case.” *Id.* at 38830.

{16} CYFD argues that, in general, the cultural standards category of testimony should be considered jointly with the serious damage category because the plain language of federal regulations promulgated to implement § 1912(e) provides that the serious damage component should be considered in light of the Indian child’s tribe’s cultural standards. CYFD suggests that the Regulations do not explicitly provide for separately weighing the cultural standards requirement and the serious damage requirement. In contrast, Parents highlight the plain language of the Regulations and argue that the two qualification categories are separate and, as a result, whether a particular expert is qualified to testify as to each type of testimony is determined independently.

{17} On this question, the Court of Appeals concluded that the “definition promulgated by the BIA . . . splits the ICWA expert [testimony] requirement into two separate components.” *Douglas B.*, 2022-NMCA-028, ¶ 17. While CYFD is correct that the plain language of the statute does not include a strict requirement that one expert be qualified to testify about both cultural standards and serious damage to the child, the Regulations highlight and consistently reference the importance of

providing testimony about the cultural standards of the tribe. *See* 81 Fed. Reg. 38779 (“State agencies and courts had often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”); *id.* at 38780 (noting that one of the four leading factors contributing to high rates of Indian child removal was “a lack of culturally competent State child-welfare standards for assessing the fitness of Indian families”); *id.* at 38784 (“ICWA helps ensure that State courts incorporate Indian social and cultural standards into decision-making that affects Indian children.”); *id.* at 38829 (“[E]xpert testimony presented to State courts should reflect and be informed by those cultural and social standards.”). Although the BIA regards cultural testimony as important, it clarified that if there are multiple experts in the case, they may each be qualified separately to testify about either cultural standards or serious damage; one, however, must testify about serious damage. *See id.* at 38831 (“The court may accept expert testimony from any number of witnesses, including from multiple qualified expert witnesses . . . [where] at least one qualified expert witness *must* address the issue of whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child . . . and that the qualified expert witnesses should be qualified to testify as to the prevailing social and cultural standards of the Indian child’s Tribe.” (emphasis added)).

{18} Ultimately, the BIA left the determination of whether testimony about cultural standards is necessary in a particular case to the discretion of the court and noted that cultural testimony is not necessary where it is “plainly irrelevant to the particular circumstances at issue in the proceeding.” *Id.* at 38830. For example, it referenced situations where a child is a victim of sexual abuse, explaining that “a leading expert on issues regarding sexual abuse of children may not need to know about specific Tribal social and cultural standards in order to testify as a qualified expert witness regarding whether return of a child to a parent who has a history of sexually abusing the child is likely to result in serious emotional or physical damage to the child.” *Id.* In this situation, and other very limited similar situations, cultural standards testimony is not strictly required in order to determine that the abuse caused serious damage to the child. *See id.* This does not mean, however, that even in these limited situations, a court is released from its obligation to qualify a QEW—whether one or several—sepa-

ately on the two categories identified in the Regulations. We apply this separate approach to the qualification of the expert in this case.

### C. Standard for Qualification of a § 1912(e) Expert

{19} As in other areas of expert testimony, the standard for qualification of a QEW exists in our rules of evidence, which provide,

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

Rule 11-702 NMRA. There are three requirements for experts to be qualified under Rule 11-702. *State v. Alberico*, 1993-NMSC-047, ¶¶ 43-45, 116 N.M. 156, 861 P.2d 192. They must (1) be qualified “by knowledge, skill, experience, training, or education,” (2) present an opinion based on their “scientific, technical, or other specialized knowledge,” and (3) be helpful to the trier of fact in understanding the evidence or determining a fact at issue. *Id.* (internal quotation marks and citation omitted). Our evidentiary rules combined with the standard announced in *Alberico* provide sufficient guidance to our courts to qualify a QEW in an ICWA proceeding.

#### 1. Category 1: serious damage

{20} “For a foster-care placement . . . , the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the . . . child.” 25 C.F.R. § 23.121(c) (2023). The QEW’s role is to assist the trier of fact with the causation element of the serious damage requirement. The BIA implementation guidelines further explain that an expert witness who is qualified to draw this causal connection must have “expertise beyond normal social worker qualifications.” U.S. Dep’t of the Interior, BIA, Guidelines for Implementing the Indian Child Welfare Act, 53-54 (quoting H.R. Rep. No. 95-1386, at 22 (1978)). Various justifications for this standard include the concern that many social workers who lack understanding of Indian cultural values and social norms make decisions without proper context and “frequently discover neglect or abandonment where none exists.” H.R. Rep. 95-1386, at 10. We construe this guidance along with the plain meaning of 25 U.S.C. § 1912(e),<sup>3</sup> to require that a court not accept an expert based simply on a social work degree but must require expertise

<sup>3</sup> Although this case involves an adjudicatory hearing, our holding also applies to termination hearings under 25 U.S.C. § 1912(f).

beyond the normal social worker qualification. *See* 81 Fed. Reg. 38780 (reporting that “social workers, ignorant of Indian cultural values and social norms, ma[d]e decisions that [we]re wholly inappropriate in the context of Indian family life and so they frequently discover[ed] neglect or abandonment where none exist[ed]”) (alterations in original) (quoting H.R. Rep. 95-1386, at 10)); *see, e.g., I.P. v. Wisconsin (In re Interest of D.S.P.)*, 480 N.W.2d 234, 240 (1992) (affirming as a QEW, a testifying social worker who was a member of the petitioner’s tribe, who “was reared in the tribal tradition,” who “has reared eight children in the tribal tradition,” and who was “one of the drafters of the ICWA at the federal level”).

{21} This does not mean, however, that someone like Ms. Ahtone who has other education, including significant ICWA training, could not be qualified as a QEW due to absence of a social work degree. “[T]he proper initial inquiry for the admissibility of expert opinion testimony, or any evidence for that matter, is the purpose for which it is being offered.” *Alberico*, 1993-NMSC-047, ¶ 71. A court’s inquiry into whether an expert is qualified to give an opinion is guided by that expert’s qualification to assist a trier of fact to understand the causal connections described in ICWA regulations, 25 C.F.R. § 23.121(c). This is why a “trial judge has wide discretion to determine whether a witness is qualified to give testimony as an expert, and no set criteria can be laid down to test [such] qualifications.” *State v. Sloan*, 2019-NMSC-019, ¶ 42, 453 P.3d 401 (alteration in original) (internal quotation marks and citation omitted). “Appellate courts review the qualification of an expert for an abuse of discretion.” *Id.* We turn now to whether Ms. Ahtone was qualified to testify as a QEW.

{22} At the time of the hearing, Ms. Ahtone worked for Child’s Tribe as an ICWA caseworker, and she stated that her job was to monitor state cases involving children from Child’s Tribe to ensure compliance with ICWA. She testified about her education and experience working with ICWA cases and her attendance at multiple ICWA trainings. In this case, Child was allegedly exposed to substance abuse and domestic violence, and she was allegedly engaging in self-harm and experiencing suicidal ideation. None of Ms. Ahtone’s testimony demonstrated that she had expertise, or even experience, in these areas. CYFD never asked Ms. Ahtone to explain the subject matter of her previous expert testimony, whether her ICWA training covered the topics presented, or whether she had been taught how to determine whether certain types of abuse were likely to manifest self-harm or suicidal thoughts.

In other words, CYFD did not link Ms. Ahtone’s training, education, or experience to the required “causal relationship between the particular conditions in the home and the likelihood that continued custody of [C]hild will result in serious emotional or physical damage to [Child].” 25 C.F.R. § 23.121(c).

{23} We therefore agree with the Court of Appeals that CYFD did not lay the proper foundation required by Rule 11-702 to qualify Ms. Ahtone to testify about serious damage to Child, *Douglas B.*, 2022-NMCA-028, ¶ 30, and we hold that the district court abused its discretion in allowing Ms. Ahtone to testify on this subject.

## 2. Category 2: cultural standards

{24} With regard to the cultural standards testimony, the BIA procedural guidelines provide that a “qualified expert witness should have specific knowledge of the Indian tribe’s culture and customs” and then set out a list of persons who, “in descending order [based on various levels of experience and knowledge], are presumed to meet the requirements for a qualified expert witness,” including a “member of another tribe who is recognized to be a qualified expert witness by the Indian child’s tribe based on [that witness’s] knowledge of the delivery of child and family services to Indians and the Indian child’s tribe.” Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10157 § D.4 (Feb. 25, 2015). Experts who meet one of those requirements are presumably qualified as QEWs. *Id.*

{25} In considering the BIA procedural guidelines’ approach, to the extent that the witness was designated by Child’s Tribe as its ICWA expert, that witness would be “presumed to meet the requirements” for testifying as a QEW about Child’s Tribe’s cultural standards. *Id.* The district court found that Ms. Ahtone was designated by the Tribe as its ICWA expert. This finding is supported by substantial evidence in the record, including Ms. Ahtone’s statement to the district court that she was designated by the Tribe, her five years of employment by the Tribe, and the notice she sent that Child “is . . . eligible for membership in the [Tribe]” and that the Tribe “intend[ed] to intervene” in the case, which was on the Tribe’s letterhead. Therefore, Ms. Ahtone was qualified as a QEW to testify about the cultural standards of the Tribe. *See* 80 Fed. Reg. 10157 § D.4.

{26} While we affirm the Court of Appeals on this category of testimony based on Ms. Ahtone’s designation by Child’s Tribe, we emphasize that knowledge about a tribe’s spiritual customs and ceremonial events is not necessarily sufficient to qualify an expert to testify about the tribe’s

societal and cultural attitudes surrounding familial relationships. The BIA procedural guidelines emphasize consideration of the tribe’s cultural standards regarding raising children. *See id.* If a witness is not presumably qualified by having been designated by the tribe, the BIA procedural guidelines go on to list two options for persons to become presumably qualified to meet the requirements of a QEW, both of which require the person to have “knowledge of prevailing social and cultural standards and childrearing practices within the Indian child’s tribe.” *Id.* § D.4 (b)(3), (4). Parties should take care to lay sufficient foundation to meet these requirements.

## D. The Proper Remedy Is to Remand to the District Court for Further Proceedings

{27} Having determined that Ms. Ahtone was not qualified to testify as a QEW, we clarify the remedy. “Ordinarily, appellate reversal on substantive grounds of an adjudication of abuse or neglect results in the dismissal of the petition and a remand to the district court, which retains jurisdiction to determine whether the parent prevailing on appeal should regain custody of the child.” *Esther V.*, 2011-NMSC-005, ¶ 48 (internal quotation marks and citation omitted). However, in *Esther V.*, this Court remanded a similar case instead of dismissing because (1) the case decided an issue of first impression, (2) CYFD “made a good faith effort to comply with the letter and spirit of ICWA,” and (3) “requiring CYFD to begin the process anew . . . by bringing new allegations of abuse or neglect neither promotes judicial economy nor protects [the child’s] best interests.” *Id.* ¶ 49. Parents argue that this case should be dismissed under *State ex rel. CYFD v. Benjamin O.*, 2007-NMCA-070, 141 N.M. 692, 160 P.3d 601, while CYFD argues that this case should be remanded because, as in *Esther V.*, it is an issue of first impression that clarifies a procedural issue. Parents respond that Ms. Ahtone’s nonqualification as a QEW is not procedural but substantive because it constitutes a failure by CYFD to prove an element in its prima facie case and therefore that the case should be dismissed.

{28} In this case, as a procedural matter and a matter of first impression, we clarify that ICWA sets forth two distinct testimony requirements for QEWs, and we reverse the neglect and abuse adjudications upon a determination that the record did not support the district court’s qualification of Ms. Ahtone to testify as an expert regarding serious damage to the Child. CYFD acted in good faith to comply with ICWA, its error being conflation of the cultural standards testimony requirements with the serious damage to the child requirements. If we were to order dismissal of the abuse

and neglect petition, “CYFD would be precluded from bringing the same potentially meritorious allegations in a new petition but instead would have to decide whether it had grounds to supplement the original petition or file a new petition with different allegations of abuse or neglect.” *Esther V.*, 2011-NMSC-005, ¶ 49. Remand is in the interest of judicial economy because there is a possibility that Ms. Ahtone could qualify to testify as a QEW if the proper foundation is laid under this Court’s guidance. We conclude, as this Court did in *Esther V.*, “that requiring CYFD to begin the process anew in this case by bringing

new allegations of abuse [and] neglect neither promotes judicial economy nor protects Child’s best interests.” *Id.* We therefore affirm the Court of Appeals and remand this case to the district court for a new adjudicatory hearing.

### III. CONCLUSION

{29} We affirm the Court of Appeals’ conclusions that the two testimony requirements for QEWs under ICWA are separate and that Rule 11-702 supplies the proper standard for qualification. We affirm the Court of Appeals’ holding that Ms. Ahtone is not qualified to testify as to

serious damage to Child. We also affirm the Court of Appeals’ holding that Ms. Ahtone was qualified to testify as to the cultural standards of Child’s Tribe. Finally, we remand to the district court for a new adjudicatory hearing.

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

**DAVID K. THOMSON, Justice**

**WE CONCUR:**

**C. SHANNON BACON, Chief Justice**

**MICHAEL E. VIGIL, Justice**

**JULIE J. VARGAS, Justice**

**BRIANA H. ZAMORA, Justice**

# Advance Opinions

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From the New Mexico Supreme Court

From the New Mexico Supreme Court

**Opinion Number: 2023-NMSC-029**

No: S-1-SC-38502 (filed October 12, 2023)

**STATE OF NEW MEXICO,**

Plaintiff-Petitioner,

v.

**ISAAC MARQUEZ,**

Defendant-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

Alisa Hart, District Judge

Hector H. Balderas, Attorney General

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for Respondent

## OPINION

### BACON, Chief Justice.

{1} The admission of evidence of a separate crime, wrong, or other bad act is broadly prohibited as proof of a person's propensity to commit a charged offense. 1 Kenneth S. Broun et al., *McCormick on Evidence* § 190 (Robert P. Mosteller ed., 8th ed. 2020); *see also* Rule 11-404(B)(1) NMRA (2012).<sup>1</sup> Nonetheless, at common law, many jurisdictions—including New Mexico—observed the lewd and lascivious disposition exception to this rule. *See State v. Minns*, 1969-NMCA-035, ¶¶ 12-13, 80 N.M. 269, 454 P.2d 355. This common-law exception allowed the state to demonstrate a defendant's "lewd and lascivious disposition" toward the witness by introducing evidence of other acts of sexual misconduct against the complaining witness where the defendant was charged with a sexual offense. *Id.* ¶ 13. In this opinion, we clarify that the common-law lewd and lascivious disposition exception to Rule 11-404(B)(1)'s prohibition on the admission of other bad acts evidence

is abrogated in New Mexico. Evidence offered to show a particular disposition toward an alleged victim is propensity evidence that may not be introduced against a defendant unless it is admissible pursuant to Rule 11-404(B)(2). Rule 11-404(B)(2) authorizes admission of evidence of "a crime, wrong, or other act" (prior, uncharged acts) to prove a nonpropensity fact, such as "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule 11-404(B)(1)-(2) (emphasis added). We conclude that the district court in this case admitted evidence of prior, uncharged acts against Defendant to demonstrate his lewd and lascivious propensity to commit the charged offenses. We therefore vacate Defendant's conviction and remand to the district court for a new trial. On retrial, evidence of any prior, uncharged acts of misconduct may not be admitted against Defendant unless the district court first determines it is admissible for one of the nonpropensity purposes prescribed by Rule 11-404(B)(2).

#### I. BACKGROUND

{2} Defendant Isaac Marquez lived with his wife, Judy, in a trailer home in Albu-

querque. Judy's granddaughter, J.K.,<sup>2</sup> lived with Defendant and Judy in their home sporadically when J.K. was between the ages of six and eight years old. Years later, J.K. disclosed to her adoptive mother, Brenda, and later to Judy that when she was living with Defendant and Judy, Defendant touched her and would make her touch him inappropriately. Judy reported the conduct to the police, and Defendant was subsequently indicted by a grand jury on four counts of Criminal Sexual Penetration of a Minor (CSPM) in the first degree, contrary to NMSA 1978, Section 30-9-11(C) (1995, amended 2009).

{3} The CSPM charges arose out of one specific pattern of misconduct Defendant allegedly committed against J.K. J.K. testified that Defendant would often wake up during the night and walk over to the couch where J.K. was sleeping, kneel, insert his hand in J.K.'s underwear, and digitally penetrate her labia, touching her clitoris. J.K. could not recall how many times this occurred, describing it as "just a blur," but testified that it happened "more times than I can count on my hands." At around the same time that these acts allegedly occurred, Defendant also allegedly engaged in other sexual misconduct against J.K., including exposing himself to her and causing her to touch his penis. The State never charged these other acts because the relevant statute of limitations had run.

#### A. District Court Proceedings

{4} Prior to trial, Defendant filed a motion to preclude the admission of any evidence of prior, uncharged acts pursuant to Rule 11-404. Following a hearing, the district court entered an order noting the State's stipulation to Defendant's motion to exclude such evidence of prior, uncharged acts and stating that the State "agrees [that] if [a Rule 11-]404(B) notice is filed, it will be addressed prior to trial." Four days before trial, the State filed an unrelated notice of intent to introduce evidence of prior, uncharged acts pursuant to Rule 11-404(B). The notice referred solely to acts allegedly committed by Defendant against a child other than J.K. and indicated that the State only intended to introduce the evidence if Defendant claimed at trial that Judy filed a false report concerning the other child with authorities in a different county. The notice failed to mention anything regarding Defendant exposing himself to J.K. or causing her to touch his penis.

<sup>1</sup> This prior (2012) amendment applies to the district court proceedings in this case, all of which predate the rule's current amendment (in effect as of December 31, 2022). We omit inclusion of the otherwise-prescribed date parenthetical in this opinion's numerous subsequent references to the 2012 amendment of Rule 11-404.

<sup>2</sup> J.K. is not related by birth to Defendant.

{5} The Court addressed the State's notice with the parties on the third day of trial, following voir dire and prior to opening statements. Following a discussion of the State's notice, the State disclosed for the first time that it intended to introduce evidence of the prior, uncharged acts of exposure and coerced sexual touching allegedly committed by Defendant against J.K. The State argued that the two sets of allegations of sexual misconduct against Defendant, including the charged and uncharged acts, were part of "an ongoing situation of abuse." The district court took the matter under advisement, admonishing the State not to mention the conduct at issue during opening argument. The State complied.

{6} Following opening arguments and outside the presence of the jury, the district court asked the State to identify the nonpropensity purpose for which the evidence of prior, uncharged acts was being offered. The State argued that "lewd and lascivious conduct with the same victim is admissible under 404(B), if . . . it shows an ongoing pattern of behavior with that victim." Defendant responded that the evidence at issue was "pure and simple propensity evidence."

{7} The district court admitted the evidence of prior, uncharged acts under the lewd and lascivious exception, explaining as follows:

It appears from the case law that the evidence that the State is attempting to elicit can be admissible in this circumstance. It involves the same victim. It's during this same time frame. There is relevance with regard to the lewd and lascivious disposition towards the particular victim. It also corroborates the victim's testimony and gives some context to this behavior.

The court also found that Defendant had actual notice of the State's intention to introduce the evidence.

{8} At trial, in addition to providing testimony about the charged acts of CSPM, J.K. testified that, during daylight hours, Defendant would on occasion expose himself to her through an open robe and direct her hand to stroke his penis. These acts were separate and distinct from the charged conduct in this matter. Judy also testified that she once witnessed Defendant standing in a bedroom doorway, wearing only a robe and underwear and facing toward J.K. Finally, J.K.'s adoptive mother,

Brenda, testified that J.K. had described to her incidents in which Defendant would have J.K. retrieve candy that he had placed "by his private" while wearing only a robe. {9} The jury convicted Defendant of one count of CSPM.<sup>3</sup> He timely appealed his conviction to the Court of Appeals on numerous grounds, including that the district court erred by permitting the State to introduce propensity evidence in contravention of Rule 11-404(B).

#### **B. The Court of Appeals' Opinion**

{10} The Court of Appeals reversed the district court. *State v. Marquez*, 2021-NMCA-046, ¶ 1, 495 P.3d 1150. First, the Court "reaffirm[ed] that the so-called 'lewd and lascivious disposition' exception to the prohibition against propensity evidence is abolished in New Mexico." *Id.* The Court observed that criticism of the rationale for the exception was well established in New Mexico law, even in decisions affirming its continued viability. *Id.* ¶¶ 13-14. The Court reiterated its conclusion from prior caselaw that the continued recognition of the lewd and lascivious exception was "indefensible." *Id.* ¶ 15 (internal quotation marks and citation omitted). It rejected the State's contention that this Court expressed doubt about the rejection of the exception. *Id.* ¶ 18.

{11} The Court of Appeals then considered, pursuant to the right for any reason doctrine, whether the evidence of prior, uncharged acts was admissible for a purpose other than to prove Defendant's propensity to commit CSPM. *Id.* ¶¶ 22-30. Because it determined that intent was immaterial in that Defendant had altogether denied penetrating J.K., the Court concluded that the evidence was not admissible to prove intent. *Id.* ¶ 25. The Court also rejected the State's argument that the evidence of prior, uncharged acts was admissible to rebut Defendant's claim that Judy influenced J.K. to fabricate the accusation against Defendant. *Id.* ¶ 28. It concluded that the evidence of prior, uncharged acts is not admissible simply because it may, as would be the tendency of any uncharged evidence, corroborate the victim's testimony. *Id.* ¶¶ 19, 28.

{12} Finally, the Court of Appeals held that the error in admitting the evidence of prior, uncharged acts was not harmless because credibility was a central issue in the case and because of the emphasis that was placed on the "erroneously admitted evidence." *Id.* ¶ 34. The Court reversed Defendant's conviction and remanded to the district court for a new trial. *Id.* ¶ 36.

{13} We granted the State's petition for writ of certiorari to address two questions: (1) whether the Court of Appeals erred in holding that the evidence of prior, uncharged acts was inadmissible under the lewd and lascivious disposition exception to provide context to the victim's allegations or to rebut Defendant's claim of fabrication; and (2) whether the Court of Appeals erred in holding that the evidence was inadmissible to prove unlawfulness or intent.<sup>4</sup>

## **II. DISCUSSION**

### **A. Standard of Review**

{14} We review a district court's decision to admit evidence of other crimes, wrongs, or bad acts for an abuse of discretion. *See State v. Romero*, 2019-NMSC-007, ¶ 26, 435 P.3d 1231. "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citation omitted). "Additionally, a court abuses its discretion if it applies an incorrect standard, incorrect substantive law, or its discretionary decision is premised on a misapprehension of the law." *State v. Sena*, 2020-NMSC-011, ¶ 15, 470 P.3d 227 (internal quotation marks and citation omitted).

### **B. The Lewd and Lascivious Exception to Rule 11-404(B)(1) Is Abrogated in New Mexico**

#### **1. Common-law creation of the lewd and lascivious exception**

{15} At common law, New Mexico courts barred the admission of evidence of prior, uncharged acts to prove a defendant acted in conformity with a propensity to commit a criminal offense. *See State v. Nelson*, 1959-NMSC-023, ¶ 35, 65 N.M. 403, 338 P.2d 301; *State v. Velarde*, 1960-NMSC-077, ¶¶ 5-6, 67 N.M. 224, 354 P.2d 522; *State v. Mason*, 1968-NMCA-072, ¶¶ 14, 20, 79 N.M. 663, 448 P.2d 175. "[P]ropensity evidence is excluded precisely because its relevance fosters over-reliance upon it; it injects a prejudicial effect into the proceeding that substantially outweighs the benefits of whatever slight, probative value it may have." *State v. Phillips*, 2000-NMCA-028, ¶ 21, 128 N.M. 777, 999 P.2d 421. Further, it "creates the unnecessary risk that a jury will convict a defendant on the basis of former behavior and not the conduct charged." *Id.* A corollary of this common-law rule was that evidence of prior, uncharged acts offered for a nonpropensity purpose, such as proving

<sup>3</sup> After the State's case in chief, Defendant moved for a directed verdict on all counts. The State did not object to a directed verdict on counts two, three, and four because J.K. could not distinguish individual acts. Therefore, only one count of CSPM was submitted to the jury. In its closing argument the State informed the jury that Defendant was "charged for the entire course of conduct, not for each individual time he touched her, because [J.K.] couldn't distinguish" among them.

<sup>4</sup> The State does not challenge the Court of Appeals' determination that the error was not harmless.

the defendant's intent, motive, absence of mistake or accident, common scheme or plan, or identity, did not violate this prohibition. *State v. Bassett*, 1921-NMSC-016, ¶ 7, 26 N.M. 476, 194 P. 867; see also *State v. Lord*, 1938-NMSC-059, ¶ 32, 42 N.M. 638, 84 P.2d 80. In *Bassett*, this Court observed that, although the admissibility of evidence of prior, uncharged acts for nonpropensity purposes was frequently referred to as an "exception" to the rule barring such evidence, it was better characterized as "part of the rule itself" because a defendant should be "convicted, if at all, by evidence which shows that he is guilty of that offense alone." 1921-NMSC-016, ¶ 7.

{16} Simultaneously, a true exception to the bar on propensity evidence did arise under common law in cases alleging sexual offenses. In *State v. Whitener*, this Court held that evidence of prior, uncharged acts of alleged statutory rape against the complaining witness were admissible in the defendant's trial on a charge of statutory rape. 1918-NMSC-111, ¶ 4, 25 N.M. 20, 175 P. 870. The *Whitener* Court noted that the rule prohibiting the admission of evidence of an uncharged crime was "unquestioned" but held that the evidence in the case before it was admissible, "not for the purpose of proving a different offense, but to show the relation and familiarity of the parties, and as corroborative of the prosecutrix's testimony concerning the particular act relied upon for a conviction." *Id.* (internal quotation marks and citation omitted).

{17} Later, in *Minns*, our Court of Appeals held broadly that New Mexico's common-law rule barring evidence of prior, uncharged acts "is inapplicable" in cases alleging sexual misconduct where the uncharged acts constitute "similar sex offenses committed by [the] defendant with the prosecuting witness." 1969-NMCA-035, ¶ 13. "Such evidence," the Court concluded, "is admissible as showing a lewd and lascivious disposition of [the] defendant toward the prosecuting witness and as corroborating evidence." *Id.* Thus, at common law, evidence of prior, uncharged sexual misconduct was generally admissible against a defendant charged with a sexual offense, subject to relevance and prejudice determinations, as long as the evidence of these acts concerned the same victim as alleged in the charged offense. See *State v. Dodson*, 1960-NMSC-051, ¶ 12, 67

N.M. 146, 353 P.2d 364 (citing *Whitener*, 1918-NMSC-111, ¶ 4); cf. *Velarde*, 1960-NMSC-077, ¶¶ 3-6 (holding that evidence of sexual assault against a separate victim was inadmissible under the rule barring evidence of prior, uncharged acts); *Mason*, 1968-NMCA-072, ¶¶ 20-25, (same).

{18} There can be little doubt that, unlike the "so-called exceptions" for admitting other acts evidence for nonpropensity purposes, *Bassett*, 1921-NMSC-016, ¶ 7, the lewd and lascivious disposition exception has operated as a bona fide exception to the rule barring propensity evidence. This exception authorizes admissibility of such evidence on the grounds that "[e]vidence of [a] defendant's past sexual misconduct, similar in nature to the crime of which [the] defendant was indicted, is illustrative of a lewd and lascivious disposition of [the] defendant toward the victim." *State v. Scott*, 1991-NMCA-081, ¶ 8, 113 N.M. 525, 828 P.2d 958; see generally Basyle J. Tchividjian, *Predators & Propensity: The Proper Approach for Determining the Admissibility of Prior Bad Acts Evidence in Child Sexual Abuse Prosecutions*, 39 Am. J. Crim. L. 327, 337-38 (2012) (stating that, in jurisdictions adopting a lustful disposition exception, "[t]he jury is free to infer from the evidence of the collateral crime evidence that the defendant committed the charged sexual offense"). Were this principle not conceived as an exception to the rule against propensity evidence, it would surely violate the rule. "The purpose of [the rule excluding evidence of prior, uncharged acts] is to exclude the admission of character traits to prove that a defendant acted in accordance with those traits." *State v. Williams*, 1994-NMSC-050, ¶ 18, 117 N.M. 551, 874 P.2d 12, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 & n.6, 275 P.3d 110. Indeed, the word *disposition* is synonymous with "character." See *id.*; *disposition*, *Black's Law Dictionary* (11th ed. 2019).

{19} In 1973, New Mexico adopted the Rules of Evidence, NMSA 1953, §§ 20-4-101 to -1102 (1975) (Vol. 4, Repl., 1975 Pocket Supp.), incorporating the prohibition on propensity evidence, § 20-4-404(a) (1975), and its corollary provision, § 20-4-404(b) (1975), that bad acts evidence offered for a nonpropensity purpose is generally admissible. The 2012 amendment of Rule 11-404(B), applicable in this case, provides:

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; notice in a criminal case. This evidence may be admissible for another purpose, *such as* proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case, the prosecution must

(a) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial, and

(b) do so before trial—or during trial if the court, for good cause, excuses lack of pretrial notice.

*Id.* (emphasis added).<sup>5</sup> However, the Rules of Evidence contained no mention of the lewd and lascivious disposition exception.<sup>6</sup> As a result, whether the exception survived adoption of the Rules of Evidence was left to the consideration of our appellate courts.

{20} In a series of opinions, New Mexico appellate courts repeatedly affirmed the continued viability of the lewd and lascivious disposition exception, relying upon the authority of *Minns*. See *State v. Mankiller*, 1986-NMCA-053, ¶ 33, 104 N.M. 461, 722 P.2d 1183; *Scott*, 1991-NMCA-081, ¶ 8; *State v. Delgado*, 1991-NMCA-064, ¶ 23, 112 N.M. 335, 815 P.2d 631. In line with the limitation observed in the common-law exception, the Court in *State v. Lucero* declined to apply the lewd and lascivious disposition exception to cases involving victims other than the complaining witness. See 1992-NMCA-107, ¶ 13, 114 N.M. 489, 840 P.2d 1255.

## 2. Movement away from the lewd and lascivious exception

{21} Over time, however, many courts and legal scholars began to call into question the empirical bases purporting to justify the lewd and lascivious disposition exception. Edward J. Imwinkelried, *Uncharged Misconduct Evidence*,

<sup>5</sup> Reinforcing the 2012 amendment is its immediate successor, the 2022 (current) amendment of Rule 11-404(B), which additionally requires the prosecution intending to offer permitted-use evidence to "articulate . . . the reasoning that supports" the permitted use.

<sup>6</sup> By contrast, the Federal Rules of Evidence, upon which our Rules of Evidence were modeled, were amended in 1994 to expressly provide for the admissibility of evidence of other similar offenses in a sexual offense prosecution. See Fed. R. Evid. 413; *State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶ 92, 410 P.3d 201 (noting that the New Mexico Rules of Evidence promulgated in 1973 were "based almost wholly on the then-proposed Federal Rules of Evidence").

§ 4:16 (1984).<sup>7</sup> Additionally, our appellate courts began to express a growing skepticism about its continued viability. *Lucero*, 1992-NMCA-107, ¶ 15; *Williams*, 1994-NMSC-050, ¶ 36 (Montgomery, J., concurring) (agreeing with the *Lucero* Court's characterization of "evidence of a lewd and lascivious disposition as nothing more than a euphemism for character evidence" (internal quotation marks and citation omitted)).

{22} In *Lucero*, the Court of Appeals considered the continued viability of the exception in light of this emergent trend. 1992-NMCA-107, ¶¶ 11-15. The defendant in *Lucero* challenged the district court's admission of evidence that his girlfriend had refused to engage in oral and anal sex with him in a case alleging that he had committed sexual offenses against a minor child. *Id.* ¶¶ 1, 6-7. The Court recognized that "[s]ince the adoption of the Rules of Evidence in 1973, New Mexico courts have continued to recognize that proof of sexual conduct involving the same victim may be admitted." *Id.* ¶ 13. Citing scholarship criticizing courts' reliance upon "debatable assumptions about recidivism and problematic psychiatric theories," *id.* ¶ 11 (internal quotation marks and citation omitted), the Court then expressed skepticism about the exception's viability in light of New Mexico's enactment of Rule 11-404(B):

Legal scholars have criticized this trend [of admitting such evidence] and have, we believe correctly, pointed out that the "lewd disposition" exception is nothing more than a euphemism for the character evidence which Federal Rule of Evidence 404(b) and its state counterparts are designed to exclude.

*Lucero*, 1992-NMCA-107, ¶ 11 (citation omitted). However, the *Lucero* Court was ultimately not tasked with determining whether the exception survived adoption of the Rules of Evidence because the evidence at issue concerned the behavior of the defendant toward someone other than the alleged victim. *Id.* ¶¶ 12-13.

{23} In *State v. Landers*, the Court of Appeals directly addressed whether the lewd and lascivious disposition exception conflicted with Rule 11-404(B)'s bar on propensity evidence. 1992-NMCA-131, ¶¶ 22-25, 115 N.M. 514, 853 P.2d 1270. Although the Court recognized that the exception was not codified in New Mexico's Rules of Evidence, it determined that its purpose was not "inconsistent with the intent of the express exceptions contained in Rule 11-404(B)." *Id.* ¶¶ 22, 24. The Court reaffirmed that, while the exception might "be understood to describe 'propensity,'" it was nonetheless justified under the rule because evidence of prior, uncharged sexual offenses "can directly bolster the complaining witness's testimony by providing significant corroboration" and "plac[ing] the charged acts in context." *Id.* ¶¶ 23-25. {24} The holding in *Landers* was applied in *State v. Casaus*, 1996-NMCA-031, ¶¶ 26-27, 121 N.M. 481, 913 P.2d 669, the primary authority relied upon by the State in arguing before the district court for the admission of the evidence of prior, uncharged sexual misconduct at issue here. The *Casaus* Court echoed the *Landers* Court's conclusion that because "[t]he prior bad acts [evidence] . . . indicated Defendant's lewd and lascivious disposition toward the victim and placed the criminal charge in context," it was admissible. *Casaus*, 1996-NMCA-031, ¶ 27.

### 3. Rejection of the lewd and lascivious exception

{25} Nine years later, the Court of Appeals rejected this line of authority and disavowed the lewd and lascivious disposition exception. See *State v. Kerby I*, 2005-NMCA-106, ¶ 29, 138 N.M. 232, 118 P.3d 740. The defendant in *Kerby I* was charged with criminal sexual contact of a minor, based on allegations that he had touched the buttocks and vulva of the six-year old child of his then-wife. *Id.* ¶¶ 4, 6. Testifying for the defense, the defendant's mother stated that when she asked the defendant about the accusations by the alleged victim, the defendant denied improperly touching her, stating that "all

he had done was pat [the v]ictim good-night." *Id.* ¶ 9. On rebuttal, the State elicited testimony about a peephole in a small compartment in the master bedroom, through which it was possible to observe the victim as she bathed. *Id.* ¶¶ 10-15. The defendant's then-wife testified that she had seen the defendant in the compartment while her fourteen-year-old sister was in the bathroom. *Id.* ¶¶ 12-15.

{26} On appeal of his conviction, the defendant argued that the peephole evidence was improperly admitted. *Id.* ¶ 20. The Court of Appeals agreed, concluding that "the peephole was relevant to the issue of sexual gratification precisely because it allowed the jury to infer that sexual attraction to young female children was a trait of [the d]efendant's character." *Id.* ¶ 28. While it recognized that the *Landers* Court had previously affirmed the admissibility of evidence of prior sexual offenses against the complaining witness, the Court concluded that it had embraced an "'indefensible' distinction" drawn by previous courts between evidence demonstrating a lewd and lascivious disposition toward the complainant and evidence of such a disposition toward other victims. *Id.* ¶ 29 (citation omitted). It determined that this common-law exception, grounded in questionable assumptions, *id.* ¶ 27, was irreconcilable with the clear language of Rule 11-404(B):

Nothing in the express language of Rule 11-404 mandates the perpetuation of a common-law exception to the general proscription of propensity evidence; to the contrary, the lewd and lascivious disposition exception appears to flatly contradict the general proscription of propensity evidence found in Rule 11-404(A) and repeated in the first sentence of Rule 11-404(B).

*Kerby I*, 2005-NMCA-106, ¶ 28. The Court then "disavow[ed] *Landers*," holding that the lewd and lascivious disposition exception, even if restricted to other acts committed against the complaining witness, "is

<sup>7</sup> The rationale for making an exception to the propensity evidence rule in the case of sexual misconduct rested on two assumptions: (1) that sexual offenses are especially difficult to detect and (2) that sexual offenders are especially likely to reoffend. See Imwinkelried, *supra* § 4:16. Out of concern about detection, courts authorized the evidence to provide corroboration for the testimony of the complaining witness and to provide "context" for the alleged offense. See Whitener, 1918-NMSC-111, ¶ 4 (corroboration); *State v. Landers*, 1992-NMCA-131, ¶ 23, 115 N.M. 514, 853 P.2d 1270 (endorsing the view that, where a sexual offense is alleged against a member of a defendant's household, evidence of prior, uncharged sexual offenses against the victim may be necessary to explain "a seemingly isolated incident" that would otherwise seem "incredible" (internal quotation marks and citation omitted)). But see, *State v. Kerby I*, 2005-NMCA-106, ¶ 29, 138 N.M. 232, 118 P.3d 740 (disavowing the "distinction between evidence of a lewd and lascivious disposition toward the prosecuting witness . . . and . . . toward other victims"). The belief that recidivism among sexual offenders is especially high acted as a counterweight to the common-law principle that character evidence should be excluded because it is not particularly probative of whether a defendant committed the charged offense. *Lucero*, 1992-NMCA-107, ¶¶ 9, 11, 15. Both assumptions have been questioned by courts and legal scholars. Imwinkelried, *supra*, § 4:16 (noting that critics of the exception have observed that "many crimes are usually committed in a clandestine fashion" and that "most recent research largely discredits the old medical literature sanctioning the lay belief" that the rate of recidivism among sex offenders is especially high).



*A Word About*

## PRO BONO WORK

*in the State of New Mexico*

*By Brandon McIntyre*



**A**s an institution, civil and criminal justice is a vital societal groundwork. The pursuit of that justice through legal service and representation is highly fulfilling, and it provides a sense of reward for the legal community. Legal practice is an industry that encompasses a broad variety of ways to create paths for fair and effective legal recourse. As we kick off the new year, we would like to highlight a crucial pillar of justice: pro bono work and its significance in New Mexico.

Pro bono representation involves efforts to improve access to justice for those of limited economic means. This is especially important in New Mexico because New Mexico has been placed in the bottom ten states in the U.S. for median household income consistently for years. According to World Population Review, New Mexico has the sixth lowest median household income as of 2024, at about \$54,000. Although standard of living varies by state, the conclusion is that New Mexico has a comparably large population of residents of limited economic means. This translates to the need for pro bono legal services to New Mexicans who are not able to access other forms of legal representation.

New Mexico's various legal institutions have been doing their part in encouraging pro bono work and facilitating a rich atmosphere for providing pro bono services. For example, the New Mexico Commission on Access to Justice, established by the New Mexico Supreme Court in 2004, is very committed in its mission to serve New Mexicans of modest means. In 2006, the Access to Justice Commission devised the Ten Step Pro Bono plan, which was significant in increasing pro bono work by the membership. The Ten Step Pro Bono plan, whose highlights can be viewed at <https://accesstojustice.nmcourts.gov/access-to-justice-program/our-work/past-accomplishments/pro-bono-work/>, was multi-faceted and demonstrated the Supreme Court's commitment to pro bono legal services to New Mexicans of limited economic means.

Additionally, the State Bar of New Mexico and New Mexico State Bar Foundation have made multiple strides in the last several years to successfully promote pro bono services. The New Mexico State Bar Foundation has multiple programs enabling attorneys to do pro bono work. The American Bar Association's Free Legal Answers, for instance, gives quick to attorneys providing virtual legal assistance to qualifying users. The Modest Means Helpline and the Legal Resources for the Elderly Program, also hosted through the Bar Foundation, are both integral channels through which attorneys can engage in pro bono work.

In 2023, the State Bar of New Mexico met a new record by awarding \$1,200,000 in its provision of grant funds to nine civil legal service organizations that are conduits for pro bono legal services in New Mexico. The organizations given awards were Disability Rights of New Mexico, Enlace Comunitario, Las Americas Immigrant Advocacy Center, Native American Disability Law Center, New Mexico Environmental Law Center, New Mexico Center on Law and Poverty,

New Mexico Immigrant Law Center, New Mexico Legal Aid and Pegasus Legal Services for Children. Most, if not all, of these organizations utilize pro bono attorneys in their efforts to increase access to justice.

Even with all these achievements, there are still challenges ahead to increase pro bono efforts. In the years following COVID-19, many attorneys retired, and the admission numbers of new attorneys lowered. Compared to 164 attorneys who joined the State Bar of New Mexico's membership in 2019, there were 148 who joined in 2022. Moreover, in 2023, the State Bar of New Mexico's total membership fell for the first time in years, which will surely negatively impact volunteerism in pro bono work.

A growth in caseloads for attorneys adds another barrier to meeting goals for increasing pro bono work. New Mexico had the fourth highest rate of divorce in 2022, according to statistics cited on Divorce.com. This equates to a higher number of clients seeking representation in resolving family-related legal dilemmas. Combined with a falling number of attorneys in-state, this greater caseload provides another barrier to effectively meeting the need for pro bono services across New Mexico.

Although these challenges remain, legal professionals can support pro bono legal service efforts by providing monetary donations to civil legal service providers. Donations can be made to New Mexico's civil legal service providers, found in the New Mexico Civil Legal Service Provider Directory on page 5. These legal services providers give the underrepresented much needed access to justice across different areas of law. While pro bono work is highly encouraged, donations can be made in lieu of pro bono services, which aids in the pursuit of justice for New Mexicans.

A rule change in 2023 now allows attorneys to get 1.0 Self-Study CLE Credit for pro bono work as of 2024. In specific, for every three hours of pro bono work, attorneys can receive 1.0 CLE Self-Study credit for up to 4.0 total credits per year. This adds another level of reward for attorneys making time for pro bono work.

2024 will be a year of promoting and encouraging pro bono legal services in New Mexico. Together, the New Mexico Supreme Court, Commission on Access to Justice, the State Bar of New Mexico and many other legal entities are collaborating to ensure access to the tools and information listed above.

Through the State Bar's communications channels, pro bono and volunteer opportunities will be advertised more thoroughly. One of the biggest additions will be the Pro Bono & Volunteer Opportunities Calendar, which will first debut in this issue of the Bar Bulletin and will thereafter be visible through the State Bar's other communication channels, including eNews, [www.sbnm.org](http://www.sbnm.org) and the State Bar's social media channels. In addition to this calendar, the State Bar will also advertise these opportunities and source and publish content from outside legal entities, highlighting pro bono work in the state and bringing attention to ways in which attorneys can increase access to justice.

Pro bono legal services are some of the most rewarding that attorneys can provide. Charitably representing and providing legal support to the underserved is an endeavor that yields a sense of fulfillment that other forms of legal representation may not. In New Mexico, where income levels are on the lower end of the scale nationally, pro bono services are especially important. From bustling areas such as Bernalillo County to more rural, many New Mexicans need these services, and thankfully, there are numerous tools in support of that endeavor.

There is more work to be done and challenges to overcome. As we move forward in 2024 and beyond, New Mexico's central legal pillars are firmly united in their collaboration to enriching the legal landscape with resources that provide a flourishing environment for pro bono services and representation. ■



# Rule 16-601: Voluntary Pro Bono Publico Service

*Adopted by the New Mexico Supreme Court Order No. 08-8300-005, effective March 15, 2008*

The legal profession has a responsibility to provide legal services to those unable to pay. In fulfilling this responsibility, a lawyer should aspire to:

- A. provide legal services without fee or expectation of fee to:
  - (1) persons of limited means; or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; or
- B. provide legal services at:
  - (1) a substantially reduced fee to persons of limited means; or
  - (2) no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; or
- C. participate in activities for improving the law, the legal system or the legal profession; or
- D. contribute financial support to organizations that provide legal services to persons of limited means or promote improvement of the law, the legal system or the legal profession.

N. M. R. Prof'l. Cond. 16-601

As amended, effective 1/1/1997; as amended by Supreme Court Order 08-8300-05, effective 3/15/2008.

## COMMITTEE COMMENTARY

Every lawyer, regardless of professional prominence or professional work load, should aspire to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The New Mexico Supreme Court has adopted Rule 24-108 NMRA, which sets forth minimum pro bono goals and reporting requirements.

Subparagraphs (1) and (2) of Paragraph A recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Such services consist of the full range of legal activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

Eligible persons are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but who, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations, such as, homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

Because service should be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of Subparagraphs (1) and (2) of Paragraph A. Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

The aspirational standard of Rule 16-601 NMRA of the Rules of Professional Conduct can be met in a variety of other ways as set forth in Paragraphs B, C and D of the rule.

Subparagraph (1) of Paragraph B covers instances in which the lawyer agrees to and receives a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are examples.

Subparagraph (2) of Paragraph B includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this subparagraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

Paragraph C recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a examples of the many activities that fall within this paragraph.

There may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations within the contemplation of Rule 16-601 NMRA of the Rules of Professional Conduct. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by Rule 16-601 NMRA of the Rules of Professional Conduct.

The responsibility set forth in Rule 16-601 NMRA of the Rules of Professional Conduct is not intended to be enforced through disciplinary process.

# Rule 24-108: Pro Bono Publico Service

*Approved by the New Mexico Supreme Court Jan. 22, 2008*

**A. Professional Responsibility.** In attempting to meet the professional responsibility established in Rule 16-601 of the Rules of Professional Conduct, a lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. The substantial majority of the fifty (50) hours of service should be provided as indicated in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct. Additional services may be provided as indicated in Paragraphs B or C of Rule 16-601 of the Rules of Professional Conduct.

**B. Financial Contribution.** Alternatively or in addition to the service provided under Paragraph A of this rule, a lawyer may fulfill this professional responsibility by:

- (1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or
- (2) provide a combination of pro bono hours and a financial contribution as suggested in this table:

Pro Bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contributions	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney Discretion

**C. Pro Bono Certification.** Each lawyer of the bar shall annually certify whether the lawyer has satisfied the lawyer's professional responsibility to provide pro bono services to the poor. Each lawyer shall certify this information through a form that is made a part of the lawyer's annual membership fees statement that shall require the lawyer to report the following information:

- (1) the number of hours the lawyer dedicated to pro bono legal services, and
- (2) if the lawyer has satisfied the obligation by contribution or part contribution, the amount of that contribution.

## COMMENTARY

The provisions of Rule 24-108 of the Rules Governing the New Mexico Bar are an affirmation of the lawyer's professional responsibility, as provided in Rule 16-601 of the Rules of Professional Conduct and are not mandatory nor do they constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Paragraph C of Rule 24-108 of the Rules Governing the New Mexico Bar are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct, to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in the variety of ways as set forth in Paragraphs B, C and D of Rule 16-601 of the Rules of Professional Conduct. Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct. Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in Paragraphs B, C and D of Rule 16-601 of the Rules of Professional Conduct.

Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill their pro bono responsibilities in their own state or provide monetary contributions to organizations providing assistance in New Mexico.

To facilitate the goals of this rule the Supreme Court adopted an order on April 28, 2006, establishing district court pro bono committees in each judicial district. Under the Pro Bono Plan adopted by the Court, a local pro bono committee convened by the chief judge and comprised of local lawyers, judges, legal service providers and other interested participants shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be recommended by the Supreme Court's Access to Justice Commission and established by further administrative order of the Supreme Court.



# New Mexico Civil Legal Service Providers

The New Mexico Access to Justice Commission works collaboratively with civil legal service providers in New Mexico. We are including information about some of these providers for State Bar of New Mexico members to share with those in their communities who may need civil legal assistance or information about legal resources. The civil legal service providers help low-income New Mexicans meet basic human needs such as health, safety, education, housing, child custody and financial stability. The State Bar of New Mexico is dedicated to helping these civil legal service providers execute their missions with the highest degree of effectiveness to best serve New Mexicans

## General



New Mexico  
State Bar Foundation  
Modest Means Helpline

### Modest Means Helpline

The Modest Means Helpline (MMH) is a free legal helpline and pro bono referral service for New Mexico residents of modest means. MMH offers assistance in most civil legal matters. MMH provides legal advice in both English and Spanish.

**Service area: Statewide**

**Tel: 505-797-6013 or 888-857-9935 • Website: [www.sbnm.org/MMH](http://www.sbnm.org/MMH)**



### New Mexico Legal Aid

Helps low-income families secure and maintain public benefits, affordable housing, safety for domestic violence victims and their children and protection from consumer fraud. Services include a statewide legal helpline, legal representation, outreach, education, training, and pro se clinics.

**Service Area: Statewide**

**Tel: 866-416-1922 • Website: [newmexicolegalaid.org](http://newmexicolegalaid.org)**



### NM Center on Law and Poverty

Systemic advocacy & related legal services to improve living conditions, increase opportunities, and protect the rights of people living in poverty. The Center provides advocacy, education and litigation across a broad range of issues including healthcare, public benefits, housing, fair lending, workers' rights, and public education.

**Service area: Statewide**

**Tel: 505-255-2840 • Website: [nmpovertylaw.org](http://nmpovertylaw.org)**



### New Mexico Innocence and Justice Project

The New Mexico Innocence and Justice Project is a 501(c)(3) non-profit organization whose primary mission is to provide assistance and referrals to people wrongfully convicted in our state. NM IJP strives to ensure that the criminal justice system remains accountable to our Constitution and its promise to all citizens of due process and equal protection.

**Service area: Statewide**

**Website: [www.nmijp.org](http://www.nmijp.org)**

## Children & Youth



### **Pegasus Legal Services for Children**

Services to at-risk children & youth including guardianship, homelessness, education, & teen parents.

**Service Area: Statewide**

**Tel: 505-244-1101 • Website: [pegasuslaw.org](http://pegasuslaw.org)**

## Disabilities



### **Disability Rights New Mexico**

Individual and system advocacy for persons with disabilities to resolve disability rights problems; advocacy and training to promote, protect and expand the rights of persons with disabilities.

**Service Area: Statewide**

**Tel: 505-256-3100 • Website: [drnm.org](http://drnm.org)**

## Homeowners



### **United South Broadway Fair Lending Center**

Direct legal representation and educational workshops for homeowners at risk of losing their homes to foreclosure. Consumer education and advocacy on fair housing and fair lending issues.

**Service Area: Statewide**

**Tel: 505-764-8867 • Website: [unitedsouthbroadway.org](http://unitedsouthbroadway.org)**

## Immigrants



### **Catholic Charities**

- **Center for Immigration and Citizenship Legal Assistance:**

Low cost immigration legal services, including family-based petitions, DACA, and citizenship.

**Tel: 505-724-4600 • Website: <https://catholiccharitiesdlc.org>**

- **Domestic Violence and Sexual Assault Survivor Immigration Services (DVSASIS):**

Free representation for immigrant victims of domestic violence, sexual assault, and child sexual abuse. **Service Area: Albuquerque metro**

**Tel: 505-724-4649 • Website: [ccasnm.org](http://ccasnm.org)**



## Catholic Charities of Southern NM

- **Immigrants**

Full service bi-lingual provider of immigration legal services including asylum cases, defense of deportation, family-based petitions, DACA, and citizenship. We charge modest fees for legal services and many of our clients qualify for pro bono services.

**Service Area: Ten (10) southern counties of the State of New Mexico**

**Tel: 575-527-0500 • Website: <https://catholiccharitiesdlc.org>**

- **Victims of Domestic Violence/Sexual Assault**

In partnership with La Casa, Inc., we provide free bi-lingual legal assistance to victims of crimes including domestic violence and sexual assault. Expertise in U-Visa and VAWA petitions as well as assisting victims of human trafficking.

**Service Area: Ten (10) southern counties of the State of New Mexico**

**Tel: 575-527-0500**



## NM Immigrant Law Center

Legal assistance to asylum seekers, unaccompanied minors, and low-income immigrants facing separation due to deportation.

**Service Area: Statewide**

**Tel: 505-247-1023 • Website: [nmilc.org](http://nmilc.org)**

## Native Americans



## DNA People's Legal Services

DNA – People's Legal Services serves low income individuals across the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of New Mexico, Northern Arizona, and Southern Utah. Office Locations: Window Rock Arizona, Chinle Arizona, Hopi Arizona, Tuba City Arizona, Flagstaff Arizona, Farmington New Mexico.

**Toll Free Telephone Intake: 833-362-1102 • Farmington Tel: 505-325-8886**

**Website: [www.dnalegalservices.org](http://www.dnalegalservices.org)**



## Native American Disability Law Center

Advocates for legal rights of Native Americans with disabilities.

**Service Area: Four Corners**

**Tel: 800-862-7271 • Website: [natedisabilitylaw.org](http://natedisabilitylaw.org)**

## Seniors



## Senior Citizens' Law Office

Civil legal services, including direct representation, systemic advocacy, outreach and education, for persons aged 60 and older in Bernalillo County, and persons aged 60 and older with income restrictions in Torrance, Valencia, and Sandoval Counties.

**Service Area: Central New Mexico**

**Tel: 505-265-2300 • Website: [sclonm.org](http://sclonm.org)**



## Legal Resources for the Elderly Program (LREP)

LREP is a free legal helpline for New Mexico residents age 55 and older. LREP has no income restrictions and offers assistance in most civil legal matters. If a problem cannot be resolved through the helpline, referrals to private attorneys (pro bono, reduced-fee or full-fee basis) may be provided.

**Service area: Statewide**

**Phone: 505-797-6005 • 1-800-876-6657**

**Website: [www.sbnm.org/LREP](http://www.sbnm.org/LREP)**

## Victims of Domestic Violence



### Enlace Comunitario

Provides civil legal services to victims of domestic violence in Central NM, including: legal representation for domestic matters and orders of protection; and outreach and education. All individuals in need of domestic violence services are welcome, however because of the dire need for bilingual services (Spanish/English), Latino immigrants are prioritized.

**Service Area: Albuquerque metro**

**Tel: 505-246-8972 • Website: [enlacenm.org](http://enlacenm.org)**

## Women & Girls



### Southwest Women's Law Center

Supports women and girls in New Mexico through legislative advocacy, pro bono engagement, legal research and reporting and coalition building.

**Service Area: Statewide**

**Tel: 505-244-0502 • Website: [swwomenslaw.org](http://swwomenslaw.org)**



### KWH Law Center

From its offices located in Albuquerque, KWH Law Center for Social Justice and Change uses legal assistance, advocacy, administrative and other remedies to protect and support the legal rights of women, children, families with children.

**Service Area: Statewide**

**Tel: 505-205-0868 • [www.kwhlawcenter.org](http://www.kwhlawcenter.org)**

For full list of Civil Legal Service Providers and additional resources, visit [https://www.sbnm.org/CivilLegalServiceProviders\\_And\\_OtherResources](https://www.sbnm.org/CivilLegalServiceProviders_And_OtherResources).





# Pro Bono & Volunteer Opportunities CALENDAR

## January

24 **Consumer Debt/Bankruptcy Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6094 to register  
Location: Virtual

25 **Legal Teleclinic**  
Virtual  
New Mexico Legal Aid  
[bit.ly/NMLALegalFairSignUp](http://bit.ly/NMLALegalFairSignUp)  
Location: Virtual

26 **Asylum Initial Application and Work Permit Pro Se Clinic**  
In-Person  
New Mexico Immigrant Law Center  
New Mexico Legal Aid  
[www.nmilc.org/asylum](http://www.nmilc.org/asylum)  
Location: Announced prior to clinic

## February

7 **Citizenship & Residency Workshop**  
In-Person  
New Mexico Immigrant Law Center  
[www.nmilc.org/citizenship](http://www.nmilc.org/citizenship)  
Location: El Centro de Igualdad y Derechos

9 **Family Law Legal Fair**  
In-Person  
New Mexico Legal Aid  
[bit.ly/NMLALegalFairSignUp](http://bit.ly/NMLALegalFairSignUp)  
Location: Grants - Grants District Courthouse

21 **Citizenship & Residency Workshop**  
In-Person  
New Mexico Immigrant Law Center  
[www.nmilc.org/citizenship](http://www.nmilc.org/citizenship)  
Location: El Centro de Igualdad y Derechos

7 **Divorce Options Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6022 to register  
Location: Virtual

13 **Legal Resources for the Elderly Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6005  
or 1-800-876-6657 to register  
Location: Virtual

21 **Consumer Debt/Bankruptcy Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6094 to register  
Location: Virtual

## March

1 **Law-La-Palooza**  
In-Person  
New Mexico Legal Aid  
[bit.ly/NMLALegalFairSignUp](http://bit.ly/NMLALegalFairSignUp)  
Location: Albuquerque

7 **Economic Justice Workshop**  
In-Person/Remote  
New Mexico Immigrant Law Center  
[www.nmilc.org/economic-justice](http://www.nmilc.org/economic-justice)  
Location: NMILC

16 **Legal Resources for the Elderly Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6005  
or 1-800-876-6657 to register  
Location: Virtual

6 **Citizenship & Residency Workshop**  
In-Person  
New Mexico Immigrant Law Center  
[www.nmilc.org/citizenship](http://www.nmilc.org/citizenship)  
Location: El Centro de Igualdad y Derechos

8 **Legal Fair**  
In-Person  
New Mexico Legal Aid  
[bit.ly/NMLALegalFairSignUp](http://bit.ly/NMLALegalFairSignUp)  
Location: Roswell

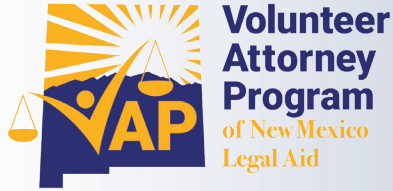
20 **Citizenship & Residency Workshop**  
In-Person  
New Mexico Immigrant Law Center  
[www.nmilc.org/citizenship](http://www.nmilc.org/citizenship)  
Location: El Centro de Igualdad y Derechos

6 **Divorce Options Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6022 to register  
Location: Virtual

14 **Asylum Initial Application and Work Permit Pro Se Clinic**  
In-Person  
New Mexico Immigrant Law Center  
New Mexico Legal Aid  
[www.nmilc.org/asylum](http://www.nmilc.org/asylum)  
Location: Announced prior to clinic

20 **Consumer Debt/Bankruptcy Workshop**  
Virtual  
State Bar of New Mexico  
Call 505-797-6094 to register  
Location: Virtual

Listings in the *Bar Bulletin* Pro Bono & Volunteer Opportunities Calendar are gathered from civil legal service organization submissions and from information pertaining to the New Mexico State Bar Foundation's upcoming events. All pro bono and volunteer opportunities conducted by civil legal service organizations can be listed free of charge. Send submissions to [probono@sbnm.org](mailto:probono@sbnm.org). Include the opportunity's title, location/format, date, provider and registration instructions.



## VAP Pro Bono Collaborative ECHO CLE Sessions

The Volunteer Attorney Program (VAP) of New Mexico Legal Aid offers FREE CLE sessions through its Pro Bono Collaborative ECHO project.

The **VAP Pro Bono Collaborative ECHO** is a resource and learning tool that seeks to expand the knowledge and expertise of volunteer attorneys across the state through tele-mentorship, while building a collaborative community of practice focused on the legal needs of low-income rural New Mexicans. Each interactive CLE session offers a Topic Presentation and a Case Study for discussion. *By joining the VAP Pro Bono Collaborative ECHO, you will have full access to all session material and resources and you consent to receive pro bono opportunities for consideration.*

**To Join the Pro Bono Collaborative ECHO and attend upcoming sessions:**

**SIGN-UP HERE**



Or visit [www.cognitofirms.com/VAPECHO/VAPProBonoCollaborativeECHO](http://www.cognitofirms.com/VAPECHO/VAPProBonoCollaborativeECHO)

### Upcoming 2024 Sessions

#### Empowering Families/Clients: An Income Tax Perspective

(1.0 General CLE Credit per session) **Presented by:** *Grace Allison, Staff Attorney and Former Director, New Mexico Legal Aid Low Income Taxpayer Clinic*

3-part series held from 11:30 a.m. to 1 p.m. (MT)

- **Thursday, January 25, 2024** – Part 1: Helping Low- & Middle-Income Families Get Their Money From the IRS
- **Thursday, February 22, 2024** – Part 2: Understanding Income Tax Benefits for Low- & Middle-Income Families
- **Thursday, March 28, 2024** – Part 3: Allocating Income Tax Benefits Between Parents in a Split-Up

#### Adult Guardianship 101

(1.0 General CLE Credit per session) **Presented by:** *Patricia M. Galindo, Esq., Supervising Attorney, Administrative Office of the Courts*

4-part series held from 3:30 to 5 p.m. (MT)

- **Tuesday, February 20, 2024** – Part 1: Petition to Hearing
- **Tuesday, March 5, 2024** – Part 2: Appointing 3 Professionals
- **Tuesday, March 19, 2024** – Part 3: Dealing with Family Conflict
- **Tuesday, April 19, 2024** – Part 4: Filing of Professionals' Reports

#### Foreclosure Defense and Alternatives

(1.0 General CLE Credit) **Presented by:** *Penelope Quintero, Esq. – Associate Attorney, O'Brien & Padilla, P.C.*

- **Thursday, June 6, 2024** from 11:30 a.m. to 1 p.m. (MT)

Lend Us  
Your  
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## Volunteering for a Legal Clinic or Pro Bono Case is Easier than Ever

*This article was originally published in Bar Bulletin Issue No. 9 in Volume 62, distributed May 11, 2022.*

**Judge Erin B. O’Connell**

*Co-chair of the New Mexico Access to Justice Commission and  
the Second Judicial District Court Pro Bono Committee*

**Judge Jane C. Levy**

*Co-chair of the Second Judicial District Court Pro Bono Committee*

*You may not wear a cape but you have  
a superpower—you are a lawyer.*

For countless New Mexicans who need help with their civil case, the lightest touch by you is equivalent to being rescued by Batman, Robin, and Batwoman all at the same time.

If you haven’t had the chance to consult at a free legal clinic or to take a case pro bono this year, we can help. Does any of this sound familiar to you?

- I don’t have much time to commit to pro bono representation.
- I don’t feel qualified in the areas where pro bono help is needed most.
- I have no training or experience in the areas where pro bono help is needed.
- I am concerned about legal liability or having to rely on my professional liability insurance.
- I live out of state so can’t attend a clinic or otherwise help.

If one or more of these thoughts have been barriers for you, we’ve got you covered. “In times of crisis, the wise build bridges while the foolish build barriers.” - T’Challa, Black Panther.

*I don’t have much time to commit to pro bono representation. No problem!*

Statewide monthly legal clinics are only four hours long, and you can volunteer for all or part of that time. The Pro Bono Committees of your Judicial Districts and Legal Aid now facilitate free legal clinics that are monthly, virtual and statewide. The statewide monthly legal clinics are every third Thursday of the month from 1–4 (MT) p.m.

Here’s how it works: You sign up with New Mexico Legal Aid’s Volunteer Attorney Program (VAP) to help in a given month and you inform Legal Aid of your practice areas. Legal Aid will match you with clients for a consultation and will send you a case intake for each client. You will meet with each client virtually by phone or video. Clients are told to be available in a certain timeframe, for example, between 1–2 p.m. (MT), and each assigned client will wait for you to contact them to discuss their legal problem. Call or email Jaime Mayfield at Legal Aid at 505-768-6117, or JaimeM@nmlegalaid.org, to sign up to assist at a monthly clinic, or to be put on the list of potentially available attorneys to take a case pro bono in the areas you specify.

*I don't feel qualified to help in civil or family law cases. You are qualified!*

We need assistance in numerous areas and are confident you can help. When you sign up as a volunteer attorney you will be asked to identify what areas of law you work in and clients will be selected and directed to you based on that information. You will have the chance to look at the client's intake sheet before you "meet" with them by phone or video, and therefore you'll have the chance to identify any conflicts beforehand.

*I have no training or experience in areas where pro bono help is needed.*

*Don't worry, free CLEs are available!*

We have worked with Legal Aid and other organizations to conduct free CLEs in discreet areas of law that will give you the tools and information you need to take a pro bono case or to expand the legal areas in which you can provide consultations at our clinics. For example, we can help you find a 1-hour CLE to prepare you to handle cases involving expungement, eviction, probate, preparation of simple wills, domestic violence, and debt and money due cases. There are many kinds of cases that are relatively short-lived, or in which you can enter a limited appearance and help in a finite way, such as in handling an eviction case, debt and money due case, a domestic violence hearing on a temporary restraining order, or preparing a simple will or an expungement petition. There have been free CLEs to train you in all of these areas, and we are working to hold them again. Legal Aid is hosting a free CLE on expungement on June 7 from noon-1 (MT) p.m. Stay tuned for registration information and additional details.

*I am concerned about legal liability or having to rely on my professional liability insurance. You worry too much, we've got you covered (by malpractice insurance)!*

When you attend a legal clinic or take a direct representation case through Legal Aid's VAP, your professional liability coverage is covered. Legal Aid has a professional malpractice liability policy that covers volunteer attorneys working through Legal Aid's VAP.

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*You Will Be Rewarded.*

The New Mexico Bar believes that, "With great power comes great responsibility." – Uncle Ben, Spiderman. Your work here counts towards your annual pro bono service requirement. Rule 24-108 NMRA. In addition, if you didn't know, you can now receive self-study CLE credit for your pro bono service through an accredited provider of pro bono CLE credit. Rule 18-204(C)(1) NMRA.

The Access to Justice Commission, Second Judicial Pro Bono Committee and Legal Aid have built a bridge to expand legal-representation opportunities for attorneys over the course of the last two years, we welcome you to join us. Don't let your superpower lie dormant, with a minimum of time and energy your gifts will be known throughout the Land of Enchantment.

nothing more than a euphemism for the propensity evidence that Rule 11-404 was designed to exclude.” *Id.* ¶ 29.

{27} We agree. Whether applied to conduct perpetrated against the complaining witness or someone else, the lewd and lascivious exception authorizes the admissibility of evidence for the express purpose of demonstrating a defendant’s propensity to commit the charged offense. And this is plainly prohibited under a modern understanding of Rule 11-404(B)(1). Nor does the emphasis placed by prior courts on “corroboration” or “context” alter this analysis. See *Whitener*, 1918-NMSC-111, ¶¶ 4, 8 (“corroboration”); *Landers*, 1992-NMCA-131, ¶¶ 23, 25 (“corroboration” and “context”). While evidence of other bad acts, committed against the complaining witness or against others, may only corroborate the testimony of a complaining witness or overcome a presumption that an allegation of sexual abuse is inexplicable, such evidence invites precisely the inferential leap that Rule 11-404(B)(1) proscribes. See *Marquez*, 2021-NMCA-046, ¶ 19.

{28} The State contends that, in *State v. Kerby*, (*Kerby II*), 2007-NMSC-014, 141 N.M. 413, 156 P.3d 704, this Court overruled the Court of Appeals’ rejection of the lewd and lascivious disposition exception. We disagree. We vacated the defendant’s convictions based on the statute of limitations in *Kerby II*, 2007-NMSC-014, ¶ 3. Although our holding was dispositive, we wrote that we additionally were “compelled to address briefly the admissibility of the peephole evidence under Rule 11-404(B).” *Id.* ¶ 25. Considering the peephole evidence in light of testimony provided at trial by the defendant’s mother that the defendant claimed that any contact with the victim was akin to “a fatherly pat on the bottom,” we determined that the peephole evidence would be probative of the defendant’s sexual intent. *Id.* ¶ 26; see also Rule 11-404(B)(2) (allowing that evidence of prior, uncharged acts “may be admissible for another purpose, such as proving . . . intent”). “Thus,” we concluded that “evidence of the peephole is precisely the type of *non-propensity evidence* that Rule 11-404(B) allows.” *Kerby II*, 2007-NMSC-014, ¶ 26 (emphasis added).

{29} Our conclusion in *Kerby II* on the challenged peephole evidence was limited to the Court of Appeals’ determination in *Kerby I* that the peephole evidence was not otherwise admissible under Rule 11-404(B) to prove unlawful intent. *Kerby II*, 2007-NMSC-014, ¶ 26. Our analysis proceeded solely under the statutory provision establishing permissible uses for evidence

of prior, uncharged acts, Rule 11-404(B)(2); we left undisturbed the Court of Appeals’ rejection of the lewd and lascivious disposition exception to Rule 11-404(B)(1). *Id.* ¶¶ 25-26.

{30} We now address the exception directly and hold that the lewd and lascivious disposition exception to the prohibition on evidence of prior, uncharged acts is abrogated in New Mexico. We therefore affirm the Court of Appeals’ determination that the trial court erred in admitting the uncharged misconduct evidence in this case under that exception. *Marquez*, 2021-NMCA-046, ¶¶ 1, 21.

**C. Whether the Evidence of Uncharged Conduct Is Admissible for a Nonpropensity Purpose Is a Question for the District Court on Remand**

{31} The State next asks us to conclude that the evidence at issue was otherwise admissible under Rule 11-404(B)(2) to prove a nonpropensity purpose. Because the district court admitted the evidence at issue under the lewd and lascivious disposition exception and did not otherwise address admissibility under Rule 11-404(B)(2), the State essentially asks us to affirm the district court pursuant to the right for any reason doctrine. See *State v. Ruiz*, 2007-NMCA-014, ¶ 38, 141 N.M. 53, 150 P.3d 1003 (“acknowledg[ing] that the district court appear[ed] to have admitted the statements on a different legal theory” than the Court of Appeals held to be admissible but noting the general rule that the Court “will uphold the decision of a district court if it is right for any reason”). Defendant argues that it would be unfair to apply the doctrine in this case because, after the evidence was admitted under the exception, “the jury was told to rely on this evidence for improper purposes in closing arguments.”

{32} An appellate court may affirm a district court’s decision if it is right for any reason. *State v. Wilson*, 1998-NMCA-084, ¶ 17, 125 N.M. 390, 962 P.2d 636. However, we will affirm the district court as right for any reason only “so long as the circumstances do not make it unfair to the appellant to affirm.” *State v. Serna*, 2018-NMCA-074, ¶ 29, 429 P.3d 1283 (internal quotation marks and citation omitted). “[I]t would be unfair to an appellant to affirm on a fact-dependent ground not raised below” because it is improper for an appellate court to engage in fact-finding and “because the appellant [would have] lacked an opportunity to present admissible evidence relating to the fact.” *State v. Franks*, 1994-NMCA-097, ¶ 8, 119 N.M. 174, 889 P.2d 209. Accordingly, “[a]ppellate courts

usually apply the right for any reason basis of affirmance to strictly legal questions.” *Wilson*, 1998-NMCA-084, ¶ 17. Moreover, it is improper for an appellate court to apply the doctrine to unpreserved arguments where the party opposing its application “had no opportunity in the district court to respond to the unasserted argument.” *Freeman v. Fairchild*, 2015-NMCA-001, ¶ 29, 340 P.3d 610, *rev’d on other grounds*, 2018-NMSC-023, ¶¶ 29, 36, 416 P.3d 264. {33} In this case, the State filed a Rule 11-404(B) notice of its intention to introduce evidence of prior, uncharged acts by Defendant, but the State’s notice was unrelated to the evidence at issue in this case and instead solely concerned allegations against a child other than J.K. As we have explained, evidence concerning a different victim could not have been admitted pursuant to the lewd and lascivious disposition exception under any interpretation of New Mexico law. As a result, the State failed to apprise either the district court or Defendant that the State might seek to invoke the exception at trial. Although the district court found that Defendant had actual notice of the allegations of uncharged misconduct against J.K. through pretrial interviews, “[d]isclosing the information in discovery rather than in response to the specific rule misses the point of the rule, which is to inform the defendant of crimes the state intends to introduce and to allow the defendant time to respond by motion in limine or otherwise.” *State v. Acosta*, 2016-NMCA-003, ¶ 19, 363 P.3d 1240 (text only) (citation omitted).<sup>8</sup>

{34} Moreover, even if Defendant was on actual notice that there were other allegations of his prior, uncharged acts directed against J.K., the State’s failure to provide notice pursuant to Rule 11-404(B)(2) would have suggested to Defendant that the State would not seek to introduce that evidence at trial. See *State v. Gomez*, 2003-NMSC-012, ¶ 7, 133 N.M. 763, 70 P.3d 753 (declining to apply the right for any reason doctrine where failure of appellant to raise the issue at trial was the result of its introduction on a dispositive motion). The lack of pretrial notice also meant that the State failed to offer any authority for its position that the evidence was admissible until the second day of trial, essentially ambushing Defendant and the district court. “Courts have long recognized the dangers of unfair surprise associated with prior bad acts evidence” because the provision of notice under Rule 11-404(B) “facilitates intelligent objection and argument, provides greater opportunity for thoughtful rulings that address all legitimate considerations and concerns, and tailors the evidence

<sup>8</sup> The “text only” parenthetical used herein indicates the omission of any of the following—internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text itself otherwise unchanged.

presented to the specific circumstances.” *Acosta*, 2016-NMCA-003, ¶ 21.

{35} In addition to the State’s failure to provide notice, the posture of the issue as it was developed in the district court counsels against application of the right for any reason doctrine in this case. At trial, when the State first indicated that it intended to introduce evidence of Defendant’s prior, uncharged acts directed against J.K., the State described the uncharged acts as “all part of the same course of conduct, the same series of bad acts, and the same time frame with the same victim.” The State’s argument before the district court was that “lewd and lascivious conduct with the same victim is admissible under 404(B), if . . . it shows an ongoing pattern of behavior with that victim.” The State also contended (apparently arguing in the alternative) that the evidence did not constitute “other acts” evidence under Rule 11-404(B) and was instead generally admissible as “relevant evidence” under Rule 11-401 NMRA and Rule 11-402 NMRA. At no time in its argument before the district court did the State allege that the uncharged acts were being introduced to prove a nonpropensity purpose, such as intent or absence of mistake. *See* Rule 11-404(B)(2). Conse-

quently, neither the State nor Defendant had occasion to develop a factual or legal argument concerning Defendant’s intent, and the district court was not tasked with adjudicating the facts or law bearing on this issue. Where, as here, critical facts that bear on admissibility (such as whether Defendant had ever touched the victim’s vulva) are contested on appeal despite the district court having had no occasion to adjudicate those facts, and where an evidentiary ruling on such facts may have shaped arguments and evidence at trial, it is improper for an appellate court to affirm the district court on unreserved grounds. *See State v. Sanchez*, 2001-NMCA-060, ¶ 12, 130 N.M. 602, 28 P.3d 1143 (declining to apply the right for any reason doctrine where the trial court’s ruling required a determination on a disputed factual issue); *see also Franks*, 1994-NMCA-097, ¶ 8 (declining to affirm a suppression order on fact-dependent grounds); *Freeman*, 2015-NMCA-001, ¶ 29 (declining to affirm under the right for any reason doctrine where the facts extend beyond those raised in the district court).

{36} We conclude that it would be unfair to Defendant to apply the right for any reason doctrine in this case. We remand

to the district court for a determination of whether the evidence of uncharged misconduct by Defendant is admissible at trial pursuant to the current Rule 11-404(B)<sup>9</sup> and subject to the relevancy and prejudice considerations of Rule 11-403 NMRA.

### III. CONCLUSION

{37} We hold that the lewd and lascivious disposition exception to Rule 11-404(B) (1) has been abrogated in New Mexico. Because the district court relied upon this exception in admitting evidence of other bad acts against Defendant and the error was not harmless, we vacate Defendant’s convictions and remand the matter to the district court. Should the State elect to retry Defendant on these charges, the evidence at issue may not be admitted against him unless the district court first determines that it is admissible under the 2022 amendment of Rule 11-404(B) for a nonpropensity purpose and otherwise meets the requirements of Rule 11-403.

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

**C. SHANNON BACON, Chief Justice**

**WE CONCUR:**

**MICHAEL E. VIGIL, Justice**

**DAVID K. THOMSON, Justice**

**EMILIO J. CHAVEZ, Judge**

<sup>9</sup> While Article IV, Section 34 of the New Mexico Constitution provides that “[n]o act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case,” we have clarified that “Article IV, Section 34 of the New Mexico State Constitution does not apply to rule changes implemented by this Court.” *State v. Martinez*, ¶ 11, 2011-NMCA-010, 149 N.M. 370, 249 P.3d 82.

# FORMAL OPINION

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

**Filing Date: 12/13/2023**

**No. A-1-CA-40004**

**WV 23 JUMPSTART, LLC,**  
Plaintiff-Appellant,

v.

**TIGER W. MYNARCIK; JILL  
MYNARCIK; ANTIQUA, LLC; and  
TRADEWIND COMPANIES, LLC,**  
Defendants-Appellees.

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

Francis J. Mathew, District Court Judge

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

for Appellant

The Simons Firm, LLP  
Thomas A. Simons, IV  
Frieda Scott Simons  
Santa Fe, NM

for Appellees

## ► Introduction of Opinion

Plaintiff WV 23 Jumpstart, LLC appeals the district court's order granting Defendants' Tiger Mynarcik, Jill Mynarcik, Antiqua, LLC, and Tradewind Companies, LLC's (Defendants) motion for summary judgment and denying Plaintiff's counter-motion for summary judgment. The district court determined that Plaintiff could not domesticate and enforce a California state court judgment against Defendant Tiger Mynarcik in New Mexico because (1) the judgment was a ministerial registration of a Nevada state court money judgment and thus not entitled to full faith and credit in New Mexico; and (2) the original Nevada judgment was expired and could not be registered in New Mexico. Plaintiff contends that the district court erred by failing to give full faith and credit to the California judgment because, under California law, registration of the Nevada judgment in California state court rendered it an original California judgment, which is entitled to full faith and credit in New Mexico. We agree with Plaintiff and reverse.

Kristina Bogardus, Judge  
WE CONCUR:  
Gerald. E. Baca, 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-40004>

# 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: 12/5/2023**

**No. A-1-CA-38410**

**NM NOTE HOLDING LLC, substituted as real party in interest for People's Trust Federal Credit Union,**

Plaintiff-Appellee,

v.

**GABRIEL BETHEL; BTA LAWGROUP PLLC, Trustee; and SKI DEVELOPEMENT LLC,**

Defendants-Appellants.

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

Bryan Biedscheid, District Court Judge

Sommer, Karnes & Associates, LLP  
Karl H. Sommer  
Santa Fe, NM

for Appellee

The Stranahan Firm, LLC  
Robert A. Stranahan, IV  
Santa Fe, NM

for Appellants

## ► Introduction of Opinion

The convoluted facts and odd procedural posture of this complex property dispute have frustrated this Court's review and forced us to take an unconventional route to decide the case. Defendants Gabriel Bethel and Ski-Development New Mexico, LLC (Ski-NM) appeal the district court's decision to grant quiet title and foreclosure in favor of Plaintiff NM Note Holding LLC and to dismiss Bethel's and Ski-NM's counterclaims for reformation, rescission, and foreclosure. For the reasons set forth below, we remand for amendment of the final order and we otherwise affirm.

Michael D. Bustamante, Judge, retired,  
Sitting by designation  
WE CONCUR:  
Shammara H. Henderson, Judge  
Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38410>



# 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: 12/5/2023**

**No. A-1-CA-40091**

**FOUR CORNERS NEPHROLOGY ASSOCIATES,  
P.C., a New Mexico professional corporation;  
and MARK F. BEVAN, M.D., an individual,**

Petitioners-Appellants,

v.

**MANISH PANDYA, M.D.,**

Respondent-Appellee.

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

Beatrice J. Brickhouse, District Court Judge

Peifer, Hanson, Mullins & Baker, P.A.

Elizabeth K. Radosevich

Albuquerque, NM

for Appellants

Saucedo Chavez, P.C.

Ryan H. Harrigan

Albuquerque, NM

for Appellee

## ► Introduction of Opinion

Four Corners Nephrology Associates, P.C. and Mark F. Bevans (collectively, Four Corners) entered into a noncompete agreement with Manish Pandya, M.D. (Dr. Pandya), a shareholder in Four Corners' nephrology practice. When Dr. Pandya decided to leave the practice on September 30, 2018, he sought to limit what he believed to be an overbroad limitation on his ability to practice medicine in Farmington, New Mexico, and in the Four Corners area. He filed a complaint seeking declaratory judgment in the district court. The complaint was referred to arbitration based on the terms of the noncompete agreement. The arbitrator entered a decision and order modifying the terms of the noncompete agreement. The arbitrator's decision and order was then adopted and confirmed by order of the district court. Shortly thereafter, Four Corners filed a motion for an order to show cause, claiming Dr. Pandya was violating the terms of the arbitrator's decision and seeking injunctive relief, sanctions, and attorney fees. **View full PDF online.**

Jane B. Yohalem, Judge

WE CONCUR:

Megan P. Duffy, 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-40091>

# 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: 12/5/2023**

**No. A-1-CA-40293**

**JONATHAN SANCHEZ,**

Petitioner-Appellee,

v.

**JOCELYNNE MARQUEZ,**

Respondent-Appellant.

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

Allen R. Smith, District Court Judge

Batley Family Law

L. Helen Bennett

Albuquerque, NM

for Appellee

Roybal-Mack Law, P.C.

Antonia Roybal-Mack

Dynette C. Palomares

Albuquerque, NM

for Appellant

## **► Introduction of Opinion**

The opinion filed on November 8, 2023 is hereby withdrawn, and this opinion is substituted in its place, following Respondent-Appellant's timely motion for rehearing, which this Court has denied. Mother Jocelyne Marquez appeals the district court's order adopting the hearing officer's child support modification report. Mother argues that the district court (1) abused its discretion in adopting the hearing officer's child support award; (2) erred in awarding Father Jonathan Sanchez child support credit for money voluntarily provided for Child's school tuition; and (3) violated Rule 1-053.2(H)(1)(b) NMRA (2017)<sup>1</sup> by failing to specifically address Mother's objections. We agree with Mother's first argument, decline to review the second, and disagree with the third. Accordingly, we reverse and remand in part and affirm in part.

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-40293\\_Updated](https://bit.ly/A-1-CA-40293_Updated)

# 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: 12/7/2023**

**No. A-1-CA-39933**

**MARICAR CASTRO,**

Plaintiff-Appellant,

v.

**UNIVERSITY OF NEW MEXICO MEDICAL GROUP,**

Defendant-Appellee.

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

Daniel E. Ramczyk, District Court Judge

Gilpin Law Firm, LLC  
Donald G. Gilpin  
Christopher P. Machin  
Albuquerque, NM

for Appellant

Garcia Law Group, LLC  
Bryan C. Garcia  
Meghan S. Nocholson  
Andrew J. Deakyne  
Albuquerque, NM

for Appellee

## ► Introduction of Opinion

Plaintiff Maricar Castro appeals the grant of summary judgment on her Whistleblower Protection Act (WPA) claim, NMSA 1978, Sections 10-16C-1 to -6 (2010). The district court granted summary judgment in favor of Defendant University of New Mexico Medical Group after finding, as a matter of law, that Defendant was not subject to the WPA because of its status as a private, nonprofit corporation under the University Research Park and Economic Development Act (URPEDA), NMSA 1978, §§ 21-28-1 to -25 (1989, as amended through 2022). On appeal, Plaintiff argues that the district court erroneously granted summary judgment because (1) a genuine issue of material fact exists as to whether Defendant was a public employer subject to the WPA and (2) the district court's earlier denial of Defendant's motion to dismiss Plaintiff's WPA claim was law of the case. Plaintiff has failed to convince us of error and we therefore affirm.

Kristina Bogardus, Judge  
WE CONCUR:  
Jennifer L. Attrep, Chief Judge  
J. Miles Hanisee, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39933>

# 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: 12/7/2023**

**No. A-1-CA-39530**

**SAMANTHA RUPERT,**

Claimant-Appellant,

v.

**NEW MEXICO HUMAN SERVICES DEPARTMENT,**

Respondent-Appellee.

**APPEAL FROM THE  
ADMINISTRATIVE HEARINGS OFFICE**

Lisa Lucero, Administrative Law Judge

New Mexico Center on Law & Poverty

Sovereign Hager

Teague González

Albuquerque, NM

for Appellant

John R. Emery, Deputy General Counsel

Santa Fe, NM

for Appellee

## ► Introduction of Opinion

Samantha Rupert appeals a decision of the New Mexico Department of Human Services (the Department), adopting the recommendation of its administrative law judge (ALJ). The Department agreed with the Income Support Division's (ISD) decision to terminate Rupert's Temporary Assistance for Needy Families (TANF) cash benefits, as a sanction for her noncompliance with the requirements of the Child Support Enforcement Division (CSED). *See generally* 8.102.620.10 NMAC (describing the sanction structure). 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-39530>

# 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: 12/7/2023**

**No. A-1-CA-39552**

**FLORENCE SCHRIEK, MATT OLGUIN,  
STACY OLGUIN, and MICHAEL FULLER,**

Plaintiffs-Appellants,

v.

**DAVID MCWILLIAMS; LARRY LASATER;  
L & K CONSTRUCTION COMPANY, LLC, Et al.**

Defendants-Appellees.

consolidated with

**GARRETT STAGG and MICHELE STAGG,**

Plaintiffs-Appellants,

v.

**DAVID MCWILLIAMS; TRIPLE EAGLE  
CONSTRUCTION, INC.;**

**MED CONCRETE, INC., Et al.**

Defendants-Appellees.

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

Daylene A. Marsh, District Court Judge

Jennings Haug Keleher McLeod LLP

Chris R. Marquez

Albuquerque, NM

for Appellants

Lorber, Greenfield & Polito, LLP

Louis W. Horowitz

Linn E. Gillen, Et al.

Albuquerque, NM

for Appellee David McWilliams

## ► Introduction of Opinion

This appeal requires us to unravel a complex tangle of parties and claims related to a dispute over a collapsed retention wall. Plaintiffs Florence Schriek, Matt and Stacy Olguin, Michael Fuller, and Garrett and Michele Stagg appeal the district court's grants of summary judgment for Defendants David McWilliams; Economic Council Helping Others, Inc. (ECHO); and L&K Construction Company, LLC and Larry Lasater (together, the Lasater Defendants). We address the appeals against each Defendant individually for the sake of clarity. Within each section devoted to the individual Defendants, we parse out the appeal brought by Plaintiff Fuller because of the underlying facts unique to his claims.

[2] All Plaintiffs asserted claims of breach of contract, breach of implied warranty, and negligence against all Defendants for the collapse of the retaining wall system separating their properties. Plaintiffs Schriek, Olguin, and Fuller also asserted claims of breach of implied warranty and negligence against the Lasater Defendants for construction of a sub-surface French drain on Plaintiff Fuller's property. **View full PDF online.**

Jacqueline R. Medina, Judge

WE CONCUR:

Megan P. Duffy, 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-39552>

# 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: 12/12/2023**

**No. A-1-CA-39941**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ERNESTO JUAN MARTINEZ,**

Defendant-Appellant.

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

Drew D. Tatum, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Charles J. Gutierrez, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kimberly Chavez Cook, Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Ernesto Juan Martinez appeals his convictions for tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003), and possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(A), (E) (2021).<sup>1</sup> In relevant part, Defendant argues that his convictions are not supported by sufficient evidence and the district court's failure to provide a definitional instruction constitutes fundamental error. For the reasons that follow, we affirm in part and reverse in part.

J. Miles Hanisee, Judge

WE CONCUR:

Megan P. Duffy, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39941>

# MEMORANDUM OPINION

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**Filing Date: 12/13/2023**

**No. A-1-CA-40928**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**JAVIER R.,**

Child-Appellant.

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

Jeffrey Shannon, 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

MJ Edge, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

After adjudicatory and dispositional hearings on alleged probation violations, the district court ordered Child committed to the Children, Youth and Families Department for two years. On appeal, Child contends that (1) the petition to revoke his probation should be dismissed with prejudice because his adjudication hearing was not held within the thirty-day time limit mandated by Rule 10-243(A) NMRA and (2) his confrontation rights were violated when the district court refused to allow him to participate in his adjudication hearing in person. We disagree with Child's untimeliness argument. However, we agree with Child—and accept the State's concession—that Child's confrontation rights were violated. We therefore reverse and remand for a new adjudication hearing.

Zachary A. Ives, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40928>

# 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: 12/13/2023**

**No. A-1-CA-38661**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**CHARLES JACKSON,**

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  
Allison H. Jaramillo, Assistant Appellate Defender  
Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Charles Jackson was convicted of both aggravated battery against a household member and battery against a household member after he physically attacked his then-wife (Victim) while they were dropping their children off at elementary school.<sup>1</sup> On appeal, Defendant argues that (1) his convictions violate double jeopardy; (2) there is insufficient evidence to support his conviction for aggravated battery against a household member; (3) the district court improperly qualified an expert witness; and (4) he received ineffective assistance of counsel at trial. Because the conduct forming the basis of both charges occurred during the course of a single, continuous eight-second attack, we conclude the conduct underlying both convictions was unitary, and therefore, Defendant's battery conviction must be vacated on double jeopardy grounds. We otherwise affirm.

Megan P. Duffy, Judge  
WE CONCUR:  
Jane B. Yohalem, Judge  
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38661>



# 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: 12/14/2023**

**No. A-1-CA-39938**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**YSIDRO ROBERT GARCIA,**

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT  
OF BERNALILLO COUNTY

Jennifer J. Wernersbach, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Erica Schiff, Assistant Attorney General

Michael J. Thomas, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Caitlin C.M. Smith, Assistant Appellate Defender

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

Defendant Ysidro Robert Garcia appeals his conviction for receiving or transferring a stolen vehicle in violation of NMSA 1978, Section 30-16D-4(A) (2009). Defendant argues that during trial the State improperly elicited testimony from a witness that Defendant invoked his right to counsel during a post-arrest interview. Defendant seeks reversal of his conviction and a bar on retrial under the Double Jeopardy Clause of the New Mexico Constitution. For reasons set forth below, we affirm.

J. Miles Hanisee, 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-39938>

# DISPOSITIONAL ORDER

*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: 12/5/2023**

**No. A-1-CA-39494**

**U.S. BANK NATIONAL ASSOCIATION as Legal  
Title Trustee for TRUMAN 2016 SC6 TITLE TRUST,**

Plaintiff-Appellee,

v.

**JAVIER CAMPOS, CHRISTIANA TRUST, A DIVI-  
SION OF WILMINGTON SAVINGS FUND  
SOCIETY, FSB, not in its Individual Capacity but  
as Trustee of ARLP TRUST 4, THE UNKNOWN**

**SPOUSE OF JAVIER CAMPOS,**  
Defendants,  
**REALTEK, INC.,**  
Proposed Intervenor-Appellant.

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

Carl J. Butkus, District Court Judge

Houser LLP  
Solomon S. Krotzer  
Albuquerque, NM

for Appellee

Marrs Griebel Law, Ltd.  
Clinton W. Marrs  
David S. Ketai  
Albuquerque, NM

for Appellant

## ► Introduction of Dispositional Order

In 2016, Defendant pleaded guilty to three counts of third-degree criminal sexual contact of a minor, contrary to NMSA 1978, Section 30-9-13(A) (2003). The district court entered an order of conditional discharge, deferred the eighteen-year prison sentence, and placed Defendant on supervised probation. The district court revoked Defendant's probation after the fourth admitted probation violation and sentenced him to eighteen years in prison. Defendant filed a pro se motion to reconsider the sentence, and the district court denied the motion to reconsider. On appeal, Defendant first contends that he had a right to counsel for the motion to reconsider and that because he argued the motion pro se, a new hearing on the motion to reconsider is warranted. See *State v. Leon*, 2013-NMCA-011, ¶ 11, 292 P.3d 493 (observing that the right to counsel post-conviction is a matter of due process and fundamental fairness). Defendant also argues that any waiver of the right to counsel was not knowing or voluntary because the district court did not conduct a sufficient colloquy before allowing him to proceed pro se. **View full PDF online.**

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

To read the entire dispositional order, please visit the following link: <https://bit.ly/A-1-CA-39494>

# DISPOSITIONAL ORDER

*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: 12/13/2023**

**No. A-1-CA-39393**

**MARY LOIS COLE,**  
Plaintiff-Appellee,

v.

**ANTHONY D. RYD and JUSTA VERONICA RYD,**  
Defendants-Appellants.

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

James A. Noel, District Court Judge

Grammer Law Offices, P.C.  
David A. Grammer III  
Albuquerque, NM

for Appellee

Anthony D. Ryd  
Justa Veronica Ryd  
Albuquerque, NM

Pro Se Appellants

► **Dispositional Order**

Defendants Anthony Ryd (Anthony) and his wife, Justa Ryd, appeal from the judgment of the district court imposing a constructive trust for the benefit of Anthony's mother, Plaintiff Mary Lois Cole, on the mobile home and the Corrales property at issue in this appeal (referred to by the district court as the "Subject Property"). The trial court found that, although the mobile home and the Corrales property were titled in Anthony's name or in the names of both Defendants as husband and wife, Plaintiff did not intend to make a gift of either the mobile home or the Corrales property to Defendants, and that she did not do so. The district court found there was a relationship of trust and confidence between Plaintiff and her son Anthony at all material times and that Anthony abused that confidential relationship to gain an interest in the Subject Property. The district court also made findings supporting all elements of promissory estoppel: that Plaintiff took significant actions with respect to the property to her detriment in reliance on the understanding that she was the owner of the property and in reliance on Anthony's role as her agent, acting in her name, and for her benefit. **View full PDF online.**

Jane B. Yohalem, Judge  
WE CONCUR:  
J. Miles Hanisee, Judge  
Kristina Bogardus, Judge

To read the entire dispositional order, please visit the following link: <https://bit.ly/A-1-CA-39393>

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#### Associate Attorney – Civil Litigation

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. Experience relevant to civil litigation is preferred. Excellent legal writing, research, and verbal communication skills, required. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to [imb@sutinfirm.com](mailto:imb@sutinfirm.com).

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Mid size downtown Defense litigation firm looking for experience Associate Attorney in medical malpractice, complex liability, general liability, and or employment and civil rights. Excellent benefits. Pay at high end of range based on experience. Congenial and easy-going firm. Please contact Karen Arrants at Stiff, Garcia & Associates, [KArrants@stiffllaw.com](mailto:KArrants@stiffllaw.com)

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The Dinelli Law Firm, LLC, an established plaintiff personal injury law firm, is seeking an associate attorney to assist with our firm's growing caseload. Prior litigation experience is preferred, though not required. Candidates must be detail oriented and have excellent writing, research and verbal communication skills. Competitive salary and full benefits package offered, including health insurance, 401(k) and bonus structure. Please send letter of interest, resume, and writing sample to [mark@dinellilaw.com](mailto:mark@dinellilaw.com). Any and all inquiries will be kept in the strictest of confidences

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The Thirteenth Judicial District Court is recruiting for the following position: Classification: Attorney Senior; Location: Bernalillo, NM (997-070099); Position #: 00049359; Pay Range: LL; Target Pay Rate: \$45,609. TO APPLY: Submit a Judicial Branch Application for Employment or a Resume and Resume Supplemental form, a writing sample and proof of education by 5:00 p.m. Wednesday February 07, 2024 to: Thirteenth Judicial District Court, Attn: Brittany Lucero 1835 Hwy 314 SW, 3rd floor, P.O. Box 1089, Los Lunas, NM 87031. Applications may be emailed to: [13thjdchr-grp@nmcourts.gov](mailto:13thjdchr-grp@nmcourts.gov)

### Hermit's Peak/Calf Canyon Fire Claims Office Attorney Vacancy Announcement

The Federal Emergency Management Agency's (FEMA) Office of Chief Counsel is seeking qualified applicants for an Attorney position to support the Hermit's Peak/Calf Canyon Fire Claims Office (Office). The duty station is Santa Fe, NM. Salary range is \$99,450 to \$152,775. The successful candidate will be expected to: Represent the Office in arbitration and support Federal court litigation; Support the administrative appeal program; Advise on claim handling/valuation issues and Office-specific authorities; and Advise Office leadership on general administrative legal issues. Qualifications: The candidate must possess strong oral and written communication skills and be able to discuss nuanced legal issues with program leadership, attorneys, and stakeholders both across and outside of the agency. Experience with insurance, property loss, business loss, tort or similar litigation required. The successful candidate will have the following minimum qualifications: 1. United States Citizenship; 2. Ability to successfully pass a background investigation; 3. Selective Service registration for males born after 12/31/59; 4. A J.D. or LL.B. degree from an ABA accredited law school; 5. An active membership, in good standing, of the bar of a state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. Minimum Experience: The candidate must demonstrate at least three years of full-time professional legal experience gained after being admitted to the bar, including at least three years of specialized experience that is directly related to the position being filled. Application Instructions: Interested applicants should submit a detailed resume and statement expressing their interest to Anthony Juzaitis via email at [Anthony.Juzaitis@fema.dhs.gov](mailto:Anthony.Juzaitis@fema.dhs.gov). Applications must be received by 5PM ET on January 31, 2024. Candidates may be asked to provide additional documentation, including a list of references and a short response to a legal writing prompt.

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## Assistant District Attorney

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

## Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is accepting applications for one or more full-time permanent Associate Staff Attorney or Assistant Staff Attorney positions. The positions may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. The target pay for the Associate position is \$87,813, plus generous fringe benefits. The target pay for the Assistant position is \$76,848, plus generous fringe benefits. Eligibility for the Associate position requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant position requires one year of practice or judicial experience plus New Mexico Bar admission. Either position requires management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial, yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, law school transcript, and writing sample of 5-7 double-spaced pages to Cynthia Hernandez Madrid, Chief Appellate Attorney, c/o AOC Human Resources Division, [aochrd-grp@nmcourts.gov](mailto:aochrd-grp@nmcourts.gov), 237 Don Gaspar Ave., Santa Fe, New Mexico 87501. Position to commence immediately and will remain open until filled. More information is available at [www.nmcourts.gov/careers](http://www.nmcourts.gov/careers). The New Mexico Judicial Branch is an equal-opportunity employer.

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## Supervising Attorney and Three Staff Attorneys

The New Mexico Office of the Superintendent of Insurance is seeking applicants for a Supervising Attorney and three Staff Attorneys. The Supervising Attorney will work in the Albuquerque Office while the Staff Attorneys will work from the Santa Fe Office. The ideal candidate for the Supervising Attorney would be an attorney with both hearing officer and supervisory experience. The Staff Attorneys will be responsible for both advisory and advocacy duties. The Staff Attorney positions are open to all licensed attorneys who have a desire to work in the insurance regulatory field and who are in good standing with the New Mexico Bar or any other State bar (Limited License). Salary range will be based on the 1/12/2024 attorney salary schedule and commensurate with experience. To apply please visit the State Personnel website at: [www.spo.state.nm.us](http://www.spo.state.nm.us). Applications will be accepted commencing January 12, 2024.

## Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 35 states, is currently seeking an experienced litigation attorney for an immediate opening in its Albuquerque, NM office. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers a \$50K signing bonus, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume with cover letter to Hamilton Hinton at [hhinton@cordelllaw.com](mailto:hhinton@cordelllaw.com)

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

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The New Mexico Court of Appeals is seeking its next Clerk of the Court. The Clerk of the Court is a licensed attorney who works closely with the Judges to oversee the management and administrative functions of the Court. Under the general direction of the Chief Judge, the position is responsible for allocating resources in a manner that maximizes efficiency in operations and enhances service to the public. The position is the Court's main point of contact for legal practitioners and the public and is responsible for communicating with attorneys and litigants. The Clerk of the Court rules on procedural motions and issues orders under delegated authority, evaluates cases for jurisdiction and timeliness, closes cases by issuing mandates, and performs research and analysis to make legal recommendations to the judges and staff, among a variety of other duties. The Court of Appeals has offices in Santa Fe and Albuquerque with regular travel between the offices required. The position may be primarily located in either location. Required experience: (1) six years of advanced level management involving administrative matters such as budget, finance, procurement, human resources or contracts; (2) six years practicing law as an attorney or law clerk, at least three of which involved appellate practice; and (3) three years supervising and managing a diverse staff. The salary range is \$98,463 - \$196,924 annually. Interested applicants should submit a New Mexico Judicial Branch Application for Employment, or a Resume and a Resume Supplemental form to: [jobs@nmcourts.gov](mailto:jobs@nmcourts.gov), AOC Human Resources Division, 202 E. Marcy Street, Santa Fe, New Mexico 87501. To view the complete job description and obtain the Judicial Branch Application for Employment or Resume Supplemental form, interested applicants should visit [www.nmcourts.gov/careers](http://www.nmcourts.gov/careers). The New Mexico Judicial Branch is an equal-opportunity employer.

## Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

## New Mexico Legal Aid – Current Job Opportunities

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. NMLA has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. Chief Financial Officer; Paralegal Positions: Paralegal - Housing Stability and Veteran's, Flexible NMLA Location; Paralegal - Housing Stability, Albuquerque; Legal Secretary: Low Income Tax Clinic – General, Albuquerque, NM. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

## New Mexico Legal Aid - Current Staff Attorney Job Openings

New Mexico Legal Aid (NMLA) provides civil legal services to low income New Mexicans for a variety of legal issues including domestic violence/family law, consumer protection, housing, tax issues and benefits. NMLA has locations throughout the state including Albuquerque, Santa Fe, Las Cruces, Gallup, Roswell, Silver City, Clovis, Hobbs, Las Vegas, Taos, and Santa Ana. Staff Attorney Positions: Generalist - Silver City, NM; (2) Disaster Relief, Northern NM; Medical Legal Partnership, Santa Fe, NM; LGBTQ – Safe To Be You; Intake Referral and Advice Unit. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>



### Assistant Federal Public Defender – Trial Attorneys for Las Cruces, NM

The Federal Public Defender for the District of New Mexico is seeking experienced Assistant Federal Public Defender-Trial Attorneys in the Las Cruces office. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney. Three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. Positions are full-time with comprehensive benefits including: Health, Vision, Dental and Life Insurance, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from \$72,553 to \$189,771 determined by experience, qualifications, and budgetary constraints. For more information about our office, please visit <https://nm.fed.org/>. In one

PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Margaret Katze, Federal Public Defender at [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org). Reference in the subject line 2024-02. Closing date is 03/04/2024.

### Assistant Federal Public Defender – Trial Attorneys

The Federal Public Defender for the District of New Mexico is seeking experienced Assistant Federal Public Defender-Trial Attorneys in the Albuquerque office. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney. Three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. Positions are full-time with comprehensive benefits including: Health, Vision, Dental and Life Insurance, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from

\$73,265 to \$182,509 determined by experience, qualifications, and budgetary constraints. In one PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Margaret Katze, Federal Public Defender at [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org). Reference in the subject line 2024-01. Closing date is 01/31/2024.

### Attorney With a Minimum of 3-5 Years Of Experience

Tired of billable hours? The Law Offices of Erika E. Anderson is looking for an attorney with a minimum of 3-5 years of experience. The law firm is a very busy and fast-paced AV rated firm that specializes in civil litigation on behalf of Plaintiffs. We also do Estate Planning and Probate litigation. The candidate must be highly motivated and well organized, pay close attention to detail, be willing to take on multiple responsibilities, and be highly skilled when it comes to both legal research and writing. This is a wonderful opportunity to join an incredible team that works hard and is rewarded for hard work! The position offers a great working environment, competitive salary and a generous benefits package. If interested, please send a resume to [erika@eandersonlaw.com](mailto:erika@eandersonlaw.com).



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**Paralegal / Case Specialist**

The State Ethics Commission is currently seeking a Case Specialist to provide comprehensive support to our Attorneys in all aspects of the Commission’s litigation and administrative complaint process: document management, intake and client meetings, case investigations, drafting legal documents, and guiding cases from start to resolution. Under attorney direction and supervision, prepare legal documents like pleadings, discovery requests, and deposition summaries. The State Ethics Commission is located in Albuquerque. Strong writing skills, organizational abilities, and attention to detail are essential for this position. The midpoint salary range is \$76,500 annually. Standard New Mexico State benefits include Public Employees Retirement Association, health, dental, vision, life, and bi-weekly accrued sick and annual leave. For more information or to apply please visit: <https://www.spo.state.nm.us/work-for-new-mexico/>

**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>.

**Paralegal**

Established law firm seeks experienced paralegal. Must have ability to multi-task heavy state and federal court workload including calendaring, drafting pleadings and discovery, and direct client contact and follow-up. Word, WordPerfect, Outlook and Adobe expertise required, as well as excellent proofreading skills. Bachelor’s degree a plus. Competitive salary and excellent benefits offered. Resumes should be submitted to [csalazar@wwwlaw.us](mailto:csalazar@wwwlaw.us). Qualified applicants only, please.

**Business Manager**

The Moses Law Firm has an immediate opening for a full-time Business Manager with at least five years’ experience in an accounting or law firm administration role. If you are seeking a challenging position in a thriving firm, we are looking for you! The firm provides a collegial and collaborative environment from the top down. We are an AV Preeminent® firm serving New Mexico clients for 70 years and the only New Mexico firm invited to be a member of Meritas®, a global alliance of leading independent law firms and the world’s premier legal network. Candidates must have a working knowledge of basic bookkeeping principles, strong computer skills, and the ability to prioritize and perform multiple tasks. Experience with QuickBooks is desirable. The Firm offers a competitive compensation and benefits package. Please send your letter of interest, resume and salary requirement to Lucas N. Frank at [lucas@moseslaw.com](mailto:lucas@moseslaw.com).

**Administrative Support Coordinator**

The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Administrative Support Coordinator. The successful applicant will provide administrative and logistical support for the activities, programs and events of State Bar committees, practice sections, and divisions and coordinate implementation of other State Bar/Bar Foundation programs and events. \$17-\$20/hour, depending on experience and qualifications. Generous benefits package included. This position qualifies for partial telecommuting. Qualified applicants should submit a cover letter and resume to [HR@sbnm.org](mailto:HR@sbnm.org). Visit [www.sbnm.org/SBNMjobs](http://www.sbnm.org/SBNMjobs) for full details and application instructions.

**Miscellaneous**

**For Sale- Complete set of Bound New Mexico Reports**

For Sale- Complete set of Bound New Mexico Reports Volumes 1-150 (1852-2011) and New Mexico Appellate Reports Volumes 1-6 (2012-2014). Beautiful addition to any law library. \$3,000.00 OBO. Lock Law Offices (505)-880-1200.

**2024 Bar Bulletin  
Publishing and Submission Schedule**

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

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

**For more advertising information, contact:  
Marcia C. Ulibarri at 505-797-6058 or  
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The publication schedule can be found at  
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