

BAR BULLETIN

DIGITAL ISSUE

November 22, 2023 • Volume 62, No. 22



Copper Canyon, by Kathleen Frank (see page 6)

www.kathleenfrankart.com

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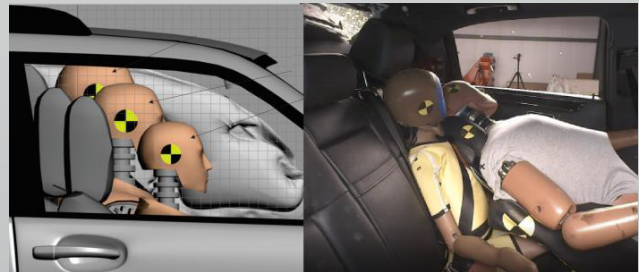
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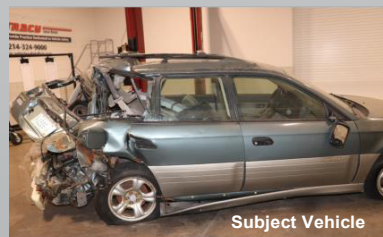


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Meetings

November

24
Immigration Section
 Noon, virtual

December

1
Elder Law Section
 Noon, virtual

5
Health Law Section
 9 a.m., virtual

8
Cannabis Law Section
 9 a.m., virtual

18
Children's Law Section
 Noon, virtual

Workshops and Legal Clinics

December

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

12
Common Legal Issues for Senior Citizens Workshop
 11 a.m.-noon, virtual
 For more details and to register, call
 505-797-6005

13
Consumer Debt/Bankruptcy Workshop
 6-8 p.m., virtual

About Cover Image and Artist: Santa Fe artist Kathleen Frank travels throughout the Southwest/West, seeking landscape paintings vistas. Using vibrant hues, she captures light, pattern and a glint of logic in complex terrains. Exhibitions include Northwest Montana History Museum, UNM Valencia, International Art Museum of America, MonDak Heritage Center| Art & History Museum, St. George Museum of Art, WaterWorks Museum, Sahara West Gallery, La Posada de Santa Fe, Roux & Cyr Fine Art Gallery and Jane Hamilton Fine Art. Press includes LandEscape Art Review, MVIBE, Art Reveal, Magazine 43 and Southwest Art. Art in Embassies/U.S. State Department selected her work for Kuala Lumpur, Malaysia.

Notices

Please email notices desired for publication to 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 or visit <https://lawlibrary.nmcourts.gov>.

N.M. Administrative Office of the Courts

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

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

U.S. District Court, District of New Mexico

Notice of Investiture of United States Magistrate Judge Damian L. Martinez

Please join us for the Investiture of Honorable Damian L. Martínez at 3:30 p.m. (MT) on Dec. 1 in the Sierra Blanca Courtroom at the United States Courthouse in Las Cruces, N.M. (100 N. Church Street, Third Floor). A reception hosted by the Federal Bench and Bar of the United States District Court for the District of New Mexico will follow from 5:30 to 7:30 p.m. (MT) at Double Eagle (2355 Calle De Guadalupe, Mesilla, N.M.). All members of the Federal

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

Bench and Bar are cordially invited to attend; however, reservations are requested. RSVP, if attending, at <https://rsvp.nmcourt.uscourts.gov/Martinez>.

STATE BAR NEWS 2024 Budget Disclosure Deadline to Challenge Expenditures

The State Bar of New Mexico Board of Bar Commissioners has completed its budgeting process and finalized the 2024 Budget Disclosure, pursuant to the State Bar Bylaws, Article VII, Section 7.2, Budget Procedures. Starting Nov. 1, the budget disclosure will be available in its entirety on the State Bar website at www.sbnm.org on the financial information page under the About Us tab. The deadline for submitting a budget challenge is on or before 5 p.m. (MT), Nov. 30, and the form is provided on the last page of the disclosure document. The BBC will consider any challenges received by the deadline at its Dec. 6 meeting. Address challenges to: Executive Director Richard Spinello, State Bar of New Mexico, PO Box 92860, Albuquerque, N.M. 87199; or info@sbnm.org. Challenges may also be delivered in person to the State Bar Center, 5121 Masthead NE, Albuquerque, N.M. 87109.

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. To complete your annual license renewal and verify your MCLE compliance, visit www.sbnm.org and click "My Dashboard" in the top right corner. For questions about license renewal and MCLE compliance, email license@sbnm.org. For technical assistance accessing your account, email techsupport@sbnm.org.

Board of Bar Commissioners Appointments to New Mexico Access to Justice Commission

The Board of Bar Commissioners will make two appointments to the NM Access

to Justice Commission for three-year terms. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico who would like to serve on the Commission should send a letter of interest and brief resume by Nov. 27 to bbc@sbnm.org.

Appointment to New Mexico State Bar Foundation

The Board of Bar Commissioners of the State Bar of New Mexico will appoint one public director to the New Mexico State Bar Foundation Board for a three-year term. The New Mexico State Bar Foundation advances the legal community's commitment to serve the legal profession and people of New Mexico. Through member donations, fundraising and programs, the Foundation provides and promotes access to legal services to underserved New Mexicans. The Foundation also supports public service, education, and diversity, as well as organizations consistent with its mission. For more information about the Bar Foundation, visit <https://www.sbnm.org/Bar-Foundation>. Members of the public interested in serving on the Board should submit a letter of interest and resume to bbc@sbnm.org by Nov. 27.

Disciplinary Board Appointment

The President of the Board of Bar Commissioners will make one appointment to the Disciplinary Board for a three-year term. Members wishing to serve on the Board should send a letter of interest and brief resume by Nov. 27 to bbc@sbnm.org.

Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on Oct. 13 at the State Bar Center, Albuquerque, N.M. Action taken at the meeting follows:

- Approved the July 27, 2023 meeting minutes;
- Discussed Rule 24-101(A) NMRA, Objective #2, Promote the Interests of the Legal Profession in the State of New Mexico;
- Reported that we're on track with the 2023-2025 Three-Year Strategic Plan; the Appellate Court Case Summaries

Correction to the *Bar Bulletin*

In the Nov. 8, 2023 issue of the Bar Bulletin, the Fall 2023 Swearing-In Ceremony article stated that over 200 graduates from the University of New Mexico School of Law were sworn in to New Mexico's legal community. This is incorrect, as the Swearing-In Ceremony also includes graduates from other law schools. This has been corrected in the digital issue of the Nov. 8, 2023 Bar Bulletin, and we apologize for the error.

project, which includes sending out the case summaries to the members and publishing them in the Bar Bulletin, is going well;

- Approved the 2024 State Bar Budget;
- Received a report from the Finance Committee, which included: 1) approval of the July 26 Finance Committee and September 21 Audit Committee meeting minutes; 2) accepted the August 2023 Financials; and 3) received the Client Protection Fund, Access to Justice Fund and Judges and Lawyers Assistance Program Third Quarter 2023 Financials;
- Approved entering into an agreement with SJT Audit Group for the State Bar's and Bar Foundation's Audit;
- Received a report from the Member Services Committee, which is revising the Committees Policy to provide expectations and guidelines for the standing committees of the State Bar;
- Received a report from the Policy and Bylaws Committee and approved a policy regarding committee awards, effective January 1, 2024;
- Received a report on the ATJ Commission and Judicial Clerkship Program;
- Received an update on the Immigration Law Section;
- Discussed correspondence from members regarding the Hermit's Peak/Calf Canyon Fire and FEMA and requested an expedited analysis from the Ethics Advisory Committee on trust accounts and assignments;
- Received reports from the Presidents of the State Bar and NM State Bar Foundation;
- Received the BBC Liaison roster to the Supreme Court Boards and Committees and requested volunteers to serve in 2024;
- Received a report from the President-Elect of the State Bar, which included plans for the 2024 Annual Meeting, which will be a hybrid event in Albuquerque in October 2024, and the 2024 meeting dates as follows: February

23, May 17, July 26, October 24 (in conjunction with the Annual Meeting on October 25), December 4 or 11 (Santa Fe);

- Received a report from the Executive Director; and
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions and bar commissioners on events in their districts.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Dec. 6 meeting.

Client Protection Fund Notice of Commissioner Vacancies

Two Commissioner appointments for three-year terms for the Client Protection Fund will be made in accordance with Rule 17A-005 (B). The purpose of the Client Protection Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of New Mexico. The new term will begin Jan. 1, 2024. Applicants must be active members of the State Bar of New Mexico. Anyone interested in serving on the Commission should send a letter of interest and brief résumé to kate.kennedy@sbnm.org.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a

— *Featured* —

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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 Jan. 11, 2024. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

The 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 NM LAP 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.

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.

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. Closing date for 2024 award nominations will be Feb. 15, 2024.

OTHER NEWS Judicial Performance Evaluation Commission Notice of Vacancies

Pursuant to Rule 28-101 NMRA, which governs the procedure for evaluating judges standing for retention and interim evaluations, the President of the State Bar of New Mexico nominates three lawyers from which the Supreme Court appoints a member to serve on the Judicial Performance Evaluation Commission for a six-year term. Active status members wishing to serve on the Commission should send a letter of interest and brief resume by Dec. 8 to bbc@sbnm.org.



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Applicants must have an active New Mexico law license, be able to work independently as part of a busy team in a fast-paced environment, have excellent customer service and computer skills, and have an interest in issues affecting lower-income New Mexicans. Spanish fluency is a plus.

**For more information www.sbnm.org/sbnmjobs
Submit a cover letter and a resume to hr@sbnm.org**

Legal Education

November

- 29 **2023 Alternative Dispute Resolution Conference**
2.0 G, 3.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 30 **Why Female Attorneys Get Paid Less: What's Gender Bias Got to Do With It**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 30 **Spanish for Lawyers I**
20.0 G
Live Program
University of New Mexico Law School
lawschool.unm.edu
- 30 **2023 Immigration Law Institute**
2.0 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org

December

- 1-31 **Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**
1.0 G, 2.0 EP
Online On-Demand
The Ubuntuworks Project
www.ubuntuworksschool.org
- 1 **Making Victim's Rights Meaningful: Representing Victims in the Criminal Courts**
1.5 G, 0.5 EP
In-Person or Webcast
DWI Resource Center/Victims Rights Projects
www.dwiresourcecenter.org
Location: 6739 Academy Rd. NE, Albuquerque, NM 87109
- 4 **Water Vulnerabilities in New Mexico**
1.0 G
Live Program
University of New Mexico Law School
lawschool.unm.edu
- 6 **Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**
1.0 G, 2.0 EP
Video Replay with Monitor (Live Credits)
The Ubuntuworks Project
www.ubuntuworksschool.org
- 7 **Gain the Edge!® Negotiation Strategies for Lawyers w/ Marty Latz**
5.0 G, 1.0 EP
Webcast
Center for Legal Education of NMSBF
www.sbnm.org
- 8 **2023 Guardian Ad Litem (GAL) Training**
5.6 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org
- 12 **Effective Lawyering - Effective Living: Law Practice and Well-being**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 13 **2023 New Mexico Tax Law Conference**
6.3 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org
- 14 **"Let Me Ask You a Question. Suppose I Was Considering . . ." Current Hot Topics Under the Rules of Professional Conduct**
2.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 14 **What a Startling Discovery: Judicial Perspectives on Discovery in Federal and State Courts**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 14 **2023 Winter Education Seminar**
5.0 G, 1.0 EP
Live Program
Workers Compensation Association of New Mexico
www.wcaofnm.com
- 15 **Earth, Air, Water, Fire: 2023 Natural Resources, Energy and Environmental Law Institute**
5.0 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org
- 19 **What Music Stars and Movie Stars Teach About Writing and Negotiation w/ Stuart Teicher**
3.0 G
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org
- 19 **Tech and Ethics: There's Nothing New Under the Ethical Sun....Except Everything w/ Stuart Teicher**
3.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org

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

Rules/Orders

From the New Mexico Supreme Court

<http://www.nmcompcomm.us/>

THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2023 YEAR-END RULE AMENDMENTS

Under Rule 23-106.1 NMRA, the Supreme Court has approved a number of changes to the rules, forms, and uniform jury instructions for the 2023 rulemaking cycle. What follows is a summary of those changes that the Court approved on November 1, 2023. The summary also includes out-of-cycle amendments that the Court approved on November 1, 2023. Unless otherwise noted below and in the history note at the end of each approved rule, form, or UJI, most amendments will take effect on December 31, 2023. The full text of the amendments in markup format and the related orders are available on the Court's website by clicking here. Approved rule amendments will also appear on NMOneSource.com by their effective date.

CHILDREN'S COURT RULES COMMITTEE

Detention Hearings and Conditions of Release in the Children's Court – Amended Rule 10-225 NMRA

On recommendation of the Children's Court Rules Committee, the Supreme Court approved amendments to Rule 10-225 NMRA to harmonize language in subparagraphs (A)(1) to (4) and eliminate any possible conflict between the subparagraphs and any burden shifting issue arising from the rule in its current form.

Notification to Tribes of Change of Placement – Amended Forms 10-565 and 10-566 NMRA

The Supreme Court approved the Children's Court Rules Committee's proposal to amend forms for Notice of Change of Placements that would ensure consistency with federal law, Bureau of Indian Affairs (BIA) Regulations, and BIA Guidelines related to placement of Indian children. The Supreme Court also approved the Committee's recommendation to incorporate provisions of the New Mexico Indian Family Protection Act, NMSA 1978, Sections 32A-28-1 to -42 (2022, as amended through 2023), which requires the filing of a notice demonstrating that the relevant tribe was notified of the change of placement, and seeks to clarify what types of attorneys are entitled to notice and where a child is placed.

Consent Decree Order – Amended Form 10-714 NMRA

The Supreme Court approved amendments to the consent decree form that would incorporate the statutory protection provided under NMSA 1978, Section 32A-2-22(E) (2005). The amendments are intended to ensure a child is properly informed of the statutory protection and that the child receives the benefit of a dismissal with prejudice upon completion of the terms of a consent decree.

Educational Decision Maker Form – Amended Form 10-564 NMRA

The Supreme Court approved amendments to Form 10-564 NMRA to ensure consistency with NMSA 1978, Section 32A-4-2(D) (2018) and federal law related to the privacy of educational records. The amendments clarify the duties of an appointed educational decision maker to ensure the child's education and care are not negatively impacted when a parent is unable or unwilling to make decisions regarding their child's education.

CODE OF JUDICIAL CONDUCT COMMITTEE

Acceptance of Gifts – Amended Rule 21-313 NMRA

On recommendation of the Code of Judicial Conduct Committee, the Supreme Court approved amendments to the committee commentary to Rule 21-313 NMRA to clarify that, in nearly all situations, free or discounted legal services are gifts that judges are prohibited from accepting.

Judicial Disqualification – Amended Rule 21-211 NMRA

The Supreme Court approved amendments to the committee commentary to Rule 21-211 NMRA to delineate the circumstances under which a judge's present attorney-client relationships are grounds for disqualification.

CODE OF PROFESSIONAL CONDUCT COMMITTEE

Safekeeping Property – Amended Rule 16-115 NMRA

The Supreme Court approved the Code of Professional Conduct Committee's proposal to amend Rule 16-115 NMRA to clarify procedures for trust account balances containing a lawyer's own funds and methods of paying bank service charges on lawyer trust accounts.

NEW MEXICO SUPREME COURT COMMISSION ON EQUITY AND JUSTICE

Requirements for Equity in Justice and Professionalism – Amended Rule 18-201 NMRA

On recommendation of the New Mexico Supreme Court Commission on Equity and Justice, the Supreme Court approved amendments to Rule 18-201 NMRA and its associated committee commentary to require one (1) hour of equity in justice credit as part of the required twelve (12) CLE credits and to explain the required professionalism credit.

RULES OF CRIMINAL PROCEDURE FOR STATE COURTS COMMITTEE

Judgment Notwithstanding the Verdict – New Rules 5-614.1 and 7-611.1 NMRA; Amended Rules 5-607, 5-701, 6-603.1, 6-701, 7-603.1, and 7-701 NMRA

On recommendation of the Rules of Criminal Procedure for State Courts Committee, the Supreme Court adopted new Rules 5-614.1 and 7-611.1 NMRA and approved amendments of various rules of criminal procedure for the district, magistrate, and metropolitan courts to address procedures for post-verdict judgment of acquittal in light of *State v. Martinez*, 2022-NMSC-004, 503 P.3d 313.

Definition of Local Detention Center – Amended Rules 5-401, 5-403, 6-401, 6-403, 6-506, 6-802, 7-401, 7-403, 7-506, 7-802, 8-401, 8-403, 8-506, and 8-802 NMRA

The Supreme Court approved amendments of various rules of criminal procedure for the district, magistrate, and metropolitan courts to define local detention centers and to clarify that a local detention center is one that is commonly used by the district court and need not necessarily be within the territorial jurisdiction of the court.

Filing of Criminal Complaint in District Court – Amended Rule 5-201 NMRA

The Supreme Court approved amendments to the commentary of Rule 5-201 NMRA to dispel confusion about the proper process and venue for the filing of a criminal complaint in district and inferior courts.

Citizen Grand Jury – Amended Rule 5-302.3 NMRA

The Supreme Court approved amendments to Rule 5-302.3 NMRA and its associated committee commentary to clarify the processes related to grand jury proceedings, including verification of the petition, determining the validity of the petition, assignment of the prosecuting attorney, and notice to the target.

Grand Jury Time Limits – Amended Rule 5-302.2 NMRA

The Supreme Court approved amendments to Rule 5-302.2 NMRA and its associated committee commentary to address grand jury time limits. The amendments are intended to address the ambiguity in the grand jury rule regarding the time limits for commencing a grand jury proceeding and to amend the rules to conform with the law requiring that a grand jury be impaneled within the time limits for commencing a preliminary examination.

Right to Jury Trial in Magistrate Court – Amended Rules 6-602, 6-603, 7-602, and 7-603 NMRA

The Supreme Court approved amendments of various rules of criminal procedure to align the procedures for jury trials in the metropolitan and magistrate courts. The Supreme Court also approved technical amendments of these rules to create conformity with the NMRA.

Probable Cause Determinations for Criminal Complaints – Amended Form 9-201 NMRA

The Supreme Court approved amendments to the criminal complaint form to remove the option, “complaint dismissed without prejudice,” based on the Rules of Criminal Procedure for State Courts Committee’s assessment that the option is not relevant to a probable cause determination.

RULES OF EVIDENCE COMMITTEE

Fifth Amendment Invocation – Amended Rule 11-513 NMRA

The Supreme Court approved amendments to Rule 11-513 NMRA to clarify that the prohibition of a comment on the invocation of the privilege against self-incrimination would not apply in non-criminal proceedings.

STATE BAR OF NEW MEXICO

Self-Study MCLEs – Amended Rule 18-204 NMRA

The Supreme Court approved the State Bar of New Mexico’s proposal to amend Rule 18-204 NMRA to remove the limit on self-study credits that an attorney may obtain for required CLE credits and to require previously recorded courses to be pre-approved by the Board of Bar Commissioners and have procedures/technology to verify an attorney’s attendance and attentiveness during the program.

State Bar Young Lawyers Division – Amended Rule 24-101 NMRA

The Supreme Court approved amendments to Rule 24-101 NMRA to expand membership in the State Bar of New Mexico Young Lawyers Division to all New Mexico attorneys who have practiced law in any state for ten (10) years or less.

UNIFORM JURY INSTRUCTIONS-CIVIL COMMITTEE

Bad Faith Duty to Defend – New UJI 13-1703A NMRA; Amended Chapter 17 Introduction and UJIs 13-1701, 13-1702, 13-1704, 13-1705, 13-1706, 13-1707, 13-1708, 13-1709, 13-1710, 13-1711, 13-1712, 13-1713, 13-1714, 13-1715, 13-1716, and 13-1718 NMRA; Amended and Recompiled UJI 13-1703 NMRA as UJI 13-1703B NMRA; Withdrawn UJI 13-1717 NMRA

On recommendation of the UJI-Civil Committee, the Supreme Court adopted new UJI 13-1703A NMRA, approved amendments to the UJIs in Chapter 17, approved the amendment and recompilation of UJI 13-1703 NMRA as UJI 13-1703B NMRA, and has withdrawn UJI 13-1717 NMRA. These amendments are intended to implement changes in the law and provide a thorough review and revision of substantive instructions, use notes, and committee commentary throughout the chapter.

UNIFORM JURY INSTRUCTIONS- CRIMINAL COMMITTEE

Leaving the Scene of an Accident – New UJIs 14-4513, 14-4514, 14-4515, and 14-4516 NMRA

On recommendation of the UJI-Criminal Committee, the Supreme Court has adopted four new UJIs to address a void in the jury instructions noted by the Court of Appeals in *State v. Esparza*, 2020-NMCA-050, 475 P.3d 815. The new UJIs address various crimes described in NMSA 1978, Section 66-7-201 (1989), and NMSA 1978, Section 66-7-202 (1978), including

failing to stop or give information or render aid where an accident results in great bodily harm or death, knowingly failing to stop or give information or render aid where an accident results in great bodily harm or death, failing to stop or give information or render aid where an accident does not result in that degree of injury, and failing to stop or give information or render aid when an accident only involves damage to a vehicle.

Facilitative Use of Deadly Weapon – New UJI 14-135 NMRA; Amended UJIs 14-305, 14-306, 14-355, 14-356, 14-375, 14-376, 14-2202, and 14-2203 NMRA

The Supreme Court requested the UJI-Criminal Committee to offer recommendations consistent with the Court's definition of use of a deadly weapon in the context of assault as set forth in *State v. Zachariah G.*, 2022-NMSC-003, 501 P.3d 451. As a result, the Court has adopted new UJI 14-135 NMRA to clarify the definition of use of a deadly weapon and approved amendments to related UJIs concerning use of a deadly weapon and facilitative use.

Aggravated Fleeing in the Third Degree – Amended UJI 14-2217 NMRA

The Supreme Court approved amendments proposed by the UJI-Criminal Committee to address revised statutory language concerning NMSA 1978, Section 30-22-1.1 (2022) in the elements, use notes, and committee commentary of UJI 14-2217 NMRA.

**THE RULE AMENDMENTS SUMMARIZED ABOVE
CAN BE VIEWED IN THEIR ENTIRETY AT THE
NEW MEXICO SUPREME COURT WEBSITE**

<https://supremecourt.nmcourts.gov/14056-2/>

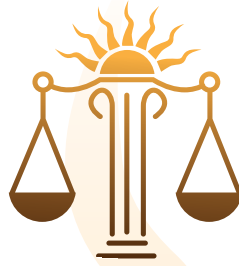


New Mexico Judiciary

Remote Proceedings and Meeting Standards

The courtroom, whether a physical in-person courtroom, or a virtual courtroom, remains a formal and serious setting where judges hear matters involving real people that affect real lives. Every case is important, and all participants should maintain court decorum in the virtual world, just as they would in person. We ask all individuals participating in Remote Court proceedings, as well as all meetings called by a member of the New Mexico Judiciary, to continue to observe the following well-established rules of court standards and decorum:

- 1) **Arrive on Time and Follow Remote Proceedings Directions** - To minimize distractions during the court proceeding, log in a few minutes before the scheduled start time and follow the Google Meet (or other virtual platform) directions provided by your presiding judge and/or their staff. Identify yourself when in the virtual meeting with your real name.
- 2) **Camera** – Your camera should be turned on in a remote proceeding and in Judicial meetings, unless you have express permission from the Judge or chair of the meeting to turn off your camera. Make sure there is ample light so you can be clearly seen by the Judge and other participants. Make sure the camera is pointed directly at your face.
- 3) **Dress Appropriately for Court** - Business attire (collared shirt with or without a tie or jacket for either gender) is always appropriate for court; sweatshirts, gym clothes, Hawaiian shirts, concert t-shirts, sports team jerseys, bedazzled images, and pajamas are never appropriate.
- 4) **Eliminate Distractions** - Participating in Remote Court proceedings often means working from home. Please try to locate a quiet area and minimize interruptions by others in the home. While we agree that your children and pets are adorable, their presence in the remote courtroom distracts you, the Court, and other participants from the subject matter of the hearing. We recognize in the close quarters at home, utmost quiet is not available to everyone, but please minimize distractions as much as possible.
 - Consider using a virtual background to eliminate visual distractions in the background.
 - Put your cell phones and other technology in silent mode during the Virtual Court proceeding.
 - If you must appear in a remote proceeding from your vehicle, please make sure you parked at a safe place before joining the remote proceeding. ***Do not attend a Virtual Court proceeding while driving.***
- 5) **Do Not Speak Out of Turn or Interfere in Testimony** - Just like an in-person court setting, the presiding judge will indicate when it's your turn to be heard. In order to prevent any accidental audio distractions, please mute your audio setting until it is your turn to speak. If another person is testifying, you may not suggest answers – including via texting or chat, make gestures, or otherwise coach a witness or a party from off camera.
- 6) **Be Courteous and Respectful to all Virtual Court Participants** - Use good manners; ensure that your physical and facial expressions are appropriate and uphold the dignity of a court setting. Ensure your language upholds the dignity of a court setting – do not use profanity.
- 7) **Do Not Bring Food to the Virtual Courtroom** – Do not eat or chew gum during proceedings. Coffee is fine, we all need coffee. Tea and water are also acceptable.
- 8) **Do not Use Tobacco or Vaping Products in the Remote Courtroom or During Remote Meetings**
- 9) **Sit Up Straight** - Show the same courtesy the Court is showing you. Do not prop your feet up on a table or chair. Take time to make sure your camera is pointed straight at your face - not from below or from the side. We want to see you at your best.
- 10) **No Recording** – There is no filming or videotaping of remote proceedings. No sound recordings of the proceedings shall be permitted except by the official court reporter for the court or over FTR, and no broadcasting of the proceedings shall be permitted.
- 11) **Prepare Your Exhibits** – Exhibits must be submitted to the Court and opposing counsel 48 hours before a hearing.
- 12) **Impairment** – An appearance while being impaired to any degree by alcohol, sedatives, prescriptions, or controlled substances is prohibited and must be reported. If it appears or if the Court determines that any person at a proceeding is under the influence, the hearing will be rescheduled or other appropriate action may be taken.



ARTURO L. JARAMILLO

Summer Law Clerk Program

- ✓ Does your firm, business, or organization want to be part of an ABA Awarded program? It's the only one of its kind in the country!
- ✓ Do you want to help ignite first year law student's passion in your field of law?
- ✓ Are you committed to promoting diversity and inclusion through the membership of the State Bar?

If you answered yes to one or all of these questions, then participating in the Arturo Jaramillo Clerkship Program can help accomplish these goals! Arturo L. Jaramillo, the first Hispanic president of the State Bar of New Mexico, developed the Summer Law Clerk Program ("Program") in 1993 to offer first year law students of diverse backgrounds the opportunity to clerk in legal settings that provide a foundation for the students' law careers and to promote equal employment opportunities for persons who have historically been under-represented in the legal profession. The Program creates employment opportunities in medium and large law firms, state and local public agencies, and corporate law departments in New Mexico by providing a summer law clerk experience for motivated and deserving law students who meet the programs eligibility criteria.

To learn more, please contact the organizers of the event!



DENISE CHANEZ
DChanez@sclawnm.com



LEON HOWARD
lhoward@aclu-nm.org



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

Redefining Worthiness: Challenging My Childhood Beliefs About Money

By Hannah Bell, JD, AFC

If I'm being honest, I became a lawyer because I wanted to be wealthy. I graduated from college and saw two choices; doctor or lawyer. Both were high-earning professions with plenty of social prestige. I applied to law school and was on my way to becoming a lawyer. While I was, and am, motivated to help people in need, my choices were narrowed by a desire to make money.

Like many, my beliefs about money formed during childhood.¹ Growing up, I watched my dad, a general contractor, work 10-hour days doing manual labor. My mom occasionally picked up odd jobs to bring in extra money. While we never lacked, I could sense my parents' relationship with money was stressful and their conversations around it were frequently tense. In contrast, I saw the way wealthy people lived and how they were treated by others. I saw wealthy people held in high regard, not because of the kind of person they were, but because they simply had money. I equated money with happiness and with being a good person. I believed the more money you had, the more worthy you were.

With the idea of wealth providing motivation, I finished law school. However, even with the degree in hand, my husband and I quickly realized we needed two incomes to cover our bills, with little leftover. We had over \$90,000 in debt, and like so many Americans, we were just one emergency away from serious financial strain. I felt pressure to know how to manage my money – I had more of it than I ever had – but my lack of financial understanding left me shaken.

I turned to the personal finance space for help but only saw titles like “I Will Teach You to Be Rich,” “How Rich People Think” and “Rich Dad Poor Dad.” The answer seemed to always be more money. However,



even in my new profession, with my new salary, I didn't feel the worthiness I thought this lifestyle promised. I felt insecure, both with money and in who I was. My long-held beliefs were being challenged. Even more, I felt alone. I believed that, as a lawyer, I couldn't share that I didn't have this aspect of life figured out.

Determined to foster a better relationship with money, I centered my finances on my values. I stopped obsessing over wealth, and the physical trappings of it, and instead set a new goal of financial wellness. The first step towards that goal was to pay off all our debt and in a two-year period, we paid off over \$90,000.

As we progressed through our financial journey, I grappled with my beliefs about money. My attraction to wealth, and the social and moral value we ascribe to it, wasn't surprising anymore. Our society constantly reinforces that our worth is tied to material signs of money. We are constantly exposed to advertisements for luxury vehicles, designer clothes and extravagant homes. With social media and the internet, we no longer have to keep up with the Joneses down the block; we have to keep up with the Kardashians. In the

law, redress is commonly measured monetarily. We assume the larger the recovery, the better the result for the injured person. Even in these helping professions, we see assistance through numbers.

I realized that chasing wealth for its own sake would always be a moving target, and tying it to my self-worth meant I would never feel secure in who I am.

I came to understand the appearance of wealth is often just that – superficial. Feeling financially secure allowed me to have choices – true choices – and gave me the space to create my own identity. I no longer needed to define myself by how much money I earned or the social value society placed on my profession. As the financial strain lessened, I was finally able to shape my practice of the law, rather than letting it shape me.

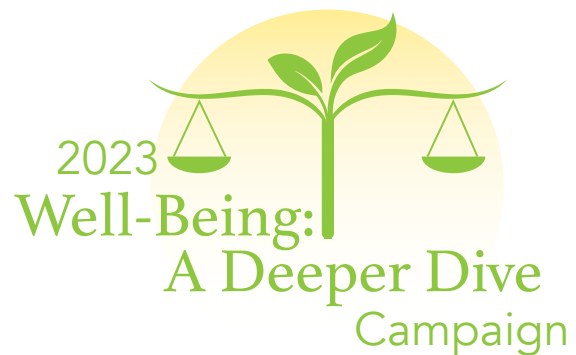
So, how do you challenge harmful money beliefs? For me, I started by exploring my values. I value financial security and stability, which I've learned is not always synonymous with extraordinary monetary wealth. I value choice and freedom; something that financial security provides. I value kindness and generosity, which, while it now seems obvious, is unrelated to how much money you have.

I share this story, not because it's easy or comfortable, but because a healthy and open dialogue on this subject is needed. When we become lawyers, everyone assumes we have all the answers and it's hard to acknowledge that sometimes we don't. Challenging our beliefs about money can be a long and difficult process, but it's a crucial step towards finding true financial security and personal fulfillment. Our early experiences and external messaging about money can deeply influence our attitudes and behaviors towards it. By examining our values and priorities, we can redefine our relationship with money and find



greater peace and purpose in our lives. Ultimately, true wealth lies not in the amount of money we accumulate but in the freedom and choices it affords us and the relationships and experiences that give our lives meaning. ■

***HANNAH BELL, J.D., AFC®**, is a financial wellness consultant and the founder of Bottom Line Personal Finance. She holds a bachelor's degree in economics from the University of New Mexico and a law degree from the University of New Mexico School of Law. In addition to her financial wellness practice, Ms. Bell co-teaches Mediation at the University of New Mexico School of Law. By combining her great passions, financial fluency, mediation, and teaching, Ms. Bell helps her clients adopt a mindful money system, communicate about money, and build healthy, intentional habits.*



Endnotes

¹ <https://www.psychologytoday.com/us/blog/mental-wealth/202108/how-your-parents-beliefs-about-money-affect-you>

Get to Know:



The New Mexico Women's Bar Association

What is the main objective, or mission statement, of your bar/association?

The New Mexico Women's Bar Association seeks to develop a network and support system for women in the profession by providing resources that empower women in the legal profession.

What groups and communities will attorneys and legal professionals gain by joining your organization?

The NMWBA is made up of attorneys from all practice areas and backgrounds. This provides members with the opportunity to expand their network, broaden their support system and unify women in the legal field. Our vision is that these connections will better promote a civil and collegial bar and healthy work environments.

What qualities are shared between members of your bar/association?

We are all active in community engagement, volunteer work and continuing education. We welcome attorneys and paralegals of all genders. We share a vision that we all have success and fulfillment in our legal careers.

Where can I learn more about the activities of your bar/association and how can I participate?

We are active on LinkedIn and Instagram. Our website is www.nmwba.org.

What can I do to serve stakeholders of the bar/association if I am not a member yet?

You can attend our events! Additionally, paying your annual membership dues allows us to provide ongoing sponsorships of events that anyone can attend and bar exam scholarships to recent graduates who are sitting for the N.M. Bar. This year, we provided 10 scholarships to recent graduates of \$1,000 each providing much needed financial support during that stressful time between graduation and employment.

You can also share your ideas for events or volunteer.

When was your bar/association founded?

1990.

How can State Bar of New Mexico members join?

You can join by going to our website and purchasing a membership. Or, you can select the New Mexico Women's Bar Association membership when you renew your annual State Bar of New Mexico membership and pay your annual dues.

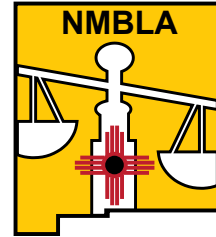
Better yet, we have our annual elections on November 28, 2023 where we welcome new potential board members to join us and run for the board. Please contact us at the information below if you are interested.

Who can prospective members of the bar/association contact?

You can contact the copresidents Laura Horton at laura@ahm.law and Michelle Garcia at michelleg@nmlegalaid.org and we will be happy to invite you to a monthly board meeting, introduce you to other officers or meet you for coffee or lunch.

To have your bar association featured, email Brandon McIntyre at brandon.mcintyre@sbnm.org

Get to Know:



The New Mexico Black Lawyers Association

What is the main objective, or mission statement, of your bar/association?

The New Mexico Black Lawyers Association's ("NMBLA") mission is to conduct a program of continuing legal education for the membership, improve judicial selection and tenure; to study the needs of the State and community for legislation and to protect the civil rights of community citizens through the legal profession.

What groups and communities will attorneys and legal professionals help by joining your organization?

Engaging with NMBLA offers various benefits, including insights into community issues and opportunities to fulfill annual CLE credits. We also facilitate co-sponsored events, provide streamlined access to partner activities and enable impactful support for students through our National Bar Association partnership.

What qualities are shared between members of your bar/association?

Members of NMBLA come from various backgrounds, yet we are united by core values that go beyond the legal profession. Our collective commitment is deeply rooted in advocating for equity and justice, particularly within the Black community. We prioritize educational outreach and organizational excellence as the main avenues through which we drive change and uplift lives. In doing so, we aim to significantly contribute to the betterment of legal practices and social justice frameworks that empower Black individuals and communities.

Where can I learn more about the activities of your bar/association and how can I participate?

Visit our website at <https://newmexicoblacklawyersassociation.org/> or find us on Facebook at <https://www.facebook.com/NMBlackLawyers> where NMBLA shares its latest events, including CLEs and sponsored events.

What can I do to serve stakeholders of the bar/association if I am not a member yet?

NMBLA welcomes non-member support by way of volunteering for upcoming events, sponsoring and co-sponsoring upcoming events and attending CLE's and other community events supported by NMBLA. The most up to date information on how to support upcoming NMBLA can be found on its Facebook page.

When was your bar/association founded?

NMBLA was founded in 1982 and incorporated by charter members and incorporators: Tommy Jewell, retired Chief Children's Court Judge; Hannah Best, now head of Best and Associates; Raymond Hamilton, retired Assistant United States Attorney; and Angela Jewell, retired District Court Judge.

How can State Bar of New Mexico members join?

To join NMBLA, simply email NMBLA at nmblacklawyers@gmail.com. You may also join by electing NMBLA on your annual licensure recertification provided by the State Bar of New Mexico.

Who can prospective members of the bar/association contact?

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To have your bar association featured, email Brandon McIntyre at brandon.mcintyre@sbnm.org

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-021

No: S-1-SC-38147 (filed July 24, 2023)

RUFINO TORRES,

Petitioner,

v.

DWAYNE SANTISTEVAN, Warden,

Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

Angie K. Schneider, District Judge

Bennett J. Baur, Chief Public Defender
Kimberly M. Chavez Cook,
Appellate Defender
Santa Fe, NM

Liane E. Kerr, LLC
Liane E. Kerr
Albuquerque, NM

for Petitioner

Hector H. Balderas, Attorney General
Emily C. Tyson-Jorgenson,
Assistant Attorney General
Santa Fe, NM

for Respondent

OPINION

VIGIL, Justice.

{1} This case comes before us on a petition for writ of certiorari under Rule 12-501 NMRA to review Petitioner Rufino Torres's district court habeas corpus proceedings. Petitioner contends that the judgment and sentence which required him to serve consecutive, i.e., "stacked," five-year terms of probation was illegal. We agree. Furthermore, we determine that consolidation of four separate cases resulted in a single judgment and sentence, and when the district court determined that Petitioner had completed serving his sentence and probation in one case, the legal effect was that the determination applied to the entire judgment and sentence. We therefore conclude that Petitioner is entitled to be released from custody of the New Mexico Department of Corrections immediately upon the issuance of our mandate. We also determine that Petitioner's three conspiracy convictions violate double jeopardy.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} Four different indictments were filed

against Petitioner in the Twelfth Judicial District Court in Otero County charging Petitioner with sixteen crimes which occurred between June 1, 2010, and June 3, 2010. The indictment in cause number D-1215-CR-2010-0270 (-270 case) charged four offenses: that on June 2, 2010, Petitioner burglarized two storage units located at the same address; and that on the same day Petitioner conspired to commit nonresidential burglary and received stolen property. The indictment in cause number D-1215-CR-2010-0290 (-290 case) charged three offenses: that on June 2, 2010, Petitioner committed larceny of property that was on display at the Alamogordo Chamber of Commerce Museum; engaged in a conspiracy to commit the larceny; and received the property that was stolen from the museum. The indictment in cause number D-1215-CR-2010-0269 (-269 case) alleged six offenses: that on June 2, 2010, Petitioner burglarized a storage unit and conspired to commit nonresidential burglary; and that on June 3, 2010, Petitioner burglarized three other storage units and received stolen property. Finally, the indictment in cause number D-1215-CR-2010-0271 (-271 case) alleged that on June 1, 2010,

Petitioner committed three offenses: that he broke into and entered a self-storage business, burglarized the business, and stole property from the business.

{3} The State then filed a motion to consolidate the four cases for plea and disposition. The district court granted the motion and ordered the cases "consolidated into [the -269 case] for plea and disposition." Thereafter, unless we note otherwise, every subsequent pleading was filed in all four cases. This did not in any way alter the fact that the cases were consolidated. In the plea and disposition agreement Petitioner agreed to plead guilty to all sixteen of the original charges "because he is in fact guilty of the foregoing charges." There was no agreement as to sentence, and Petitioner understood he was exposed to a twenty-seven year term of imprisonment, a period of mandatory parole for each offense, and mandatory fines and fees.

{4} Petitioner was sentenced on February 4, 2011. Petitioner received a twenty-seven year term of imprisonment, and there is no issue about whether the term of imprisonment imposed on each count was correct. The total term of twenty-seven years resulted from the fact that the district court imposed a sentence of incarceration for every crime charged in each case. Thus, in the -270 case Petitioner was sentenced to a term of imprisonment of six years; in the -290 case he was sentenced to a term of imprisonment of seven years and six months; in the -269 case he was sentenced to a term of imprisonment of nine years; and in the -271 case he was sentenced to a term of imprisonment of four years and six months, for a total of twenty-seven years.

{5} In addition, the district court ordered that the sentences in each case be served consecutively. Specifically, the district court ordered that the sentence in the -290 case run consecutively to the -270 case, that the sentence in the -269 case run consecutively to the -290 case, and that the sentence in the -271 case run consecutively to the -269 case. In other words, Petitioner was ordered to serve the sentence in the -270 case in full before beginning to serve the sentence in the -290 case, and to serve the sentence in the -290 case in full before beginning to serve the sentence in the -269 case, and to serve the sentence in the -269 case in full before beginning to serve the sentence in the -271 case.

{6} The district court then ordered that all but 364 days of the sentence in the -270 case, apparently the time served, be suspended and that Petitioner be placed on probation for a period of five years; that the sentence of incarceration in the -290 case be suspended and that Petitioner be

placed on probation for five years “after the completion” of the -270 case; that the sentence of incarceration in the -269 case be suspended and that Petitioner be placed on probation for thirty days “after the completion” of the -290 case; and that the sentence in the -271 case be suspended and that Petitioner be placed on probation for thirty days “after the completion” of the -269 case. It is this feature of consecutive probationary terms and Petitioner’s multiple probation violations which give rise to the primary issue in this case.

{7} Petitioner violated probation multiple times over the years following his sentencing. The original five-year period of probation was from February 8, 2011, to February 7, 2016. On June 11, 2013, the district court revoked Petitioner’s probation, reinstated probation, and imposed a new probation term of five years, beginning June 11, 2013. Subsequently, on September 27, 2013, the district court once again revoked Petitioner’s probation, reinstated probation, and imposed a new five-year probationary term from September 27, 2013, to September 26, 2018. On May 23, 2014, the district court revoked Petitioner’s probation for the third time. This order was different than the preceding orders because no new five-year term of probation was imposed. Instead, the district court reinstated probation for the period of September 27, 2013, to September 26, 2018. On July 15, 2016, the district court revoked Petitioner’s probation a fourth time. In this order, the district court continued Petitioner’s probation under the terms and conditions set forth in the original judgment and sentence with the additional condition that Petitioner serve a six-month sanction in the Otero County Detention Center. The resulting order of probation states that Petitioner is “under probation supervision until 2/14/2017 or until further order of the [c]ourt” (emphasis added).

{8} On February 21, 2017, the district court filed its order of discharge on suspended sentence. This order recites that the period of suspension expired on February 4, 2017. The order of discharge changes the termination date from February 14, 2017, to February 4, 2017, but is nevertheless consistent with the latter possibility in the order of probation stating that Petitioner is “under probation supervision until 2/14/2017 or until further order of the [c]ourt” (emphasis added). The order of discharge continues, stating that “pursuant to [NMSA 1978,] Section 31-20-8 [(1963)], [Petitioner] is relieved of any obligation imposed upon him[] by said order of the [c]ourt and has satisfied his[] criminal liability for the crime charged

herein.” The order of discharge was filed only in the -270 case.

{9} Following the order of discharge, the State filed yet another petition to revoke probation on February 26, 2018. This petition was not filed in the -270 case because the State said Petitioner’s sentence in the -270 case “was completed on February 4, 2017.” The petition alleged that Petitioner’s then-current probation in the -290 case was from February 4, 2017, to February 4, 2022. On May 9, 2018, the district court entered its order revoking probation and committing Petitioner to the Department of Corrections. After giving Petitioner credit for six years in the -270 case and credit for time served in the -290 case, the district court calculated that the balance on Petitioner’s sentence was 7,220 days. The district court ordered Petitioner to serve 2,292 days of those days in the custody of the Department of Corrections. The balance of 4,928 days was suspended, and Petitioner was ordered to serve a new five-year term of probation. This order was filed in the -269, -271, and -290 cases.

{10} Acting pro se, on October 17, 2018, Petitioner filed a habeas corpus petition in the district court. Petitioner asserted he was illegally sentenced, did not receive the proper credit calculations, and received ineffective assistance of counsel. The district court appointed an attorney to review the illegal sentence and credit calculation claims, but did not order the attorney to review the ineffective assistance of counsel claim.¹

{11} The district court entered a procedural order on Petitioner’s petition for habeas corpus in which the district court recalculated Petitioner’s credit for presentence confinement. The district court concluded that Petitioner had not been awarded 245 days of credit for presentence confinement in the -270 case, with the result that the February 21, 2017, order of discharge on suspended sentence should have stated that Petitioner’s sentence in the -270 case expired on June 4, 2016, not February 4, 2017. The result of the correction was that the balance on Petitioner’s sentence was 6,975 days instead of 7,220 days. Petitioner was still ordered to serve 2,292 of those days in the custody of the Department of Corrections, with the balance suspended under a new five-year term of probation. The district court otherwise denied Petitioner’s requested habeas corpus relief.

{12} On February 7, 2020, the district court entered an amended order revoking probation and committing Petitioner to the Department of Corrections, reiterating that Petitioner was discharged from the -270 case on June 4, 2016, setting forth the

new calculations, and ordering Petitioner’s incarceration in the Department of Corrections for 2,292 days, followed by the new five-year term of probation.

{13} Petitioner requested certiorari review pursuant to Rule 12-501, which we granted. For the reasons stated herein, we reverse the district court, grant habeas corpus relief, and order Petitioner’s immediate release from custody upon issuance of the mandate.

II. DISCUSSION

{14} We begin by addressing the consequence of consolidating Petitioner’s district court cases. We then address the error in stacking consecutive five-year terms of probation with the result that Petitioner’s custody is now illegal. Finally, we address Petitioner’s argument that his three convictions for conspiracy violate double jeopardy.

A. Legality of Petitioner’s Sentence and Custody

{15} Petitioner maintains that he always believed he was facing a total of only five years of probation, despite his total sentencing exposure equating to twenty-seven years. Petitioner asserts that the total period of probation the district court could have imposed was five years, and that the district court lacked authority to impose a new five-year probation period following each probation violation. In response, the State argues the district court properly placed Petitioner on new terms of probation following each revocation. When, as here, a case “involves issues concerning the district court’s interpretation and application of the sentencing law, it is subject to de novo review.” *State v. Brown*, 1999-NMSC-004, ¶ 8, 126 N.M. 642, 974 P.2d 136.

{16} We first address the legal effect of consolidation on Petitioner’s four separate cases. Since at least 1953, the rule has been that “if the separate informations were properly consolidated they would thenceforth be considered as one information containing separate counts.” *State v. Compton*, 1953-NMSC-036, ¶¶ 41-42, 57 N.M. 227, 257 P.2d 915 (considering the number of preemptory challenges a defendant is allotted following consolidation of two cases). Subsequently, in *State v. Paschall*, 1965-NMSC-008, ¶ 3, 74 N.M. 750, 398 P.2d 439, we considered the effect of consolidating separate criminal informations for trial. We said consolidation “means trying the several different criminal informations, charging separate offenses, at one time and before one jury—a procedure which involves separate verdicts respecting each offense charged and tried.” *Id.*

{17} The current rules of criminal procedure lack explicit provisions about the effect of consolidation. However, the

¹ In light of our disposition of this case, we do not address the ineffective assistance of counsel issue in this opinion.

local rules of several districts, which we have approved, give direction on the effect of consolidation. For example, when two or more cases are consolidated, all the pleadings filed after consolidation are docketed and placed in the file with the lowest case number. See LR1-108(B) NMRA; LR3-204(C) NMRA; LR5-213(B) NMRA. Further, “[t]he case number of each case consolidated shall appear in the caption of all pleadings, motions, and other papers filed after consolidation.” LR5-213(C); see also LR3-204(D). Based on the procedural history of this case and lack of explicit provisions outlining the effect of consolidation, we request that the appropriate rules committees define the effect of consolidation within our Rules of Criminal Procedure for the District, Metropolitan, and Magistrate Courts.

{18} Here, Petitioner’s four separate cases were “consolidated into [the -269 case] for plea and disposition.” The legal effect was that upon consolidation, there was a single case, the -269 case, with multiple underlying charges. The order of consolidation ultimately resulted in a single judgment and sentence. However, despite consolidation, the judgment and sentence sets forth a separate probation period for each original case in which the probation terms were stacked. We now turn to whether this was permissible.

{19} “When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the . . . district court has . . . suspended [the] sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension . . .” NMSA 1978, Section 31-20-5(A) (2003). Critical to the case before us, the statute explicitly directs, “the total period of probation for district court shall not exceed five years.” *Id.* Our Court of Appeals explained in *State v. Devigne*, 1981-NMCA-088, ¶¶ 28-33, 96 N.M. 561, 632 P.2d 1199, that when a period of probation is entered on a multiple count indictment at one trial, the district court cannot impose a total term of probation longer than five years. The Court of Appeals based its conclusion on the statutory text of Section 31-20-5 and the statute’s legislative history. *Id.* ¶ 33. We agree with the Court of Appeals on this point, and hold that when two or more cases are consolidated for a plea and sentencing, if the district court in its discretion suspends all or part of the sentence only a single term of probation, not to exceed five years, can be imposed.

{20} That is not to say that a probationer cannot be required to serve more than five years on probation. When a probation violation “is established, the [district] court may continue the original probation or revoke the probation and either order a new

probation with any condition provided for in Section 31-20-5 or [NMSA 1978, Section] 31-20-6 [(2007)] . . . or require the probationer to serve the balance of the sentence imposed or any lesser sentence.” NMSA 1978, § 31-21-15(B) (2016). Thus, if all or a part of the sentence is suspended under a five-year term of probation, the district court may properly revoke probation and impose a new five-year period of probation if the defendant violates the terms and conditions of probation during the original term of probation. *State v. Baca*, 2005-NMCA-001, ¶¶ 13-15, 136 N.M. 667, 104 P.3d 533. This case is an example of such a scenario. As explained subsequently herein, Petitioner properly served six years of probation.

{21} We disagree with Petitioner’s argument that each of the district court’s revocations and reinstatements of probation were illegal. The original probation term was from February 8, 2011 to February 7, 2016. Within that term, on June 11, 2013, the district court revoked and reinstated Petitioner’s probation and imposed a new five-year term of probation from June 11, 2013 to June 10, 2018. Within this new term of probation, on May 23, 2014, the district court revoked and reinstated Petitioner’s probation. However, the district court did not impose a new probationary term and opted to reinstate the existing term of probation which expired on September 26, 2018. Finally, within the existing term of probation, on July 15, 2016, the district court revoked Petitioner’s probation and reinstated the probation with an additional condition that Petitioner serve six months in the Otero County Detention Center. Each of the foregoing times the district court revoked and reinstated probation, the district court complied with Section 31-20-5 and *Baca*, 2005-NMCA-001, ¶¶ 13-15. These were followed by the district court’s order filed on February 21, 2017, that Petitioner’s five-year probation ended on February 4, 2017. The illegality of Petitioner’s detention stems from what happened next under the structure of the stacked probation terms set forth in the judgment and sentence.

{22} The February 21, 2017 order, which determined that Petitioner’s five-year term of probation had expired was only filed in the -270 case. Correctly understanding that the judgment and sentence intended to impose stacked terms of probation, the State filed another petition to revoke probation in the -290 case, contending that the period of probation in this case started on February 4, 2017, and ended on February 4, 2022. Upon finding that Petitioner violated probation during this time, on April 25, 2018, the district court revoked probation and ordered Petitioner’s incarceration in the Department of Corrections for 2,292

days, followed by another five-year term of probation. As noted previously herein, the district court later recalculated Petitioner’s credit for presentence confinement (which resulted in an earlier termination of probation in the -270 case), but still ordered incarceration in the Department of Corrections for 2,292 days, followed by five years of probation. When the district court subsequently revoked Petitioner’s probation, sentenced Petitioner to the Department of Corrections, and imposed a new five-year term of probation, those actions violated Section 31-20-5(A) as construed in *Devigne*, 1981-NMCA-088, ¶¶ 28-33. In fact, while Section 31-20-5(A) limits a term of probation to five years, the structure of the judgment and sentence here required Petitioner to serve more than ten years of probation. The question remains: what relief is Petitioner entitled to receive?

{23} For the answer to this question, we look to the district court’s February 21, 2017, order of discharge filed in the -270 case. The order provides:

[Petitioner was] placed under the supervision of the Probation Division for a period of 5 year(s), 0 month(s), 0 day(s), as evidenced by a copy of the Judgment and Sentence entered [in] this case, and;

It further appearing to the [c]ourt that the period of suspension expired on 2/4/2017 . . .

THEREFORE, IT IS ORDERED THAT pursuant to Section 31-20-8, . . . [Petitioner] is relieved of any obligation imposed upon him[] by said order of the [c]ourt and has satisfied his[] criminal liability for the crime charged herein.

{24} The order says two things: (1) Petitioner’s five-year term of probation imposed by the judgment and sentence has “expired”; and (2) Petitioner “is relieved of any obligation imposed upon him[] by said order of the [c]ourt and has satisfied his[] criminal liability for the crime charged herein.” As we already stated, the date that the probation expired was later changed from February 4, 2017, to June 4, 2016 (after the district court recalculated Petitioner’s presentence confinement credits), but the order was not otherwise changed and remains in full force and effect. The fact that this order was only filed in the -270 case cannot change the fact that the four separate cases were “consolidated into [the -269 case] for plea and disposition.” The legal effect was that upon consolidation, there was a single case, the -269 case, with multiple underlying charges, which

resulted in a single judgment and sentence. {25} The first consequence of the order of discharge is that after February 4, 2017, the district court had no jurisdiction to revoke Petitioner's probation. Under New Mexico case law, Section 31-20-8 combined with Section 31-21-15(B) deprives district courts of jurisdiction to revoke probation once the probationary period has expired. See *State v. Ordunez*, 2012-NMSC-024, ¶¶ 2, 9, 283 P.3d 282 (concluding the district court lacked jurisdiction over the petition to revoke probation after the probationary term expired). The second consequence is that the district court order declaring that Petitioner "has satisfied his[] criminal liability for the crime charged herein" applies to the entire judgment and sentence. After February 4, 2017, Petitioner was no longer subject to the judgment and sentence. The core purpose of the writ of habeas corpus—to protect an individual from illegal custody or restraint—goes to the heart of this case. *Caristo v. Sullivan*, 1991-NMSC-088, ¶ 25, 112 N.M. 623, 818 P.2d 401 ("Because the writ of habeas corpus protects our most basic right of freedom from illegal restraint on personal liberty, the writ must be construed to afford a swift and imperative remedy in all cases of illegal restraint or confinement." (internal quotation marks and citations omitted)). Petitioner shall be immediately released from custody upon the issuance of our mandate in this case.

B. Double Jeopardy Violations

{26} Next, we address whether Petitioner's three convictions and sentences for conspiracy violate double jeopardy. The sentence imposed under a plea agreement can violate double jeopardy. *State v. Jackson*, 1993-NMCA-092, ¶¶ 10-11, 116 N.M. 130, 860 P.2d 772. Furthermore, the fact that we have determined Petitioner has served his sentence is no bar to our review of this claim. See *id.* ¶ 12 ("In New Mexico, 'double jeopardy may not be waived and may be raised . . . at any stage of a criminal prosecution, either before or after judgment.'" (quoting NMSA 1978, § 30-1-10 (1963))).

{27} Petitioner argues his three conspiracy convictions violate double jeopardy because his conduct underlying the conspiracy convictions was unitary. The State argues that the conduct was not unitary because the convictions either involved different victims or occurred on different days. "This Court reviews claims involving alleged violations of a defendant's right to be free from double jeopardy de novo." *State v. Loza*, 2018-NMSC-034, ¶ 4, 426 P.3d 34.

{28} Both the United States Constitution and the New Mexico Constitution guarantee that no person shall be "twice put in jeopardy" for the same offense. U.S.

Const. amend. V; N.M. Const. art. II, § 15. Double jeopardy protects against successive prosecutions and multiple punishments for the same offense. See *Swafford v. State*, 1991-NMSC-043, ¶ 6, 112 N.M. 3, 810 P.2d 1223. Multiple punishment cases are classified in one of two ways: double description cases or unit of prosecution cases. *State v. Gallegos*, 2011-NMSC-027, ¶ 31, 149 N.M. 704, 254 P.3d 655. In double description cases, "a single act results in multiple charges under different criminal statutes"; unit of prosecution cases arise when "an individual is convicted of multiple violations of the same criminal statute." *Id.* (internal quotation marks and citations omitted). Petitioner pleaded guilty to three conspiracy crimes under NMSA 1978, Section 30-28-2 (1979), so this is a multiple punishment case, and we therefore apply the unit of prosecution analysis. In analyzing a unit of prosecution claim, the relevant inquiry is "whether the [L]egislature intended punishment for the entire course of conduct or for each discrete act." *Swafford*, 1991-NMSC-043, ¶ 8. {29} This Court originally applied the unit of prosecution analysis to the conspiracy statute, § 30-28-2, in *Gallegos*, 2011-NMSC-027, ¶¶ 43-64. The *Gallegos* Court inferred that based on the "text, history, and purpose of our conspiracy statute . . . the Legislature established . . . a rebuttable presumption that multiple crimes are the object of only one, overarching, conspiratorial agreement subject to one, severe punishment set at the highest crime conspired to be committed." *Id.* ¶ 55. *The State may overcome this presumption of singularity, "but doing so requires the state to carry a heavy burden."* *Id.* To determine whether the presumption of singularity is overcome, *Gallegos* adopted a totality of the circumstances test. *Id.* ¶ 56. Under this totality of the circumstances test, we consider whether

"(a) the location of the two alleged conspiracies is the same; (b) there is a significant degree of temporal overlap between the two conspiracies charged; (c) there is an overlap of personnel between the two conspiracies (including unindicted as well as indicted co-conspirators); and (d) the overt acts charged and (e) the role played by the defendant in the alleged conspiracies are similar."

Id. ¶ 42 (alterations, ellipsis, and citation omitted). We continue to rely on these factors from the *Gallegos* analysis in analyzing conspiracy double jeopardy cases. *State v. Comitz*, 2019-NMSC-011, ¶¶ 33-34, 443 P.3d 1130; *State v. Ortega*, 2014-NMSC-017, ¶ 27, 327 P.3d 1076.

{30} Since there was no trial, we consider only the limited facts contained in the

statement of facts from Petitioner's guilty plea. See *Jackson*, 1993-NMCA-092, ¶¶ 11, 18 (considering only the facts established at the guilty plea hearing to determine if the sentence imposed under a plea agreement violated double jeopardy). The facts are as follows:

On or about June 02 and 03, 2010, I did enter four separate locked storage units, located at 2801 Indian Wells Rd., Alamogordo, NM, without authorization or permission, with intent to commit a theft when I got inside and I conspired by words and acts together with another person to break into the units. . . .

On or about June 02, 2010, I did enter two different locked storage units, located at 3110 North Florida, Alamogordo, NM, without authorization or permission, with intent to commit a theft when I got inside and I conspired by words and acts together with another person to break into the units. . . .

On or about June 02, 2010, I did take and carry away two metal dyes and one Columbia Shuttle medallion, belonging to Tularosa Basin Historical Society (Mrs. Dolores Rogers), which had a market value of over \$2500, and at the time the property was taken, intended to permanently deprive the owner of it and . . . I conspired by words and acts together with another person to take said property.

The two metal dyes and the medallion were stolen from the Alamogordo Chamber of Commerce Museum. We apply the factors from the *Gallegos* analysis to these facts from Petitioner's guilty plea.

{31} First—as to whether the conspiracies occurred at the same location—the statement of facts provides that the two conspiracies to commit nonresidential burglary and the conspiracy to commit larceny occurred at three separate locations: (1) four storage units at 2801 Indian Wells Road, (2) two storage units at 3110 North Florida, and (3) the Alamogordo Chamber of Commerce Museum. This first factor weighs towards finding separate conduct. {32} Regarding the second factor—whether the conspiracies overlap in time—because all of the alleged conspiracies occurred on the same day, June 2, 2010, and because the State failed to introduce evidence of intervening conduct or distinct conspiratorial agreements, the State failed to satisfy its burden by showing "how

this Court can meaningfully distinguish between the three charged conspiracies in a way that would justify multiple punishment under the conspiracy statute.” *Gallegos*, 2011-NMSC-027, ¶ 62; *see id.* ¶ 46 (“A single conspiracy can last for years, with many of its substantive offenses being completed during that time. . . . Furthermore, a conspiracy may mature and expand over time, adding more members and embracing additional criminal objectives without changing the fundamental nature of the single agreement.” (internal quotation marks and citations omitted)). Even if we were to attempt to distinguish the discreet conspiracies temporally throughout that day, it does not follow that Defendant entered into a new conspiracy each time he committed burglary and larceny, and it “would be contrary to the plain language of our conspiracy statute, which punishes the act of combining with another, not the objects that were to be committed” to presume such a finding. *Id.* ¶ 62. Thus, the second factor weighs in favor of singularity.

{33} As to the third factor—whether there was the same or overlapping personnel—the record indicates Petitioner conspired with at least one other person. However, there is no conclusive evidence before this Court as to whether there was more than one other coconspirator. We conclude this third factor cannot be used to meaningfully weigh towards a finding of separate conduct or towards a finding of singularity.

{34} Fourth, to determine whether defendant was charged with similar overt acts, we look to the statutory definitions of the criminal acts underlying the conspiracy convictions. NMSA 1978, Section 30-16-3(B) (1971), outlining the elements of nonresidential burglary, states: “Any person who, without authorization, enters any vehicle, watercraft, aircraft or other structure, movable or immovable, with intent to commit any felony or theft therein is guilty of a fourth degree felony.” “The crime of burglary is complete when there is an unauthorized entry with the necessary intent; the intent does not have to be carried out after entry.” *State v. McAfee*, 1967-NMSC-139, ¶ 17, 78 N.M. 108, 428 P.2d 647. NMSA 1978, Section 30-16-1(A) (2006), outlines the elements of larceny: “Larceny consists of the stealing of anything of value that belongs to another.” Moreover, as established in *McAfee*, the elements of burglary and larceny do not merge: “Since stealing is a necessary element of larceny but is not a necessary element of burglary, larceny is not necessarily involved in a burglary. . . . [A] defendant could be convicted of and sentenced for both crimes.” *McAfee*, 1967-NMSC-139, ¶ 18. Because the elements of

nonresidential burglary and larceny do not have similar overt acts, this fourth factor weighs towards finding separate conduct. {35} Fifth, looking as to whether Petitioner played a similar role in each conspiracy, the record establishes that Petitioner was the constant actor in each of the three conspiracies. This fifth factor weighs towards a finding of singularity.

{36} Thus, of the five factors, two factors weigh towards a finding of singularity, two factors weigh in favor of a finding of separate conduct, and one factor does not meaningfully affect the analysis. It is therefore untenable to conclude that there were three separate agreements in such a way that would justify multiple punishments under the conspiracy statute based on the limited factual record before us. The evidence does not demonstrate more than one agreement between two or more coconspirators nor that two conspirators made multiple agreements on or about June 2, 2010.

{37} In addition to the lack of facts, the presumption of singularity is the strongest barrier to concluding that there were three separate conspiracies. During the plea hearing and sentencing hearings, the State did not present more evidence to prove there were three separate agreements. Further, on appeal the State has not highlighted specific evidence in the record to overcome the presumption of singularity. Therefore, the presumption has not been rebutted and we hold that Petitioner’s conspiratorial conduct was unitary.

{38} Thus, we turn to the proper remedy for violation of Petitioner’s double jeopardy rights. In *Jackson*, the defendant appealed two consecutive sentences imposed for conspiracy which were imposed as a result of his guilty plea. 1993-NMCA-092, ¶¶ 1, 4, 8. The Court of Appeals agreed with the defendant that there was only one conspiracy. *Id.* ¶¶ 2, 21. Treating the appeal as a request to vacate the plea agreement, the Court of Appeals determined that the defendant was entitled to have his plea vacated only if the state agreed; alternatively, the state could agree to accept the sentence imposed, as corrected by the determination that there was only one conspiracy. *Id.* ¶ 24. Importantly, in *Jackson*, the defendant had not yet fully served his sentence. *Id.* ¶¶ 5, 8. In contrast, in this case, Petitioner has already served his sentence, including the probation term for one conspiracy conviction. Therefore, on remand, we direct the district court to enter an amended judgment and sentence vacating Petitioner’s remaining two conspiracy convictions.

III. CONCLUSION

{39} We grant habeas corpus relief. Petitioner shall be released from custody immediately upon the issuance of

our mandate. The district court’s order consolidating the four cases resulted in a single judgment and sentence. We reverse the district court because the subsequent February 21, 2017, order of discharge on suspended sentence, as amended, not only terminated Petitioner’s probation but also determined that Petitioner satisfied his criminal liability for the crimes charged, and discharged Petitioner from any obligation imposed by the judgment and sentence as of June 4, 2016. In addition, upon remand, the district court shall enter an amended judgment and sentence vacating two conspiracy convictions.

{40} IT IS SO ORDERED.

MICHAEL E. VIGIL, Justice
WE CONCUR:

C. SHANNON BACON, Chief Justice
DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice, concurring in part, dissenting in part
ZAMORA, Justice (concurring in part and dissenting in part).

{41} I agree with the majority that orders of consolidation result in a single judgment and sentence, that only a single term of probation can be imposed when two or more cases are consolidated for plea and sentencing, and that Petitioner should be immediately released from custody because he is no longer lawfully detained. *Maj. op.* ¶¶ 18-19, 25. But I cannot join the majority’s opinion for two reasons. First, the Court’s conclusion that a district court may order a defendant to complete a new five-year period of probation each and every time there is a probation violation, regardless of the severity of the alleged violation and regardless of how many years of probation the defendant has already served, is contrary to the plain language of NMSA 1978, Section 31-20-5(A) (2003). I also believe the Court should remand the double jeopardy issue to the district court. Petitioner did not raise double jeopardy below so no record on the issue was developed in the district court. Moreover, Petitioner’s counsel neglected to sufficiently address double jeopardy in the brief in chief and at oral argument. Accordingly, I respectfully concur in part and dissent in part.

I. ORDERING A NEW FIVE-YEAR PROBATIONARY PERIOD IS NOT PERMITTED UNDER SECTION 31-20-5(A) EACH TIME A DEFENDANT VIOLATES PROBATION

{42} In its analysis of the probation issue, the majority relies in part on *State v. Baca*, 2005-NMCA-001, 136 N.M. 667, 104 P.3d 533. This Court has yet to review the holding in *Baca*, which the majority relies on to conclude that pursuant to NMSA 1978, Section 31-21-15(B) (2016), a district

court can start a new five-year period of probation each time a defendant commits a probation violation until the Court no longer has jurisdiction. *Maj. op.* ¶¶ 20-21. Because I believe this result contravenes legislative intent and that the *Baca* Court's interpretation of Section 31-21-15(B) conflicts with the plain language of Section 31-20-5(A), I would overrule *Baca* and hold that a district court may not start a new five-year period of probation each time a defendant is found to have violated probation.

{43} Here, the district court sentenced Petitioner in 2011 to a total term of twenty-seven years based on his guilty plea to charges that were consolidated for purposes of plea and disposition. *Maj. op.* ¶¶ 3-4. The court suspended part of Petitioner's initial sentence and he was ordered to a period of probation. *Maj. op.* ¶ 7. Petitioner violated his probation three times prior to the expiration of this term. *Maj. op.* ¶ 7. In each instance, the district court revoked and reinstated Petitioner's probation pursuant to Section 31-21-15(B). *Maj. op.* ¶ 7. However, following the first and second revocations, the district court started an entirely new five-year period of probation, setting new expiration dates of June 10, 2018, and September 26, 2018, respectively. *Maj. op.* ¶ 7.

{44} The majority concludes that each order starting a new five-year period of probation was proper and that it was only when the district court revoked Petitioner's probation on May 9, 2018, that it acted outside its authority. *Maj. op.* ¶¶ 20-22. While I agree that the district court did not have jurisdiction to issue its May 9, 2018, revocation order, I disagree that its June 11, 2013, and September 27, 2013, orders extending Petitioner's probationary term beyond the five-year statutory limit established in Section 31-20-5(A) were lawful. The legality of Petitioner's probation term depends upon the interplay between two statutes bearing on the imposition of probation: Section 31-20-5(A) (the probation statute) and Section 31-21-15(B) (the probation revocation statute). Section 31-20-5(A) provides:

When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. *Except for sex offenders as provided in*

[NMSA 1978,] Section 31-20-5.2 [(2003)], *the total period of probation for district court shall not exceed five years . . .*

Id. (emphasis added). Section 31-21-15(B) states that, following a revocation application:

The court shall then hold a hearing, which may be informal, on the violation charged. If the violation is established, the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for . . . or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of sentence was deferred, the court may impose any sentence that might originally have been imposed, but credit shall be given for time served on probation.

Id. (emphasis added).

{45} The majority asserts that the district court's orders restarting Petitioner's probation were lawful because "the district court complied with Section 31-20-5 and *Baca*, 2005-NMCA-001, ¶¶ 13-15" in issuing them. *Maj. op.* ¶ 21. However, by its plain language, Section 31-20-5(A) establishes that "[e]xcept for sex offenders as provided in Section 31-20-5.2 NMSA 1978, *the total period of probation for district court shall not exceed five years.*" (Emphasis added). Accordingly, the majority's conclusion that the district court's orders restarting Petitioner's probation term were lawful rests on the Court of Appeals' decision in *Baca*. Because I believe *Baca* was wrongly decided, I cannot join the majority's endorsement of that holding in this opinion.

{46} Our primary purpose in interpreting statutes is to give effect to the Legislature's intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. The primary indicator of that intent is the plain language of the provision. *Id.* Therefore, where the language of a statute is plain, our inquiry is at an end. *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. We "will not depart from the plain language of the statute unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or . . . deal with an irreconcilable conflict among statutory provisions." *Maestas v. Zager*, 2007-NMSC-003, ¶ 9, 141 N.M. 154, 152 P.3d 141 (internal quotation marks and citation omitted).

{47} In my view, the language of Section 31-20-5(A) is unambiguous. The statute mandates that a probationary period is not to exceed five years in total. *See Marbob Energy Corp. v. N.M. Oil Conservation*

Comm'n, 2009-NMSC-013, ¶ 22, 146 N.M. 24, 206 P.3d 135 ("[W]hen construing statutes, 'shall' indicates that the provision is mandatory.')

{48} In *Baca*, the Court of Appeals nonetheless held that Section 31-20-5(A) could not mean what it says because, in the Court's estimation, the plain meaning of the provision would contravene the legislative purpose behind the probation statutes. *Baca*, 2005-NMCA-001, ¶¶ 16-17, 19. In that case, the defendants argued that Section 31-20-5(A) prohibits imposition of more than five years of probation in the aggregate. *Id.* ¶¶ 8, 11. The State asserted that the statute prohibits only the imposition of a probationary term of greater than five years at initial sentencing, arguing that nothing in Section 31-20-5(A) prevents a defendant from serving longer than five years overall if there are probation violations. *Id.* ¶ 18. The Court agreed with the State. *Id.*

{49} According to the *Baca* Court, adherence to the plain language of Section 31-20-5(A) would frustrate the purposes of the probation statutes in three ways. First, the Court asserted that the word "total" in Section 31-20-5(A) could not be construed to mean five years in the aggregate without rendering the option to "order a new probation with any condition" in Section 31-21-15(B) a "nullity." *Id.* ¶¶ 13, 18. Second, the *Baca* Court concluded that the defendants' proposed construction would permit a defendant to violate probation multiple times without consequence. *Id.* ¶ 19. Finally, the Court concluded that a new five-year period of probation furthered the legislative purpose of enhancing the rehabilitation of probationers by offering additional flexibility to district courts beyond either continuing the probation or revoking probation and sending the defendant to jail. *Id.* ¶ 20.

{50} I disagree. The Court of Appeals' conclusions in *Baca* are predicated on a mistaken premise. The Court appeared to believe that the option to "revoke the probation and . . . order a new probation with any [authorized] condition" under Section 31-21-15(B) *must* mean "revoke the existing probation and restart the probationary term" because, if it did not, then it would be indistinguishable from the first option (continue the probation). *See Baca*, 2005-NMCA-001, ¶ 18. However, "revoke the probation and . . . order a new probation with any [authorized] condition" is readily susceptible to a different interpretation that would distinguish it from continuing probation. *See* § 31-21-15(B). A court could order a "new probation with any condition provided for" under Sections 31-20-5 and -6 even if it did not extend the probation term if the court attached new or different conditions. Moreover, if

the original probationary term were for a period shorter than five years, “order[ing] a new probation term” could mean imposing a longer probationary term, so long as it did not exceed five years in total when combined with the prior probation term. In other words, Section 31-21-15(B) could be construed to authorize a district court to: (1) continue the probation as is for the balance of the existing probation term, which cannot be longer than five years; (2) revoke the probation and order a new probation for the balance of the term with different and/or additional conditions or for a longer term, so long as the total probation period does not exceed five years; or (3) revoke the probation and incarcerate the defendant for the balance of the sentence or some lesser term.

{51} This is a more harmonious reading of Sections 31-21-15(B) and 31-20-5(A) than that adopted by the majority and *Baca* because it gives effect to the plain language of both statutes. See *State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622 (stating that the Court reads statutes as a whole and that the Legislature “is presumed not to have used any surplus words in a statute; each word must be given meaning”). Recall that Section 31-20-5(A) provides, in part, that “[e]xcept for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation for district court shall not exceed five years . . .” (Emphasis added.) The dictionary definition of the word “total” indicates it most commonly signifies an entire amount, including an amount produced by adding or summing constituent parts. *Total*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2004) (defining “total” as “a product of addition: sum;” “an entire quantity”); see *State v. Vest*, 2021-NMSC-020, ¶ 14, 488 P.3d 626 (noting that this Court “consult[s] common dictionary definitions” when giving words “their ordinary meaning”). Thus, a plain reading of Section 31-20-5(A) indicates that a defendant’s entire probationary term—including any and all partial probationary periods—must not exceed five years. By contrast, the *Baca* Court’s interpretation of the probation statutes renders the word “total” superfluous to this provision. Such a construction is disfavored by New Mexico law. *State v. Juan*, 2010-NMSC-041, ¶ 39, 148 N.M. 747, 242 P.3d 314 (“A statute must be construed so that no part of the statute is rendered surplusage or superfluous.” (internal quotation marks, brackets, and citations omitted)).

{52} The interpretation of Section 31-21-15(B) that I propose would also resolve the *Baca* Court’s second concern: that a probationer could repeatedly violate probation and simply run out the clock on the original probation term without

consequence. *Baca*, 2005-NMCA-001, ¶¶ 19-20. On my reading of the statute, a defendant who continued to violate probationary conditions would always be subject to incarceration or to the imposition of new or more restrictive conditions until his or her probation term ran out. Or, if the probationary term imposed at sentencing were for a period of less than five years, the district court could extend it so long as the overall term did not exceed five years. In other words, the district court would not be without options to address a probationer who committed repeat violations. {53} In sum, each of the Court of Appeals’ concerns in *Baca* may be addressed by construing the option to “start a new probation” under Section 31-21-15(B) to mean that a district court may revoke a defendant’s probation and order a new probation for the balance of the existing probationary period with new or different conditions, or order a longer probation period so long as the total period of probation does not exceed five years. Each of these options provides a clear mechanism by which a district court may reconsider and recalibrate a defendant’s probation to enhance its rehabilitative potential. See *State v. Rivera*, 2004-NMSC-001, ¶ 21, 134 N.M. 768, 82 P.3d 939 (“Sections 31-20-5 and 31-21-15 [are] indicative of the Legislature’s intent to give trial courts broad discretion to sentence defendants to probationary terms and strictly monitor their compliance with an eye toward the goal of prompt and effective rehabilitation”). By contrast, it is not at all clear how the *Baca* Court’s reading of the statute—which authorizes a district court to simply extend its jurisdiction over a defendant rather than reconsider the rehabilitative purposes of the probation conditions—does anything to advance the legislative purpose of our probation statutes. “The broad general purposes to be served by probation are education and rehabilitation. . . . The conditions of probation are directed to that end.” *State v. Baca*, 1977-NMCA-030, ¶ 10, 90 N.M. 280, 562 P.2d 841.

{54} Even if there were an ambiguity in the probation statutes, I do not believe that the *Baca* Court’s interpretation of the interplay between Sections 31-20-5 and 31-21-15 is either necessary or desirable to give effect to the Legislature’s intent in enacting them. To the contrary, the interpretation advanced by *Baca* and endorsed by the majority in this opinion could result in several absurd sentencing outcomes. For example, a defendant (like Petitioner) charged with multiple counts in a consolidated case could serve decades of probation if a district court is permitted to start a new five-year period of probation each time a defendant violates probation, as occurred in this case. And of course a

new five-year period of probation could start again and again upon a finding of a violation, rendering the five-year limit stated in Section 31-20-5(A) barely a suggestion, much less a requirement. Moreover, while all agree that Petitioner could not be sentenced to more than five years’ probation at initial sentencing, regardless of the court’s overall jurisdiction, *maj. op.* ¶ 19, the *Baca* Court’s interpretation of Section 31-21-15 allows for an actual probation period spanning many times that length. Surely, this cannot be what the Legislature intended.

{55} Further, to the extent that there remains “insurmountable ambiguity” about the Legislature’s intent, such doubts should be resolved in favor of lenity toward the defendant. *State v. Tafoya*, 2010-NMSC-019, ¶ 23, 148 N.M. 391, 237 P.3d 693 (internal quotation marks and citation omitted); see *United States v. Bass*, 404 U.S. 336, 347 (1971) (“[A]mbiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” (internal quotation marks and citation omitted)). Applying the rule of lenity is important for two reasons, both of which are of significance in this case. First, the law must provide a fair warning “in language that the common world will understand, of what the law intends to do if a certain line is passed.” *Bass*, 404 U.S. at 348 (internal quotation marks and citation omitted). Next, “because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity.” *Id.*; see also *United States v. Simpson*, 319 F.3d 81, 86 (2nd Cir. 2002) (applying the rule of lenity to sentencing guidelines because one of the purposes of the rule of lenity is “to maintain the proper balance between Congress, prosecutors, and courts” (internal quotation marks and citation omitted)).

{56} Finally, in my view, the Court of Appeals’ reading of the probation statutes in *Baca* relied in part on an insupportable reading of *State v. Devigne*, 1981-NMCA-088, 96 N.M. 561, 632 P.2d 1199. According to the *Baca* Court, *Devigne* offered no support for the proposition that Section 31-20-5(A) imposes a five-year cap on the total probation that may be served because *Devigne* “stands for the principle that the maximum period of probation that a district court may impose at sentencing is a total of five years, . . . not that five years is the total amount of time a defendant can serve on probation, regardless of the number of violations.” *Baca*, 2005-NMCA-001, ¶ 18 (emphasis added).

{57} In *Devigne*, the defendant “was sentenced to three years imprisonment on each of five counts.” 1981-NMCA-088, ¶

22. The court suspended the sentence and ordered six years of probation. *Id.* The defendant argued that Section 31-20-5² prohibited the imposition of a probation term in excess of five years. *Id.* ¶ 23. Based on the plain language of the statute, the *Devigne* Court agreed with the defendant that “the maximum length of *his* probation cannot exceed five years,” *id.* (emphasis added), and held that Section 31-20-5 establishes “that the *maximum* probation for the five sentences imposed upon defendant, for convictions that occurred at one trial, [is] five years.” *Id.* ¶ 33 (emphasis added).

{58} The Court of Appeals in *Baca* read *Devigne* as holding only that the five-year limitation period applied to the probation term imposed at initial sentencing, not that a probation term could not be restarted and therefore lengthened during the probationary period. *Baca*, 2005-NMCA-001, ¶ 18. The *Baca* Court adopted this interpretation of *Devigne* based on the concerns already identified. *Id.* ¶¶ 18-20. However, there is nothing in the *Devigne* opinion—including its holding—that suggests the Court intended to distinguish between a probationary term imposed at sentencing and the period of probation actually served by a defendant. See *Devigne*, 1981-NMCA-088, ¶¶ 23, 33. Nor is there anything in the plain language of Section 31-20-5 that suggests the five-year limitation applies only to the probation imposed at sentencing. Section 31-20-5 (referring to

“the total period of probation.”). Contrary to the *Baca* Court’s strained reading of the decision, in my opinion the *Devigne* Court properly held that “the maximum probation for the five sentences imposed upon defendant, for convictions that occurred at one trial, was five years.” *Devigne*, 1981-NMCA-088, ¶ 33.

{59} I would apply that principle here. Petitioner’s probationary period should have ended after five years, thereafter depriving the district court of authority to revoke his probation. I concur in the majority’s conclusion that Petitioner should be immediately released from custody.

II. THE DOUBLE JEOPARDY CLAIM WAS NOT ADEQUATELY DEVELOPED

{60} Petitioner did not raise the issue of double jeopardy in his pro se Petition for Writ of Certiorari. Instead, this Court sua sponte raised the issue in the Order granting the petition. Despite our raising the issue, Petitioner neglected to adequately develop an argument in his brief in chief or at oral argument. Where a conviction arises from a guilty plea and there is no factual record developed at trial, “[w]e place the burden on the defendant, the party raising the double jeopardy challenge, to provide a sufficient record for the court to determine unitary conduct and complete the remainder of the double jeopardy analysis.” *State v. Sanchez*, 1996-

NMCA-089, ¶ 11, 122 N.M. 280, 923 P.2d 1165. This higher burden provides fundamental fairness to the State, which “must have the opportunity to contest [the d]efendant’s version of the facts.” *Id.* Here, the majority faults the State for failing to “highlight[] specific evidence in the record to overcome the presumption of singularity,” *maj. op.* ¶ 37, but in my opinion, the State was deprived of an opportunity to develop a record below because the issue was not raised in the district court.

{61} “Courts risk overlooking important facts or legal considerations when they take it upon themselves to raise, argue, and decide legal questions overlooked by the lawyers who tailored the case to fit within their legal theories.” *N. M. Dep’t of Hum. Servs., Income Support Div. v. Tapia*, 1982-NMSC-033, ¶ 11, 97 N.M. 632, 642 P.2d 1091. Because the issue was not adequately developed on appeal and the State was deprived of its opportunity to present evidence showing that the conduct at issue may not have been unitary, I believe the matter should have been remanded to the district court to determine in the first instance whether a double jeopardy violation exists. Accordingly, I respectfully dissent from the majority’s conclusion that Petitioner’s three conspiracy convictions violate the prohibition on double jeopardy. *Maj. op.* ¶¶ 1, 37-38.

{62} **BRIANA H. ZAMORA, Justice**

² *Devigne* concerned an earlier version of Section 31-20-5, but the two provisions are nearly identical and there is nothing in the legislative history of Section 31-20-5 that suggests the change enacted in 2003 was intended to modify the effect of the five-year limitation on probation. Compare § 31-20-5(A) (1977), with § 31-20-5(A) (2003). The provision was almost certainly amended to account for the enactment of the sex offender parole statute, Section 31-20-5.2, which was enacted in the same legislative session. See 2003 N.M. Laws, 1st Spec. Sess., ch. 1, § 7.

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-022
No: S-1-SC-39343 (filed July 27, 2023)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
ANTONIO M.,
Child-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Grace B. Duran, District Judge

Hector H. Balderas, Attorney General
Meryl E. Francolini, Assistant Attorney
General
Santa Fe, NM

for Petitioner

Harrison, Hart & Davis, LLC
Nicholas T. Hart
Albuquerque, NM

for Respondent

OPINION

BACON, Chief Justice.

{1} A jury found that Child-Respondent Antonio M. (Child) committed felony murder, attempted armed robbery, conspiracy to commit armed robbery, child abuse, and aggravated assault with a deadly weapon. On appeal, Child challenged the admission of three in-court identifications under federal and state due process. *State v. Antonio M.*, 2022-NMCA-041, ¶ 36, 516 P.3d 193.

{2} The Court of Appeals reversed for plain error, finding that the in-court identifications were impermissibly suggestive and thereby violated Child's due process right to a fair trial under the Fourteenth Amendment of the United States Constitution. *Antonio M.*, 2022-NMCA-041, ¶¶ 44, 46. The Court of Appeals remanded for a new adjudicatory hearing and did not reach the state constitutional issue. *Id.* ¶¶ 46, 49.

{3} On our grant of certiorari, Petitioner State of New Mexico makes three primary arguments for reversing the Court of Appeals. First, the State contends that identity was not at issue at the adjudicatory hearing, and thus any alleged suggestiveness in the relevant prosecutorial identification procedures did not implicate Child's due process rights. Second, the State challenges

the Court of Appeals' application of the federal due process standard articulated in *Manson v. Brathwaite*, 432 U.S. 98 (1977) and *State v. Ramirez*, 2018-NMSC-003, 409 P.3d 902, to in-court procedures by prosecutors. Third, the State contends that, in the event this Court finds that *Manson* does apply, the Court of Appeals' analysis under *Manson* and *Ramirez* was "substantively flawed" and that no plain error occurred under a proper analysis. In response, Child seeks affirmance of the Court of Appeals.

{4} We determine that identity was not at issue regarding the testimony of the three relevant witnesses and thus that Child's due process rights were not violated by the relevant in-court identifications. Accordingly, we reverse the Court of Appeals.

I. Factual AND Procedural Background

{5} The State charged Child as a participant in the fatal shooting of Fabian Lopez (Victim) at Frenger Park in Las Cruces. Uncontested evidence at Child's adjudicatory hearing established that M.M. and two other participants killed Victim in his car in the course of a drug deal. During opening statements and closing arguments, as discussed further below, defense counsel's theory of the case was that the State could not present sufficient evidence of Child's participation in the crime and that the robbery and resulting

homicide were unplanned and unintended results of a simple drug purchase. Defense counsel did not challenge Child's presence in the car that transported M.M. to and from the park.

{6} Evidence presented at the adjudicatory hearing included testimony by two eyewitnesses and three collateral witnesses. During the relevant events, Victim's girlfriend (Girlfriend) sat in the back seat of Victim's car with their infant son. Girlfriend, one of the eyewitnesses, testified that M.M. was alone initially, entered the car and transacted for drugs with Victim, and then stepped out of the car on the passenger's side, pointed a gun at Victim, and demanded that Victim "give me what you got." Girlfriend testified further that "[t]wo guys" with guns walked up on the driver's side at the same time, that one of the two participants had dreadlocks, and that multiple shots were fired. At a police-arranged lineup of six suspects with dreadlocks, Girlfriend positively identified someone other than Child as a participant.

{7} The other eyewitness to the crime, M.A., was parked in her truck at Frenger Park when she saw "[s]ome boys jumping the fence," one of whom she recalled wearing "a red hoodie." M.A. testified that "the boys walk[ed] away for a while," then Victim's car pulled up behind her, and then "the [two] boys reappeared," including the one wearing the red hoodie. M.A. testified that she drove away when she saw one of the participants with a gun, and she heard a gunshot as she drove. M.A. testified that she recalled nothing distinctive about the two boys, including that she could not tell the hairstyle of the individual wearing the red hoodie.

{8} The State presented three other witnesses: E.M., Y.C., and D.G. These witnesses—referred to herein as collateral witnesses, as they did not witness the criminal events at the park—testified to Child's statements, conduct, and demeanor before and after the criminal events.

{9} E.M. and Y.C. testified to transporting Child, M.M., and A.C. in E.M.'s car to Frenger Park on the evening in question for the purpose of "a drug trade." E.M. and Y.C. testified that they dropped off the trio at the park, parked and waited a couple of blocks away, and then transported the trio to D.G.'s residence. E.M. and Y.C. further testified that, while at D.G.'s residence, Child asked them for a ride to another location at a mobile home trailer park, which they provided.

{10} E.M. and Y.C. also testified to being familiar with Child by the nickname "Santi Loc." E.M. testified that he recalled Child having dreadlocks with blonde tips and

that he had not met Child prior to the date in question. Y.C. testified that she remembered that Child's hairstyle was "long," in "either dreads or braids." Y.C. testified that she and Child "weren't friends [but] I knew him from other friends."

{11} D.G. testified that she didn't "really personally know [Child]. I just met him from a friend . . . about a year [ago] maybe." D.G. recounted being awakened late on the night in question by E.M., Y.C., M.M., A.C., and Child. D.G. testified that she was in the same room with Child as "[h]e was begging for [E.M.] to give him a ride" home. D.G. also recounted that Child "only stayed for maybe . . . 20 minutes after they came because [Y.C.] and [E.M.] had taken him home."

{12} Central to the issue before the Court, the prosecutor asked E.M., Y.C., and D.G. on direct examination to identify Child. Pursuant to the Judiciary's COVID-related public health emergency protocols, everyone in the courtroom during the adjudicatory hearing was required to wear a protective face covering throughout the proceeding, "except that a face covering may be removed for a very brief moment to allow for the identification of a party or witness." NMSC Order No. 21-8500-003, at 5, 14 (Feb. 12, 2021), <https://www.nmcourts.gov/wp-content/uploads/2021/02/Order-No.-21-8500-003-Amending-PHE-Protocol-No.1-2-12-21-Combined.pdf> (last visited July 9, 2023).

{13} With E.M., the prosecutor conducted the following identification:

Prosecutor: Your Honor, I would like to ask [E.M.] if he could identify [Child]. But I would like to ask if [Child] could take off his mask for the purpose of identification so [E.M.] can see his face.

Court: All right. Just briefly.

Prosecutor: Please look here and see.

(Witness looks at [Child].)

Prosecutor: Okay. Thank you. Who is the young man that you looked at seated over here?

E.M.: [Child].

Prosecutor: Okay. Thank you.

With Y.C., the prosecutor conducted the following identification:

Prosecutor: Your Honor, I would like to ask [Y.C.] if she could identify [Child]. Could I please ask [Child] to remove his mask just long enough for her to see if she identifies him or not?

Court: Yes.

Prosecutor: So please look at this young man. Can you tell is this [Child] or not?

Court: Yes, I believe so.

Y.C.: Yes, I believe so.

Prosecutor: Okay. Thank you.

With D.G., the prosecutor conducted the following identification:

Prosecutor: Your Honor, I would like to ask if [D.G.] could identify [Child]. I would like to ask if [Child] could briefly remove his mask to see if she can identify him.

Court: Okay. Please.

Prosecutor: Please look at this young man here and tell us if this is [Child].

D.G.: Yes, it is.

Prosecutor: Okay. Thank you.

The record reflects and Child concedes that Child did not object to the prosecutor's identification procedures regarding the collateral witnesses' identifications.

{14} On cross-examination, defense counsel did not challenge the collateral witnesses' accounts of Child's statements, conduct, or demeanor. Rather, defense counsel confirmed each collateral witness's account of Child's state of mind after the robbery as scared or anxious to go home.

{15} As cited herein, defense counsel's consistent theory of the case in opening statements and closing arguments challenged whether Child was one of the participants in the robbery-homicide and whether Child possessed any criminal intent beyond the drug transaction. During opening statements, defense counsel stated that "there's not going to be sufficient evidence to prove [Child's] role or his criminal liability for the horrible things that happened including [Victim's] death." During closing arguments, defense counsel asserted that the State had not proven that Child was "one of those two boys" who participated with M.M. in the robbery-homicide and that Child "had no [criminal] intent" beyond "a drug transaction." Defense counsel also directly cited the accounts of E.M., Y.C., and D.G. regarding Child's mental state, effectively acknowledging the accuracy of the witnesses' testimony.

{16} Consistent with the jury verdict, the district court adjudged Child delinquent as having committed first-degree felony murder contrary to NMSA 1978, Section 30-2-1(A)(2) (1994), attempted armed robbery contrary to NMSA 1978, Section 30-16-2 (1973) (a lesser included offense of felony murder), conspiracy to commit armed robbery contrary to NMSA 1978, Section 30-28-2 (1979), abuse of a child contrary to NMSA 1978, Section 30-6-1(D) (2009), and aggravated assault with a deadly weapon contrary to NMSA 1978, Section 30-3-2(A) (1963).

II. COURT OF APPEALS

{17} The Court of Appeals applied plain error review where no objection had been raised at the adjudicatory hearing to the in-court identifications. *Antonio M.*, 2022-

NMCA-041, ¶ 37. The Court properly recognized that "[p]lain error review applies to errors that affect substantial rights of the accused and only applies to evidentiary matters" and that a court finding plain error "must be convinced that admission of the [challenged evidence] constituted an injustice that creates grave doubts concerning the validity of the verdict." *Id.* (internal quotation marks and citations omitted). The Court also recognized that under plain error review a court "must examine the alleged errors in the context of the testimony as a whole." *Id.* (quoting *State v. Montoya*, 2015-NMSC-010, ¶ 46, 345 P.3d 1056).

{18} The Court of Appeals first analyzed the challenged in-court identifications under the Fourteenth Amendment due process standard set forth in *Manson*, as applied by this Court in *Ramirez*, 2018-NMSC-003, ¶¶ 33-36. *Antonio M.*, 2022-NMCA-041, ¶¶ 42-46. The Court of Appeals recognized that under *Manson* "appellate courts [must] analyze 'whether the [identification] procedure used was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification and whether, under the totality of the circumstances, the identification was still reliable.'" *Antonio M.*, 2022-NMCA-041, ¶ 43 (quoting *State v. Martinez*, 2021-NMSC-002, ¶ 28, 478 P.3d 880).

{19} The Court of Appeals found that the in-court identifications by the collateral witnesses violated *Manson* as unreliable where "procured in-court under unnecessarily suggestive circumstances." *Antonio M.*, 2022-NMCA-041, ¶ 44. The Court pointed to those circumstances in three aspects of the prosecutor's identification procedures:

us[ing] Child's name while asking each witness to identify him[;] . . . ask[ing] two of the witnesses to "please look at this young man," instead of asking the witnesses if they saw Child in the courtroom[; and] . . . singl[ing] Child out by asking him to remove his mask, which is comparable to asking Child to identify himself by raising his hand or turning around.

Id. ¶ 45. Based on these "unnecessarily suggestive procedures" by the prosecutor, the Court concluded that "the district court erred in admitting the three identifications." *Id.*

{20} Importantly, in determining that the district court's error constituted plain error, the Court of Appeals determined that "[i]dentity was a central issue in this case." *Id.* ¶ 46. The Court noted that "E.M. and Y.C. [we]re the only witnesses to put Child at the park that night" and that the collateral witnesses "only had

brief interactions [with] him prior to the adjudicatory hearing.” *Id.* Considering the witnesses’ testimony as a whole, the Court concluded plain error occurred where “the State’s actions tending to suggest the identification of Child for these witnesses in court ‘constituted an injustice’ that creates doubts about the validity of the verdict and violated his right to due process.” *Id.* (citation omitted).

{21} Based on this conclusion, the Court of Appeals reversed the district court and remanded for a new adjudicatory hearing, thereby precluding analysis of Child’s state constitutional claim that the standard in *Martinez* should be extended to in-court identification procedures. *Id.* ¶¶ 46-49; see *Martinez*, 2021-NMSC-002, ¶ 72 (“departing from the *Manson* [reliability standard] and adopting in its place a per se rule of exclusion” for “unnecessarily suggestive, police-arranged, pretrial identifications”).

{22} The State timely appealed, and we granted certiorari.

III. DISCUSSION

{23} We first address the State’s argument that the collateral witnesses’ in-court identifications of Child, even if elicited by suggestive procedures, did not violate Child’s due process rights.

{24} “This appeal implicates important constitutional rights, including . . . the Fourteenth Amendment right to due process of law, including the right to a fair trial, and therefore our review is de novo.” *State v. Belanger*, 2009-NMSC-025, ¶ 8, 146 N.M. 357, 210 P.3d 783.

{25} The State argues that “a due process violation cannot possibly result from introduction of testimony that aligned with the defense’s theory of the case,” arguing further that Child’s “identity as someone E.M., Y.C., and D.G. spent time with on August 4, 2020, was never contested or at issue here.” The State distinguishes between Child’s identity being “contested with respect to whether he actually committed the robbery within the park” and Child’s identity within the uncontested scope of the collateral witnesses’ testimonies. Because “none of the three [collateral] witnesses at issue testified to seeing [Child] commit the crime or witnessing the crime at all,” the State asserts that therefore Child “understandably raised no objection to the in-court identifications when they occurred, did not cross-examine any of the witnesses about the identifications, and did not attack the identification testimony in argument.”

{26} The State cites *State v. Collymore*, 223 A.3d 1, 33-34 (Conn. 2020), for the proposition that a “defendant’s identity can be at issue during trial in *some* respects or as to certain charges, but not at issue in other respects so as not to give rise to due process concerns when the defendant is

identified in those respects.”

{27} In *Collymore*, the defendant was found guilty of felony murder, attempt to commit robbery, conspiracy to commit robbery, and criminal possession of a firearm. *Id.* at 33. The defendant’s identity as the shooter was disputed at trial, including by first-time in-court identification. *Id.* at 31-33. Notwithstanding that disputed issue, the Connecticut Supreme Court determined that, where the defendant’s own testimony placed him at the scene of the crime, “identity was not at issue as to the charges of felony murder, . . . attempted robbery, and conspiracy to commit robbery.” *Id.* at 33. For those charges, the *Collymore* Court reasoned that resolving the dispute as to identity was not necessary for the defendant to be found guilty because “[i]t was sufficient for the state to establish that the defendant participated . . . while another participant . . . possessed, used, or threatened the use of a firearm.” *Id.* The Court thus concluded that “the admission of the identification testimony . . . did not implicate the defendant’s due process rights [as to those charges] and, therefore, was not harmful.” *Id.* at 34. The defendant’s identity was at issue, however, regarding the charge of criminal possession of a firearm, and the Court therefore ruled that “the identification testimony . . . did implicate the defendant’s due process rights in relation to” that charge. *Id.*

{28} Without citation of authority, Child attempts to distinguish *Collymore*, pointing to Child not taking the stand and arguing that defense counsel’s arguments in acknowledging testimony of the collateral witnesses at the adjudicatory hearing “cannot be compared to an admission by a defendant.” We find this distinction unavailing, as we have often recognized the relevance of a party’s theory of the case to what is at issue. See, e.g., *State v. Candelaria*, 2019-NMSC-004, ¶¶ 37-39, 434 P.3d 297 (determining from the trial record that a no-duty-to-retreat argument formed no part of the defendant’s self-defense theory of the case and “was simply not at issue” in the jury’s finding of unreasonableness).

{29} We approve the reasoning in *Collymore* that, where “identity [i]s not at issue as to the charges,” an in-court identification does not implicate due process concerns to constitute plain error. See 223 A.3d at 28, 32-34; see also *Montoya*, 2015-NMSC-010, ¶ 46 (stating that under Rule 11-103(D)-(E) NMRA, “plain[] error . . . applies only if the alleged error affected the substantial rights of the accused.” (internal quotation marks and citation omitted)) We also note that our courts are well practiced in determining whether the scope of particular testimony is material or relevant to a discrete issue.

{30} Rebutting the State’s claim that iden-

tity was not at issue, Child argues that “a critical fact at the [adjudicatory hearing] was whether [Child] was present during the alleged [robbery-homicide]” and that the prosecutor improperly sought “to identify Child[] as being present at the scene of the [robbery-homicide] or with others known to have participated in the [robbery-homicide].” Child further asserts that “there is simply no doubt that identity, or in specific terms the identity of the two boys who carried out the robbery while standing on the driver’s side of the car, was at issue.”

{31} However, Child’s rebuttal points only to alleged infirmities in the relevant testimony of the two eyewitnesses and does not explain how the collateral witnesses’ testimony establishes Child’s identity as a criminal participant at the park, thereby giving rise to due process concerns. Instead, Child specifies “the key issue at the [adjudicatory hearing]” as “the State’s argument . . . that [Child] was one of the [two] people standing on the driver’s side of the car who committed the robbery” and asserts that the State “saying it doesn’t make it true” (internal quotation marks omitted). To the extent that Child’s argument suggests that the State did not meet its burden to prove Child’s participation or presence at the park, such would be a question of sufficiency of the evidence rather than a due process challenge. Such a question is not before us, and so we restrict our focus here to whether the collateral witnesses’ in-court identifications are relevant to the scope of the contested-identity issue.

{32} The adjudicatory hearing record is clear that the collateral witnesses offered no testimony specifying Child as a participant in the robbery-homicide. Regarding Child’s statements, conduct, and demeanor that night, E.M. and Y.C. testified only within the scope of traveling to and from the park, interacting at D.G.’s residence, and transporting Child home, whereas D.G. testified only within the scope of events at her residence.

{33} The record is also clear that defense counsel’s theory of the case did not contest Child’s identity within the scope of the collateral witnesses’ testimony. Rather, defense counsel on cross-examination confirmed aspects of the witnesses’ accounts, and defense counsel in opening statements and closing arguments affirmed and relied on those accounts. For example, defense counsel argued at closing that Child lacked intent for the robbery-homicide by stating that Child “had no ability to determine that a strong probability of death or great bodily harm was going to occur. This was a drug transaction. That’s what [Child], that’s what [Y.C.], that’s what [E.M.] thought they were going to

the park to do. That's it." To further support that Child "did not have any idea nor any intent nor any plan to have [M.M.] shoot anyone," defense counsel cited the collateral witnesses' corroborative testimony that Child's demeanor after the robbery-homicide was "freaked out" and "panicked," including "begging to go home" while at D.G.'s residence. {34} Based on the foregoing, we conclude

that the scope of the contested-identity issue did not extend to the testimony of the collateral witnesses. In accordance with our conclusion, the collateral witnesses' in-court identifications did not give rise to due process concerns, and we need not reach the question whether and, if so, how *Manson* should be applied to first-time in-court identifications elicited by the State under federal due process.

{35} We reverse the Court of Appeals and affirm Child's delinquency adjudications in the district court.

{36} IT IS SO ORDERED.

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

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

¹ We note our agreement with the Court of Appeals that the prosecutor's identification procedures may have been unnecessarily suggestive, notwithstanding the requirements of NMSC Order No. 21-8500-003, *supra*; see Antonio M., 2022-NMCA-041, ¶ 45, but that issue escapes plain error review under the facts and procedural posture of this case.

FORMAL OPINION

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

Filing Date: 9/28/2023

No. A-1-CA-38005

LINDA GARCIA,
Plaintiff-Appellant,
v.
**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,**
Defendant-Appellee.

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

Fred Van Soelen, District Court Judge

Mark S. Sweetman
Clovis, NM

for Appellant

Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Jennifer A. Noya
Mia K. Lardy
Albuquerque, NM

for Appellee

► Introduction of Opinion

This case requires us to determine whether Defendant Allstate Insurance Company's premium structure for uninsured/underinsured motorist (UM/UIM) coverage on a multi-vehicle policy is ambiguous, entitling Plaintiff Linda Garcia to stack her UM/UIM coverages. Plaintiff had selected "non-stacked" UM/UIM coverage on an Allstate selection/rejection form that offered such coverage for a single premium charge, but when Allstate sent Plaintiff the declarations page for her policy, that document listed UM/UIM coverage and premium charges on a vehicle-by-vehicle basis. Plaintiff argues that she is entitled to stack her coverages because she paid multiple premiums and, under well-established law, when multiple premiums are paid, stacked coverage must be provided. The district court resolved the matter in favor of Allstate and entered summary judgment on the basis that Allstate had obtained a valid rejection of stacked UM/UIM coverage as a matter of law. We conclude the insurance contract at issue is ambiguous as to whether multiple premiums were charged and hold that Plaintiff is entitled to stack her coverages. **View full PDF online.**

Megan P. Duffy, Judge
WE CONCUR:
Jennifer L. Attrep, Chief Judge
Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38005>

FORMAL OPINION

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

Filing Date: 10/2/2023

No. A-1-CA-40056

FOUNDATION MINERALS, LLC,
Plaintiff/Counterdefendant-Appellant/
Cross-Appellee,

v.

MONTIE CAROL MONTGOMERY,
Defendant/Counterplaintiff-Appellee/
Cross-Appellant,

and

**BERT MADERA; DICK MCCALL; MILDRED
MCCALL; PITCHFORK CATTLE COMPANY, LLC;
and OZARK ROYALTY COMPANY,**
Defendants.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

Mark Sanchez, District Court Judge

Hamm Law Group, PLLC
Jason B. Hamm
Rick G. Strange
Midland, TX

for Appellant

Barnhouse Keegan Solimon & West LLP
Randolph H. Barnhouse
Veronique Richardson
Los Ranchos de Albuquerque, NM

Law Office of Elizabeth Basden PLLC
Elizabeth Basden
Dallas, TX

for Appellee

► Introduction of Opinion

In this appeal, we consider whether the district court properly applied New Mexico law to grant partial summary judgment on contract claims and remedies that arose from the parties' dispute over a mineral estate purchase agreement (the MEPA) governed by Texas law and whether, after trial, the district court appropriately entered judgment dismissing both parties' remaining claims. Both parties appeal. We affirm the district court's judgment as to the dismissal of the malicious abuse of process and prima facie tort claims and reverse the pretrial grant of partial summary judgment of all contract-related claims, because we conclude that (1) the MEPA was supported by mutual assent as a matter of law and (2) genuine issues of material fact remain to be decided about the remedy of specific performance.

Katherine A. Wray, Judge
WE CONCUR:

Shammara H. Henderson, 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-40056>

FORMAL OPINION

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

Filing Date: 10/5/2023

No. A-1-CA-39582

**STATE OF NEW MEXICO ex rel.
DUANE DEARBORN,**

Relator-Appellee,

v.

**STEPHANIE SCHARDIN CLARKE,
Cabinet Secretary of Taxation &
Revenue; and SANTIAGO CHAVEZ,
Director of Property Tax Division,**

Respondents-Appellants.

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

Bryan Biedscheid, District Court Judge

Peter B. Shoenfeld, P.A.

Peter B. Shoenfeld

Santa Fe, NM

for Appellee

New Mexico Taxation & Revenue Department
Raúl Torrez, Attorney General
David Mittle, Special Assistant Attorney General
Santa Fe, NM

for Appellants

► Introduction of Opinion

This is an appeal from a writ of mandamus directing the Department of Taxation and Revenue (the Department¹) to issue and deliver a tax deed to Petitioner Duane Dearborn (Purchaser) for a property located in Santa Fe County (Parcel 114). The Department contends that it has no mandatory duty to issue a tax deed to the high bidder at auction because the tax sale was not conducted substantially in accordance with the Property Tax Code (the Code), NMSA 1978, §§ 7-35-1 to 7-38-93 (1973, as amended through 2023). The district court concluded that the Department's inadvertent error in sending potential bidders away from the auction, leaving Purchaser as the sole bidder for Parcel 114, was not "so substantial or egregious" as to violate the Code, and that issuance of the deed to Purchaser was mandatory. In the alternative, the district court concluded that even assuming the public auction of Parcel 114 was not substantially in accordance with the Code, the Department had a nondiscretionary duty to deliver a tax deed to Purchaser because the Department had accepted Purchaser's payment. We agree with the Department that Parcel 114 was not sold substantially in accordance with the public auction requirement of the Code. View full PDF online.

Jane B. Yohalem, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39582>

FORMAL OPINION

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

Filing Date: 10/10/2023

No. A-1-CA-39940

ISAIAH ROJAS,
Plaintiff-Appellant,
v.

RELIABLE CHEVROLET (NM), LLC
d/b/a RELIABLE NISSAN and OLD UNITED
CASUALTY COMPANY,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY

Lisa Chavez Ortega, District Court Judge

Bradley Law Firm, LLC
Joshua Bralduy
Albuquerque, NM

Treinen Law Office
Rob Treinen
Albuquerque, NM

for Appellant

Decker Griffel, LLC
Benjamin Decker
Lindsay Griffel
Albuquerque, NM

for Appellees

Park & Associates, LLC
Alfred A. Park
Geoffrey D. White
Albuquerque, NM

for Amicus Curiae
New Mexico Automotive Dealers Association

► Introduction of Opinion

Plaintiff Isaiah Rojas appeals the district court's grant of Reliable Chevrolet (NM), LLC and Old United Casualty Company's (collectively, Defendants) motion to compel arbitration in his claim for fraud, in violation of the Unfair Practice Act (UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019); negligence and punitive damages arising from Plaintiff's purchase of an allegedly defective vehicle; and Defendants' prior assurances leading to the sale. More specifically, Plaintiff argues that the arbitration agreement provision of the purchase contract should not be enforced because the entire contract is substantively unconscionable due to a provision that bars punitive damages against only the dealership, in this case Reliable Chevrolet. Plaintiff maintains that this bar against punitive damages deprives him of statutorily created treble damages under the UPA and thereby constitutes an unconscionable contract term. The district court ordered arbitration, and we affirm.

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

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39940>

FORMAL OPINION

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

Filing Date: 10/10/2023

No. A-1-CA-40419

**IN THE MATTER OF THE PROTECTIVE
PROCEEDINGS FOR ELIZABETH A., an adult
incapacitated person,**

JOHN E.A.,

Petitioner-Appellee,
and

PATRICIA A.V.

Interested Party/Co-Conservator/
Co-Guardian-Appellant
and

JACK D.A.

Intervenor/Co-Conservator/Co-Guardian,
and

DAVID MICNEILL, JR.,

Guardian Ad Litem,
and

MATTHEW P. HOLT,

Counsel for Elizabeth A.

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

James T. Martin, District Court Judge

Kemp Smith LLP
CaraLyn Banks
Las Cruces, NM

for Appellee

Lakins Law Firm, P.C.
Charles N. Lakins
Albuquerque, NM

for Appellant

► Introduction of Opinion

This case involves the payment of fees to the attorney of an interested party who petitioned for the appointment of a guardian or conservator. The petitioner in the present case (Petitioner), one of the children of Elizabeth A. (Mother), through Appellee CaraLyn Banks (Banks), an attorney, filed a petition for the appointment of a guardian and conservator for Mother under Article 5 of the New Mexico Uniform Probate Code, "Protection of Persons Under Disability and Their Property," NMSA 1978, §§ 45-5-101 to -436 (1975, as amended through 2022) (Article 5). Banks' fees had been paid by the temporary conservator until interested parties objected. After protracted proceedings, the district court ordered Banks' fees to be paid from funds from Mother's estate (Mother's Estate or the Estate). On appeal, Appellant Patricia Vandver (Current Guardian), whom the district court eventually appointed to be co-guardian and co-conservator, argues that the district court was without authority to order Mother's Estate to pay Banks' attorney fees. **View full PDF online.**

Katherine A. Wray, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40419>

FORMAL OPINION

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

Filing Date: 10/18/2023

No. A-1-CA-39288

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

**KOREY BUECKER a/k/a KOREY
WILSON BUECKER,**
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

William G.W. Shoobridge, District Court Judge

Raúl Torrez, Attorney General
Maris Veidemanis, Assistant Attorney General
Santa Fe, NM

for Appellee

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

for Appellant

► Introduction of Opinion

Following a conditional plea, Defendant Korey Buecker appeals the district court's denial of his motion to suppress. Defendant argues the district court erred by denying his suppression motion on two grounds. First, Defendant contends he was subjected to a de facto arrest without probable cause. Specifically, Defendant challenges his lengthy detention in a patrol car with handcuffs while a limited number of law enforcement officers conducted a nighttime investigation of gunshots fired and a roving domestic violence incident. Considering the totality of the circumstances—including that probable cause for Defendant's arrest arose within ten minutes of the challenged detention—we conclude the intrusion upon Defendant's Fourth Amendment right to privacy was outweighed by the government's substantial justification for the intrusion. We accordingly affirm the district court's determinations that Defendant's detention was reasonable and he was not subjected to an unlawful de facto arrest. Second, Defendant contends the waiver of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and his confession were not voluntary. **View full PDF online.**

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Megan P. Duffy, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39288>

FORMAL OPINION

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

Filing Date: 10/18/2023

**No. A-1-CA-39378 and No. A-1-CA-40372
(consolidated for purpose of opinion)**

**CARLSBAD IRRIGATION DISTRICT and OTIS
MUTUAL DOMESTIC WATER CONSUMERS &
SEWAGE WORKS ASSOCIATION,**

Petitioners-Appellees,

v.

**JOHN D'ANTONIO,
NEW MEXICO STATE ENGINEER,**

Respondent-Appellee,

and

INTREPID POTASH -- NEW MEXICO, LLC, Et al.,
Movants-in-Intervention-Appellants.

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

Raymond L. Romero, District Court Judge

consolidated with

**STATE OF NEW MEXICO ex rel. OFFICE
OF THE STATE ENGINEER, Et al.**

Plaintiffs-Appellees,

v.

**INTREPID POTASH, INC. and INTREPID
POTASH-NEW MEXICO, LLC,**

Defendants-Appellants.

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

James J. Wechsler, District Court Judge,
Pro Tempore

Martin, Dugan & Martin
Kenneth D. Dugan
W.T. Martin, Jr., Et al.
Carlsbad, NM

for Petitioners-Appellees (No. A-1-CA-39378)

► Introduction of Opinion

This opinion consolidates two appeals—State ex rel. Office of the State Engineer v. Intrepid Potash, Inc., A-1-CA-40372 (Case 1) and Carlsbad Irrigation District v. D'Antonio, A-1-CA-39378 (Case 2)—which stem from the same underlying proceedings, involve various of the same parties, and the conclusion of Case 1 moots the issue presented in Case 2. See Rule 12-317(B) NMRA (providing appellate courts the discretion to consolidate appeals). Appellants Intrepid Potash, Inc., and Intrepid Potash-New Mexico, LLC are the parties appealing in both cases. The New Mexico Office of the State Engineer (OSE), the New Mexico Interstate Stream Commission (ISC), Pecos Valley Artesian Conservancy District, Otis Mutual Domestic Water Consumers and Sewage Works Association, Fort Sumner Irrigation District, City of Roswell, EOG, and Yates Entities filed objections to the relevant proceeding in Case 1, and this opinion refers to them collectively as Appellees. In Case 2, Carlsbad Irrigation District and Otis Mutual Domestic Water Consumers & Sewage Works Association protested Appellants' relevant application; this opinion refers to these two parties as it relates to Case 2 as Objectors.

Kristina Bogardus, 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-39378>

FORMAL OPINION

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

Filing Date: 10/26/2023

No. A-1-CA-39628

**DENNIS P. MURPHY, Personal Representative of
the ESTATE OF TIFFANY STONE, Deceased,**

Plaintiff-Appellant,

v.

**JAMES R. LASH, D.O.; SHAHRIAR
ANOUSHFAR, D.O., F.A.C.S.; and JOHN DOES 1-5,**
Defendants-Appellees.

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

Eileen P. Riordan, District Court Judge

Sandoval Firm
Richard A. Sandoval
Santa Fe, NM

Collins & Collins, P.C.
Parrish Collins
Albuquerque, NM

for Appellant

Miller Stratvert PA
Stephen M. Williams
Thomas R. Mack
Kendall M. Barnett
Albuquerque, NM

for Appellee James R. Lash, D.O.

Hinkle Shanor LLP
Kathleen Wilson
Hari-Amrit Khalsa
Albuquerque, NM

for Appellee Shahriar Anoushfar, D.O.

► Introduction of Opinion

Plaintiff Dennis Murphy appeals from two district court orders. First is an order granting summary judgment in favor of Defendant Shahriar Anoushfar, D.O., in which the district court concluded that Plaintiff's claims against him were time barred by the two-year statute of limitations in the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -27 (1976, as amended through 2020). Second is an order dismissing Defendant James Lash, D.O., for Plaintiff's failure to serve process with reasonable diligence under Rule 1-004(C)(2) NMRA. As to the motion for summary judgment, Plaintiff argues that the district court erred in concluding that the complaint was untimely because Dr. Anoushfar failed to present evidence that he was a public employee under the TCA. As to the motion to dismiss, Plaintiff argues that the district court erred because Dr. Lash failed to demonstrate prejudice caused by any delay in service. We reverse in part, concluding that Dr. Anoushfar did not present evidence sufficient to show that he was a public employee, and we therefore remand to the district court for further proceedings consistent with this opinion. We otherwise affirm the district court's dismissal of Dr. Lash due to Plaintiff's extreme and unjustified delay in serving process.

Shammara H. Henderson, Judge

WE CONCUR:

Megan P. Duffy, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39628>

FORMAL OPINION

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

Filing Date: 10/30/2023

No. A-1-CA-40106

**NEW MEXICO EDUCATIONAL
RETIREMENT BOARD,**

Plaintiff-Appellee,

v.

**DEBBIE ROMERO, in her official capacity
as Acting Secretary of the New Mexico
Department of Finance and Administration;
and NEW MEXICO DEPARTMENT OF
FINANCE AND ADMINISTRATION,**
Defendants-Appellants.

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

Francis J. Mathew, District Court Judge

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

Mark T. Baker

Rebekah A. Gallegos

Albuquerque, NM

for Appellee

Hinkle Shanor, LLP

Jaclyn M. McLean

Chelsea R. Green

Santa Fe, NM

for Appellants

► Introduction of Opinion

We are asked to determine whether the New Mexico Department of Finance and Administration (DFA) has the authority to reject pay raises for employees of the New Mexico Educational Retirement Board (the Board), which have been approved by the Board and are paid from the educational retirement fund. The educational retirement system is governed by the New Mexico Constitution, Article XX, Section 22, and the Educational Retirement Act (the Act), NMSA 1978, §§ 22-11-1 to -55 (1967, as amended through 2023). It was the practice of DFA between 2016 and 2020, before the declaratory judgment was entered in this case, to require Board-approved salary increases to comply with the governor's exempt salaries plan, a plan prepared annually under Section 10-9-5 of the Personnel Act, NMSA 1978, §§ 10-9-1 to -25 (1961, as amended through 2014). Raises exceeding the percentage of increase in salary adopted by the governor's exempt salaries plan or found by DFA to be insufficiently justified under the plan's performance measures were either rejected by DFA or submitted to the governor for approval. **View full PDF online.**

Jane B. Yohalem, 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-40106>

FORMAL OPINION

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

Filing Date: 10/30/2023

No. A-1-CA-39970

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

SERGIO VARELA-CORONADO,

Defendant-Appellee.

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

Michelle Renee Torres, Metropolitan Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Emily Bowen, Assistant Attorney General

Albuquerque, NM

for Appellant

Crowley & Gribble, P.C.

Joseph J. Gribble

Albuquerque, NM

for Appellee

► Introduction of Opinion

The State appeals the metropolitan court's order granting Defendant Sergio Varela-Coronado's motion to suppress evidence obtained by law enforcement at a sobriety roadblock. The State argues on appeal, as it did in the metropolitan court, that under the Fourth Amendment to the United States Constitution, it was not required to establish the constitutionality of the roadblock itself pursuant to *City of Las Cruces v. Betancourt*, 1987-NMCA-039, 105 N.M. 655, 735 P.2d 1161, because there was reasonable suspicion to believe that Defendant was driving while intoxicated before Defendant's vehicle came to a stop at the roadblock. The metropolitan court found that Defendant entered the roadblock before law enforcement made the observations that the State relied upon to establish individualized reasonable suspicion to justify the seizure of Defendant. The court therefore concluded that the State bore the burden of establishing the constitutionality of the roadblock under *Betancourt*. Because the State did not present any evidence regarding the constitutionality of the roadblock, the metropolitan court suppressed the evidence obtained at the roadblock. **View full PDF online.**

Zachary A. Ives, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39970>

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: 9/26/2023

No. A-1-CA-38698

CHELSEA VAN DEVENTER,

Plaintiff-Appellant/Cross-Appellee,

v.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON,

Defendant-Appellee/Cross-Appellant,

and

DESERT SPECIALTY UNDERWRITERS, INC.

and DESERT SPECIALTY ADJUSTERS, INC.,

Defendants-Appellees.

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

Joshua A. Allison, District Court Judge

Renee N. Ashley
Albuquerque, NM

Bowles Law Firm
Jason Bowles
Albuquerque, NM

for Appellant

Wiggins, Williams & Wiggins
Patricia G. Williams
Albuquerque, NM

for Appellee Certain Underwriters
at Lloyd's London

► **Introduction of Opinion**

Plaintiff Chelsea Van Deventer sued Certain Underwriters at Lloyd's London (CULL), Desert Specialty Underwriters, Inc. (DSU), and Desert Specialty Adjusters, Inc. (DSA) (collectively, Defendants) for breach of contract, unfair insurance practices, and unfair trade practices after her home was damaged by a windstorm. The district court entered a determination of liability in favor of Plaintiff before trial as a sanction for Defendants' serious discovery violations. At the ensuing trial on damages, a jury found in favor of Plaintiff and awarded compensatory damages, statutory damages, and punitive damages. Plaintiff appeals and Defendant CULL cross appeals, together raising thirteen issues. Detecting no error, we affirm.

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-38698>

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: 9/29/2023

No. A-1-CA-40556

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

ROBERT CASSIDY,

Defendant-Appellee.

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

Clara Moran, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Van Snow, Assistant Attorney General

Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Joelle N. Gonzales, Assistant Appellate Defender

Santa Fe, NM

for Appellee

► **Introduction of Opinion**

The State appeals the district court's order granting in part and denying in part Defendant Robert Cassidy's motion to exclude evidence under the Confrontation Clause. U.S. Const. amend VI. The State argues that the district court inappropriately excluded testimony by Dr. Hoy and sexual assault nurse examiner (SANE) Regan regarding information provided by deceased Victim under the Confrontation Clause because Victim's statements were non-testimonial. For the following reasons, we (1) affirm the district court's exclusion of Dr. Hoy's testimony and (2) remand the case to the district court for full reconsideration of SANE Regan's testimony in light of our Supreme Court's analysis in *State v. Tsosie*, 2022-NMSC-017, 516 P.3d 1116.

Kristina Bogardus, Judge

WE CONCUR:

Zachary A. Ives, Judge

Katehrine A. Wray, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-40556>

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: 9/29/2023

No. A-1-CA-39239

WAYNE SIDES,
Appellant-Petitioner,
v.
**NEW MEXICO HUMAN SERVICES
DEPARTMENT,**
Appellee-Respondent.

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

Francis J. Mathew, District Court Judge

Disability Rights of New Mexico
Jason C. Gordon
Albuquerque, NM

for Petitioner
John R. Emery, Deputy General Counsel
Santa Fe, NM

for Respondent

► **Introduction of Opinion**

Petitioner Wayne Sides appeals the district court's affirmance of the New Mexico Human Services Department's (HSD) denial of Petitioner's request for an administrative hearing. Petitioner argues that (1) federal and state regulations required HSD to provide Petitioner with an administrative hearing, and (2) the denial of a hearing violated Petitioner's right to procedural due process. 1 Unpersuaded, we affirm.

Zachary A. Ives, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39239>

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: 10/10/2023

No. A-1-CA-39328

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JASON TAYLOR,

Defendant-Appellant.

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

Drew D. Tatum, District Court Judge

Raul Torrez, Attorney General
Santa Fe, NM

Emily Bowen, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

► **Introduction of Opinion**

A jury convicted Defendant Jason Taylor of receiving stolen property over five hundred dollars, a fourth degree felony, contrary to NMSA 1978, Section 30-22 L6-11 (2006). Defendant appeals, arguing (1) the district court erred in denying his motion to suppress; (2) there is insufficient evidence to support his conviction for possession of stolen property; and (3) the district court abused its discretion when it denied his motion for a mistrial. We affirm.

Shammara H. Henderson, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39328>

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: 10/10/2023

No. A-1-CA-40250

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JOHN NORWOOD,

Defendant-Appellee.

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

Christine E. Rodriguez, Metropolitan Court Judge

Raul Torrez, Attorney General

Laurie Blevins, Assistant Attorney General

Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Kathleen T. Baldrige,

Assistant Appellate Defender

Santa Fe, NM

for Appellee

► **Introduction of Opinion**

The State appeals the metropolitan court's order granting Defendant John Norwood's motion to suppress because the arresting officer lacked probable cause to arrest Defendant for driving while intoxicated (DWI). The State argues that the metropolitan court erred in granting the motion to suppress because the facts found by the metropolitan court to be within the arresting officer's, Officer Fulton's, knowledge were sufficient to establish probable cause despite his errors in administering Standardized Field Sobriety Tests (SFSTs) and their mixed results. Because Officer Fulton had reasonable grounds to believe Defendant had been driving while intoxicated, we reverse and remand.

Kristina Bogardus, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40250>

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: 10/10/2023

No. A-1-CA-40507

MARIA ISABEL RIOS,
Petitioner-Appellant,

v.

JUAN MANUEL RIOS,
Respondent-Appellee.

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

Amber Chavez Baker, District Court Judge

Enlace Comunitario
Vanessa I. Peake
Albuquerque, NM

for Appellant

Cordell Law, LLP
Linda L. Ellison
Albuquerque, NM

for Appellee

► **Introduction of Opinion**

Petitioner Maria Rios appeals an order from the district court dismissing her petition for dissolution of marriage for lack of subject matter jurisdiction. Petitioner claims that her purported marriage to Respondent Juan Rios was valid under New Mexico law despite the existence of her prior, lawful marriage in California at the time of her nuptials with Respondent. Because New Mexico does not recognize marriages that occur when at least one party is otherwise still married, we affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-40507>

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: 10/11/2023

No. A-1-CA-40366

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

FELIPE JUAREZ,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF DOÑA ANA COUNTY**

Douglas R. Driggers, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Andrew Coffing, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mary Barket, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Felipe Juarez appeals the denial of his motion for satisfactory discharge from probation and the subsequent revocation of his probation. He argues that the district court erred in finding he was a fugitive, which allowed the district court to extend the length of his probation by withholding credit for time served. On appeal, the State concedes that it did not introduce evidence sufficient for the district court to properly determine that Defendant was a fugitive. We agree and conclude that the State did not present sufficient evidence to show it acted reasonably and diligently in attempting to serve Defendant with bench warrants, and thus insufficient evidence supports the district court's finding that Defendant was a fugitive. Accordingly, we reverse and remand.

Shammara H. Henderson, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40366>

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: 10/12/2023

No. A-1-CA-40080

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ISAIAH L. CARVER,
Defendant-Appellant.

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

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Erica Schiff, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Joelle N. Gonzales, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Isaiah Carver appeals the revocation of his probation, arguing that his right to due process was violated in two ways: (1) the district court judge appeared for the evidentiary hearing remotely rather than in person, and (2) the district court did not identify the evidence it relied on to revoke his probation. We agree with Defendant on the first issue and therefore reverse and remand without reaching the second.

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-40080>

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: 10/17/2023

No. A-1-CA-40573

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JOSHUA BRAZIEL,

Defendant-Appellant.

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

Albert J. Mitchell, Jr., District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Meryl E. Francolini, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Nina Lalevic, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Joshua Braziel appeals his conviction for second-degree murder, contrary to NMSA 1978, Section 30-2-1(B) (1994).¹ Defendant contends (1) there was insufficient evidence presented at trial to support his conviction; (2) he received ineffective assistance of counsel because his trial attorney failed to object to the testimony of two witnesses; and (3) alternatively, the district court's admission of these two witnesses' testimony constituted plain error. For the reasons that follow, we reject the assertions of error and affirm the rulings of the district court.

Megan P. Duffy, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40573>

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: 10/17/2023

No. A-1-CA-40242

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

GAGE WORTHAM,

Defendant-Appellant.

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

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Maris Veidemanis, Assistant Attorney General
Santa Fe, NM

for Appellee

Law Office of Scott M. Davidson, Ph.D., Esq., LLC
Scott M. Davidson
Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Gage Wortham appeals his conviction for aggravated battery with a deadly weapon, contrary to NMSA 1978, Section 30-3-5(C) (1969). At trial, Defendant claimed that he shot Jason Adams (Victim) in self-defense, after which the district court instructed the jury on the elements of self-defense. Defendant argues on appeal that (1) the district court unconstitutionally curtailed his due process right to present a defense by limiting the evidence, which would have showed that Defendant reasonably feared Victim based on his knowledge of Victim's acts of domestic violence against Defendant's aunt; (2) Defendant's counsel provided ineffective assistance by failing to ask for clarification of the district court's ruling restricting the evidence of Victim's past acts of domestic violence, failing to object to that ruling, failing to call Defendant's aunt as a witness, and failing to question or cross-examine other witnesses about Victim's domestic violence; (3) the district court's restrictions on presenting evidence of Victim's past violence, combined with counsel's ineffective assistance, amount to reversible cumulative error. We affirm.

Jane B. Yohalem, Judge

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40242>

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: 10/18/2023

No. A-1-CA-39753

BRYCE FRANKLIN,
Plaintiff-Appellant,

v.

NEW MEXICO STATE PERSONNEL OFFICE
and REGINA SENA,
Defendants-Appellees.

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

Kathleen McGarry Ellenwood, District Court Judge

Bryce Franklin
Las Cruces, NM

Pro Se Appellant

Montgomery & Andrews, P.A.

Kaleb W. Brooks
Daniel B. Goldberg
Santa Fe, NM

for Appellees

► Introduction of Opinion

Plaintiff Bryce Franklin appeals from the district court's order granting summary judgment in favor of Defendants State Personnel Office (SPO) and Regina Sena. Plaintiff argues (1) Defendants' motion for summary judgment was improperly granted because there was a genuine issue of material fact regarding SPO's receipt of Plaintiff's request for public records, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978 §§ 14-2-1 to -12 (1947, as amended through 2023); (2) Plaintiff's motion for summary judgment was improperly denied because Defendants failed to create a genuine issue of material fact regarding whether Plaintiff served SPO his IPRA request; and (3) Defendants should be held in contempt for failing to comply with the district court's order to provide Plaintiff with records in accordance with his IPRA request. We reverse because the district court erred in concluding there was no genuine issue of material fact regarding SPO's receipt of Plaintiff's IPRA request.

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

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-39753>

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: 10/25/2023

No. A-1-CA-39156

SHEILA ORTEGO MCLAUGHLIN,

Plaintiff-Appellant,

v.

**SANTA FE COMMUNITY COLLEGE and THE
SANTA FE COMMUNITY COLLEGE GOVERNING
BOARD,**

Defendants-Appellees.

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

Francis J. Mathew, District Court Judge

Atler Law Firm, P.C.
Jazmine J. Johnston
Timothy J. Atler
Albuquerque, NM

for Appellant

Coppler Law Firm, P.C.
Gerald A. Coppler
John L. Appel
Santa Fe, NM

for Appellees

► Introduction of Opinion

Plaintiff Sheila Ortego McLaughlin filed suit against Santa Fe Community College (Defendant or the College) and its Board of Directors (collectively, Defendants) for breach of contract, breach of the implied covenant of good faith and fair dealing, and promissory estoppel. The district court dismissed Plaintiff's claims, finding that Plaintiff failed to file her complaint within the statute of limitations set forth in NMSA 1978, Section 37-1-23(B) (1976), and the complaint failed to state a claim upon which relief could be granted. We conclude that the discovery rule applied to Plaintiff's claims, resolution of the discovery rule's application to the facts of this case is for the jury, and Plaintiff sufficiently pleaded the asserted claims. We therefore reverse and remand.

Katherine A. Wray, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39156>

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: 10/25/2023

No. A-1-CA-39897

VIRGINIA MEJIA,
Plaintiff-Appellant,

v.

**ADELITA'S INC. d/b/a Adelita's Restaurant, and
MARIA OLIVAS RAMIREZ and YADIRA RAMIREZ,**
in their individual and official capacities,
Defendants-Appellees.

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

Maria Sanchez-Gagne, District Court Judge

Quiñones Law Firm LLC
Carlos M. Quiñones
Santa Fe, NM

for Appellant

Walcott, Henry & Winston, P.C.
Donald A. Walcott
Santa Fe, NM

for Appellees

► Introduction of Opinion

Plaintiff Virginia Mejia appeals the district court's grant of summary judgment in favor of Defendants Adelita's Inc., Maria Olivas Ramirez, and Yadira Ramirez. Plaintiff argues the evidence presented provided a genuine issue of material fact regarding whether Defendants discharged or constructively discharged Plaintiff, and the district court therefore erred in granting summary judgment. Defendants argue that Plaintiff cannot sustain her retaliatory discharge claim because she did not file a workers' compensation claim. We reverse.

Michael D. Bustamante, Judge, retired,
Sitting by designation
WE CONCUR:
Jacqueline R. Medina, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39897>

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: 10/25/2023

No. A-1-CA-39830

NATIONAL EDUCATION ASSOCIATION OF NEW MEXICO and CENTRAL CONSOLIDATED EDUCATION ASSOCIATION,

Plaintiff-Appellant/Cross-Appellee,

v.

CENTRAL CONSOLIDATED SCHOOL DISTRICT, ET AL.

Respondents-Appellants,

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

Sarah V. Weaver, District Court Judge

Jones, Snead, Wertheim & Clifford, P.A.

Jerry Todd Wertheim

Kaitlyn DelBene

Santa Fe, NM

for Appellees

Germaine Chappelle

Flora Vista, NM

for Appellants

► Introduction of Opinion

Central Consolidated School District (CCSD), the Board of Education of Central Consolidated District (Board), Board President Gary J. Montoya, Board Vice President Suzette Jean Haskie, Board Secretary Christina J. Aspaas, Board member Charlie T. Jones, Jr., Board member Sheldon Pickering, and CCSD Superintendent Daniel P. Benavidez (collectively, Respondents) appeal the district court's grant of a peremptory writ of mandamus ordering Respondents to engage in meaningful, good-faith tribal consultation with the Navajo Nation regarding Respondents' decision to expand in-person learning for all public school students. We conclude, after review of the briefing and the record of the case before us, that the issue presented is moot and the appeal should be dismissed. See *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 ("As a general rule, this Court does not decide moot cases.").

Kristina Bogardus, Judge

WE CONCUR:

Jane B. Yohalem, 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-39830>

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: 10/30/2023

No. A-1-CA-39426

MICHELLE CHAVEZ a/k/a MICHELLE A. CHAVEZ,

Petitioner-Appellant,

v.

MIGUEL CHAVEZ a/k/a MIGUEL A. CHAVEZ,

a/k/a MIGUEL ARMARANTE CHAVEZ,

Respondent-Appellee,

**IN THE MATTER OF THE ESTATE
OF MIKE S. CHAVEZ, Deceased.**

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

Bryan Biedscheid, District Court Judge

Robert Richards
Santa Fe, NM

for Appellant

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

for Appellee

► Introduction of Opinion

Michelle A. Chavez (Petitioner), a former co-personal representative and heir of her father, Mike S. Chavez's (Decedent) Estate (the Estate), appeals from the district court's orders granting her brother, Miguel Chavez's (Respondent) motion to enforce the settlement agreement (the Agreement), denying Petitioner's motion for reconsideration, and granting Respondent's request for attorney fees. On appeal Petitioner argues: (1) the Agreement is unenforceable; (2) the district court erred in finding that the Agreement did not have to meet the "fair market value" requirement for valuing assets distributed in kind; (3) the district court erred in awarding Respondent attorney fees; (4) Petitioner is entitled to compensation for her services and attorney fees; and lastly (5) that Petitioner's half-sister, Louise Chavez-Rasgado (Louise), breached her fiduciary duties as co-personal representative. Unpersuaded, we affirm.

Shammara H. Henderson, Judge

WE CONCUR:

Megan P. Duffy, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39426>

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: 10/30/2023

No. A-1-CA-39912

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

NICOLAS C. WILLIAMS a/k/a

NICKOLAS WILLIAMS,

Defendant-Appellant.

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

Cindy Leos, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Erica Schiff, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Carrie Cochran, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

After a trial by jury, Nicolas C. Williams (Defendant) was convicted of three counts of criminal sexual penetration against Victim, J.V., contrary to NMSA 1978, Section 30-9-11(E)(6) (2009), and first-degree kidnapping, contrary to NMSA 1978, Section 30-4-1(A) (2003). On appeal, Defendant argues that (1) the district court abused its discretion in admitting propensity testimony in violation of Rule 11-404(B) NMRA from an alleged victim; (2) the district court impeded Defendant's right to present a defense; (3) the prosecutor committed prosecutorial misconduct in his closing arguments; (4) Defendant was denied effective assistance of counsel; and (5) the above errors, in the aggregate, resulted in cumulative error. Unpersuaded, we affirm.

Gerald E. Baca, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39912>

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: 10/3/2023

No. A-1-CA-38718

VONTELLA QUANSAH,

Petitioner-Appellee,

v.

STEPHEN A. QUANSAH,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Gerard J. Lavelle, District Court Judge

Law Offices of Lynda Latta, LLC

Lynda Latta

Albuquerque, NM

for Appellee

Moss George LLP

Jordon P. George

Robert H. Moss

Albuquerque, NM

Aragon Law Firm, P.C.

Robert Aragon

Albuquerque, NM

for Appellant

► **Dispositional Order**

This matter is on appeal from the district court's order finding in favor of Vontella Quansah (Petitioner). Below, the district court found that (1) any overpayments of monthly spousal support by Stephen Quansah (Respondent) during the relevant period are deemed gifts and do not offset any alleged underpayment of spousal support by Respondent and; (2) the real property at issue, although held in joint tenancy by the parties, is subject to Petitioner's contractual right to continue living at the residence during her lifetime. **Read full opinion at the link below.**

Gerald E. Baca, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Katherine A. Wray, Judge

To read the entire dispositional order, please visit the following link: <https://bit.ly/A-1-CA-38718>

MODRALL SPERLING WELCOMES OUR NEWEST ATTORNEYS

Modrall Sperling is pleased to announce that Tony Andrade, Celina Baca, Katalina Elizabeth Hadfield, Taryn Osborne, Yarithza Peña, and Benjamin Rossi have joined the firm's Albuquerque office as associate attorneys.



Tony Andrade's practice encompasses real estate and commercial matters in the litigation and transactional arenas. Tony counsels clients on issues involving contract formation and negotiation, property and land use analysis, boundary and easement disputes, condemnation, construction defect claims, residential and commercial leasing, foreclosure, and creditor's rights. Prior to joining Modrall Sperling, he advised Silicon Valley real estate startups through formation and corporate acquisition.



Celina Baca practices in the firm's litigation department, focusing on personal injury, products liability, and insurance disputes. During law school, she tutored students in torts and criminal law, completed an externship with Judge Julie J. Vargas at the New Mexico Court of Appeals, and was a member of the National Hispanic Bar's moot court team. Prior to joining Modrall Sperling, Celina served a two-year term as a law clerk for Chief Justice C. Shannon Bacon at the New Mexico Supreme Court.



Katalina Elizabeth Hadfield assists clients with a variety of environmental issues, including: public lands disputes; cultural and historic resource regulation; hazardous waste management; animal legal issues; state and federal environmental permitting; water rights and quality issues; nuclear power; Native American legal matters; and adjudicatory, rulemaking, and legislative matters. Katalina earned her J.D. from Berkeley Law, where she served as Editor-in-Chief of Ecology Law Quarterly.



Taryn Osborne practices in Modrall Sperling's litigation department. Taryn earned her bachelor's degree in Political Science from Ohio University. She then attended Case Western Reserve University School of Law, where she was an Executive Articles Editor of the Case Western Reserve Journal of International Law and spent a semester externing in Colorado's First Judicial District Court. After law school, Taryn moved to Santa Fe to clerk for Justice David K. Thomson of the New Mexico Supreme Court.



Yarithza Peña's practice is centered on the representation of oil and gas operators in compulsory pooling actions, and clients who seek drilling approvals for both vertical and horizontal, saltwater disposal, and acid gas injection wells before the New Mexico Oil Conservation Division and the Oil Conservation Commission. Yarithza attended UNM School of Law where she gained experience in criminal law, family law, and immigration law matters during her time in the Community Lawyering Clinic.



Benjamin Rossi practices in the litigation group at Modrall Sperling. His focus is on personal injury claims, product liability cases, and class actions. Benjamin earned his undergraduate degree in philosophy from the University of Chicago with honors. He went on to obtain a masters and PhD in philosophy from the University of Notre Dame. Benjamin attended Duke University School of Law, where he was Senior Research Editor at the journal *Law and Contemporary Problems* and graduated *cum laude*.



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Contract Prosecutor

The Eleventh Judicial District Attorney’s Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for a Contract Prosecutor to assist in the prosecution of criminal misdemeanor cases, felony cases and conflict of interest cases. The Contract Prosecutor position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; the ability to draft legal documents and to research/analyze information and situations and the ability to work effectively with other criminal justice agencies and Law Enforcement. This position is open to all attorneys who have knowledge in criminal law and who are in good standing with the New Mexico Bar. Limited License is okay. Salary will result in a contractual agreement between the contract prosecutor and the District Attorney. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to bmartin@da.state.nm.us.

Assistant Attorneys General

The New Mexico Office of the Attorney General is committed to recruiting the highest quality Assistant Attorneys General candidates who support the values of integrity, excellence and service. We have a commitment to honesty, ethical behavior, and transparency in all actions and decisions. We strive for the highest level of professionalism and expertise in all aspects of our work. And we have a strong dedication to serving the public interest and prioritizing the well-being of the community - especially the interests of those least capable of defending themselves. The New Mexico Office of the Attorney General is an equal opportunity employer, and we encourage applicants from all backgrounds to apply. To apply please visit the State Personnel website at: www.spo.state.nm.us. For additional job opportunities please visit our website at: www.nmag.gov.

Litigation Attorney

The Albuquerque office of Lewis Brisbois is seeking associates with a minimum of three years litigation defense experience. Candidates must have credentials from ABA approved law school, be actively licensed by the New Mexico state bar, and have excellent writing skills. Duties include but are not limited to independently managing a litigation caseload from beginning to end, communicating with clients and providing timely reporting, appearing at depositions and various court appearances and working closely with other attorneys and Partners on matters. Please submit your resume along with a cover letter and two writing samples to rob.henderer@lewisbrisbois.com and indicate “New Mexico Associate Position”. All resumes will remain confidential.

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

Trial Attorney or Senior Trial Attorney

Trial Attorney or Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney’s Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Torrance County (Estancia, NM). Estancia is a short commute from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be \$74,886 - \$93,607, and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans in the country. Send resume to: Seventh District Attorney’s Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us.

Law Clerk and Associate Attorney Positions

deGrauw Law Firm, specializing in civil litigation and listed in Best Lawyers, is seeking an entry-level Associate Attorney (0-3 years’ experience) and Law Clerk (2L or 3L) to join our Albuquerque office. Competitive salary, bonuses, profit-sharing, health insurance, 401k, and other benefits included. Energetic, flexible, and collegial work environment. Candidates must have good organizational skills, research/writing and oral advocacy ability, a good sense of humor, and a life outside of the law. Please contact Drew deGrauw directly with interest at drew@dglawfirm.com.

Briefing Attorney

Excellent licensed briefing attorney with strong education, experience and appellate qualifications. Practice includes Texas, New Mexico, and other states, State and Federal Courts. Expect an active trial practice for Nationally recognized Texas NM Plaintiff PI trial attorney in El Paso/Las Cruces. Full-time Salary range: \$100,000.00 - \$180,000.00 per year. Please submit resume and writing sample to jimscherr@yahoo.com

Lawyers With 3+ Years of Experience

Montgomery & Andrews, P.A. is seeking lawyers with 3+ years of experience to join its firm in Santa Fe, New Mexico. Montgomery & Andrews offers enhanced advancement prospects, interesting work opportunities in a broad variety of areas, and a relaxed and collegial environment, with an open-door policy. Candidates should have strong written and verbal communication skills. Candidates should also be detail oriented and results-driven. New Mexico licensure is required. Please send resumes to jwechsler@montand.com.

Bernalillo County Hiring 20 Prosecutors

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

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

DNA-People's Legal Services Wants To Hire You!

DNA - People's Legal Services ("DNA") is committed to providing high quality legal services to persons living in poverty on the Navajo, Hopi and Jicarilla Apache Reservations, and in parts of Northern Arizona, New Mexico, and Southern Utah. DNA's main office, as well as DNA's Fort Defiance branch office, are located in Window Rock, Arizona. DNA also has branch offices in Chinle, Arizona, Tuba City, Arizona, Flagstaff, Arizona, on the Hopi BIA judicial compound near Keams Canyon, Arizona, and Farmington, New Mexico. DNA legal staff practice in tribal, state, federal, and administrative courts. DNA IS SEEKING TO HIRE MANAGING AND STAFF ATTORNEYS FOR THE FOL-LOWING OPEN POSITIONS: 1. Managing and Staff Attorney (State Licensed - Multiple Locations - NM & AZ); 2. Managing and Staff Attorney (Tribal Court Licensed - Multiple Locations - NM & AZ); 3. NM VOCA Project Director (Farmington, NM or Hybrid-Remote). WHAT TO SUBMIT: Employment Application (found at <https://dnalegalservices.org/careeropportunities-2/>), Resume, Cover Letter, and upon request, Transcripts and (Writing Sample-Attorneys only). HOW TO APPLY: Email: HResources@dnalegalservices.org | Direct: 928.871.4151 ext. 5640 or Cell: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted). Preference is given to qualified Navajo and other Native American applicants. DNA requires all applicants to be eligible to work within the United States. DNA will not sponsor visas unless otherwise noted on the position description.

Experienced Family Law Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 35 states, is currently seeking an experienced family law attorney for an immediate opening in 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

Full-Time Associate Attorney

Gallagher, Casados & Mann, PC is an Albuquerque law firm with a primary focus on defending clients in civil litigation. We are looking for a full-time associate attorney. The ideal candidate will have 2 to 5 years of experience. Our lawyers and staff enjoy a congenial working environment with a healthy and happy work-life balance. Candidates should have excellent academic credentials and communication skills. Compensation depends on experience and is competitive with other firms. Please direct inquiries together with a resume to wjackson@gcmlegal.com.

Associate Attorney - Civil Litigation

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. The candidate must have at least 3 years of experience relevant to civil litigation, and must have excellent legal writing, research, and verbal communication skills. 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.

Associate Attorney

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

Attorney or Law School Graduate Positions

Busy legislative office is seeking attorneys or law school graduates for full-time employment from January to February, 2024. Strong legal research and writing skills required. Salary DOE. Applicants with tax policy experience are especially encouraged to apply. For application and more details: <https://www.nmlegis.gov/Entity/Senate/Employment>.

**Deputy Attorney General for
Affirmative Litigation
New Mexico Office of the
Attorney General**

Santa Fe or Albuquerque, New Mexico

Job Description: The New Mexico Office of the Attorney General is seeking a highly-skilled and motivated individual to join our team as the Deputy Attorney General for Affirmative Litigation. The Deputy Attorney General will play a critical role in leading and managing our affirmative litigation efforts. They will work closely with the Attorney General, the Chief Deputy Attorney General and other senior staff members to develop and execute litigation strategies that promote justice, protect the public interest, and advance the rights of individuals and communities. This is an at-will position. Responsibilities: Lead and oversee the development and implementation of affirmative litigation strategies in collaboration with the Attorney General and other stakeholders including, but not limited to, civil rights, consumer protection, environmental protection, and corporate fraud; Conduct legal research and analysis to identify potential claims and develop legal theories to support affirmative litigation cases; Prepare and file legal documents, including complaints, motions, and briefs, in state and federal courts; Manage a team of attorneys and legal staff involved in affirmative litigation, providing guidance, feedback, and mentorship; Collaborate with relevant government agencies, nonprofits, and advocacy organizations to gather evidence, build partnerships, and leverage resources; Conduct investigations and discovery processes to gather evidence and build strong cases Represent the New Mexico Office of Attorney General in court proceedings, including hearings, trials, and possible appeals; Monitor developments in relevant legal areas and propose policy and procedural changes to enhance the effectiveness of affirmative litigation efforts; Maintain accurate and organized case files, records, and other documentation; Collaborate and monitor outside legal counsel pursuing legal claims and lawsuits on behalf of the office; Lead nationwide litigation in the pursuit of protecting public interests. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 10 years of experience in litigation, with a focus on affirmative litigation, and 5 years of management experience preferred; Knowledge of civil rights law, consumer protection law, and environmental law preferred; Excellent legal research, writing, and oral advocacy skills; Proven ability to lead and manage a team of attorneys and legal staff; Demonstrated experience in developing and executing litigation

strategies. Strong analytical and problem-solving skills; Exceptional organizational and time management abilities; Ability to work effectively under pressure and meet deadlines; Excellent interpersonal and communication skills. Application Instructions: To apply for the position of Deputy Attorney General for Affirmative Litigation, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience. 2. Resume/CV with a detailed overview of your educational and professional background. 3. Writing samples showcasing your legal research and writing abilities. 4. Contact information for three professional references.

**Division Director for Civil Rights
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Job Description: The New Mexico Office of the Attorney General is seeking a dynamic and experienced individual to join our team as the Division Director for Civil Rights. The Director will be responsible for overseeing and managing legal matters related to civil rights enforcement and protection. Their primary focus is promoting equality, combating discrimination, and upholding constitutional and statutory rights. The Director will work closely with the Attorney General, Chief Deputy Attorney General, and Deputy Attorney General for Affirmative Litigation and collaborate with a team of attorneys and legal professionals to develop and execute strategic litigation initiatives. Responsibilities: Provide legal counsel and guidance on civil rights laws, regulations, and policies to government agencies, departments, and officials; Oversee and manage civil rights investigations and enforcement actions; Assist in the development and implementation of policies and regulations aimed at protecting civil rights; Develop and implement outreach initiatives to raise awareness about civil rights, educate the public on their rights and protections, and promote inclusivity and diversity; Oversee and manage civil rights litigation, including working with other attorneys, developing case strategies, and representing the New Mexico Office of the Attorney General in court or administrative proceedings; Collaborate with other government agencies, civil rights organizations, community groups, and stakeholders to address civil rights issues effectively; Advocate for civil rights issues by engaging in public policy discussions, testifying before legislative bodies, and promoting legislation or regulations that enhance civil rights protections. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission

to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 6 years of experience in litigation, with a demonstrated focus on affirmative litigation and 3 years of management experience preferred; Strong knowledge of civil rights law, and other relevant legal areas; Proven track record of developing and executing successful litigation strategies; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders; Demonstrated commitment to social justice, equality, and public interest law. Application Instructions: To apply for the position of Division Director for Civil Rights, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references.

Immigration Attorney

Rebecca Kitson Law is seeking an Associate Attorney with passion and commitment to help immigrants in family based and humanitarian immigration relief. Our firm values compassion, teamwork, excellence, and fierce advocacy. Our team works collaboratively to create a warm and supportive work environment that provides the opportunity to transform people's lives, bring families together, and protect the vulnerable. We are proud to be inclusive firm that embraces and honors diversity in our staff and clients. We offer robust tiered benefits after probationary periods to include: extensive time off, fully funded health insurance, dental, vision, short- and long-term disability and life insurance and a 401k with employer contribution. Flexible hybrid work options are available, as well as a relocation budget if needed. Experience in immigration law is welcomed but not required. MUST be fully fluent in Spanish. Must have a law license in any state and be in good standing. Salary DOE. To be considered for the position, please submit a resume, letter of intent, and writing sample to mf@rkitsonlaw.com.

**Division Director for
Environmental Protection
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Job Description: The New Mexico Office of the Attorney General is seeking a dynamic and experienced individual to join our team as the Division Director for Environmental Protection. The Environmental Protection Division Director is responsible for overseeing and managing legal matters related to environmental protection and enforcement. Their primary focus is to ensure compliance with environmental laws and regulations, protect natural resources, pursue affirmative environmental protection litigation, and advocate for the preservation of environmental resources and environmental quality standards. Responsibilities: Provide legal counsel and guidance on matters related to environmental laws, regulations, and policies to various government agencies, departments, and officials; Oversee and manage enforcement actions related to environmental violations, which can involve conducting investigations, collaborating with law enforcement agencies, and initiating legal proceedings against violators; Assist in the development and implementation of environmental policies and regulations at the state or federal level; Advocate for environmental protection and conservation initiatives, including supporting or opposing environmental legislation, participating in public hearings, and representing the Attorney General's Office in environmental matters before administrative bodies and courts; Collaborate with other government agencies, non-profit organizations, and stakeholders involved in environmental protection and enforcement efforts; Oversee and manage litigation related to environmental matters, including working with other attorneys, managing case strategy, and ensuring legal actions are aligned with the overall objectives of the Attorney General's Office. Qualifications: Juris Doctor (J.D.) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire a limited law license; 6 years of experience in litigation, with a demonstrated focus on affirmative litigation and 3 years of management experience preferred; Strong knowledge of environmental law and other relevant legal areas; Proven track record of developing and executing successful litigation strategies; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize

tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders Demonstrated commitment to social justice, equality, and public interest law. Application Instructions: To apply for the position of Division Director for Environmental Protection, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references.

**IPRA Attorney Lead
New Mexico Office of the
Attorney General
Santa Fe or Albuquerque,
New Mexico**

Full-Time; Open until the position is filled. Job Description: The New Mexico Office of the Attorney General (the Office) seeks a dynamic and experienced individual to join our team as the lead attorney for fulfilling Inspection of Public Records Act (IPRA) requests. The lead IPRA Attorney is responsible for overseeing and managing legal matters related to IPRA requests to the Office. Their primary focus is the timely, efficient, and effective processing of requests to inspect public records. The IPRA Lead Attorney works closely with the Special Counsel for the Attorney General, Deputy Attorney General for Civil Affairs, and Director of Government Counsel & Accountability and collaborates with attorneys and legal professionals throughout the Office. Responsibilities: Oversee and manage IPRA request fulfillment, including working with other attorneys, developing case strategies, and representing the New Mexico Office of the Attorney General in court or administrative proceedings; Provide legal counsel and guidance on IPRA laws, regulations, and policies to the Office; Collaborate with other government agencies, community groups, and stakeholders to address IPRA and government transparency issues effectively; Develop and implement internal trainings to build institutional awareness about IPRA and government transparency; Assist in the development and implementation of policies and regulations aimed at IPRA law and government transparency; Engage in public policy discussions, testifying before legislative bodies, and promoting legislation or regulations that develop the legal framework impacting public records in New Mexico. Qualifications: Juris Doctor (JD) degree from an accredited law school; Admission to the New Mexico state bar and in good standing or the ability to acquire

a limited law license; Minimum of four (4) years of experience in the practice of law. Preferred qualification of 6 years of experience in litigation, with a demonstrated experience processing IPRA requests and 3 years of management experience preferred; Strong knowledge of IPRA law, and other relevant legal areas; Excellent leadership and management skills, with the ability to inspire and motivate a team of attorneys and legal professionals; Outstanding legal research, writing, and oral advocacy skills; Strong analytical and problem-solving abilities; Ability to work effectively under pressure, prioritize tasks, and meet deadlines; Exceptional interpersonal and communication skills, with the ability to collaborate effectively with diverse stakeholders; Demonstrated commitment to public service law; Application Instructions: To apply for the position of IPRA Attorney Lead, please submit the following documents to Dean Woulard at recruiting@nmag.gov: 1. Cover letter detailing your interest in the role and your relevant experience; 2. Resume/CV with a detailed overview of your educational and professional background; 3. Writing samples showcasing your legal research and writing abilities; 4. Contact information for three professional references. The New Mexico Office of the Attorney General is committed to recruiting the highest quality candidates who embody its institutional values of: Integrity - a commitment to honesty, ethical behavior, and transparency in all actions and decisions; Excellence - the highest level of professionalism and expertise in all aspects of our work, and; Service - a strong dedication to serving the public interest and prioritizing the well-being of the community - especially the interests of those least capable of defending themselves. The New Mexico Office of the Attorney General is an equal opportunity employer, and encourages applicants from all backgrounds to apply. For more information, please visit www.nmag.gov.

**Senior Trial Attorney –
Espanola Office - VAWA grant
1st Judicial District Attorney**

The First Judicial District Attorney's Office is seeking a Senior Trial Attorney under the VOWA domestic violence grant, in the Espanola Office. Rural differential pay and retention bonus may be offered. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

Modest Means Helpline

Staff Attorney

Are you tired of billable hours? Would you love not to have to go to court? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks a Full-Time (40 hours/week) or Part-Time (30 hours/week) helpline staff attorney for its Modest Means Helpline. Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The position includes an excellent benefits package and competitive salary for legal work in the non-profit sector. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who have moderate or low income. Additionally, the attorney may conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico. Applicants must be licensed to practice law in New Mexico, and able to work as part of a busy team in a fast-paced environment. Excellent customer service and computer skills are required. Fluency in Spanish is a plus as is a demonstrable interest in issues affecting the lower-income community. To be considered, applicants must submit a cover letter and resume to hr@sbnm.org. In your cover letter, please explain why you are interested in working as a helpline attorney. EOE. Visit www.sbnm.org/sbnmjjobs for full details and application instructions.

JSC Investigative Trial Counsel

State of NM Judicial Standards Commission located in Albuquerque seeks a JSC Investigative Trial Counsel, an FLSA exempt (not classified), at-will and full-time position with benefits including PERA retirement. NMJB Pay Range LL \$31,273/hr-\$62,546/hr, or (\$65,048-\$130,096) yearly. JSC target pay range (\$90,000 - \$95,000) DOE and budget. Flexible work schedules available. Under general direction and review, the Investigative Trial Counsel assists in the investigation and prosecution of matters before the Commission involving the discipline, removal, or retirement, of New Mexico judges and appear in cases before the New Mexico Supreme Court. No telephone calls, e-mails, faxes, or walk-ins accepted. See full job description and application instructions at <https://humanresources.nmcourts.gov/home/career-opportunities/or> on the News page of the Commission's website (www.nmjsc.org).

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/>. Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us

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. Managing Attorney- Consumer Law Practice Group. Staff Attorney Positions: Generalist - Silver City, NM; Generalist - Las Cruces, NM; (2) Disaster Relief, Northern NM; Staff Attorney - Statewide Intake, Referral and Advise Unit - Flexible Location. Medical Legal Partnership, Santa Fe, NM. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.isolvedhire.com/jobs/>

Requesting Letters of Interest for Contract Compliance Officer

The City of Albuquerque (City), through the City Council Services Department (Council Services) is requesting Letters of Interest (RFLI) for services to serve as a Contract Compliance Officer (CCO) to ensure compliance by the Civilian Police Oversight Agency (CPOA) and the Civilian Police Oversight Advisory Board (CPOAB) with the Police Oversight Ordinance and the 2014 DOJ Settlement Agreement with the City of Albuquerque. The selected candidate for this part-time contract position shall not be a current or former employee of the Albuquerque Police Department nor have served on the CPOA Board. Experience in compliance and familiarity with interpreting administrative or personnel policies, procedures and ordinances preferred. For a complete description of the position and to submit a letter of interest please visit: www.cabq.gov/complianceofficer

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is a successful and established Albuquerque-based complex civil commercial and tort litigation firm seeking motivated and talented associate attorney candidates with great academic credentials. Join our small but growing focused Firm and participate in litigating cases from beginning to end with the support of our nationally recognized, experienced attorneys! Come work for a team that fosters development and growth to become a stand-out civil litigator. Highly competitive compensation and benefits. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Civil Litigation Attorney

Description: Rodey, Dickason, Sloan, Akin & Robb, P.A. is currently seeking attorneys with 2 or more years of Civil Litigation experience to work in our Albuquerque office. Qualifications: Ideal candidate must have strong academic credentials, excellent references, solid writing skills, deposition experience, hearing experience, and must be licensed in New Mexico. Experience in professional liability, medical negligence or personal injury is preferred. Candidates should possess the desire to work as a team, to mature their legal skills, and to represent their clients well. Rodey offers comprehensive benefits package, including health, dental and vision; professional development and multi-faceted mentoring program; FSA and HSA plan option(s); 401K plan/employer match; group life and long-term disability insurance; employee assistance program; wireless phone/services stipend. We are excited about our opportunity to partner with qualified candidates looking to advance their legal career. For consideration, please include a cover letter, resume, law school transcript and writing sample and submit via email to [Ali Dyer, Human Resources Director at: jobs@rodey.com](mailto:jobs@rodey.com) with "Litigation Attorney" in the subject line. All inquiries will be kept confidential. Rodey is an Equal Opportunity Employer. Rodey Law Firm is not accepting unsolicited resumes from search firms for this position.

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid remote work schedule available. The Legal Department's team of attorneys provides a broad range of legal services to the City and represents the City in legal proceedings in court and before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Current open positions include: Litigation Division: The City is seeking attorneys to join the Litigation Division, which de-fends claims brought against the City. Property and Finance Division: The City is seeking attorneys to bring code enforcement actions, advise on real estate matters, and serve as general counsel to various City departments; General Counsel to the City Clerk: The City is seeking an attorney to advise on the interpretation of and compliance with the Inspection of Public Records Act and serve as General Counsel to the City Clerk's Office; Office of Civil Rights: The City is seeking an attorney to enforce the Human Rights Ordinance in conjunction with the Human Rights Board and enforce the Closed Captioning Ordinance. This attorney will advise various departments and conduct educational and investigative programs; General Counsel to APD: The City is seeking an attorney to advise APD regarding policies, procedures and training, review and negotiate contracts, review uses of force, draft legal opinions, review and draft legislation and administrative instructions. Additional duties may be assigned based on experience. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, government compliance, litigation, contracts, and policy writing. Salary based upon experience. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Experienced Litigation Attorney

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

Entry Level Attorney (0 – 3 years)

Why work for us? LOBJD is one of the fastest growing law firms in the Southeast of New Mexico. We are located in Hobbs, New Mexico, and are looking for an entry-level attorney (0-3 years) to join our expanding and fast-paced litigation team. Our practice focuses mainly on criminal defense and various civil matters. We already have outstanding paralegals and staff, and we are now looking to complete the puzzle. Compensation includes a fun and fast-paced atmosphere and a competitive starting salary, including periodic bonuses and a percentage of the cases brought in. LOBJD also practices in Arizona. Come join the varsity team. Please contact Christy at christy.lobjd@gmail.com or call 505-705-1247.

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>.

Experienced Paralegal

Experienced paralegal needed for Montgomery & Andrews, P.A. We are seeking an experienced paralegal to join our busy team in a full-time role. As paralegal you will be required to assist lawyers throughout the firm. You must have at least two years' experience. Must have knowledge of legal processes, excellent organizational skills, research skills, the ability to work under pressure, great communication, and trial preparation experience. This position requires at least two years of litigation experience. Graduation from an accredited paralegal program or bachelor's degree desired. Firm offers a congenial work environment, competitive compensation, and a benefit package. Please send cover letter, resume and salary requirements to Firm Administrator, P. O. Box 2307, Santa Fe, NM 87501 or email: tgarduno@montand.com

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. Paralegal Positions: Paralegal - Housing Stability and Veteran's, Flexible NMLA Location; Paralegal - Housing Stability, Albuquerque; Paralegal - LGBTQ+ legal access program, Safe To Be You - Flexible NMLA. Legal Secretary: Low Income Tax Clinic – General, Albuquerque, NM Location. Grants Assistant. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - <https://newmexicolegalaid.solvedhire.com/jobs/>

Legal Secretary

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

Full-Time Paralegal

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

Legal Assistant

Montgomery & Andrews, Law Firm is accepting resumes for a Legal Assistant position in our Santa Fe Office. Must have a minimum of two years' experience working in a mid- or large-sized law firm. Applicants must have experience, including knowledge of local court rules and filing procedures. Must have excellent clerical, organizational, computer and word processing experience. Applicants must be able to multi-task and work in a team player environment. Firm offers a congenial work environment, competitive compensation, and a benefit package. Please send resume to tgarduno@montand.com or mail to T. Garduno, P.O. Box 2307, Santa Fe, New Mexico 87504-2307.

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Older lawyer on verge of and desiring to cut back/retire; has large client base with regular PI referrals, general practice and business matters from long time clients and numerous blind calls. Has government 'outside counsel' contracts in place with case referrals. Needs minor support staff and associate assistance with ongoing matters until closed out. No staff lateral hire required. Referrals of all new matters to associated firm. 'Of counsel' role desired for short while thereafter as current caseload clears. Reply in confidence to Bar Box A with interest, PO Box 92860, Albuquerque, NM 87199-2860

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

Miscellaneous

Search for Will

INFORMATION REGARDING ELIZABETH SLADE A/K/A ELIZABETH OHMAN. Anyone having any information about the Last Will and Testament and/or a trust prepared for Elizabeth Slade a/k/a Elizabeth Ohman (the Elizabeth Slade Trust), or any probate related proceedings concerning this person, please contact Kevin D. Hammar, Attorney at Law or Helen Haun at (505)266-8787 or by email at Khammar@AbqLawNM.com or HHaun@AbqLawNM.com

2023 Bar Bulletin Publishing and Submission Schedule

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

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

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

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



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Attorneys at Law

Is pleased to announce

Tierra Marks and Jesse Heibel

have become senior associate attorneys of the firm

Tierra Marks is a member of the Navajo Nation and a first-generation law graduate and lawyer. Tierra's work ranges from complex litigation and discovery to employment, contract, and construction disputes, bid protests, land disputes, taxation matters, natural resources and environmental regulation, and sovereign immunity and tribal jurisdiction. Tierra litigates at trial and appellate levels in tribal, state and federal courts, and administrative hearings. Tierra holds a JD from the University of New Mexico School of Law and was a recipient of the New Mexico State Bar Health Law Scholarship and Mary Beth and W. Richard West Jr. Award. She has presented on discovery and evidentiary issues in litigation against state and federal governments, has served as an Adjunct Professor at the University of New Mexico School of Law, and is an alumna of the American Indian Law Center Pre-Law Summer Institute.



Jesse began his practice in Colorado after receiving his JD from the University of Colorado School of Law with Certificates in Federal Indian Law and Natural Resources Law. Jesse has over six years of experience representing tribal governments, entities, and members in all areas of federal, state, and tribal law, with a particular focus on natural resources, regulatory compliance, and litigation. Jesse works hands on to implement and enhance a range of economic development projects and is committed to helping his clients achieve their goals and benefit their communities through the best legal and business solutions. He has also authored articles published in the Harvard Journal of Law and Gender, University of Colorado Law Review, and the American Bar Association Human Rights Magazine.

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