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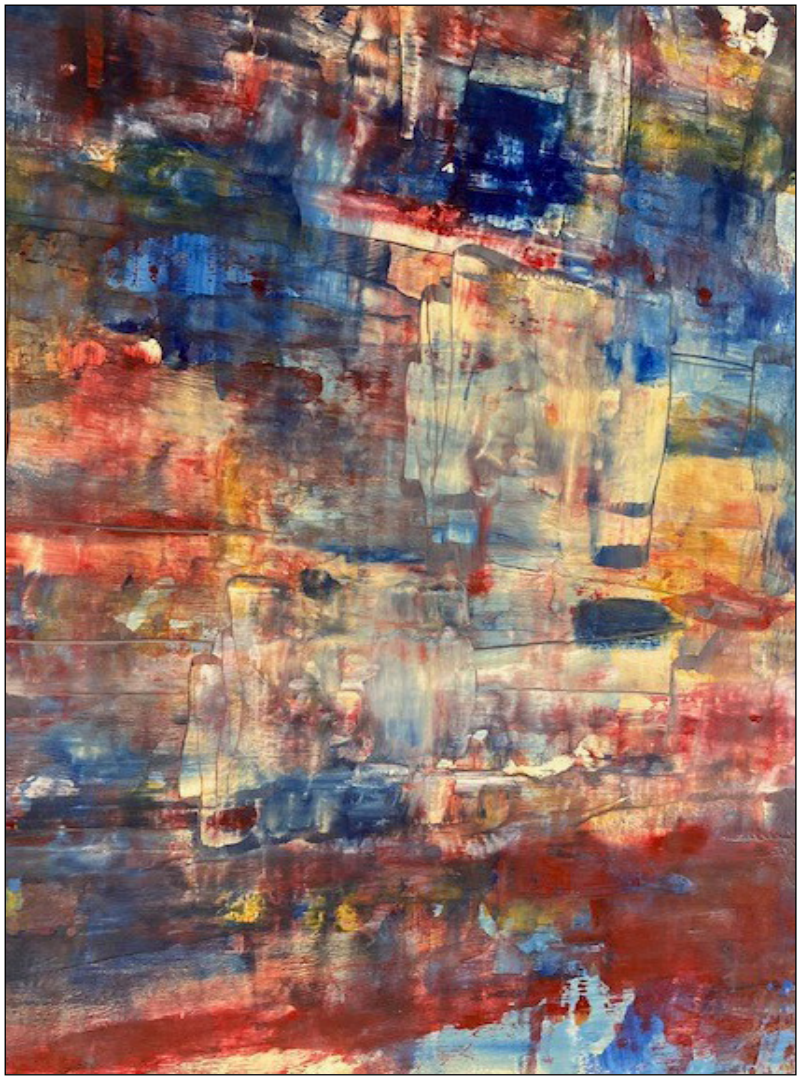

Untitled, by Randall V. Biggers (see page 3)

Inside This Issue

State Bar of New Mexico
Est. 1886

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June 26, 2024 • Volume 63, No. 6-D

www.sbnm.org

Table of Contents

Section, Division and Committee Meetings

Section, Committee, Division	June	July	Time, Format
ADR Steering Committee	N/A	11	Noon, Zoom
Animal Law	N/A	10	12:30 p.m., Zoom
Appellate	4	2	Noon, Zoom
Bankruptcy Law	11	9	Noon, Bankruptcy Court & Zoom
Business Law	11	9	11 a.m., Zoom
Cannabis Law	14	12	9 a.m., Zoom
Children's Law	17	15	Noon, Zoom
Elder Law	7	5	Noon, Zoom
Employment and Labor Law	5	3	12:30 p.m., Zoom
Family Law	21	19	9 a.m., Zoom
Health Law	4	2	9 a.m., Zoom
Immigration Law	28	26	11 a.m., Zoom
Indian Law	N/A	19	Noon, Zoom
Intellectual Property Law	19	17	Noon, Zoom
NREEL	25	23	Noon, Zoom

About Cover Image and Artist: Randy was born in Roswell and lives to tell about it. He has been painting non-stop for the past twenty years when he retired from a career in the Foreign Service. In an earlier incarnation he was a Peace Corps Volunteer in a free Afghansitan(74-76). In addition to the abstract on today's cover, he paints imaginary landscapes. His preferred medium is acrylics on various papers and mat board. Visit his website: randallvbiggersart.com to see more of his work.

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.

New Mexico Courts Launch New Website

New Mexico Courts launched a new website to provide the public with an improved user experience and a fresh, new look. The website is nmcourts.gov. View the press release from the Administrative Office of the Courts that explains the new features of the website at https://www.sbnm.org/News-Publications/Bar-Bulletin/Online-Notices/Court-Notices.

Professionalism Tip

With respect to my clients:

I will advise my client that civility and courtesy are not weaknesses.

Notice for Invoices for Court-Appointed Representations

Invoices for court-appointed representations that conclude in fiscal year 2024 (July 1, 2023 to June 30) are due no later than July 10. This would include all cases where the appointment order assigned fees to the fee schedule published by the Administrative Office of the Courts, Court Appointed Attorney Program (AOC-CAAP), and the assigned duties are concluded on or before June 30. The fee schedule and invoice forms can be located at https://courtappointedattorneys.nmcourts.gov/ under non-contract attorneys. Please contact AOC-CAAP with any questions aoccaaff-grp@nmcourts.gov.

Second Judicial District Court

Invitation to Swearing-In Ceremony

The judges and employees of the Second Judicial District Court invite the legal community to the swearing-in ceremony of the Hon. Diana Garcia (Division XIX). The investiture ceremony will take place on June 27 at 4 p.m. (MT) at the Second Judicial District Court, located at 400 Lomas Blvd. NW, Albuquerque, N.M., 87102. A reception will follow the ceremony.

State Bar News

Save the Date for the State Bar of New Mexico's 2024 Annual Meeting on Oct. 25

The Annual Meeting looks a little different this year! Save the Date for the State Bar of New Mexico's 2024 Annual Meeting on Oct. 25. "Be Inspired" during one full day of legal education, networking with your colleagues in the N.M. legal community, inspirational speakers and activities, entertainment, and much more. Join us either in-person at the State Bar Center or virtually and earn all 12 of your CLE credits for the year! Sponsorship opportunitites are now available. More information and registration can be viewed soon at https://www.sbnm.org/AnnualMeeting2024.

Alternative Dispute Resolution Committee

Notice of Quarterly Meetings

The State Bar of New Mexico's Alternative Dispute Resolution Committee that covers all topics related to ADR meets each quarter for general meetings. The Committee's next meeting is July 18, where the ADR Committee will discuss topics for their Annual Institute and have a presentation by Tonya Covington on "Restorative Justice and How It Fits Into Alternative Dispute Resolution." For more information, contact either Tamara Couture by email at tamara@couturelaw.com or by phone at 505-266-0125, or contact Rachel Donovan by email at abqmediation@gmail.com or by phone at 505-328-4792.

Board of Bar Commissioners

Appointment to Rocky Mountain Mineral Law Foundation Board

The President of the Board of Bar Commissioners will make one appointment to the Rocky Mountain Mineral Law Foundation Board for a three-year term. The appointee is expected to attend the Annual Trustees Meeting and the Annual Institute, make annual reports to the appropriate officers of their respective organizations, actively assist the Foundation on its programs and publications, and promote the programs and objectives of the Foundation. Active status members in New Mexico wishing to serve on the board should send a letter of interest and brief resume by July 10 to bbc@sbnm.org.

Supreme Court of New Mexico Sitting in Terms

At its February 2024 administrative conference, the Supreme Court of New Mexico approved sitting in terms with updates to the Court's oral argument calendar.

Notably, the Supreme Court of New Mexico will hear oral arguments in the months of September, November, December, and March. Dispositions for all cases submitted during the Court's 2024-2025 term will be filed on or before July 15, 2025. At this time, no amendments to the Rules of Appellate Procedure are necessary to implement the Court's new calendar. The Court will continue to set expedited appeals in accordance with Supreme Court Order No. 238500-016, In the Matter of the Modification of the Policy Expediting the Process for Specific Categories of Case upon the Issuance of Writ of Certiorari. For the current Supreme Court oral argument schedule, please visit the Court's website at https://supremecourt.nmcourts.gov/about-this-court/court-calendar-and-oral-argument-livestream/.

Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on May 17 at the State Bar Center in Albuquerque, N.M. Action taken at the meeting follows:

- Held a joint Executive Session with the NM State Bar Foundation Board;
- Approved the February 23, 2024 Meeting Minutes;
- Discussed Rule 24-101(A) NMRA, Objective #4, Be Cognizant of the Needs of Individual and Minority Members of the Profession, Including the Full and Equal Participation of Minorities and Women in the State Bar of New Mexico and the Profession at Large, and received a report on the NM Supreme Court's Commission on Equity and Justice and an introduction of the State Bar's new Equity in Justice Attorney, Abby Lewis;
- Received an update on the 2023-2025 Three-Year Strategic Plan;
- Reviewed applicants for the ABA House of Delegates and appointed H. Nicole Werkmeister to a two-year term;
- Reviewed applicants for the Judicial Standards Commission and appointed Howard R. Thomas to a four-year term;
- Received a request from the National Academy of Continuing Legal Education to Waive the Three-Year Accreditation Requirement Pursuant to Rule 18-203(A(1)(B) NMRA and approved the request subject to several requirements;
- Approved a request to award CLE credit to arbitrators who participate in the Fee Arbitration Program;
- Received a report on the Executive Committee, which included: 1) a discussion of the Executive Session; 2) approved the licensing late fee waiver requests pursuant to management's recommendations; and 3) approved the agenda for the meeting;
- Received a report from the Finance Committee, which included: 1) approved the Feb. 23 Finance Committee meeting minutes; 2) accepted the 2023 Combined Financial Audit; 3) accepted the April 2024 Financials; 4) reported on the Intercompany Payment from the NM State Bar Foundation to the State Bar; 5) received an update on the security of Bill.com, the new accounts payable system; and 6) received the CPF, ATJ, JLAP, YLD and SLD First Quarter 20024 Financials;
- Approved amendments to the State Bar Bylaws, which were updated pursuant to the new Committees Policies;
- Received a report on the Member Services Committee and approved their recommendations regarding the annual review of sections and committees; also approved dissolving the Board of Editors and establishing a new Communications Advisory Committee;
- Received an update on the programs and activities of the Prosecutors Section;
- Received reports from the Presidents of the State Bar and NM State Bar Foundation and the outsourced fundraiser for the Bar Foundation regarding the upcoming fundraising events, including the 2024 NM State Bar Foundation Golf Classic and the State Bar of NM Annual Meeting;
- Received a report from the Executive Director;
- Received a report on ABA Day, which entails bar leaders from around the country meeting with their congressional delegation in Washington, D.C. to lobby on issues, including funding for legal services;
- Reported that the suspension list of members for failure to comply with their licensing requirements was sent to the Supreme Court;
- Received an update on the roll of attorneys joint project with the Supreme Court to create one database for members' information, which will be live the end of May;

- Received the 2023 Client Protection Fund Annual Report; and
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions, Bar Commissioner Districts, and Supreme Court Board and Committee Liaisons.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the July 26 meeting.

New Mexico Lawyer Assistance Program

Monday Night Attorney Support Group

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

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on July 11 and Oct. 11. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

New Mexico Well-Being Committee Meetings

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

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 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.

New Mexico State Bar Foundation Golf Classic - Register to Play!

You're invited to the New Mexico State Bar Foundation Golf Classic on Sept. 30 at 9 a.m. (MT) at the Tanoan Country Club in Albuquerque! Register to play form.jotform.com/sbnm/GolfClassic. All proceeds benefit the New Mexico State Bar Foundation. Sponsorship opportunities are also available. Visit www.sbnm.org/NMSBFGolfClassic2024 for more information.

UNM School of Law

Law Library Hours

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

Other News

N.M. Legislative Counsel Service

Legislative Research Library Hours

The Legislative Research Library at the Legislative Council Service is open to state agency staff, the legal community, and the general public. We can assist you with locating documents related to the introduction and passage of legislation as well as reports to the legislature. Hours of operation are Monday through Friday, 8 a.m. to 5 p.m. (MT), with extended hours during legislative sessions. For more information and how to contact library staff, please visit https://www.nmlegis.gov/Legislative_Library.

A Guide to

State Bar of New Mexico
Est. 1886

The State Bar of New Mexico's Digital Communications

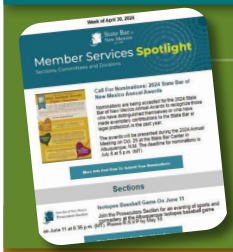
As part of our mission to serve New Mexico's legal community, the State Bar of New Mexico is dedicated to ensuring that licensees are up-to-date with the latest information and announcements via regular digital e-newsletters and email communications. From news pertinent to New Mexico courts to pro bono opportunities, our emails cover a variety of legal information.

eNews

Sent out each Friday morning, our weekly eNews e-newsletter is a comprehensive email containing a variety of information and announcements from the State Bar of New Mexico, the New Mexico State Bar Foundation, New Mexico courts, legal organizations and more. To advertise in eNews, please email **marketing@sbnm.org**. To have your organization's announcements or events published in eNews, please contact **enews@sbnm.org**.

Digital Bar Bulletin

The State Bar of New Mexico's official publication, the Bar Bulletin, is published on our website on the second and fourth Mondays of each month. The day the *Bar Bulletin* is published digitally, an email is distributed to the legal community linking to the online Bar Bulletin. To publish your notices, announcements or articles in the Bar Bulletin, contact **notices@sbnm.org**.

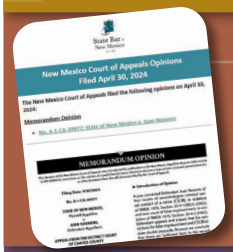


Member Services Spotlight

Emailed each Tuesday morning, our weekly Member Services Spotlight e-newsletter contains announcements and events from each of the State Bar's Sections, Committees and Divisions. To highlight your Section, Committee or Division's latest news, email **memberservices@sbnm.org**.

CLE Weekly Roundup

Distributed each Wednesday morning, the CLE Weekly Roundup provides a highlight of the New Mexico State Bar Foundation Center for Legal Education's upcoming CLE courses with information regarding the date and time of the course, credits earned and link to register. For more information regarding the CLE Weekly Roundup, please contact **cleonline@sbnm.org**.



New Mexico Court of Appeals Opinions

As a licensee benefit, the State Bar of New Mexico distributes introductions to the New Mexico Court of Appeals' published opinions with links to the full opinions the day they are published. For more information regarding the Court of Appeals opinions distribution, please contact **opinions@sbnm.org**.

Pro Bono Quarterly Newsletter

Disseminated quarterly, the State Bar of New Mexico's Pro Bono Quarterly e-newsletter provides the New Mexico legal community with an overview of initiatives to provide pro bono legal services for New Mexican residents in need. For more information on the newsletter or to advertise your pro bono or volunteer opportunity, contact **probono@sbnm.org**.

Opportunities for Pro Bono Service
CALENDAR

June

27 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

28 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Las Vegas, NM

July

3 **Citizenship & Residency Workshop**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/citizenship
Location: El Centro de Igualidad y Derechos

12 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Taos

19 **Legal Fair**
In-Person
Eighth Judicial District Court Pro Bono Committee w/New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Taos

If you would like to volunteer for pro bono service at one of the above events, please contact the hosting agency.

Resources for the Public
CALENDAR

June

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

27 **Asylum Initial Application and Work Permit Pro Se Clinic**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/asylum
Location: Announced prior to clinic

28 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Las Vegas, NM

July

3 **Citizenship & Residency Workshop**
In-Person
New Mexico Immigrant Law Center
www.nmilc.org/citizenship
Location: El Centro de Igualidad y Derechos

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

12 **Legal Fair**
In-Person
New Mexico Legal Aid
bit.ly/NMLALegalFairSignUp
Location: Taos

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

Introducing the

Statewide Legal Fairs and Clinics Calendar!

In collaboration with the **Administrative Office of the Courts**, the **State Bar of New Mexico** recently established an all-new online **Statewide Legal Fairs and Clinics calendar**!

To view it, visit:
https://www.sbnm.org/Statewide-Legal-Fairs-and-Clinics-Calendar

Send your upcoming legal fairs and clinics to probono@sbnm.org for increased visibility and access!
All courts, civil legal service providers and other legal organizations are welcome to share this calendar!

State Bar of New Mexico
Est. 1886

The State Bar of New Mexico's Annual Meeting looks a little **different** this year.

be inspired.

Save the Date!

October 25, 2024

Attend In-Person at the State Bar Center in Albuquerque or Virtually

Earn all 12 of your CLE credits for the year at a discounted rate!

Earn a portion of your CLE credits by attending the live (in-person or virtual) Annual Meeting event and complete the remaining credits with access to our CLE On-Demand courses. More information coming soon!

Reach thousands of members of the New Mexico legal community! Annual Meeting sponsorships are available!

Contact Marcia Ulibarri at 505-797-6058 or marketing@sbnm.org for more information.

www.sbnm.org/AnnualMeeting2024

In Memoriam

Steven S. Suttle (1949-2024), a former district attorney and assistant attorney general, passed away on February 27 in Albuquerque, leaving behind his loving wife of 49 years, Denise, his daughter Tovah Close and her husband Bryan, two wonderful grandsons, Asher and Jonah, and his brother Hal Jack. Steven had many avocations, but especially enjoyed his thirteen years on the air at Big 98.5 radio, stand-up comedy, and community theater. His love of family, New Mexico, and constitutional government knew no bounds. In keeping with Jewish tradition, in lieu of flowers please commit a random act of kindness. Suggested charities are the Navajo Water Project (navajowaterproject.org) and Animal Humane New Mexico (animalhumanenm.org).

Thomas Charles Esquibel passed away at the age of 73 in San Jose, Calif., on Nov. 28, 2023, on a bright, sunny morning surrounded by his beloved family after a courageous battle with cancer. Tom was born Sept. 17, 1950, to Ezequiel and Emma Esquibel, and had six brothers, Ezekiel, Frank, Joe, Edwin, Donald and John. As a child, he attended St. Mary's Catholic School in Belen. There, he learned to speak English in school with Catholic nuns as his teachers. He has described this education and experience as formative in his life and giving him a drive to achieve and persevere beyond people's expectations of him. Tom was outgoing and intelligent throughout his life. He truly loved life and people. He attended the University of New Mexico and became an attorney in 1975. In 1980, at the age of 30, he won a campaign to become the youngest district attorney in the history of the country. His cases varied from divorce law to criminal law. He was a very talented attorney and most people in the small towns he and his family were from knew of him and would often call on him when they needed legal advice or help. Tom was proudest of his family — his children and grandchildren. He was selfless in his love and care. If there was any way to help anyone, he would be there in an instant. His grandchildren would describe him as very silly and willing to play, listen, cook or drive them anywhere they needed at a moment's notice. He will be greatly missed by family and friends near and far. Thomas is survived by his three children, Franchesca Perez, Carlos Esquibel and Eric Esquibel; his grandchildren, Emma Perez, Hector Esquibel, Keona Perez, Brandon Esquibel and Jayda Esquibel; brothers, Frank Esquibel (Mary Rita), Joe Esquibel (Peggy) and John Esquibel (Ruby); sisters-in-law, Kathy Esquibel and Alice Esquibel; and many lifelong friends and extended family. Thomas was preceded in death by his loving parents, Ezequiel and Emma Esquibel; and his brothers, Ezekiel (Alice), Edwin (Kathy) and Donald.

Jetulio Victor Pongetti, Jr., age 95, also known as "Vic," "Junior," "J. Victor," and "Gramps," passed away peacefully on January 17, 2024, surrounded by family. Vic was born on October 23, 1928, in Shelby, MS, into an Italian immigrant family, who were sharecroppers. He was the 2nd of 9 children of Jetulio Victor, Sr., and Amelia (nee Avaltroni) Pongetti. As a child he worked on the farm with his father and grandfather, Adamo. For the rest of his life, he described himself as "a sharecropper's kid from Mississippi." After high school, he attended Mississippi State University, graduating in 1950 with a degree in Agriculture Engineering. As a pilot in the US Navy, he flew the Cougar aircraft off the deck of the Midway Aircraft Carrier and made some of the best friends of his life in his Hellraisers squadron. After finishing his commission in the Navy, he served in the Reserves and went to Vanderbilt Law School. A good friend from law school suggested that he practice law in Albuquerque, NM, where he became the law clerk for the Supreme Court Chief Justice, James M. McGee. Subsequently, he worked for the Bellamah Corporation, became a partner at the Johnson and Lanphere Law Offices, and built the firm Pongetti, Wilson and Pryor. As a prominent real estate attorney, he worked on many negotiations, including the Taylor Ranch Subdivision. In 1990, he pursued a Master's Degree in Counseling at the University of New Mexico, after which he maintained his own law practice with several long-term clients, until retiring at the age of 88 from the "law business," as he would say. In 1963, he married Lou Delle Fidel, and they had one daughter, Gina. Although they divorced, they had a kind and respectful relationship. In 1987, he met Rita Heidinger while serving on the St Joseph's Foundation Board. They were married in a surprise wedding ceremony in 1992. They enjoyed hiking the Grand Canyon, traveling to Italy to visit family, gardening, making gingerbread houses with their grandchildren and extravagant gingerbread houses including a model of St. Basil's Cathedral with his friends, cooking delicious meals with the "food group," watching football with friends and spending time with their grandchildren. He was generous with his time and finances. He has served on the Board of Directors for All-Faith's Receiving Home, the Board of Directors for St. Joseph's Foundation, and facilitated Beginning Experience weekends to help those in the healing process after divorce. He was a moral man throughout his life and in his later years he trusted in Jesus as Lord. He enjoyed gardening, making Easter bread and delivering it hot to friends and family, cooking and the importance of eating food when it's hot, calculating the right balance of cake and ice cream on his plate, and watching his grandkids compete in anything - never missing a game or performance. He was a patriot to the core and felt that anything was possible in America. He was described by one of his Italian relatives as "a man of great humanity, of good will at all times, an example of commitment towards everyone and also towards those, like us, who lived far from him. It was so wonderful to see his care, interest and pride regarding his relatives, his origins and his Italian roots." Indeed, his commitment to his family extended across the country and around the world, but his home was always the center of Pongetti family life. Vic hosted many family reunions, holiday gatherings, and family members and friends in need. Vic was preceded in death by his parents, Jetulio Victor, Sr., and Amelia Pongetti; his brothers, Charles Pongetti, Anthony Pongetti, Robert Gene (Bob) Pongetti, Adam Pongetti, and Raymond Pongetti; his sisters, Elizabeth Pringle and Lillian Pongetti; and a sister-in-law, Vicki Bachechi. Vic is survived by his wife, Rita Pongetti; his daughter and son-in-law, Gina and Sandy Beauchamp; their children, Ben (Abigail), Emma, and Luke (Alexandria); his great-grandson, Desmond; Rita's daughter and son-in-law, Shannon and Jeff Adragna and their children, Nicolas, and Mathew; Rita's daughter, Pamela Heidinger, and her sons, Dennis Chavez II and Grant Chavez; his sister, Delores Pongetti; sisters-in-law: Mitzi Pongetti and Dorothea Pongetti; and many beloved nieces, nephews, grand-nieces, and grand-nephews. He is also survived by a host of wonderful family in Italy, friends and colleagues.

Harold Folley Jr. died peacefully at home on his 89th birthday January 11, 2024, in Albuq., NM. As a cub scout visiting the Lincoln memorial in his birthplace Springfield, Illinois, Harold had the opportunity to shake the hand of an old man who had shaken the hand of Abraham Lincoln. This event had an impact on his life. Harold had an exciting career in Law. His first job was with the Indiana Attorney General's office. Ironically, one of his cases resulted in the establishment of the Lincoln Boyhood National Memorial in Lincoln City, Indiana. His next job was with the prestigious law firm in Indianapolis, Krieg, DeVault, Alexader and Capehart. Double irony. The firm was engaged by the State to defend the establishment of the Lincoln Boyhood National Memorial before the United States Supreme Court. Because of his Type 1 diabetes, the firm could not provide desired benefits. His next Career move was with Indiana Bell who provided the benefits. He could tell many stories involving Yellow Pages ads. While attending a Bell Telephone system conference, he met legal staff from Sandia National Laboratories who at that time were managed by AT&T under contract to the Department of Energy. The idea of being close to skiing made the idea of a transfer to Sandia very appealing and Harold jumped at the chance to make his final career move. Although involved in many interesting cases, he was most proud of the work he did with medical Director Larry Clevenger to abolish smoking in the workplace. Harold was an avid squash player and skier. His retirement years gave him the opportunity to enjoy docent opportunities at the NM Natural History Museum and the New Mexico Holocaust and Intolerance Museum, as well as indulge in adventure travel and attend classes at Oasis Lifelong Adventure. He relished writing philosophical essays on subjects that reflected his deep thinking. Harold discovered the reward of being Philanthropic, making an impact on our community. Harold treasured his 36-year marriage to Jennie Negin. Through their relationship, he was inspired by Judaic teachings and became a respected member of the Jewish community. Harold was preceded in death by son Bradley Lindsey Folley, former wife Sandra Folley, parents Harold Lindsey Folley and Charlotte Auld. Survivors of Harold (aka "Gruncle") include his son Scott Folley (Sue), grandchildren Matthew, Emilyn Simone (Danny) and Nicholas, and great-grandsons Dominic, Salvatore and Leonardo Simone. Harold was like a father to Jennie's daughter Rachel (Steve) Galper, grandchildren Marlee and Nathan Galper, and son Neil Boring.

Rory Lane Rank, age 70, of Las Cruces, passed away on March 10, 2024. Rory was born in Cleveland, Ohio to Robert and Lois Rank on November 7, 1953. He graduated from Adrian College and received his Juris Doctorate from Widener College. He worked as an attorney for over 30 years. He primarily worked as a Public Defender and supervised the Juvenile Division in Las Cruces. After retiring from the Public Defender, Rory was an adjunct professor at New Mexico State University and other local community colleges. Rory was a veteran and served in the Air Force and was awarded the USFA Commendation Medal, USFA Meritorious Service Medal, USAF Commendation Medal (First Oak Leaf Cluster). Rory helped to develop the Juvenile Drug Court in Dona Ana County and it was designated one of six mentor sites in the nation. He also served on a number of boards and volunteered in the community. He served on the Youth Violence Initiative, Youth-at-Risk Programs/ JARC board, NM Juvenile Justice Strategic Plan for Girls board, Task Force: Youth Violence Initiative, Youth Advocates Alliance Board, Juvenile Detention Alternative Initiative and Gang Awareness Task Force, Disproportionate Minority Representation, Dona County Juvenile Justice Advisory Board, Dona Ana County Juvenile Detention Center Design/ Building Project, JARC, Continuum Board, Veterans Treatment Court Team. Rory also received the 2009 Driscoll Award from the Public Defender's Office. In 2005, he received the Carlos Vigil Award from the NMPD department as attorney of the year, and in 2004, he received the humanitarian award from the Las Cruces Hispano Chamber of Commerce, in 2016 was New Mexico State University Department of Criminal Justice Starry Night Nominee. Rory is survived by his Children: daughter Haley Manaia Rank, son Niclaus Makusia Rank, and daughter-in-law Amanda Rank, Siblings: Brothers Kim Rank, Kyle Rank, and Sister Lora Ehle, Grandchildren: Makuisa Brandon Rank, and Leighanne Christa Munoz.

David Rask, born March 2, 1930 in Minneapolis MN to Peter and Ella (Johnson) Rask, died at 93 on October 20, 2023 at home in Albuquerque. He is survived by his sons John, Dan and Will, all of the Albuquerque area, and two grandsons, Quinn and Galen. Peter loved his family, duck hunting, classical music, a good pair of shoes ("I'd wear them to bed if I could"), golf and driving long distances across the US. Later in life he became a great reader of history, philosophy and the occasional novel. Peter grew up in south Minneapolis and studied at the U. of Minnesota, earning his law degree. While he was in law school, his National Guard unit was activated during the Korean War. He married Mary Helen Slaughter of Bayport, MN in 1953. Peter worked as a state tax auditor, then found his niche as an assistant city attorney in Duluth, MN and Albuquerque. After 3 years with the Federal Aviation Administration, in 1974 he returned to law practice as the first general counsel for the Univ. of New Mexico. Mary died at only 52 years old in 1983, leaving a deep void. Peter retired from the Albuquerque City Attorney's office in 1988. He reconnected with Gretchen Letson at his 40th high school reunion and when they were married in 1992 he joined her in Dana Point, CA where they lived until her death in 2014. He spent his years since then in Albuquerque, much of that time as a member of the La Vida Llena elder community, where he was deeply grateful for all those who visited and cared for him.

Sigmund Lample Bloom, long resident of Albuquerque, NM, passed away on October 6th, 2022. Sigmund was born in Washington, PA, and a resident of Albuquerque for most of his life. He lived the last year of his life living in NYC with his daughter and grandson. Sigmund was a loving husband and an inspiration to his family and all who knew him. His sense of humor was enjoyed by all, and whoever met him was enamored with his charisma and personality. He thoroughly enjoyed all of the Pittsburgh team sports and supported all of them, all of the time. He had many names that he lived up to with great honor and pride, but most of all, husband to his wife, Marcia. Sigmund was an excellent criminal defense attorney who cared deeply for his clients and for 54 years practiced a style of law that sadly no longer exists. He was preceded in death by his father Israel Bloom, his mother Ida Lample Bloom and his loving wife, Marcia. He is survived by son Sigmund M. Bloom and wife Kate of New Orleans, LA and daughter Lori Bloom and partner Alfredo of New York City, NY and three grandsons. He is also survived by one sister, Carole Sue Kaminsky and one brother Charles J. Bloom and wife Susan. Sigmund's family thanks all those who touched his life and who were a part of it. If you had the privilege to know him, you knew that he loved life very much. He will be greatly missed. According to Sigmund's wishes, he was cremated and a Celebration of Life Service will be held at a later date. In lieu of flowers, please make a donation in his memory to your local Animal Humane Association.

David L. Norvell lived a wonderful life. A brilliant man with a brilliant smile, Dave loved his family, all children especially babies and toddlers dogs, politics, the law, cooking, playing and watching both tennis and golf, and piloting his own plane. He graduated from the University of Oklahoma School of Law, and was a lifelong Boomer Sooner fan. Dave approached all challenges with optimism, confidence, and good humor. He was generous in every sense of the word, from taking time for his children and grandchildren, to making time to mentor new attorneys or advise political hopefuls. As a young State Representative, who served as Majority Leader in his third term and the youngest Speaker ever in his fourth and final term, Norvell was clearly a legislative visionary. He led fights against capital punishment, for higher minimum wages, for a public employee collective bargaining act, for civil rights legislation and court reform. Speaker Norvell was a prime sponsor of the Human Rights Act, creating a commission with enforcement powers. He not only fought to maintain a clean environment, he opposed tax cuts that would have threatened public educational funding. Norvell was often quoted as saying he did what he thought best for the people of New Mexico, rather than weighing his re-election chances. He liked to relate that when FDR was running for a second term, supporters greeted the President at Madison Square Garden with a huge sign that read, "We Love Him for the Enemies He Has Made." Speaker Norvell observed, "Well, I have made some good enemies lately, and I find it a rather agreeable experience." In 1970, Norvell ran successfully for Attorney General and distinguished himself in that role. He joined with a number of other states' Attorneys General to oppose the Viet Nam war, hired a record number of women as Assistant AGs. and issued many consequential opinions, such as the protection of the rights of students in public education to speak in their Native languages on campus and for state workers to bargain collectively. Norvell failed in his bid to secure the Democratic nomination for the US Senate in 1972, and, at the end of his term as AG in 1975, decided not to run again for public office. Dave then began a successful private law practice in Santa Fe, then Albuquerque, representing criminal defendants, plaintiffs with civil rights claims, and patients injured by medical negligence. Dave became a skilled pilot when he flew between Clovis and Santa Fe as a legislator, and often flew all over New Mexico to appear in court, as well to CA to appear before the 9th Circuit Court of Appeals. Ultimately, Dave managed to make good colleagues of former adversaries, such as the late Governor David Cargo with whom Norvell sparred while Speaker of the House. Cargo was a guest at the reception following Norvell's marriage to Gail Chasey in October, 2003 in Pendaries, NM, along with the late Governor Richardson. Dave and Gail met during the late Bill Richardson's campaign for Governor in 2002. Dave had helped Richardson organize a joint caucus of House and Senate Democrats in Pendaries in northern NM after Richardson had secured the nomination. A close family friend, Barbara Gay, arranged for Dave and Gail, then running for her 4th term in the NM House, to meet. They married a year later. Dave enjoyed having that close connection with the NM Legislature again. When Gail was elected House Majority Floor Leader in 2022, Dave reminded her that he had held the same position. She joked that, while Dave was likely the youngest ever to hold that position, she is likely the oldest to do so. Dave has enjoyed supporting many of Gail's legislative priorities, particularly her 10-year effort to repeal the death penalty, which succeeded in 2009. They joined the late Governor Richardson and the late Archbishop Sheehan in a trip to Rome (at their own expense), where the Community of Sant'Egidio arranged for a ceremony, at which Saxophonist Branford Marsalis played "Imagine," as the lights were lit in the Roman Coliseum to celebrate New Mexico's repeal of the death penalty. Governor Richardson later appointed Dave to the Gaming Control Board, where he served as Chair until 2013, at which time, he resumed practicing law part-time until he retired in 2016. Always well-informed and fascinated by politics, Dave devoured the New York Times, which has long been delivered to his home daily, regularly read the New Yorker and the NM Bar Bulletin. He rarely missed the national news or important Congressional hearings on TV. To the end, Dave was always kind, gracious, and managed to be the funniest one in the room. The night of the Winter Solstice, he died peacefully at home, surrounded by his loving family and beloved dogs. Born in Kansas City, MO, on January 31, 1935, David was raised in Bartlesville, OK, the only child of Kenneth and Mildred Norvell. He was predeceased by his second child David Jr, who died in 2005, and by the mother of his children, Mary Vivian (Marivee) Trentman Norvell, with whom Dave shared a warm relationship following their divorce in 1991, after 34 years of marriage. David is survived by his four children, Teresa Norvell of San Diego and Las Vegas, NV, Felicia Norvell of Santa Fe, Connie Beers of Las Vegas, NV, and Jack Norvell of Edgewood, and "the older grandchildren," Hayden Beers, of Las Vegas, NV, Trentman (Trent) Norvell, of Richardson, TX, and Nicole (Nikki) Norvell, of Santa Fe. David was not only a prominent figure in public service to the people of New Mexico but was an amazing presence in the lives of his children and grandchildren. He was witty, loving, and supportive of all their endeavors. They will all fondly remember the times they had, especially wonderful visits to the second home in Pendaries Village where the focus was always on family, togetherness, and enjoying the New Mexico landscape. Other survivors are Dave's cousin Glenn Norvell and wife LeAnne of San Diego, Dave's children's cousins: Dr. Greg Jochems, his wife Mindy, their sons Andy and Lou (ABQ); Ted Jochems and Leonard Jochems, (Wichita, KS), Rita Ann Allessie (MI), and Betsy Barnes (PA). Dave's wife of 20 years, Gail Chasey, and her family all loved and adored Dave â€" son Garrett Beam, wife Lindsay, of San Diego; and son Tyler Beam, wife Anna, of Parker, CO; and "the younger grandchildren," Makena and Kaiyan (CA), Lucy and George (CO) for whom Dave was their "Papa;" Gail's brothers, Don Chasey and wife Ann of Ashland, OR, niece Niabi Chasey Williams and children Jade Mahalia Scott and Dario Williams of Ft. Mill, S.C. and nephew Colin Chasey of Portland, OR; and Jim Chasey of Idaho, nephew Patrick Flanagan (NZ), Patrick's mother Margaret Flanagan (NZ), along with the extended families of Gail's cousins, Kelly Sifferman, Kathy, and Tom Allen (PHX) and Diana, Allen, Mark, and Bob Obrinsky (CA, MD, OR). The family wishes to thank those who provided such loving care to Dave and support to his family â€" Presbyterian Hospice and Sabrina Durr of Visiting Angels. Dave also enjoyed visits and outings with faithful friends John Schoeppner and Julianna Koob. The family thanks countless extended family and friends for their presence or their messages of love and condolences upon learning of Dave's passing. David Norvell will lie in State at the Capitol Rotunda at noon on January 12, 2024 in Santa Fe. Speaker of the House Javier Martinez will preside, and, following Governor Lujan Grisham, former Democratic Speakers of the House will also offer remarks â€" Raymond Sanchez, Ken Martinez, and Brian Egolf.

Attorney **Douglas "Doug" James Antoon**, died unexpectedly on February 2, 2023, after a short illness. He was only 66 years old. His family is deeply saddened and shocked by his sudden death. Douglas was born in Methuen, Massachusetts on October 28, 1956. Doug is survived by his brother Daniel and his wife Debra Antoon of Jensen Beach, Fl., his brother Gregory and his wife Christine of Pennsylvania, his sister-in-law Frances Antoon of Stuart, Fl., several beloved nieces, nephews, great-nieces, great-nephews, and his sweet cats Grace and Mercy. Doug is predeceased by his father Samuel Antoon, his mother Ann Antoon, his brothers Joseph and Dana Antoon, his sister-in-law Gina and his nephew Gregory Douglas Antoon. Doug was educated at Central Catholic High School in Lawrence, Massachusetts, the University of Denver where he received his Bachelor of Arts and at Suffolk University Law School where he received his Juris Doctorate. He was a star debate team member throughout high school and college years and always a Deans list student. He was a seasoned and very well-respected attorney regardless of where he resided. Doug was known for being incredibly passionate about his work. He most recently was Senior Legal Counsel for Philips Healthcare North America where he made many close connections and had a tremendous impact on the clients he served. Doug loved his volunteer work as a Juvenile Justice System Mentor where he mentored youth from 13 to 21 years old to help them create a path for their future success. Doug was a pillar in his community of Albuquerque, New Mexico where he resided for the last two decades. He was passionate about politics from a very young age and assisted in running campaigns throughout his time not only in New Mexico but also early in his career in Massachusetts making many close friends along the way. He had countless friends we would like to thank for their continued connection over the years; but the family would like to extend a heartfelt special thank you to Gary Gallant who was a rock during Doug's last days for him and the family. Doug was deeply connected to his congregation and worship team in his ministry "The Way" and was blessed by the close bonds that stayed by his side always praying for him. A special thanks to Terry and the amazing team that assembled to support the family during this difficult time. As a man of faith, Doug would embrace a celebration of the immortality promised to all by Christ. He would love to be remembered with funny, strange, or silly stories that celebrate what was good and blessed in his life.

The community of Cibola County lost a loyal friend, legal advocate and loved one when **Bruce Boynton** passed away from this earthly life on March 12, 2024, after a long illness. Bruce was born on October 4, 1945, in Rochester, Minnesota to parents Bruce and Sylvia Boynton. After attending Carlton College in Northfield, Minnesota, Bruce went on to earn his Juris Doctorate at Vanderbilt University. After earning his law degree Bruce headed to the Southwest and began his career working for Pueblo Legal Services in Zuni, New Mexico. He eventually went on to open a private practice in Milan, New Mexico where he also served as City Attorney as well as Attorney for the Grants Public Schools and Cibola General Hospital. Bruce was a member of the Ramah Rodeo and a long-time active member of the Rotary Club. In 2020 Bruce celebrated 50 years of law practice and continued helping countless citizens of Cibola County until very recently. His kind heart and wise advice will be greatly missed. As many of his friends know, Bruce was an avid bird watcher and traveled to Central and South America on birder excursions. Among his many passions, Bruce loved fly fishing, cultivating orchids and had a particular love of Latin music, Flamenco, and Latino literature as well. One of Bruce's favorite quotes (and word of advice) was "Don't let the truth get in the way of a good story." He will always be remembered for his quick and dry wit. Bruce is survived by Donna, his wife of 48 years, sons Corey, Steven (April), daughter Tahama (Drew) and Grandson Damian. Bruce's siblings include beloved brothers, Stan, Doug, Kenny and sisters Sylvia, Mary (Peg), Betsy (Joe) and Kathy (Craig).

Allen Kerpan, age 71, passed away February 28th, 2023 after a long illness. How do I begin to describe this man? He was a crazy, wonderful, loving husband to me for 45 years and an amazing dad to Kyle and Tessa. Together, we survived the death of Kyle from his brain tumor when he was just 11 years old. He served his country for over 30 years as a member of the United States Air Force. He served both stateside and overseas in Keflavik, Iceland, Ramstein, Germany and Doha, Qatar before retiring as a Lieutenant Colonel in 2013. His last assignment was being an Operations Officer managing the design and implementation of an Integrated Air and Missile Defense Course at Hurlburt Field, FL. After his military retirement, he worked as an attorney for the Department of Veteran Affairs in Washington DC handling claims for his fellow veterans. He graduated from Drexel University and the University of Denver Law School. He was an engineer, an attorney, a pilot, a sea captain and the smartest person I have ever known. He loved his music, flying , boating, his Manhattans and he was the love of my life and the best dad anyone could have. As he always used to say to me when I was going anywhere..."Go, run like the wind"... fly high, my Colonel to the open skies that you loved so much...Tessa and I will miss you every second of our lives... Doviđenja my love

From the New Mexico Supreme Court

Opinion Number: 2024-NMSC-007
No: S-1-SC-35619 (filed February 5, 2024)

ROY PADILLA,
Plaintiff-Appellee,
v.
RAY TORRES,
Defendant-Appellant.

CERTIFICATION FROM THE NEW MEXICO COURT OF APPEALS
Denise Barela-Shepherd, District Judge

New Mexico Legal Aid Thomas Prettyman Albuquerque, NM	Holland & Hart LLP Larry J. Montaño Santa Fe, NM
for Appellant	for Appellee

OPINION

BACON, Chief Justice.

I. INTRODUCTION

{1} In this opinion, we consider whether the Bernalillo County Metropolitan Court is required to create a record of all civil proceedings for which the court serves as a court of record. Rule 3-708(A) NMRA of the Rules of Civil Procedure for the Metropolitan Courts provides, "Every civil proceeding in the metropolitan court shall be tape recorded *if requested by a party*" (emphasis added). Defendant-Appellant Ray Torres's appeal from the metropolitan court was dismissed because the parties did not request a tape recording of the trial and the district court concluded that it could not conduct the appeal in the absence of a recording. Torres challenges the metropolitan court's practice of not recording civil proceedings except on party request, asserting that this practice contravenes NMSA 1978, Section 34-8A-6(B) (1993, amended 2019) and violates his statutory and constitutional rights. Torres seeks a new trial and asks this Court to direct that civil proceedings in the metropolitan court be recorded irrespective of a party's request.

{2} We conclude that the failure to record the trial in this matter is contrary to Section 34-8A-6(B) (1993). At the time relevant to this appeal, Section 34-8A-6(B) (1993) designated the "metropolitan court [a]s a court of record for civil actions" and granted aggrieved parties a right to appeal. We hold that the statute imposes a duty on the metropolitan court to create a record of its proceedings that will be sufficient to permit appellate review in this case. We further hold as we discuss hereinafter that Rule 3-708(A) and other similar rules impermissibly conflict with Section 34-8A-6(B) to the extent that the rules condition the creation of this record on a party's request. We direct our committee for the Rules of Civil Procedure for the State Courts to correct the rules in conformance with our opinion. Finally, we reverse and remand this matter to the metropolitan court for a new trial.

II. BACKGROUND

{3} The record in this appeal is limited due to the lack of a record of the proceedings held in the metropolitan court. Documents in the record reveal the following.

{4} On July 10, 2014, Plaintiff-Appellee Roy Padilla filed a petition in the metropolitan court under the Uniform Owner-Resident Relations Act (UORRA), NMSA 1978, §§ 47-8-1 to -52 (1975, as amended through 2007), requesting restitution of a single-family home in Southwest Albuquerque. Padilla alleged that Torres, his tenant, had not paid the rent due for part of June and all of July 2014. A civil summons form was served on Torres advising him that trial would be held on July 30, 2014. The summons also advised Torres: "If you want a recording of any proceeding, you must request it before the beginning of the proceeding. If you do not ask for a recording, you will not have a record of the proceedings to take to the district court." Both Torres and Padilla appeared pro se at trial. Neither party requested a recording of the proceedings in advance of the trial. Consequently, there is no record of the arguments, testimony, or nondocumentary evidence presented at trial.

{5} Shortly after this trial, the metropolitan court entered a judgment restoring the home to Padilla and evicting Torres. The metropolitan court also ordered that Torres pay Padilla past-due rent and costs in the amount of $927. Torres timely appealed the metropolitan court's judgment to the Second Judicial District Court.

{6} The district court dismissed the appeal because Torres had failed to request a recording of the metropolitan court's trial. The district court noted that the metropolitan court was a court of record for the matter, and thus the district court's role on appeal was to review the metropolitan court's judgment for error. The district court explained, "Without a record of the trial, the Court is unable to discern whether a particular question or issue was preserved for review . . . . Equally, without a record of the trial, the Court cannot review the testimony, arguments, evidence or any other proceedings." The district court thus determined that it could not effectively review Torres's "on-record appeal" without a recording of the trial. The district court also rejected Torres's assertion that he had a right to a recording. The court explained that Torres, as appellant, was required to provide an adequate record on appeal and that the court's rules and summons clearly notified Torres that he "must request the recording to preserve the record."

{7} Torres timely appealed the dismissal to the Court of Appeals. Torres argued that the metropolitan court's practice of not recording civil proceedings except on a party's request was inconsistent with Section 34-8A-6(B) (1993) and violated his state and federal constitutional rights. We accepted certification from the Court of Appeals to review the questions presented. *See* Rule 12-606 NMRA; NMSA 1978, § 34-5-14(C) (1972).

{8} While this appeal was pending, the Legislature amended Section 34-8A-6. *See* N.M. Laws. 2019, ch. 281, § 1. As of June 14, 2019, Section 34-8A-6(B), (C) specifies that the metropolitan court is a court of record for civil actions other than those under UORRA. Thus, the metropolitan court is no longer a court of record for petitions

for restitution similar to the petition filed in this case. However, the matter here was adjudicated under the 1993 enactment. Thus, this matter remains unresolved, and we note that the $927 judgment against Torres remains outstanding. We therefore proceed to consider the questions as presented. Unless otherwise stated, our analysis pertains to Section 34-8A-6(B) (1993), which was in effect at the time of the judgment in this matter. Nevertheless, our analysis with respect to the metropolitan court's record-keeping duties as a court of record remains relevant to the current version of the statute.

{9} Shortly after hearing oral argument, we issued an administrative order directing the metropolitan court to record all civil proceedings for which the court serves as a court of record, notwithstanding language to the contrary in Rule 3-708. N.M. Sup. Ct. Ord. No. 23-8500-003 (Jan. 30, 2023). In this opinion, we address the issues presented and illuminate this administrative change.

III. STANDARD OF REVIEW

{10} Torres contends that the metropolitan court's failure to record the trial in this matter violates Section 34-8A-6(B) (1993), which, at the relevant time, designated the metropolitan court a court of record for civil actions. Torres further argues that the metropolitan court's failure to record the trial violated his constitutional and statutory rights to appeal.

{11} However, we decline to reach the constitutional issues raised because we agree that Section 34-8A-6(B) (1993) required the metropolitan court to create a record of the trial in this matter. "It is an enduring principle of constitutional jurisprudence that courts will avoid deciding constitutional questions unless required to do so. We have repeatedly declined to decide constitutional questions unless necessary to the disposition of the case." *Schlieter v. Carlos*, 1989-NMSC-037, ¶ 13, 108 N.M. 507, 775 P.2d 709. We therefore limit our discussion to Torres's arguments under Section 34-8A-6(B) (1993).

IV. DISCUSSION

A. Context of the Metropolitan Court as a Court of Record

{12} In 1979, our Legislature added metropolitan courts to our system of courts, NMSA 1978, § 34-8A-1 (1979, amended 2010), establishing the metropolitan court as "a specialized magistrate court to perform the functions of magistrate, municipal, and small claims courts for New Mexico's most populous counties." *State v. Armijo*, 2016-NMSC-021, ¶ 14, 375 P.3d 415. Although metropolitan court functions are similar to those of other courts of limited jurisdiction, a metropolitan court is, in some ways, distinct. *Id.* ¶ 15.

{13} For example, the Legislature has made the metropolitan court "a court of record" for certain types of actions, including, at the time relevant to this appeal, for civil actions. Section 34-8A-6(B), (C) (1993); *see also* Section 34-8A-6(B), (C) (providing currently that the metropolitan court is a court of record for civil actions except for those brought under UORRA). In contrast, "[t]he magistrate court is not a court of record." NMSA 1978, § 35-1-1 (1968).

{14} Whether the metropolitan court serves as a court of record for an action determines the standard of review on appeal. *Armijo*, 2016-NMSC-021, ¶ 15. When the metropolitan court is not a court of record, an aggrieved party may appeal the metropolitan court's judgment to the district court for a trial de novo. *See* NMSA 1978, § 39-3-1 (1955) ("All appeals from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law."); *see also State v. Ball*, 1986-NMSC-030, ¶ 15, 104 N.M. 176, 718 P.2d 686 (describing the appeal from an inferior court provided for by Article VI, Section 27 of the New Mexico Constitution "as the removal of a cause from the inferior to a superior court"). The district court reviews these not-of-record actions by "trial 'anew,' as if no trial whatever had been had in the" lower court. *City of Farmington v. Sandoval*, 1977-NMCA-022, ¶ 15, 90 N.M. 246, 561 P.2d 945. Similarly, in not-of-record criminal actions, a defendant may appeal the lower court's order on certain dispositive pretrial motions to the district court for a hearing de novo, with the district court making "an independent determination of the merits of the motion." *City of Farmington v. Piñon-Garcia*, 2013-NMSC-046, ¶¶ 9, 17, 19, 311 P.3d 446; *see also State v. Lucero*, 2022-NMCA-020, ¶ 22 & n.6, 508 P.3d 917 (listing not-of-record inferior court orders subject to review by hearing de novo). The record on appeal from these not-of-record actions of the lower court "establishes what issues were preserved in the lower court and facilitates a district court's de novo review." *Piñon-Garcia*, 2013-NMSC-046, ¶ 12.

{15} However, by designating the metropolitan court a court of record for certain actions, § 34-8A-6(A)-(C) (1993), the Legislature has provided "an exception to the general rule that [parties aggrieved by an outcome in the lower court] are entitled to a de novo trial in district court." *State v. Wilson*, 2006-NMSC-037, ¶ 11, 140 N.M. 218, 141 P.3d 1272. When the metropolitan court is a court of record for an action, a reviewing court "acts as a typical appellate court reviewing the record of the lower court's trial for legal error." *State v. Foster*, 2003-NMCA-099, ¶ 9, 134 N.M. 224, 75 P.3d 824; *Serna v. Gutierrez*, 2013-NMCA-026, ¶ 13, 297 P.3d 238 ("Because this was an appeal from an on-record metropolitan court trial, the district court reviewed the case in its appellate capacity for legal error."); *State v. Candelaria*, 2008-NMCA-120, ¶ 12, 144 N.M. 797, 192 P.3d 792 (explaining that the Court of Appeals' standard of review was identical to the district court's—examining whether the on-record metropolitan court abused its discretion when it ordered that the criminal charges be dismissed). The metropolitan court's findings of fact will be affirmed by the district court on appeal if the findings are supported by substantial evidence in the record of the metropolitan court. *Johnson v. Sw. Catering Corp.*, 1983-NMCA-020, ¶ 7, 99 N.M. 564, 661 P.2d 56.

B. Implications of the Metropolitan Court's Designation as a Court of Record

{16} We now consider an issue for the present case, related to the metropolitan court's designation as a court of record for civil actions. Specifically, Torres argues that the plain meaning of the phrase "court of record," as used in Section 34-8A-6(B) (1993), requires the metropolitan court to create a record of its proceedings and that the requirement that Rule 3-708(A) imposes on a party to request a recording contradicts this statutory mandate. Padilla, in response, asserts that "'court of record'" is a term of art which merely "signifies that such proceedings are *subject to* recordation and that any ensuing appeal should entail review of the underlying proceedings for error, as opposed to de novo review" (emphasis added). Padilla further suggests that "the manner in which a record is to be created is a question of procedure, which is appropriately delineated by [court] rule."

{17} As discussed below, we agree with Torres that the metropolitan court, as a court of record, was required to create a record of the trial in this matter. We further hold that Rule 3-708(A) is invalid to the extent that the rule provides that these on-the-record proceedings will be recorded only if a party so requests. However, we emphasize that Section 34-8A-6(B) (1993) does not require the metropolitan court to create an audio recording. Rather, we agree with Padilla that the manner in which a record is to be created, and the form of record so created, are procedural questions that are properly answerable by court rule. We nevertheless express our preference for an audio recording of these proceedings to give full effect to the intent of Section 34-8A-6(B) (1993).

C. A Court of Record Must Create a Record of Its Proceedings

{18} We consider whether Section 34-8A-6(B) (1993) expresses an intent to require the metropolitan court to create a record of proceedings when it serves as a

court of record. When construing statutes, our chief goal is to give effect to legislative intent, with the language of the statute as the primary indicator of that intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. We will only depart from the statute's language if its meaning is "doubtful, ambiguous, or if an adherence to the literal use of the words would lead to injustice, absurdity or contradiction," in which case "we will construe the statute according to its obvious spirit or reason." *Id.* (brackets, internal quotation marks, and citation omitted).

> At the relevant time of this appeal, the statute provided,
>
> The metropolitan court is a court of record for civil actions. Any party aggrieved by a judgment rendered by the metropolitan court in a civil action may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method for the appeal shall be set forth by supreme court rule.

Section 34-8A-6(B) (1993).[1] The Legislature had not defined the term "court of record" as used in Section 34-8A-6(B) (1993). "When words are not otherwise defined in a statute, we give those words their ordinary meaning absent clear and express legislative intention to the contrary." *State v. Adams*, 2022-NMSC-008, ¶ 10, 503 P.3d 1130 (brackets, internal quotation marks, and citation omitted). "To do so, we consult common dictionary definitions." *Id.* We also assess that the term "court of record" is a legal term of art. "When a statute uses terms of art, we interpret these terms in accordance with case law interpretation or statutory definition of those words, if any." *Buzbee v. Donnelly*, 1981-NMSC-097, ¶ 39, 96 N.M. 692, 634 P.2d 1244; *accord Helen G. v. Mark J.H.*, 2008-NMSC-002, ¶ 42, 143 N.M. 246, 175 P.3d 914.

{19} Dictionary sources define a "court of record" as "a court that is required to keep a record of its proceedings and that may fine and imprison people for contempt." *Court of Record*, *Black's Law Dictionary* (7th ed. 1999); *see also Of Record*, *Black's Law Dictionary* (11th ed. 2019) ("2. (Of a court) that has proceedings taken down stenographically or otherwise documented"). Our early case law confirms that a "'court of record'" signifies "'a court where the acts and judicial proceedings are enrolled on parchment or paper for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority.'" *Bucher v. Thomson*, 1893-NMSC-010, ¶ 3, 7 N.M. 115, 32 P. 498 (quoting Blackstone's *Commentaries on the Laws of England*). A court of record thus denotes "'[a] court that is required to keep a record of its proceedings.'" *State v. Vanderdussen*, 2018-NMCA-041, ¶ 2, 420 P.3d 609 (quoting *Black's Law Dictionary* (10th ed. 2014)).

{20} The record maintained by a court of record is "presumed accurate and cannot be collaterally impeached." *Court of Record*, *Black's Law Dictionary* (11th ed. 2019). This is because courts of record were historically associated with "the king's courts, in the right of his crown and royal dignity," *Bucher*, 1893-NMSC-010, ¶ 3 (citation omitted), and the king insisted "'that his own word as [to] all that has taken place in his presence is incontestable,'" *Court of Record*, *Black's Law Dictionary* (quoting 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 669 (2d ed. 1899)).

{21} Because a court of record speaks through its unimpeachable record, it is often held that these "judicial records are not only necessary but indispensable to the administration of justice." *Herren v. People*, 363 P.2d 1046 (Colo. 1961); *see also* 20 Am. Jur. 2d. *Courts* § 22 (2015) ("Courts of record can speak only by or through their records, and what does not so appear does not exist in law." (brackets omitted)). Thus, "[i]t is generally accepted that the one essential feature necessary to constitute a court of record is that a permanent record of the proceedings of the court must be made and kept." *DeKalb Co. v. Deason*, 144 S.E.2d 446, 448 (Ga. 1965); 21 C.J.S. *Courts* § 178 (1990) ("[I]t is generally required that such courts shall keep such records, the object being to secure an accurate memorial *of all the proceedings in the case* so that persons interested may ascertain the exact state thereof." (emphasis added)).

{22} We therefore agree with Torres that, under the plain meaning of Section 34-8A-6(B) (1993), the metropolitan court was required to make and keep a record of the trial held in this matter. By specifying that the metropolitan court is to serve as a "court of record" for an action, *id.*, the Legislature has expressed an intent that the metropolitan court will create a record of its proceedings in that action. *See Bucher,* 1893-NMSC-010, ¶ 3 (defining a court of record as "a court where the acts *and judicial proceedings* are enrolled on parchment or paper for a perpetual memorial and testimony" (emphasis added)). Because Section 34-8A-6(B) (1993) provides for a substantive right to appeal an adverse civil judgment, we also discern that the Legislature intended that the record created by the metropolitan court be amenable to appellate review. *Cf. State ex rel. Schwartz v. Sanchez*, 1997-NMSC-021, ¶¶ 6-7, 9, 123 N.M 165, 936 P.2d 334 (explaining that Section 34-8A-6(C) (1993)'s designation of the metropolitan court as a court of record for criminal actions involving domestic violence evinces a legislative intent that a domestic violence victim's testimony be "heard on-record" so that the victim "need testify only once"); *accord State v. Krause*, 1998-NMCA-013, ¶ 9, 124 N.M. 415, 951 P.2d 1076; *see also State v. Trujillo*, 1999-NMCA-003, ¶ 5, 126 N.M. 603, 973 P.2d 855 ("An on-record appeal requires that the metropolitan court proceedings have been on the record."). We therefore hold that Section 34-8A-6(B) (1993) requires the metropolitan court to create a record of its civil proceedings sufficient to permit appellate review.[2]

{23} From the history of Section 34-8A-6(B), we also discern that the Legislature did not intend for this record-keeping requirement to be alterable by court rule. When the metropolitan court was created in 1979, Section 34-8A-6(B) provided, "The metropolitan court is a court of record with respect to civil actions *to the extent specified by supreme court rule*." 1978 N.M. Laws. ch. 346, § 6(B) (emphasis added). The Legislature shortly thereafter amended this language to directly provide, through Section 34-8A-6(B) (1980), that "The metropolitan court is a court of record with respect to civil actions." 1980 N.M. Laws, ch. 142, § 4(B); *see also Armijo*, 2016-NMSC-021, ¶¶ 29-30 (discussing this history of Section 34-8A-6). The 1980 alteration suggests that the Legislature intended the record-keeping duties of Section 34-8A-6(B) to be mandatory.

[1] Section 34-8A-6(B) now provides, "Other than for actions brought pursuant to [UORRA], the metropolitan court is a court of record for civil actions. Any party aggrieved by a judgment rendered by the metropolitan court in a civil action may appeal to the court of appeals. The manner and method for the appeal shall be set forth by supreme court rule."

[2] In holding that the metropolitan court must create a record of its on-the-record civil proceedings, we do not suggest that an inferior court that is not a court of record may not keep a record. Neither do we suggest that an inferior court becomes a court of record simply because a record is kept. Since New Mexico's territorial days, the clerks of our supreme and inferior courts have been required, by statute, to "seasonably record the judgments, rules, orders and other proceedings of the respective courts." NMSA 1978, § 34-1-6 (1865). An inferior court is not a court of record simply because it complies with this mandate.

D. Rule 3-708(A)'s Party Request Requirement Is Invalid

{24} Section 34-8A-6(B) (1993) thus requires the metropolitan court to create a record of its proceedings in an on-the-record civil action. At the time of the parties' trial, however, our rules provided that a civil proceeding would "be tape recorded if requested by a party." Rule 3-708(A). No other record would be made of the metropolitan court's civil hearings or trials. *See, e.g.*, Form 4-204 NMRA (advising metropolitan court litigants summoned to respond to a civil complaint that they will "not have a record of the proceedings to take to the district court for any appeal" if they do not request an audio recording); Rule 3-109(A)(2) NMRA (confirming that the term "record" as used in the Rules of Civil Procedure for the metropolitan courts includes "any audio recording"); Rule 3-706(E)(5) NMRA (requiring the record of a metropolitan court judgment to include "any transcript of the proceedings made by the metropolitan court, either stenographically recorded or tape recorded"); Rule 1-073(F)(5) NMRA (same). Thus, the conditional tape recording identified in Rule 3-708(A) serves as the only record showing the conduct of the metropolitan court's civil proceedings. In fact, a series of unpublished memorandum opinions from the Court of Appeals confirms that the conditional tape recording identified in Rule 3-708(A) serves as the only means of preserving the record of these proceedings, and the record on appeal is often deemed deficient in the absence of this recording. *See, e.g.*, *Bernstein v. Gaffney*, A-1-CA-33759, mem. op. ¶¶ 2-7 (N.M. Ct. App. Oct. 1, 2014) (nonprecedential) (affirming the district court's dismissal of the appeal because the defendant had not requested a recording of "the bench trial in metropolitan court and therefore the district court had no record to review on appeal"); *Venie v. Velasquez*, A-1-CA-33427, mem. op. ¶¶ 4, 8 (N.M. Ct. App. June 5, 2014) (nonprecedential) (affirming the district court's dismissal of the appeal because the defendant's "failure to make a record of the metropolitan court trial precludes appeal to district court" and holding that "to disregard evidence before the metropolitan court would be contrary to our longstanding case law"), *cert. granted* (S-1-SC-34790, Jan. 19, 2016) (held in abeyance pending the outcome of this case); *Roger Cox & Assocs. Prop. Mgmt. v. Lohmann*, A-1-CA-31810, mem op. at *1 (N.M. Ct. App. Mar. 29, 2012) (nonprecedential) (concluding that an appeal was effectively "unreviewable because [the defendant] did not preserve a record of the metropolitan court hearing in this matter" and refusing to "overlook the lack of a complete record, and . . . limit our review to the pleadings in the record proper"); *Downs v. Hunter's Ridge Apts.*, A-1-CA-30341, mem. op. at *1-2 (N.M. Ct. App. July 20, 2010) (nonprecedential) (affirming district court's dismissal of an appeal for lack of a recording of the metropolitan court's trial and refusing to review the record in the absence of the recording).

{25} Rule 3-708(A) and other Rules of Civil Procedure for the Metropolitan Courts thus stand in direct conflict with the record-keeping mandate of Section 34-8A-6(B) (1993), which requires the metropolitan court to keep a record of its civil proceedings. Yet our rules contemplate that a record of the proceedings will only be created if a party so requests.

{26} We are thus confronted with a conflict between the court rules and a statute. Article VI, Section 3 of the New Mexico Constitution grants this Court the power of superintending control over all inferior courts, and therefore "'statutes purporting to regulate practice and procedure in the courts cannot be made binding.'" *Ammerman v. Hubbard Broadcasting, Inc.*, 1976-NMSC-031, ¶ 15, 89 N.M. 307, 551 P.2d 1354 (quoting and reaffirming *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 11, 88 N.M. 244, 539 P.2d 1006). Accordingly, we will revoke or amend a statutory provision affecting pleading, practice, or procedure in the courts "when the statutory provision conflicts with an existing court rule or constitutional provision, or if the provision impairs the essential functions of the [c]ourt." *Albuquerque Rape Crisis Ctr. v. Blackmer*, 2005-NMSC-032, ¶ 5, 138 N.M. 398, 120 P.3d 820 (citations omitted).

{27} Although this Court possesses the exclusive power to regulate court procedure, in so regulating, we may not abridge, enlarge, or modify substantive rights or law. *State v. Arnold*, 1947-NMSC-043, ¶ 7, 51 N.M. 311, 183 P.2d 845; NMSA 1978, § 38-1-1(A) (1966) (providing that, in its regulation of "pleading, practice and procedure in judicial proceedings in all courts of New Mexico," this Court's "rules shall not abridge, enlarge or modify the substantive rights of any litigant"). This Court will thus invalidate a court rule if it intrudes on the substantive requirements of a law. For example, in *Smith v. Love*, we held that a court rule that limited the state's right to appeal judgments from the metropolitan court was invalid because the rule interfered with the state's substantive right to appeal. 1984-NMSC-061, ¶ 7, 101 N.M. 355, 683 P.2d 37.

{28} The form of records kept by a court and the manner of the record's creation are typically matters of court pleading, practice, and procedure and thus are not amenable to alteration by statute. *Cf. Hudson v. State*, 1976-NMSC-084, ¶¶ 3-5, 89 N.M. 759, 557 P.2d 1108 (rejecting argument that summary affirmance of a defendant's conviction by way of memorandum opinion deprived the defendant of his right to appeal, affirming that this Court has "the power to regulate and to promulgate rules regarding the pleadings, practice, and procedure affecting the judicial branch of government").

{29} However, we discern that the record-keeping requirements of Section 34-8A-6(B) are substantive and not procedural. "Generally, a substantive law creates, defines, or regulates rights while procedural law outlines the means for enforcing those rights." *State v. Valles*, 2004-NMCA-118, ¶ 14, 140 N.M. 458, 143 P.3d 496; *see also Olguin v. State*, 1977-NMSC-034, ¶ 2, 90 N.M. 303, 563 P.2d 97. The metropolitan court's designation as a court of record for an action defines its jurisdiction over that action and thus this designation is a matter of substantive law. *Armijo,* 2016-NMSC-021, ¶ 19 ("'A court's jurisdiction derives from a statute or constitutional provision.' The right to appeal is also a matter of substantive law created by constitutional or statutory provision." (citation omitted)); *State ex rel. Bevacqua-Young v. Steele*, 2017-NMCA-081, ¶¶ 8-10, 406 P.3d 547 (explaining that the district court's jurisdiction on appeal from a not-of-record inferior court is limited to de novo review and reversing because the district court engaged in on-the-record review); *Trujillo*, 1999-NMCA-003, ¶¶ 2, 4-6, 16 (concluding that a defendant convicted of a crime for which the metropolitan court was not a court of record was entitled to a trial de novo). The metropolitan court's duty to create a record of its proceedings arises as a direct consequence of its jurisdictional designation as a court of record. By extension, we conclude that the record-keeping requirements of Section 34-8A-6(B) (1993) are substantive. Further, Section 34-8A-6(B) (1993) does not intrude on this Court's exclusive power to regulate the procedural aspects of record-keeping at the metropolitan court. The statute expressly provides that "[t]he manner and method for the appeal shall be set forth by supreme court rule." Section 34-8A-6(B) (1993); *see also* Section 34-8A-6(A) (1993) (instructing this Court to "adopt separate rules of procedure for the metropolitan courts").

{30} On the other hand, Rule 3-708(A) abridges the substantive requirements of Section 34-8A-6(B) (1993) because Rule 3-708(A) does not just regulate the manner of the record's creation or dictate the type of record created in the metropolitan court. Rather, the rule also conditions the metropolitan court's act of recordation on a party's request, as no record of the proceedings is created without this request. We therefore hold that Rule 3-708(A) and

related court rules are invalid to the extent that the rules condition the metropolitan court's creation of a record of its on-the-record proceedings on a party's request. *Cf. Love*, 1984-NMSC-061, ¶ 7 (concluding that Rule 71(b) (1982) of the Rules of Procedure for the Metropolitan Courts (Judicial Pamphlet 2A, 1983 Cumulative Supplement) was invalid because it limited the state's "substantive constitutional right to appeal"). When serving as a court of record, the metropolitan court must create a record of its proceedings irrespective of a party's request.

{31} In accordance with our power of superintending control to "'control the course of ordinary litigation in inferior courts,'" *Kerr v. Parsons*, 2016-NMSC-028, ¶ 16, 378 P.3d 1 (citation omitted), we previously issued Order No. 23-8500-003 directing that "every civil proceeding in the metropolitan court for which that court is a court of record shall be recorded, regardless of whether a party requests it, and notwithstanding the language in Rule 3-708 NMRA providing that proceedings will only be recorded if requested." In addition to this administrative order, we hereby direct our rules committee to correct Rule 3-708(A), Rule 3-202(B)(4) NMRA, Form 4-204, and any other similar court rules or forms to excise any language suggesting that a record of on-the-record metropolitan court proceedings will be created only if a party so requests.

E. Parties Must Ensure That the Record Is Complete

{32} By this holding, we do not alter our long-standing rules and precedent confirming that an appellant must ensure that the necessary record is placed before an appellate court. Indeed, we expressly distinguish between a court-of-record's duty to create a record of its proceedings and the parties' duty to ensure that that record is complete. "It is quite clear that it is [an appellant's] duty to see that the record necessary to review alleged errors is before the court." *Dillard v. Dillard*, 1986-NMCA-088, ¶ 6, 104 N.M. 763, 727 P.2d 71; *see also State v. Rivera*, 1978-NMCA-089, ¶¶ 10-11, 92 N.M. 155, 584 P.2d 202 (noting that even though the rules place the burden of preparing a transcript of proceedings on a court, the rules do not relieve appellants "of their responsibility to see that a proper transcript is forwarded"). We also do not alter the general requirement that pro se litigants must comply with the rules of the court. *Newsome v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 708 P.2d 327 ("[A] *pro se* litigant, having chosen to represent himself, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar.").

{33} All appellants, whether appearing pro se or through counsel, must ensure that all necessary facts, claims, and issues are properly raised and preserved in the record kept by a trial court. Rule 12-321(A) NMRA (preserving issues for review); *see also State v. Gilbert*, 1983-NMSC-083, ¶ 22, 100 N.M. 392, 671 P.2d 640 ("[The] [d]efendant has the obligation to ensure that a proper appellate record is provided to this Court for review of alleged errors. This Court cannot review matters outside the record." (citation omitted)). And "[w]here the record on appeal is incomplete, the ruling of the trial court is presumed to be supported by the evidence." *Michaluk v. Burke*, 1987-NMCA-044, ¶ 25, 105 N.M. 670, 735 P.2d 1176.

F. The Form of Record Is to Be Defined by Court Rule

{34} Although Section 34-8A-6(B) (1993) requires the metropolitan court to create a record of its proceedings, the statute does not dictate the form of record that must be created. *See* Section 34-8A-6(B) (1993) ("The manner and method for the appeal shall be set forth by supreme court rule."). Thus, Section 34-8A-6(B) (1993) does not require the metropolitan court to make a specific type of record, such as an audio recording or stenographic transcript. Instead, the form of record and manner of the record's creation are procedural questions within this Court's rulemaking powers. *See, e.g.*, *Arnold*, 1947-NMSC-043, ¶ 11 (explaining that the creation of "reasonable regulations affecting the time and manner of taking and perfecting [an appeal] are procedural and within this court's rule making power"); *State v. Belanger*, 2009-NMSC-025, ¶ 34, 146 N.M. 357, 210 P.3d 783 ("[T]his Court has always been understood to govern its own decisions on procedure, pleading and other core judicial functions.").

{35} Moreover, an audio recording is not always necessary for meaningful appellate review. Our courts have previously recognized that, "in deciding whether there is a sufficient record for the purpose of proceeding with an appeal, a verbatim transcript is not necessary." *State v. Fish*, 1984-NMSC-056, ¶ 6, 101 N.M. 329, 681 P.2d 1106; *see also Jeantete v. Jeantete*, 1990-NMCA-138, ¶ 10, 111 N.M. 417, 806 P.2d 66 ("A verbatim transcript is not necessary in most cases to permit meaningful appellate review."). The record on appeal need only be sufficiently complete so as to "afford an adequate and effective appellate review." *State v. Herrera*, 1972-NMCA-068, ¶ 3, 84 N.M. 46, 499 P.2d 364.

G. We Express Our Preference for an Audio Recording

{36} Even though we acknowledge that Section 34-8A-6(B) (1993) does not require the metropolitan court to create an audio recording of its on-the-record civil proceedings, we nevertheless express a preference for an audio recording of these proceedings.

{37} Section 34-8A-6(A) (1993) instructs this Court to adopt rules of procedure to provide for "the just, speedy and inexpensive determination of any metropolitan court action." Based on our research into the history of Rule 3-708(A), it appears that this Court adopted the rule requiring a party to request a tape recording partly out of a concern for the expense and delays associated with producing tape recordings in the 1980s and 1990s. Torres suggests that the concerns that contributed to the adoption of Rule 3-708(A) have been alleviated with the advent of digital recording technology, characterizing the making of an audio recording as now requiring no more than the press of a button. We disagree with this characterization, as producing an official recording of court proceedings still places significant demands on judicial resources. *See, e.g.*, Rule 22-303 NMRA (providing procedures for the audio recording of judicial proceedings, including the employment of official court monitors).

{38} Nevertheless, given our holding, we realize that these resource-related concerns do not relieve a court of record of its responsibility to create a record of its proceedings. We also recognize that technological advances have lessened some of the demands attendant to producing and storing audio recordings. Likewise, experience has shown that an audio recording of these proceedings supports meaningful appellate review. *See, e.g.*, *Venie*, A-1-CA-33427, mem. op. ¶¶ 7-8 (rejecting the argument that an audio recording was unnecessary on review, explaining that the appellate court's "disregard[ing of] evidence before the metropolitan court would be contrary to our longstanding case law"). We have also previously expressed a preference for an audio recording of trial court proceedings, noting that the audio "adds a most important and significant dimension to the understanding and evaluation of the spoken words." *State ex rel. Moreno v. Floyd*, 1973-NMSC-117, ¶ 9, 85 N.M. 699, 516 P.2d 670.

{39} We therefore believe that an audio recording of the metropolitan court's civil proceedings will best serve the interests expressed in Section 34-8A-6(A). Accordingly, we express our strong preference for an audio recording. The rules committee is advised to take note of this preference when revising the court's rules and forms in conformance with our opinion.

H. We Remand to the Metropolitan Court for a New Trial

{40} Based on our holding that Section 34-8A-6(B) requires the metropolitan court to create a record of its on-the-record civil proceedings, we further conclude that the district court erred in dismissing this appeal on the basis that Torres did not request a recording of the trial in the metropolitan court. This error was due to the invalid language in our court rules conditioning the creation of a record on a party's request. It follows that this Court must therefore reverse the dismissal of Torres's appeal.

{41} We now turn to an appropriate remedy. In his briefing, Torres asks us to remand this matter to the district court for a trial de novo, suggesting that the trial in this matter was not-of-record simply because there is no recording of the trial. As discussed previously herein, designation as a court of record defines a metropolitan court's jurisdiction over its action; thus, the metropolitan court was still serving as a court of record in this matter even though no record was made. *Cf. Wilson,* 2006-NMSC-037, ¶ 11 (explaining that appeals from of-record metropolitan court actions are an exception to de novo review from inferior courts); *Steele*, 2017-NMCA-081, ¶ 10 (reversing the district court because it engaged in an on-the-record review in an appeal from a not-of-record proceeding). Torres is not entitled to a trial de novo in district court.

{42} Rather, the district court correctly determined that it was acting as an appellate court and was therefore confined to reviewing the metropolitan court's record for legal error. *See, e.g.*, *Trujillo*, 1999-NMCA-003, ¶ 4 ("For on-record appeals the district court acts as a typical appellate court, with the district judge simply reviewing the record of the metropolitan court trial for legal error."). The district court further found that the record was insufficient for review in the absence of a recording of the metropolitan court's trial. As no party has challenged this finding, we accept that this recording was necessary for review of Torres's appeal. We further assume that the parties do not fully remember the metropolitan court's trial due to the regrettable number of years of this matter's pending status. Thus, it is unlikely that the parties would be able to reconstruct the record of the proceeding. *Cf.* Rule 12-211(C) NMRA (providing for reconstruction of a record on appeal from the district court when an audio recording or transcript is not available).

{43} Accordingly, we conclude that the appropriate remedy is to remand this matter to the metropolitan court for a new trial. *Cf. State v. Moore*, 1975-NMCA-042, ¶ 7, 87 N.M. 412, 534 P.2d 1124 (remanding an appeal for a new trial due to unavailability of the trial transcript and an inability to reconstruct the record). The metropolitan court shall create a record of the trial, and our preference is that it be an audio recording. The parties may then appeal any adverse judgment as provided for under the 1993 version of Section 34-8A-6(B).

V. CONCLUSION

{44} In Section 34-8A-6(B) (1993), the Legislature has expressed an intent for the metropolitan court to create a record of its civil proceedings. We hold that Rule 3-708(A) and associated court rules are contrary to Section 34-8A-6(B) (1993) and invalid to the extent that the rules condition the creation of that record on a party's request. In addition to our previously issued administrative order directing that on-the-record metropolitan court civil proceedings be recorded, we instruct the rules committee to accordingly correct Rule 3-708(A), Rule 3-202(B)(4), Form 4-204, and any other similar court rules and forms. The rules committee should consider our preference for an audio recording of these proceedings. We remand this matter to the metropolitan court for a new trial.

{45} 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

From the New Mexico Supreme Court

Opinion Number: 2024-NMSC-008
No: S-1-SC-39107 (filed February 19, 2024)

KEVIN RAWLINGS,
Petitioner-Petitioner,
v.
MICHELLE RAWLINGS,
Respondent-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Angie K. Schneider, District Judge

Rodey, Dickason, Sloan,
Akin & Robb, P.A.
Jocelyn C. Drennan
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for Respondent

OPINION

THOMSON, Justice.

I. INTRODUCTION

{1} Rule 1-053.2(H) NMRA instructs district court judges and litigants on the required procedure following receipt of the domestic relations hearing officer's recommendations. This case answers whether Rule 1-053.2 NMRA (2017)[1] requires a district court to hold an in-person hearing to resolve a party's objections to the hearing officer's recommendations in a domestic relations proceeding. Additionally, this case clarifies the district court's requirement to set forth a reasoned basis for its resolution of these objections. *See Buffington v. McGorty*, 2004-NMCA-092, ¶ 31, 136 N.M. 226, 96 P.3d 787 ("[T]he record of the hearing held before the district court must demonstrate that the court in fact considered the objections and established the basis for the court's decision.").

{2} Having granted Father's petition for certiorari, we conclude the language of Rule 1-053.2 (2017) does not require a district court to hold an in-person hearing. In addition, we conclude that the district court set forth a reasoned basis for resolving Mother's objections to the hearing officer's recommendations when it independently reviewed the record and adopted, modified, or rejected the hearing officer's recommendations in the final order. Further, the district court complied with Rule 1-060(A) NMRA in exercising jurisdiction to clarify the record and amend the final decree while this case was on appeal.

II. BACKGROUND

{3} Kevin Rawlings (Father) and Michelle Rawlings (Mother) separated in November 2015. Mother moved from Alamogordo, New Mexico, to Las Vegas, Nevada, with the parties' two young children. Father filed a petition for dissolution of marriage on January 26, 2016. Among their many disputes, the parties disagreed about who should have the primary physical custody of the children. The district court referred the case to a domestic relations hearing officer. The hearing officer reviewed evidence and heard argument on all disputed issues, including issues relating to physical custody of the children, before filing a recommendation on the merits, which included detailed findings and conclusions. The hearing officer determined that "Joint Legal Custody [wa]s proper in this case" and that it was "in the best interest of the . . . children to reside primarily in New Mexico with [Father]." Within ten days, Mother's filing in response raised over forty objections to the hearing officer's recommendations, along with additional evidence, and requested a hearing on her objections with the district court. Father filed a response and asked the court to adopt the recommendations and enter a final decree of dissolution of marriage and division of assets, debts and custody.

{4} The district court did not hold an in-person hearing on Mother's objections and instead entered a final decree of dissolution of marriage that generally adopted the hearing officer's recommendations. The final decree did not address Mother's objections. Mother filed a notice of appeal and a motion to stay enforcement of the judgment pending appeal. At a hearing on the motion to stay, the district court explained the court's resolution of Mother's objections on the record stating,

> I wanted to make a record . . . with regard to the objection and to my adopting the recommendations . . . . While I am required to review the recommendations and make an independent determination of whether or not I'm going to adopt those recommendations, I don't read [Rule 1-053.2 (2017)] to require a hearing. I read the Rule to require a hearing . . . if I deem it is necessary to resolve the objections. And in my review of the record and my independent review of the recommendations . . . , and the objections filed and the response . . . , I made a determination that a hearing was not necessary for me to resolve anything. And so I adopted [the hearing officer's] recommenda-

[1] The events relevant to this appeal occurred prior to this Court's approved amendment to Rule 1-053.2, effective December 31, 2022, which makes clear that an in-person hearing is not required. Rule 1-053.2(H)(2)(a). Therefore, further reference in this opinion is to Rule 1-053.2 (2017) (taking "effect[] for all cases pending or filed on or after December 31, 2017"). This 2017 version is also identified as "the Rule" throughout this opinion.

> tions. . . . I felt that the objections really were a disagreement with what [the hearing officer] ruled. . . . I felt I needed to make that record clear for the parties, for counsel, for the higher court.

{5} Father suggested that an in-person hearing is not required and that the district court conducted a hearing according to the Rule when the court independently reviewed the record and adopted the hearing officer's recommendations. Father requested the filing of an amended final decree that would reflect the court's compliance with Rule 1-053.2 (2017) and orally moved the court to amend the final decree under Rule 1-060(A), arguing that the omission of the court's process for resolving objections in the final decree was a "clerical mistake." Following the hearing, the district court denied Mother's motion for stay, granted Father's oral motion to amend the final decree, and entered an amended final decree. The amended final decree added that the court

> conducted an independent review hearing under [Rule] 1-053.2(H)(1)(b) [(2017)], which included proper review of [Mother's] Objections, an independent review of the record, an independent determination that an additional evidentiary hearing and oral argument was unnecessary, and the Court . . . made an independent determination to approve and adopt the Recommendations of the Hearing Officer.

The amended final decree also denied Mother's objections. Mother appealed.

{6} The Court of Appeals reversed the district court's initial and amended final decree, concluding that the district court judge did not comply with Rule 1-053.2 (2017), *Rawlings v. Rawlings*, 2022-NMCA-013, ¶¶ 1, 27, 505 P.3d 875, and asserting two grounds for error. First, the Court's majority held that the Rule mandated an in-person hearing. *Id.* ¶¶ 15, 25. Second, because it did not hold an in-person hearing and in the majority's view "did not address the merits of Mother's objections or discuss the basis of its decision," the district court failed to "satisfy the requirements of Rule 1-053.2(H)(1)(b) and *Buffington*." *Rawlings*, 2022-NMCA-013, ¶¶ 24-25. The Court of Appeals majority did not address Mother's due process arguments. *Id.* ¶ 26.

{7} The Court of Appeals dissent agreed that the district court did not adequately establish its reasoned basis for denying Mother's objections and concurred with reversing and remanding for further proceedings. *Id.* ¶ 30 (Bogardus, J., dissenting). However, the dissent disagreed with the majority's reading that Rule 1-053.2 (2017) mandates an in-person hearing and concluded that only an independent record review is required. *Rawlings*, 2022-NMCA-013, ¶¶ 32-33 (Bogardus, J., dissenting) (explaining that the district court has broad discretion to decide the nature of the hearing necessary to resolve a party's objections). The dissent cautioned that the majority's ruling "will result in wasted judicial resources, increased costs to litigants, and cause needless delay in those cases in which a party's objections can easily be disposed of with review of the record without further oral argument." *Id.* ¶ 29 (Bogardus, J., dissenting).

III. DISCUSSION

A. The District Court's Amended Decree Was Not Contrary to Rule 1-053.2 (2017) or *Buffington*

1. Rule 1-053.2 (2017) Does Not Require an In-Person Hearing

{8} "[I]nterpretations of rules of procedure adopted by this Court [are reviewed] *de novo*." *State v. Stephen F.*, 2006-NMSC-030, ¶ 7, 140 N.M. 24, 139 P.3d 184. Rule 1-053.2 (2017) discusses not only the duties of hearing officers but also what procedures govern domestic relations hearing officer recommendations, any party objections, and district court review of the recommendations. Subpart (H) specifically instructs judges and litigants on the required procedure following their receipt of the domestic relations hearing officer's recommendations.

{9} Rule 1-053.2(H) (2017) provides:

> **District court proceedings.** After receipt of the recommendations of the domestic relations hearing officer, the court shall take the following actions:
>
> (1) **Review of recommendations**.
>
> (a) The court shall review the recommendations of the domestic relations hearing officer and determine whether to adopt the recommendations.
>
> (b) If a party files timely, specific objections to the recommendations, the court shall conduct a *hearing* appropriate and sufficient to resolve the objections. The *hearing* shall consist of a review of the record unless the court determines that additional evidence will aid in the resolution of the objections.
>
> (c) The court shall make an independent determination of the objections.
>
> (d) The court may adopt the recommendations, modify them, reject them in whole or in part, receive further evidence, or recommit them to the domestic relations hearing officer with instructions.
>
> (2) **Findings and conclusions; entry of final order.** After the *hearing*, the court shall enter a final order. When required by Rule 1-052 NMRA, the court also shall enter findings and conclusions.

Rule 1-053.2(H) (2017) (emphasis added).

{10} The Court of Appeals majority adopted Mother's interpretation of Rule 1-053.2 (2017) that "the common understanding of the phrase [conduct a hearing] is that parties are afforded an opportunity to appear before the judge and present argument." *Rawlings*, 2022-NMCA-013, ¶¶ 13, 15 (citing "legal and the nonlegal definitions of the term 'hearing'"). The majority further concluded that Father's interpretation would lead to an absurd result because it would mean that a district court "cannot conduct anything other than a record review unless the court determines that an evidentiary hearing is necessary." *Id.* ¶ 19. The majority held, "it is for the district court to determine the nature and the extent of the hearing so long as the court ensures, at a minimum, that the parties are permitted to appear on the record to address the merits of the objections." *Id.* ¶ 22. However, we agree with the dissent that the plain language of Rule 1-053.2 (2017) only requires a record review. *Rawlings*, 2022-NMCA-013, ¶ 32 (Bogardus, J., dissenting).

{11} Commentary by the rules committee reflects the district court's ability to resolve objections and the presumption that the "hearing" will take the form of a record review. Under the subheading, "Objected-to recommendations," the committee commentary stated,

> The *Buffington* court noted that "the nature of the hearing and review to be conducted by the district court will depend upon the nature of the objections being raised." *Buffington*, 2004-NMCA-092, ¶ 31. Rule 1-053.2(H)(1)(b) NMRA provides this flexibility but creates a presumption that the hearing will consist of a review of the record rather than a de novo proceeding. However, the court has discretion in all cases to determine that a different form of hearing take place, including a de novo proceeding at which evidence is presented anew before the court, or a hearing partly on the record before the hearing officer and partly based on the presentation of new evidence not before the hearing officer. *See id.* The required hearing need not always consist of oral presentations before the court. When appropriate and sufficient to resolve the objections, the court may rely on written presentations of the parties.

Rule 1-053.2 NMRA (2017) comm. cmt. (brackets omitted).

{12} In *Buffington*, the Court of Appeals addressed a father's challenge to a district court's automatic adoption of a domestic relations hearing officer's recommendations for child support obligations. 2004-NMCA-092, ¶¶ 17-19. The *Buffington* Court concluded that this kind of automatic adoption, without consideration of father's and mother's objections, was contrary to the requirements of Rule 1-053.2 (1998).[2] *Id.* ¶¶ 17-18, 32. The Court emphasized the importance of providing parties meaningful opportunity to be heard "by a judge vested with judicial power" through a hearing and review process. *Id.* ¶ 31. This requires a demonstration "that the court in fact considered the objections and established the basis for the court's decision." *Id.* Further, the *Buffington* Court suggested that the basis of the decision would take the form of adopting, modifying, or rejecting the hearing officer's recommendations. *Id.* The court explained,

> The hearing officer assists the district court in determining the factual and legal issues, and the core judicial function is independently performed by the district judge. This procedure is implicit in the requirement of the Rule that "[a]ll orders must be signed by a district judge before the recommendations of a . . . hearing officer become effective."

Id. (quoting Rule 1-053.2(C) (1998)).

{13} While the holding in *Buffington* required the district court to review and consider the recommendations of a domestic relations hearing officer and resulting objections, there was no requirement that objections be considered in an in-person hearing. *Id.* ¶¶ 30-31.[3]

{14} What is important and what is emphasized by both the *Buffington* Court and the Rule 1-053.2 committee commentary is that the district court give an independent review of the objections. There is nothing requiring that those objections be considered by an in-person hearing. The latter is consistent with the approach articulated by the Court of Appeals in *Nat'l Excess Ins. Co. v. Bingham* where it examined the district court's obligation to conduct a hearing in a summary judgement motion. 1987-NMCA-109, ¶ 9, 106 N.M. 325, 742 P.2d 537 ("In considering a motion for summary judgment, the court may, but is not required to, hold an oral hearing."). As long as each party can prepare objections and provide responses, and where notice has been properly given, then each party has been heard within the meaning of the underlying rule. *See id.* ¶ 10.

{15} Policy considerations favoring judicial efficiency also lend support to this interpretation. *See Rawlings*, 2022-NMCA-013, ¶¶ 30, 35 (Bogardus, J., dissenting). It is well acknowledged that district courts have high domestic relations caseloads and often receive multiple objections to a hearing officer's recommendations. Further, the dissent noted that these delays may cause specific harm in the context of child custody issues and would "encourage gamesmanship among the parties." *Id.* Therefore, in consideration of the holding in *Buffington*, the history of Rule 1-053.2, and policy considerations, we hold that Rule 1-053.2 (2017) does not require an in-person hearing.

2. Additional Reasoned Basis Is Not Required Beyond That Established in *Buffington*

{16} The Court of Appeals majority held that the district court did not address the merits of Mother's objections and did not establish the basis for its decision in resolving the objections. *Rawlings*, 2022-NMCA-013, ¶ 24 (citing *Buffington*, 2004-NMCA-092, ¶ 31). The dissent agreed, stating, "[T]he district court must demonstrate that it reviewed the objections and arrived at a reasoned basis for its decision." *Rawlings*, 2022-NMCA-013, ¶ 31 (Bogardus, J., dissenting) (citing *Buffington*, 2004-NMCA-092, ¶ 31). However, the majority and concurring opinion read into Rule 1-053.2 a requirement for district courts that the Rule itself does not impose. While the record should reflect a reasoned basis for the decision, Rule 1-053.2 (2017) does not specify how a district court must show that it derived its decision from a reasoned basis.

{17} A hearing officer's role is to assist the court in managing its caseload through its recommendations. *Buffington*, 2004-NMCA-092, ¶ 31 ("The hearing officer assists the district court in determining the factual and legal issues."). If the Rule is read to require the district court to enter findings and conclusions in addition to those recommended by the hearing officer, such an interpretation would render the hearing officer's role meaningless. *See* Rule 1-053.2(A), (C) (2017); Rule 1-053.2 (2006) comm. cmt. Additionally, this interpretation would be extremely burdensome in cases like this in which a party's filing included over forty objections to the hearing officer's recommendations with additional evidence for the district court to consider. Therefore, we conclude that the district court's independent review and its decision to adopt, modify, or reject the hearing officer's recommendations in the final order reflects its reasoned basis and satisfies the standard established in *Buffington*.

B. The District Court Had Jurisdiction to Clarify the Record and Amend the Final Decree under Rule 1-060(A)

{18} We next address the jurisdictional issue presented when the district court clarified the record and amended the final decree after Mother's notice of appeal. Questions regarding a trial court's jurisdiction are reviewed de novo. *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300. When a notice of appeal is filed after entry of a final judgment, a district court only retains jurisdiction to "deal with matters collateral to or separate from the issues resolved in the judgment." *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 42, 113 N.M. 231, 824 P.2d 1033. Rule 1-060(A) provides that a district court may correct "[c]lerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission" while a case is on appeal. This includes correcting a technical error or ambiguous language. *See Britton v. Britton*, 1983-NMSC-084, ¶ 7, 100 N.M. 424, 671 P.2d 1135; *Century Bank v. Hymans*, 1995-NMCA-095, ¶ 16, 120 N.M. 684, 905 P.2d 722.

{19} In this case, the trial court clarified that it independently reviewed the record and that Mother's objections "were a disagreement with what [the hearing officer] ruled." The amended final decree also contained the district court judge's reasoned basis by stating that it "conducted

[2] Important to the court's holding in Buffington was that Rule 1-053.2 (1998) at issue in Buffington did not expressly require a district court to independently review the hearing officer's recommendations and consider objections. 2004-NMCA-092, ¶¶ 30-31; see Rule 1-053.2(C) NMRA (1998). The 2006, 2017, and current versions of Rule 1-053.2 do require the district court to review the hearing officer's recommendations and consider objections.

[3] In response to the Buffington opinion, this Court amended Rule 1-053.2 in 2006 to add provisions allowing a party the opportunity to present objections to a hearing officer's recommendations and requiring a district court to independently resolve those objections. See Rule 1-053.2 NMRA (2006) comm. cmt. Specifically, the 2006 amendment added that a district court "shall conduct a hearing" when resolving a party's objections. Rule 1-053.2(H)(1)(b) (2017) (using wording identical to the text of Rule 1-053.2 (H)(1)(b) (2006)).

an independent review" in adopting the hearing officer's recommendations. We conclude that the district court had jurisdiction to clarify the record and amend the final decree because the information clarified and amended was collateral to or separate from the issue on appeal, pursuant to Rule 1-060(A).

IV. CONCLUSION

{20} In sum, Rule 1-053.2 (2017) does not require an in-person hearing. The district court provided its reasoned basis when it independently reviewed the record and adopted the hearing officer's recommendations in the final order. Further, the district court complied with Rule 1-060(A) and had jurisdiction to clarify the record and amend the final decree. Finally, we conclude Mother's due process arguments lack merit. Therefore, we reverse the Court of Appeals and affirm the district court.

{21} IT IS SO ORDERED.
DAVID K. THOMSON, Justice
WE CONCUR:
C. SHANNON BACON, Chief Justice
MICHAEL E. VIGIL, Justice
BRIANA H. ZAMORA, Justice
FRANCIS J. MATHEW, Judge, sitting by designation, dissenting

MATHEW, Judge (dissenting).

{22} The district court record is clear that the court did not conduct any hearing with respect to the Respondent's objections. Instead, the court relied on a "review of the record" and an "independent review of the recommendations . . . , and the objections filed and the response . . . ," and "made a determination that a hearing was not necessary . . . to resolve anything." *See maj. op.* ¶ 4. The district court's reading of Rule 1-053.2 (2017) NMRA (the Rule) ignores the clear wording and mandate of the Rule which provides in pertinent part:

> **District court proceedings**. After receipt of the recommendations of the domestic relations hearing officer, the court shall take the following actions:
>
> (1) **Review of recommendations.**
>
> (a) The court shall review the recommendations of the domestic relations hearing officer and determine whether to adopt the recommendations.
>
> (b) If a party files timely, specific objections to the recommendations, *the court shall conduct a hearing* appropriate and sufficient to resolve the objections. *The hearing* shall consist of a review of the record unless the court determines that additional evidence will aid in the resolution of the objections.
>
> (c) The court shall make an independent determination of the objections.
>
> (d) The court may adopt the recommendations, modify them, reject them in whole or in part, receive further evidence, or recommit them to the domestic relations hearing officer with instructions.
>
> (2) **Findings and conclusions; entry of final order.** *After the hearing*, the court shall enter a final order. When required by Rule 1-052 NMRA, the court also shall enter findings and conclusions.

Rule 1-053.2(H) (2017) (emphasis added). Respondent filed specific objections to the recommendations of the domestic relations hearing officer ten days after the filing of the recommendations.

{23} The Rule references both "review" and "hearing" as two separate and different obligations of the district court. The district court's application of the Rule by only conducting a review violates the rules of statutory construction and makes the Rule's reference to "a hearing" superfluous.

> The principal objective in the judicial construction of statutes "is to determine and give effect to the intent of the legislature." We will construe the entire statute as a whole so that all the provisions will be considered in relation to one another. "Statutes must be construed so that no part of the statute is rendered surplusage or superfluous." The complement of the preceding rule is that we "will not read into a statute or ordinance language which is not there, particularly if it makes sense as written." We will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions.

Regents of Univ. of N.M. v. N.M. Fed'n of Teachers, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236 (citations omitted). The Rule is not ambiguous as worded. By only performing the obligatory "review," the district court rendered the obligation to "conduct a hearing" superfluous.

{24} It is the job of the district court to conduct hearings in cases. Hearings are routine to the function of a district court. In dealing with the family relationship of parent and child, a concern about judicial resources, increased costs to litigants, and delay with easy disposition should not take precedence over the importance of the parent and child relationship.

{25} The importance of the parent and child relationship has been recognized by both this Court and the United States Supreme Court. "A parent's right in custody is constitutionally protected, and actions to terminate that right must be conducted with scrupulous fairness, including the providing of fair notice to the parent(s)." *Ronald A. v. State ex rel. Hum. Servs. Dep't*, 1990-NMSC-071, ¶ 3, 110 N.M. 454, 797 P.2d 243 (citation omitted); *see also In re Laurie R.*, 1988-NMCA-055, ¶ 22, 107 N.M. 529, 760 P.2d 1295 ("Procedural due process requires notice to each of the parties of the issues to be determined and opportunity to prepare and present a case on the material issues."). When the Children, Youth and Families Department sought to terminate the parental rights of a mother, this Court made the following observation.

> The Children's Code gives the court the authority to terminate the parental rights of an abusive or neglectful parent. However, because the right to raise one's child is a fundamental right protected by the Fourteenth Amendment to the United States Constitution, termination proceedings must be conducted in a constitutional manner. As such, a parent's legal relationship with his or her child cannot be severed without due process of law. Due process of law requires that termination proceedings be conducted with "scrupulous fairness" to the parent. "*Procedural due process mandates that a person be accorded an opportunity to be heard at a meaningful time and in a meaningful manner.*"

State ex rel. Children, Youth & Families Dep't v. Mafin M., 2003-NMSC-015, ¶ 18, 133 N.M. 827, 70 P.3d 1266 (emphasis added) (citations omitted). In the case of *Stanley v. Illinois*, 405 U.S. 645 (1972), the United States Supreme Court addressed the constitutionality of depriving a parent of custody on the presumption that an unmarried father was not fit to raise his children. *Id.* at 646-47, 653. The Court acknowledged that a "[p]rocedure by presumption is always cheaper and easier than individualized determination," but it concluded that such consideration gave way to the determinative issues of competence and care. *Id.* at 656-57. In *Stanley*, the Court also described how it viewed the parent and child relationship.

> The Court has frequently emphasized the importance of the

family. The rights to conceive and to raise one's children have been deemed "essential," "basic civil rights of man" and "(r)ights far more precious . . . than property rights." "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment.

Id. at 651 (omission in original) (citations omitted). As written, the Rule protects the rights of the parents and the child by requiring a hearing when objections were made, but as interpreted and applied by the district court, the Rule would elevate expediency and economy over the essential rights of the parties and their children in custody disputes.

{26} For the foregoing reasons, I respectfully dissent, and I would affirm the Court of Appeals.

FRANCIS J. MATHEW, Judge
Sitting by designation

From the New Mexico Supreme Court

Opinion Number: 2024-NMSC-009
No: S-1-SC-38910 (filed March 4, 2024)

STATE OF NEW MEXICO,
Plaintiff-Respondent/Cross-Petitioner,
v.
CLIVE DALTON PHILLIPS,
Defendant-Petitioner/Cross-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Clara Moran, District Judge

Bennett J. Baur, Chief Public Defender
Caitlin C.M. Smith,
Assistant Appellate Defender
Santa Fe, NM

for Petitioner/Cross-Respondent

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

for Respondent/Cross-Petitioner

OPINION

THOMSON, Justice.

{1} Defendant Clive Phillips was convicted of six counts of aggravated battery and pleaded guilty to one count of voluntary manslaughter after he violently attacked Adrian Carriaga and Alexzandria Buhl (Allie), killing Adrian and severely injuring Allie. Defendant challenges his convictions, arguing that double jeopardy bars the multiple convictions with the exception of one count of battery for attacking Allie and one count of manslaughter for attacking and killing Adrian. We conclude that the manslaughter conviction and the challenged battery convictions are each based on distinct conduct and therefore do not violate Defendant's right against double jeopardy. We reverse, in part, and affirm, in part, the Court of Appeals.

I. BACKGROUND

{2} Defendant, Allie, Adrian, and Sean Madrid were close friends and shared a four-bedroom house. Defendant and Allie had been in an on-and-off relationship since high school and had a baby together. In the summer of 2013, Allie broke up with Defendant and moved into her own bedroom in the house with the baby. Shortly thereafter, Allie and Adrian began a romantic relationship.

{3} Early one morning, Sean became suspicious that Allie and Adrian were sleeping together and called Defendant, who was not home at the time, to inform him of his suspicions. Defendant drove to the house, walked into Allie's room with a baseball bat, and discovered Allie and Adrian in bed together.

{4} Armed with the bat, Defendant struck the two numerous times, and a struggle ensued. Defendant eventually dropped the baseball bat and left Allie's room to retrieve a handgun. Allie immediately shut and locked her bedroom door, but Defendant came back, shot the door handle, and kicked the door open. Upon reentering Allie's room, Defendant shot Adrian once in the chest and once in his right armpit. Out of ammunition, Defendant left Allie's room, and Allie called 911. Defendant returned to the room soon after with a rifle. He asked Adrian, "Are you ready?", placed the rifle under Adrian's chin, and fired, killing Adrian.

{5} Defendant then turned to Allie and shot her once in her shin and inserted his finger into her bullet wound. Defendant grabbed Allie's phone, which was still connected to 911, and before ending the call described to the operator what had happened. He then resumed his assault on Allie by punching her in the face. The two struggled before Defendant pushed Allie against the wall in the hallway and choked her, causing her to lose consciousness. The police arrived at the home shortly thereafter.

{6} For Defendant's attack on Adrian, the jury could not reach a verdict on the murder charge or on the lesser-included offense of manslaughter for the killing of Adrian. *See* NMSA 1978, § 30-2-1 (1994) (murder); NMSA 1978, § 30-2-3 (1994) (manslaughter). However, the jury convicted Defendant of two counts of aggravated battery with a deadly weapon—one for striking Adrian with the baseball bat and one for shooting Adrian with the handgun. *See* NMSA 1978, § 30-3-5 (1969) (aggravated battery); NMSA 1978, § 31-18-16 (1993, amended 2022) (firearm enhancement). For his attack on Allie, the jury convicted Defendant of four counts of aggravated battery against a household member—one for striking Allie with the baseball bat (deadly weapon), one for shooting her with the rifle (deadly weapon), one for punching her, and one for strangling her (great bodily harm). *See* NMSA 1978, § 30-3-16 (2008, amended 2018) (aggravated battery against a household member); § 31-18-16 (1993) (firearm enhancement). Following an appeal to this Court regarding the scope of retrial on the murder charge, *see State v. Phillips* (*Phillips I*), 2017-NMSC-019, 396 P.3d 153, Defendant pleaded guilty to voluntary manslaughter for the death of Adrian. At sentencing, Defendant argued that his convictions for attacking Adrian and Allie were based on unitary conduct and therefore violated the protections afforded by the double jeopardy clause. The district court disagreed and sentenced Defendant to twenty-five years imprisonment, suspending seven years.

{7} Defendant appealed, contending (1) that he should only be convicted of one count of battery for attacking Adrian and one count of battery for attacking Allie and (2) that his battery conviction for shooting Adrian with the handgun should be vacated because it was based on the same conduct as the manslaughter conviction. *State v. Phillips* (*Phillips II*), 2021-NMCA-062, ¶¶ 1, 9, 17, 31, 499 P.3d 648. The Court of Appeals affirmed Defendant's convictions for the two batteries against Adrian as they were not based on unitary conduct and therefore, did not violate double jeopardy. *Id.* ¶ 16. However, the Court concluded that the battery (handgun) and manslaughter convictions violated double jeopardy because a reasonable jury could have found either unitary conduct or distinct acts. *Id.* ¶¶ 23-26, 29. Therefore, the Court presumed that the conduct was unitary as required by *State v. Foster*, 1999-NMSC-007, ¶ 28, 126 N.M. 646, 974 P.2d 140 (holding that we must presume a defendant's conduct is unitary

if the jury convicted the defendant under a general verdict and the record does not indicate whether the jury relied on a legally inadequate alternative that would result in double jeopardy), *abrogated on other grounds by Kersey v. Hatch*, 2010-NMSC-020, ¶ 17, 148 N.M. 381, 237 P.3d 683. *Id.* ¶¶ 26-29. Finally, the three battery convictions for hitting Allie with the baseball bat, shooting her with the rifle, and strangling her were affirmed. *See Phillips II*, 2021-NMCA-062, ¶¶ 1, 33. The Court accepted the State's concession that the battery conviction for punching Allie was violative of double jeopardy and reversed that conviction. *Id.* ¶¶ 34-35. That reversal is not at issue in this appeal.

{8} Defendant petitioned for certiorari, contending that his two battery convictions for attacking Adrian (baseball bat and handgun) and his three battery convictions for attacking Allie (baseball bat, rifle, and strangulation) all violate double jeopardy. The State cross-petitioned, arguing that the Court of Appeals erred by vacating the conviction for battery of Adrian with a handgun. We granted both petitions. We affirm Defendant's manslaughter conviction and all five of his aggravated battery convictions. We further conclude that the Court of Appeals erred in its application of the presumption announced in *Foster*. Additionally, we clarify that in conducting a double jeopardy analysis for a conviction rendered by a guilty plea, a reviewing court should examine what the record shows about whether a defendant's acts are distinct rather than what a reasonable jury could have found.

II. DISCUSSION

{9} The Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." The double jeopardy clause prohibits a court from "imposing multiple punishments for the same offense." *State v. Porter*, 2020-NMSC-020, ¶ 5, 476 P.3d 1201 (text only) (citation omitted). There are two types of multiple punishment cases: "those cases in which a defendant is charged with multiple violations of a single statute based on a single course of conduct (unit of prosecution cases) and those cases in which a defendant is charged with violating different statutes in a single course of conduct (double-description cases)." *State v. Sena*, 2020-NMSC-011, ¶ 44, 470 P.3d 227 (text only) (citation omitted). "While the analysis for each type of case focuses on whether the Legislature intended multiple punishments, the particular canons of construction we apply in ascertaining the Legislature's intent depend on the specific type of multiple punishment case in front of us." *State v. Benally*, 2021-NMSC-027, ¶ 11, 493 P.3d 366 (text only)[1] (citation omitted). We review this question of constitutional law de novo. *Porter*, 2020-NMSC-020, ¶ 11.

{10} This case involves both unit of prosecution and double description analyses. Defendant raises a unit of prosecution argument, contending that his multiple battery convictions violate double jeopardy because "he attacked [Adrian] and [Allie] during a single episode, which took place in a small space and a short amount of time, and therefore he should not have been convicted of more than one count of battery against each of them." The State argues under a double-description challenge that Defendant's convictions for aggravated battery with a handgun and manslaughter stemming from his attack on Adrian were not based on unitary conduct, and therefore we should reverse the Court of Appeals' determination that these convictions violate double jeopardy. We address Defendant's unit of prosecution challenge first.

A. Unit of Prosecution

{11} In a unit of prosecution case, we focus on "whether a defendant has received more punishments than the number of punishments that the Legislature intended to authorize under the facts and circumstances of the case." *Benally*, 2021-NMSC-027, ¶ 12. This is a two-part test. *Id.* First, "we must analyze the statute to determine whether the Legislature has defined the unit of prosecution." *Id.* ¶ 13 (text only) (citation omitted). We do this by considering "all markers of legislative intent . . . including the wording, structure, legislative history, legislative purpose, and quantum of punishment prescribed under the statutory scheme." *Id.* If the statute defines the unit of prosecution, "our inquiry is complete." *Id.* ¶ 14. "However, if the statute remains insurmountably ambiguous as to its intended unit of prosecution, then we apply . . . the rule of lenity—and construe the statute in favor of the defendant." *Id.* (internal quotation marks and citation omitted). "The rule of lenity requires us to presume that the Legislature did not intend to separately punish discrete acts in a defendant's course of conduct absent proof that each act was in some sense distinct from the others." *Id.* ¶ 16 (text only) (citation omitted). "After applying the rule of lenity . . . , we then turn to the second step of our analysis." *Id.*

{12} The second step requires us to "determine whether a defendant's acts are separated by sufficient indicia of distinctness to justify multiple punishments under the same statute." *State v. Ramirez*, 2018-NMSC-003, ¶ 56, 409 P.3d 902 (text only) (citation omitted). To determine whether a defendant's acts are sufficiently distinct, we consider the *Herron* factors: (1) temporal proximity of the acts, (2) location of the victim during each act, (3) the existence of intervening events, (4) the sequencing of the acts, (5) the defendant's intent as evidenced by his conduct and utterances, and (6) the number of victims. *Herron v. State*, 1991-NMSC-012, ¶ 15, 111 N.M. 357, 805 P.2d 624. "[T]he six *Herron* [factors] serve as a general policy for examining distinctness, but in undertaking this analysis courts should examine the elements of the offense and any policy underlying the specific statute." *Benally*, 2021-NMSC-027, ¶ 19 (internal quotation marks and citation omitted).

{13} In applying the *Herron* factors, Defendant urges us to adopt "a general rule or rebuttable presumption" that "[w]hen there is an incident that occurs in a short time in a single place, the State should generally be limited to proving one purely assaultive crime for each victim." We decline to do so. We continue to hold that no *Herron* factor is dispositive, but instead that all factors should be considered together in light of the facts and circumstances of each case. *See Herron*, 1991-NMSC-012, ¶ 15 ("[N]one of these factors alone is a panacea, but collectively they will assist in guiding future prosecutions under [the relevant charging statute]."); *Swafford v. State*, 1991-NMSC-043, ¶ 28, 112 N.M. 3, 810 P.2d 1223 (adopting the *Herron* factors in the unitary conduct inquiry for double description cases and noting that time and space may easily distinguish acts in some cases, but not in every case, and that courts should consider every factor); *State v. Handa*, 1995-NMCA-042, ¶ 26 n.2, 120 N.M. 38, 897 P.2d 225 ("[T]he time between each act is not dispositive."). We also reject Defendant's argument that some, but not all, of the principles applied in double description cases for a unitary conduct inquiry apply in a unit of prosecution analysis. *See, e.g.*, *State v. DeGraff*, 2006-NMSC-011, ¶ 27, 139 N.M. 211, 131 P.3d 61 (considering whether one crime had been completed before another was committed); *State v. Cooper*, 1997-NMSC-058, ¶¶ 60-61, 124 N.M. 277, 949 P.2d 660 (considering the initial use of force against a victim as separable by "an intervening event" from subsequent but different uses of force and weapons that resulted in the victim's death). In both unit of prosecution and double description cases, "we attempt to determine, based upon the specific facts of each case, whether a defendant's activ-

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

ity is better characterized as one unitary act, or multiple, distinct acts, consistent with legislative intent." *State v. Bernal*, 2006-NMSC-050, ¶ 16, 140 N.M. 644, 146 P.3d 289. This necessarily requires us to consider general guideposts, such as the nature of a defendant's acts and whether one crime was completed before another. Double jeopardy jurisprudence in New Mexico is a tangled and often laborious analysis. It should be this Court's goal to simplify rather than complicate it. Therefore, we reaffirm our conclusion in *Bernal* that "we are doing a substantially similar analysis when we conduct a unitary conduct inquiry in double description cases as when we conduct a unit-of-prosecution inquiry." *Id.*

{14} If a defendant's acts are sufficiently distinct, "then we will presume that the defendant has not received more punishments than were statutorily authorized." *Benally*, 2021-NMSC-027, ¶ 23. However, "[i]f a defendant's acts are not sufficiently distinct, then we will return to our lenient construction of the statute and presume that the defendant has received more punishments than were statutorily authorized." *Id.* We now apply this two-step framework to Defendant's multiple battery convictions.

1. Defendant's two battery convictions for attacking Adrian do not violate double jeopardy

a. The aggravated battery statute does not define the unit of prosecution

{15} Section 30-3-5(A) defines aggravated battery as "the unlawful touching or application of force to the person of another with intent to injure that person or another." The offense is heightened to a third-degree felony if the aggravated battery is committed with a deadly weapon, as it was in this case. Section 30-3-5(C). Analyzing the plain language of the statute, the Court of Appeals held that the unit of prosecution for the aggravated battery statute is ambiguous. *Phillips II*, 2021-NMCA-062, ¶¶ 10-11 (relying on *State v. Mares*, 1991-NMCA-052, ¶ 24, 112 N.M. 193, 812 P.2d 1341, for the proposition that "the aggravated battery statute d[oes] not separately punish each act of unlawful touching occurring during a continuous attack unless the acts are sufficiently distinct"). We agree and focus our analysis on the plain language and purpose of the aggravated battery statute. *State v. Olsson*, 2014-NMSC-012, ¶ 18, 324 P.3d 1230 ("The plain language of the statute is the primary indicator of legislative intent."); NMSA 1978, § 12-2A-19 (1997) (providing that a statute's text is "the primary, essential source of its meaning").

{16} Both parties rely on *Ramirez*, 2018-NMSC-003, ¶ 53, for their unit of prosecution analyses to different ends. In *Ramirez*, the defendant was convicted of three counts of child abuse after shooting into a vehicle that contained three children. *Id.* ¶¶ 3-4. There, we considered whether the child abuse by endangerment statute specified the unit of prosecution. *Id.* ¶ 48. We first observed that the statute's intended unit of prosecution could be the conduct of causing or permitting a child to be endangered regardless of the number of victims because the statute focused on prohibiting a course of conduct. *Id.* ¶ 51. However, we later noted that the statute could be read to indicate that the unit of prosecution was per victim because it prohibited endangering "a child." *Id.* ¶¶ 52-53. We provided that "[it] is well established . . . that where a statute prohibits the doing of some act to a victim specified by a singular noun, 'a person' for example, then 'the person' is the unit of prosecution." *Id.* ¶ 53. Ultimately, we held that the statute was ambiguous because there were two plausible readings of the statute as to its intended unit of prosecution. *Id.* ¶ 55.

{17} Defendant argues that under *Ramirez*, the usual unit of prosecution for the aggravated battery statute is per victim, but argues that the statute is still ambiguous as to whether a defendant may be convicted of multiple counts of battery against the same victim during a continuous attack. The State similarly relies on *Ramirez*, arguing that the plain language of the statute specifies the unit of prosecution as per deadly weapon.[2]

{18} We conclude that *Ramirez* does not resolve the question before us. Section 30-3-5 prohibits touching or applying force "to the person of another," which may suggest that the unit of prosecution is per victim. However, the statute still does not specify whether someone can be punished separately for *multiple* acts of touching or applying force to the *same* victim during a continuous attack. This factual situation was not considered in *Ramirez*. *See* 2018-NMSC-003. Similarly, *Ramirez* does not support the State's interpretation that use of different deadly weapons allows for separate units of prosecution. In *Ramirez*, we explained that when a statute contains a single, direct object that is the recipient of the prohibited conduct, the unit of prosecution is by object. *Id.* ¶ 52 ("Stated grammatically, the statute contains a direct object that is the recipient of the actions of [its] verbs, and that direct object is a singular noun. This suggests that our Legislature intended the protections of [the statute] to attach to *each child* endangered, and this, in turn, suggests that the unit of prosecution for [the statute] is *by child*.") Here, Section 30-3-5(C) simply heightens the offense if it is committed "with a deadly weapon." The statute's use of the term "with a deadly weapon" is not to define the direct object or focus of the statute. Instead, it serves as an aggravating factor. Neither *Ramirez* nor any other pronouncement of this Court established a rule that if a defendant uses multiple weapons or objects during an attack, the Legislature, as a matter of law, intended to impose separate punishments. *See Herron*, 1991-NMSC-012, ¶ 13 ("[S]eparate [acts] can occur within sufficient temporal proximity to raise doubt whether the legislature intended separate punishments for those acts which could equally be inspired by a single criminal intent bent on a single assaultive episode.").

{19} The State further argues that a separate punishment for each deadly weapon used is supported by the purpose of the aggravated battery statute, suggesting that the "statute is directed at preserving the integrity of a person's body against serious injury." *State v. Vallejos*, 2000-NMCA-075, ¶ 18, 129 N.M. 424, 9 P.3d 668; *see also State v. Neatherlin*, 2007-NMCA-035, ¶ 16, 141 N.M. 328, 154 P.3d 703 ("The purpose of aggravating the charge and enhancing the sentence for use of a weapon is to minimize injury to human beings no matter how the injury is inflicted and discourage people from using objects to injure another." (text only) (citation omitted)). We disagree. While in some circumstances, the use of multiple deadly weapons may increase the risk of injury or death to a victim, that alone is not supportive that such an assault is always deemed nonunitary.

{20} Our analysis is better guided by *Herron*. In *Herron*, we addressed whether a former version of the criminal sexual penetration statute allowed a defendant to be punished for each act of sexual penetration occurring during an incident of sexual assault. 1991-NMSC-012, ¶¶ 6, 8. Concluding that the language of the statute was ambiguous on this point, we applied the rule of lenity and held that the statute "cannot be said as a matter of law to evince a legislative intent to punish separately each penetration occurring during a continuous attack absent proof that each act of penetration is in some sense distinct from the others." *Id.* ¶¶ 8, 15. Later, in *Mares*, the Court of Appeals relied on and adopted our approach in *Herron* to conclude that under the aggravated battery statute, the Legislature did not intend to punish each act of battery occurring during a continuous attack un-

[2] We note that in the Court of Appeals, the State contended that Section 30-3-5 does not specify the unit of prosecution and argued that Ramirez was inapplicable, but the State now changes its position arguing that the statute does so specify.

less each act was distinct from the others. 1991-NMCA-052, ¶ 24. We agree with the *Mares* Court that the plain language of the aggravated battery statute does not clearly indicate whether a defendant can be punished for each act of battery inflicted on the same victim during a continuous attack. Therefore, we apply the rule of lenity and conclude that the Legislature did not intend to punish multiple acts of battery in these circumstances unless each act is distinct. *See Herron*, 1991-NMSC-012, ¶ 15; *Mares*, 1991-NMCA-052, ¶ 24. We now move to the second step of the unit of prosecution analysis and determine whether Defendant's acts of hitting Adrian with the baseball bat and shooting him with the handgun were separated by sufficient indicia of distinctness by applying the six *Herron* factors.

b. The batteries on Adrian were sufficiently distinct

{21} In the most recent Court of Appeals proceedings, the parties agreed that the time, location, and number-of-victims factors supported unitary conduct. *Phillips II*, 2021-NMCA-062, ¶ 12. The Court of Appeals focused on the remaining three *Herron* factors and held that Defendant committed two distinct acts of battery because he "used separate and discrete acts of force against Adrian, separated by an intervening event and a change in intent." *Phillips II*, 2021-NMCA-062, ¶ 16. The State no longer concedes the timing and location factors, arguing now that they are "neutral" and do not weigh in favor of unitary conduct. We step back to analyze all six *Herron* factors to determine whether Defendant's acts were sufficiently distinct.

{22} The attack unfolded with Defendant walking into Allie's room and striking Adrian and Allie with the baseball bat. There was a struggle over the bat, and Sean immediately called 911. Defendant left the room to retrieve a handgun. Allie locked the door behind him. Approximately one minute and forty seconds into Sean's 911 call, Defendant shot the door handle to get back into Allie's room and shot Adrian twice.

{23} The one minute and forty second gap between the battery with the baseball bat and the battery with the handgun was, in this case, a significant elapse of time. This, however, is not the only evidence that supports distinct conduct. *Cf. State v. Demongey*, 2008-NMCA-066, ¶ 15, 144 N.M. 333, 187 P.3d 679 (concluding that a time elapse of two minutes between two acts did not support distinct conduct because there was no evidence indicating a change in intent or nature of the acts). There were multiple intervening events between the batteries in this case. First was the struggle over the baseball bat. Next, Defendant left Allie's bedroom after dropping the bat and retrieved the handgun. *See, e.g.*, *DeGraff*, 2006-NMSC-011, ¶ 30 (providing that a defendant's struggle with the victim constitutes an intervening event). Finally, Defendant shot the door handle and kicked the door open before shooting Adrian.

{24} Defendant also used two different weapons to attack Adrian. *See, e.g.*, *Foster*, 1999-NMSC-007, ¶ 34 (concluding that the use of different weapons indicates distinct conduct). Each application of force, as well as the injuries inflicted, were also distinct; the baseball bat assault was nonfatal, whereas the two handgun shots inflicted more serious injuries. *See Bernal*, 2006-NMSC-050, ¶ 21 (stating that different uses of force support distinct acts).

{25} Furthermore, we agree with the Court of Appeals that there was evidence that Defendant's intent had changed from the time he attacked Adrian with the baseball bat to the time that he shot Adrian with the handgun, thus evincing distinct conduct. *Phillips II*, 2021-NMCA-062, ¶ 15 (citing *Demongey*, 2008-NMCA-066, ¶ 15). After his arrest, Defendant told police that when he hit Adrian with the baseball bat, he did not think that he was going to shoot or kill anybody. However, Defendant explained that after he battered Adrian, he remembered Adrian usually slept with a gun nearby, so he went to his bedroom to retrieve the handgun to immobilize or kill Adrian. Defendant argues that the Court of Appeals' separate-intent analysis rested on a "factual conclusion about [Defendant's intent to kill] that the jury rejected." We disagree mainly because Defendant was not acquitted of murder; the jury simply did not reach a verdict. Additionally, Defendant's argument that the jury did not make an express finding regarding his intent to kill has no bearing on our analysis. *See Herron*, 1991-NMSC-012, ¶ 15 (providing that courts determine intent "as evidenced by [the defendant's] conduct and utterances"). Defendant's conduct and statements to police demonstrate that he had not formulated an intent to kill Adrian with the baseball bat but that he had formulated this intent when shooting Adrian with the handgun. Therefore, there was a clear change in intent between each attack.

{26} We recognize that Adrian was the only victim in both of these attacks and that he remained in the same location for each. However, we decline to place great weight on the latter fact given that Adrian stayed or was forced to stay in one location, in the room with the door that Allie locked, to avoid further harm from Defendant's attacks.

{27} Therefore, we conclude that four of the *Herron* factors strongly support that Defendant's two convictions of battery for the injuries he inflicted on Adrian do not violate double jeopardy as Defendant's two attacks were distinct. *See State v. Jackson*, 2020-NMCA-034, ¶ 33, 468 P.3d 901 ("[A]lthough [the v]ictim and location of [the d]efendant's kidnappings overlap, there was sufficient evidence that the two kidnappings were separated by . . . sufficient indicia of distinctness . . . and, as a result, . . . do not violate double jeopardy.").

2. The three battery convictions for the injuries inflicted on Allie do not violate double jeopardy

a. The aggravated battery against a household member statute at issue did not clearly specify the unit of prosecution

{28} The language of the statutes for aggravated battery and aggravated battery against a household member is almost identical, and, consistent with our previous references herein, the parties advance the same arguments as to the intended unit of prosecution for the aggravated battery statute as for the aggravated battery against a household member statute, *see* Section II.A.1, paragraph 17, *supra*. The latter requires that the offense be committed against "a household member" while the former requires the offense be committed against "another." *Compare* § 30-3-16(A) (2008)[3], *with* § 30-3-5(A). The State added one additional argument: each application of force that caused or could have caused great bodily harm, *see* §§ 30-3-5(C), 30-3-16(C) (2008), creates an alternative unit of prosecution.

{29} Like the aggravated battery statute, the plain language of the aggravated battery against a household member statute does not clearly indicate whether a defendant can be punished separately for each act of battery against the same household member during a continuous attack. *See* Section II.A.1, paragraph 20, *supra*; *Herron*, 1991-NMSC-012, ¶ 15; *Mares*, 1991-NMCA-052, ¶ 24. Similar to our previous rejection of this very argument from the State applied to aggravated battery, we reject the State's argument that the aggravated battery against a household member statute defines the unit of prosecution as per deadly weapon or by each application of force that caused or could have caused great bodily harm. Therefore, we apply the rule of lenity and conclude that the statute does not separately punish each act of battery inflicted on the same victim during a continuous attack unless each act is sufficiently distinct.

[3] Defendant was convicted under the 2008 version of Section 30-3-16. However, the Legislature's 2018 amendments to the statute do not affect our analysis.

b. Defendant's acts of battery against Allie are separated by sufficient indicia of distinctness

{30} We apply the six *Herron* factors to the attack on Allie and begin by examining Allie's location during each battery. Allie remained in her room when first attacked with the baseball bat and later attacked with the rifle; however, she changed locations within the room. *Herron* recognizes that movement of a victim in between a defendant's acts supports distinct conduct. *See* 1991-NMSC-012, ¶ 15 ("[M]ovement or repositioning of the victim between [acts] tends to show separate offenses."). Further, similar to our analysis regarding the batteries on Adrian, we decline to weigh in favor of unitary conduct the fact that Allie remained in her room, which she locked after the first attack in an effort to protect herself and Adrian from a subsequent assault.

{31} In addition, Allie was in a different location of the home for the battery with the rifle than where she was for the battery by punching and strangulation. Defendant first shot Allie in the leg with the rifle in her room, and then he moved her into the hallway where he punched and strangled her. *See, e.g.*, *Bernal*, 2006-NMSC-050, ¶ 21 (stating that the use of force "in different parts of the [victim's] house" supports distinct conduct).

{32} The interval of time between the attacks remains significant to our analysis of whether the batteries were distinct. *Cf. Demongey*, 2008-NMCA-066, ¶ 15. Based on audio recordings of Sean's and Allie's separate 911 calls placed during these attacks, there was an approximate two-minute break after both the first and second of the three successive batteries inflicted on Allie.

{33} During each break between the batteries, there were also numerous intervening events. After hitting Allie with the baseball bat and before shooting her with the rifle, Defendant struggled with both victims, left Allie's room to retrieve the handgun, shot Allie's door, kicked the door open, shot Adrian twice with the handgun, left the room again to retrieve the rifle, and then killed Adrian by shooting him in the head. And after shooting Allie with the rifle, Defendant talked with the 911 operator Allie had phoned for approximately two minutes describing the attacks before he began punching and strangling Allie.

{34} Defendant also committed each act in a distinct manner. Defendant used different weapons for each battery against Allie, *see, e.g.*, *Foster*, 1999-NMSC-007, ¶ 34, and Defendant used different degrees of force by hitting her with the baseball bat all over her body, shooting her in the leg with a rifle, and then punching and strangling her until she lost consciousness, *see Bernal*, 2006-NMSC-050, ¶ 21.

{35} Defendant's intent to harm Allie may have remained the same throughout the attack, but the evidence shows that Defendant ceased his actions and reformulated this intent between each battery. *Cf. Demongey*, 2008-NMCA-066, ¶ 16 (concluding there was no evidence indicating that the defendant rethought his actions or ceased his actions and then reformulated his intent); *State v. Garcia*, 2009-NMCA-107, ¶ 14, 147 N.M. 150, 217 P.3d 1048 (stating there was no evidence that the defendant's intent to batter the victim was "interrupted, altered, or changed"). After hitting Allie with the baseball bat, Defendant ceased his attack, left the room multiple times, shot and killed Adrian, and then shot Allie with the rifle. Defendant again ceased his attack on Allie when he talked with the 911 operator before renewing a separate battery in the hallway.

{36} Defendant's batteries against Allie were clearly distinct, and his three convictions for aggravated battery against a household member do not violate double jeopardy.

B. Double Description

{37} On cross-appeal, the State challenges the Court of Appeals' determination that Defendant's convictions for aggravated battery with the handgun and manslaughter violate double jeopardy. In double description cases, we again apply "a two-part analysis for deciding whether the same offense was committed." *Sena*, 2020-NMSC-011, ¶ 45. "The first part focuses on the conduct and asks whether the conduct underlying the offenses is unitary, i.e., whether the same conduct violates multiple statutes." *Id.* (text only) (citation omitted). If the conduct is unitary, "we proceed to the second part, which focuses on the statutes at issue to determine whether the legislature intended to create separately punishable offenses." *Id.* (text only) (citation omitted). A defendant's double jeopardy rights are violated only "when (1) the conduct is unitary and (2) it is determined that the Legislature did not intend multiple punishments." *Id.* If a defendant's double jeopardy rights are violated, courts must "vacate the conviction carrying the shorter sentence." *State v. Torres*, 2018-NMSC-013, ¶ 28, 413 P.3d 467. Both parties agree that the Court of Appeals' holding on legislative intent is not before us, and therefore our focus is limited to whether Defendant's conduct was unitary.

{38} A defendant's conduct is unitary "if the acts are not separated by sufficient indicia of distinctness." *Porter*, 2020-NMSC-020, ¶ 12 (text only) (citation omitted). As previously noted, we apply the six *Herron* factors in the double description analysis to determine whether a defendant's acts are unitary or distinct. *Swafford*, 1991-NMSC-043, ¶ 28. We consider "the elements of the charged offenses, the facts presented at trial, and the instructions given to the jury." *Sena*, 2020-NMSC-011, ¶ 46; *Porter*, 2020-NMSC-020, ¶ 12. "Unitary conduct is not present when one crime is completed before another is committed, or when the force used to commit a crime is separate from the force used to commit another crime." *Sena*, 2020-NMSC-011, ¶ 46. However, "if it reasonably can be said that the conduct is unitary, then we must conclude that the conduct was unitary." *Porter*, 2020-NMSC-020, ¶ 12 (text only) (citation omitted).

{39} In this case, the instruction for aggravated battery with the handgun required the jury to find that Defendant "touched or applied force to Adrian . . . by shooting him in the torso with a handgun." However, the instruction for manslaughter required the jury to find that Defendant "killed Adrian." Thus, although the jury instruction for the aggravated battery charge specified the conduct that formed the basis of the charge, the manslaughter instruction did not. The jury convicted Defendant of the aggravated battery charge but hung on the manslaughter charge. Defendant's subsequent guilty plea for manslaughter did not specify a factual basis for his plea.

{40} As a result, the Court of Appeals applied the *Foster* presumption. *See Phillips II*, 2021-NMCA-062, ¶¶ 26-29. In *Foster*, we held that "we must presume that a conviction under a general verdict requires reversal if the jury is instructed on an alternative basis for the conviction that would result in double jeopardy, and the record does not disclose whether the jury relied on this legally inadequate alternative." 1999-NMSC-007, ¶ 28. We adopted this presumption because "we cannot assume that jurors will know to avoid an alternative basis for reaching a guilty verdict that would result in a violation of the Double Jeopardy Clause." *Id.* However, in *Sena*, we clarified that "*Foster* does not require a further presumption that the same conduct was then relied upon by the jury in convicting [a d]efendant of each crime—particularly when the record indicates [distinct crimes] were committed." 2020-NMSC-011, ¶ 54. Thus, the *Foster* presumption can be "rebutted by evidence that each crime was completed before the other crime occurred." *Id.* After reviewing the evidence presented at trial, the Court of Appeals in this case conclusively presumed that Defendant's conduct was unitary because it was "unable to determine whether the manslaughter was accomplished by the rifle shot alone or by multiple gunshots." *Phillips II*, 2021-NMCA-062, ¶¶ 21-26, 29 & n.1.[4]

{41} As an initial matter, we note that our appellate courts have never applied the *Foster* presumption to convictions based on guilty pleas. However, we assume without deciding that the *Foster* presumption applies in this case because the jury instructions and guilty plea for the manslaughter conviction do not specify what conduct forms the basis of the manslaughter conviction.[5] Therefore, we agree with the Court of Appeals that "the only reasonable inference . . . is that the factual basis for Defendant's guilty plea and resulting conviction is the same as the evidence presented at trial." *Phillips II*, 2021-NMCA-062, ¶ 19; *see State v. Sanchez*, 1996-NMCA-089, ¶ 11, 112 N.M. 280, 923 P.2d 1165 (explaining that a double jeopardy challenge based on a guilty plea could be resolved on the facts placed in the record). The Court of Appeals, however, viewed the evidence through the wrong lens. It viewed the evidence from the perspective of what a *reasonable jury could have concluded* during the trial despite the fact that Defendant's manslaughter conviction was a result of a guilty plea. *Phillips II*, 2021-NMCA-062, ¶¶ 24-25 (stating that the jury could have reasonably found two distinct acts or one unitary act for the aggravated battery and manslaughter convictions). This approach is mistaken. The proper analysis is not what a reasonable jury could have concluded but whether there are "sufficient facts in the record" to support distinct conduct which would defeat a double jeopardy claim. *Sanchez*, 1996-NMCA-089, ¶ 11.

{42} The evidence in the record shows nonunitary conduct in Defendant's acts. Defendant explained to police that he wanted to "immobilize" Adrian, so he shot Adrian twice in the torso with the handgun. Adrian was still alive when Defendant ran out of ammunition, and Defendant left the room to exchange the handgun for a rifle. Eighteen seconds later, Defendant returned to Allie's room with the rifle, placed the rifle under Adrian's chin, asked Adrian, "Are you ready?", and then pulled the trigger. Adrian immediately stopped speaking and died.

{43} Forensic pathologist, Doctor Linda Syzmanski, who performed Adrian's autopsy, testified at trial that the two handgun shots to Adrian's torso caused "multiple rib fractures," lacerated Adrian's lungs, and caused internal bleeding in Adrian's chest cavity. She explained that "with time," these injuries "would be fatal," but if Adrian had received medical attention, the injuries "most likely would have been curable" and Adrian could have survived. Dr. Syzmanski testified that the rifle shot caused extensive brain damage and "could be instantaneously fatal" or would have killed Adrian "within a couple of minutes." When asked which injury killed Adrian, Dr. Syzmanski responded: "The injury that was most fatal was the one to the head." She concluded that "[t]he gunshot *wound* was the cause of death." (Emphasis added.)

{44} Defendant urges us to rely on Dr. Syzmanski's later testimony that "[t]he cause of death was multiple gunshot *wounds*, and the manner of death was homicide." (Emphasis added.) Defendant highlights this testimony to argue that the cause of death was multiple gunshot wounds, and therefore, the manslaughter conviction encompassed the two handgun shots and the rifle shot. We disagree. It is clear from Dr. Syzmanski's testimony that the rifle shot was the fatal shot that killed Adrian.

{45} Additionally, based on the evidence presented, the battery was completed before the manslaughter was committed. *See Sena*, 2020-NMSC-011, ¶ 46. The battery was accomplished when Defendant shot Adrian twice in the torso using the handgun. Then, the manslaughter was accomplished when Defendant left the room, came back, and shot Adrian under the chin with the rifle, killing him. The two acts were separated by approximately eighteen seconds and the intervening event of Defendant leaving Allie's room to exchange the handgun for the rifle. *See Cooper*, 1997-NMSC-058, ¶ 61 (concluding that a defendant's conduct was distinct where the defendant used different weapons and that the "death was not the consequence of the initial act of battery" but was followed by an intervening event). Significantly, Defendant also used different weapons for each attack and applied distinct uses of force with each. Even though Adrian remained in Allie's room for both acts, we again decline to weigh the location factor in favor of unitary conduct because Adrian was severely injured, confining him to one location.

{46} Defendant argues that his conduct was unitary because of a common intent to "immobilize" or kill Adrian during both acts. We disagree. When Defendant left the room, exchanged the handgun with the rifle, came back to the room, and placed the rifle under Adrian's chin, he reformulated an intent to kill Adrian and to do so immediately. *See Herron*, 1991-NMSC-012, ¶ 15 (providing that a change in the defendant's intent supports distinct conduct); *cf. Demongey*, 2008-NMCA-066, ¶ 16 (stating that there was no evidence indicating that the defendant rethought his actions or ceased his actions and then reformulated his intent); *Garcia*, 2009-NMCA-107, ¶ 14 (stating that there was no evidence that the defendant's intent to batter the victim was "interrupted, altered, or changed").

{47} Therefore, we conclude that the *Foster* presumption was rebutted because there was evidence that distinct conduct supported the battery and manslaughter convictions. The Court of Appeals erred by conclusively presuming unitary conduct when the record indicated that one crime was completed before the other and that each act was sufficiently distinct. *See Sena*, 2020-NMSC-011, ¶ 54. Because Defendant's conduct is not unitary, there is no double jeopardy violation, and we reverse the Court of Appeals' determination on this issue.

III. CONCLUSION

{48} For the foregoing reasons, we hold that Defendant's two convictions of aggravated battery for attacking Adrian, one conviction of manslaughter for killing Adrian, and three convictions of aggravated battery against a household member for his attack on Allie do not violate double jeopardy. Therefore, we affirm the Court of Appeals in upholding two counts of aggravated battery for attacking Adrian (baseball bat, handgun), and upholding three counts of aggravated battery for attacking Allie (baseball bat, rifle, strangulation). However, we reverse the Court of Appeals in vacating the aggravated battery conviction for shooting Adrian with the handgun. We remand to the district court for further proceedings consistent with this opinion.

{49} IT IS SO ORDERED.
DAVID K. THOMSON, Justice
WE CONCUR:
C. SHANNON BACON, Chief Justice
MICHAEL E. VIGIL, Justice
BRIANA H. ZAMORA, Justice
T. GLENN ELLINGTON, Judge
Sitting by designation

[4] The Court of Appeals relied on our decision in State v. Franco, 2005-NMSC-013, ¶¶ 9-11, 137 N.M. 447, 112 P.3d 1104, where we conclusively applied the Foster presumption despite evidence that each act was distinct. Phillips II, 2021-NMCA-062, ¶¶ 26-29 & n.1. In Sena, we clarified that the Foster presumption should not be applied conclusively, but is instead rebutted by evidence in the record supporting distinct conduct. 2020-NMSC-011, ¶ 54. Therefore, Sena, rather than Franco, is the proper analysis.

[5] The State argues that "Defendant has the burden of creating the factual record for a double jeopardy claim," and because he did not specify within his guilty plea "whether the underlying factual basis was the rifle shot alone or all the gunshots, the Court of Appeals should have resolved any lack of clarity on that issue against Defendant." Although our case law requires a defendant who pleads guilty to "provide

FORMAL OPINION

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Filing Date: 5/13/2024

No. A-1-CA-40595

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JAMES MORGAN,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
George Eichwald, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellant

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

for Appellee

Introduction of Opinion

The State appeals the district court's orders granting Defendant James Morgan's motion to suppress and dismissing the criminal complaint with prejudice. The State argues on appeal that law enforcement had reasonable suspicion to believe that Defendant was either violating several city ordinances or had been involved in an assault or battery. Alternatively, the State argues that, even if law enforcement lacked reasonable suspicion to seize Defendant, Defendant's actions after the seizure constituted a "new crime" that sufficiently attenuated any illegality and therefore the evidence should not be suppressed. The district court found that Defendant was unlawfully seized because law enforcement lacked reasonable suspicion that he was involved in any criminal activity. The district court did not explicitly rule on the applicability of the "new crime" exception but nevertheless suppressed the evidence obtained as a result of law enforcement's interaction with Defendant. In doing so, the district court implicitly ruled that Defendant's actions did not constitute a "new crime." See State v. Leyva, 2011-NMSC-009, ¶ 58, 149 N.M. 435, 250 P.3d 861. **View full PDF online.**

Shammara H. Henderson, Judge
I CONCUR:
Megan P. Duffy, Judge
Jane B. Yohalem, Judge (dissenting)

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40595**

FORMAL OPINION

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

Filing Date: 5/14/2024

No. A-1-CA-40501

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
FERNANDO ORNELAS,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY
Cindy Leos, District Court Judge

Raúl Torrez, Attorney General
Maris Veidemanis, Assistant Attorney General
Santa Fe, NM
Meryl E. Francolini, Assistant Attorney General
Albuquerque, NM

for Appellant

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

for Appellee

▶ Introduction of Opinion

This appeal requires this Court to consider when a plea bargain not yet approved by the district court can be specifically enforced by a defendant. In State v. Bourland, 1993-NMCA-117, ¶ 7, 116 N.M. 349, 862 P.2d 457, this Court acknowledged that the state may not withdraw a plea agreement not yet approved by the district court when the defendant shows that they have detrimentally relied on the agreement or the prosecution took unfair advantage. At issue in this case is the district court's conclusion that a two or three month delay in the trial of Defendant Fernando Ornelas caused by the State's last-minute decision to withdraw its plea offer, combined with the burden on the district court of re-scheduling a jury trial during the COVID-19 pandemic, constituted detrimental reliance supporting specific enforcement of the plea agreement. We reverse and remand.

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

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40501**

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: 4/30/2024

No. A-1-CA-39977

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JUAN NAVARRO,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY
James M. Hudson, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Walter Hart, Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

▶ Introduction of Opinion

A jury convicted Defendant Juan Navarro of four counts of second-degree criminal sexual contact of a minor (CSCM), in violation of NMSA 1978, Section 30-9-13(B)(1) (2003), and one count of false imprisonment, in violation of NMSA 1978, Section 30-4-3 (1963). Defendant appeals and argues that his convictions for false imprisonment and CSCM violate double jeopardy. Because we conclude that there are "sufficient facts in the record [to] support distinct conduct," which defeats the double jeopardy claim, see State v. Phillips, ___-NMSC-___, ¶ 41, ___ P.3d ___ (S-1-SC-38910, Mar. 4, 2024) (internal quotation marks and citation omitted), we affirm.

Katherine A. Wray, 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-39977**

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: 5/6/2024

No. A-1-CA-40439

JOSEPH R. MAESTAS,
Plaintiff-Appellant,
v.
TOWN OF TAOS,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY
Emilio Chavez, District Court Judge

The Herrera Firm, P.C.
Samuel M. Herrera
Taos, NM

for Appellant

Ortiz & Zamora, Attorneys at Law, LLC
Tony F. Ortiz
Santa Fe, NM

for Appellee

▶ Introduction of Opinion

Plaintiff Joseph R. Maestas appeals the district court's orders awarding fees and costs following remand in the previous appeal in this case. See Maestas v. Town of Taos (Maestas I), 2020-NMCA-027, 464 P.3d 1056. Having carefully considered the parties' briefing and the record, we affirm in part, reverse in part, and remand for further proceedings.

Megan P. Duffy, Judge
WE CONCUR:
J. Miles Hanisee, Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40439**

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: 5/7/2024

No. A-1-CA-40583

SHARLEEN PFEIFFER-ANDERSON, Personal Representative of the Probate Estate of B.P., Deceased,
Plaintiff-Appellee,
v.
THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY d/b/a GOOD SAMARITAN SOCIETY -- MANZANO DEL SOL VILLAGE; SANFORD HEALTH FOUNDATION; LISA MEYER, Administrator; and GAYLENE MONTEZ, Director of Nursing,
Defendants-Appellants.

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

Harvey and Foote Law Firm, LLC
Jennifer J. Foote
Dusti Harvey
Albuquerque, NM

for Appellee

Miller Stratvert P.A.
Thomas R. Mack
Samantha E. Kelly
Albuquerque, NM

Fudge Broadwater P.A.
Donna J. Fudge
Keith M. Hoffman
St. Petersburg, FL

for Appellants

▶ Introduction of Opinion

Defendants Evangelical Lutheran Good Samaritan Society (Evangelical Lutheran), Sanford Health Foundation, Lisa Meyer, and Gaylene Montez appeal the district court's order that granted in part and denied in part Defendants' motion to compel arbitration. Defendants argue that the district court erred in determining that Plaintiff Sharleen Pfeiffer-Anderson, the personal representative of the estate of B.P., specifically challenged the arbitrability provision in their arbitration agreement, and that Plaintiff's common law sexual assault claims are not subject to arbitration. We affirm.

Michael D. Bustamante, Judge, retired,
Sitting by designation
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-40583**

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.decisions.

Filing Date: 5/7/2024

No. A-1-CA-40606

EILEEN R. MANDEL, PAMELA A. GONZALES, and CAROL MCBRIDE,
Plaintiffs-Appellants,
v.
DENISE TUCKER,
Defendant-Appellee.

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

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

for Appellants

Christopher M. Grimmer, Attorney at Law, LLC
Christopher M. Grimmer
Santa Fe, NM

for Appellee

▶ Introduction of Opinion

Plaintiffs Mandel, Gonzales, and McBride filed suit against their neighbor, Defendant Tucker, claiming that Defendant's storage of a Wildwood travel trailer on her property violated the subdivision's restrictive covenants. Following a bench trial, the district court entered judgment in favor of Defendant, ruling that the covenants were ambiguous and that Defendant had prevailed on a number of equitable defenses to enforcement of the covenants. Plaintiffs appeal. We affirm.

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

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40606**

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.decisions.

Filing Date: 5/7/2024

No. A-1-CA-40191

IRENE MOORHEAD,
Worker-Appellant,
v.
HYATT REGENCY TAMAYA and NEW HAMPSHIRE INSURANCE COMPANY,
Employer/Insurer-Appellees.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Leonard J. Padilla, Workers' Compensation Judge

Michael J. Doyle
Los Lunas, NM

for Appellant

Maestas & Suggett, P.C.
Paul Maestas
Albuquerque, NM

for Appellees

▶ Introduction of Opinion

Irene Moorhead (Worker) appeals a decision of the workers' compensation judge (WCJ) denying Worker's claims for benefits based on the WCJ's finding that Worker's injury was caused by a preexisting condition or occurred outside of work. Worker argues that (1) insufficient evidence supported the WCJ's finding that a discrete accident occurred after work; (2) the independent medical examiner (IME) used an incorrect causation standard and, as a result, his testimony should not have been relied upon by the WCJ; and (3) Worker's expert provided sufficient, uncontradicted evidence to establish aggravation. We reverse and remand.

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

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40191**

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: 5/13/2024

No. A-1-CA-40806

REVERSE MORTGAGE FUNDING, LLC,
Plaintiff-Appellee,
v.
ROBERT ROSALES, JR., as Successor Trustee for THE MARY R. BUTKOVICH REVOCABLE TRUST
Defendant-Appellant.
and
SECRETARY OF HOUSING AND URBAN DEVELOPMENT.
Defendant.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY
Robert A. Aragon, District Court Judge

Rose Ramirez & Associates, P.C.
Eraina M. Edwards
Albuquerque, NM

for Appellee

Law Offices of William G. Stripp
William G. Stripp
Ramah, NM

for Appellant

▶ Introduction of Opinion

Defendant Robert Rosales, Jr., as successor trnstee for the Mary R. Butkovich Revocable Trust (the Trust), appeals from the district court's grant of summary judgment in favor of Plaintiff Reverse Mortgage Funding, LLC in this in rem foreclosure action involving a reverse mortgage secured by the underlying property. On appeal, Defendant challenges only the propriety of the district court's calculation of payout funds set forth in the district court's judgment, contending Plaintiff failed to prove that a payout check in the amount of $58,837.88 was received by Butkovich when the reverse mortgage was finalized. The district court ruled in favor of Plaintiff, and for the reasons that follow, we affirm.

Bruce D. Black, Judge Pro Tem
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-40806**

MEMORANDUM OPINION

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Filing Date: 5/13/2024

No. A-1-CA-40457

CARRIE NEESE,
Plaintiff-Appellee,
v.
RAGING BULL OILFIELD SERVICES, LLC,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY
Jane Shuler Gray, District Court Judge

Ragsdale Law Firm, P.C.
Luke W. Ragsdale
Roswell, NM

for Appellee

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Charles J. Vigil
Randy Taylor
Albuquerque, NM

for Appellant

▶ Introduction of Opinion

Defendant Raging Bull Oilfield Services, LLC, appeals from the district court's entry of default judgment for Plaintiff Carrie Neese. Defendant argues the district court abused its discretion by (1) denying Defendant's corporate representative Martin Lebrun's request to continue the trial setting in order to enable Defendant to obtain legal representation, after previously ordering that Defendant could appear pro se and never having previously informed Mr. Lebrun that as a matter of law, a non-attorney could not appear on behalf of a corporation; (2) denying its Rule 1-060(B)(1) NMRA motion to set aside the judgment and for a new trial; (3) failing to enter findings of fact and conclusions of law as requested in Defendant's Rule 1-059(A) NMRA motion; and (4) granting Plaintiff's post-judgment interest exceeding the statutory maximum allowed. We hold that the district court abused its discretion when it denied Defendant's Rule 1-060(B)(1) motion. We therefore reverse and remand.

Jacqueline R. Medina, Judge
WE CONCUR:
Jane B. Yohalem, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40457**

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: 5/14/2024

No. A-1-CA-40746

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ANA RODRIGUEZ a/k/a ANA URIAS RODRIGUEZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY
Jane Schuler Gray, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Aletheia V.P. Allen, Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Melanie C. McNett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

A jury convicted Defendant Ana Urias Rodriguez of voluntary manslaughter under NMSA 1978, Section 30-2-3(A) (1994). On appeal, Defendant argues (1) the district court erred by failing to include jury instructions explicitly stating that a person may act in self-defense in the face of an attempted rape; and (2) the evidence was insufficient to rebut her theory of self-defense. We hold the district court properly instructed the jury on self-defense and sufficient evidence supports Defendant's conviction.

Jacqueline R. Medina, Judge
WE CONCUR:
Shammara H. Henderson, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40746**

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Madison, Mroz, Steinman, Kenny & Olexy, P.A., an AV-rated civil litigation firm, seeks an attorney with 3+ years' experience to join our practice. We offer a collegial environment with mentorship, work from home flexibility, and opportunity to grow within the profession. Salary is competitive and commensurate with experience, along with excellent benefits. All inquiries are kept confidential. Please forward CVs to: hiring@madisonlaw.com. Please include "Associate Attorney position" in the subject line. CVs can also be mailed to: Hiring Director, P.O. Box 25467, Albuquerque, NM 87125-5467.

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 are in good standing with the bar within or without the State of New Mexico. 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 open until filled.

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.

Attorney Associate

The Third Judicial District Court in Las Cruces is accepting applications for a Full-Time At-Will Attorney Associate. Requirements include admission to the NM State Bar plus a minimum of three years experience in the practice of applicable law, or as a law clerk. Under general direction, as assigned by a judge or supervising attorney, review cases, analyze legal issues, perform legal research and writing, and make recommendations concerning the work of the Court. For a detailed job description, requirements and application/resume procedure please refer to https://www.nmcourts.gov/careers.aspx or contact Briggett Becerra, HR Administrator Senior at 575-528-8310. Open until filled.

Division Director for Civil Rights New Mexico Department of Justice

The New Mexico Department of Justice 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. Qualifications include having a 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; 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; 6 years of experience in litigation, with a demonstrated focus on affirmative litigation and 3 years of management experience preferred. To apply please submit the following documents to Tim Maestas at recruiting@nmag.gov: Cover letter detailing your interest in the role and your relevant experience; Resume/CV with a detailed overview of your educational and professional background; Writing samples showcasing your legal research and writing abilities; Contact information for three professional references. Applicants are also encouraged to visit the State Personnel website at www.spo.state.nm.us., or our website at www.nmag.gov for additional job opportunities. If you have questions, please reach out to Tim Maestas at tmaestas@nmag.gov.

Associate Attorney

Mid- size downtown Defense litigation firm looking for associate with 3-5 years to do litigation including depositions and trials. Pay range varies with experience $70,000. To $120,000. Congenial and easy-going firm. Please contact Karen Arrants at Stiff, Garcia & Associates, karrants@stifflaw.com

Now Hiring
New Mexico Department of Justice
The New Mexico Department of Justice is committed to recruiting high quality Deputy Directors who are passionate about serving the citizens of New Mexico. There are opportunities in the Consumer Protection and Criminal Appeals. The New Mexico Department of Justice 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. If you have questions, please reach out to Tim Maestas at tmaestas@nmag.gov.

Appellate Attorney
Appellate boutique Durham, Pittard & Spalding LLP is looking for bright, motivated, and talented lawyers to join our growing and successful team in our office in Santa Fe. Our firm specializes in civil appeals and provides trial support to some of the best trial lawyers in New Mexico and throughout the country in high-stakes, complex litigation on behalf of plaintiffs. Our practice is heavily focused on catastrophic injury and wrongful death litigation, including product liability, toxic tort, medical malpractice, and trucking, but our attorneys also handle a wide variety of other civil matters including civil rights, employment, and the occasional domestic relations or criminal appeal. We are looking for candidates who enjoy researching, writing, and presenting oral argument to trial and appellate courts. The position offers the opportunity to learn from experienced practitioners and to develop the skills of a top-notch appellate attorney. If interested, please send a cover letter, resume, and writing sample to: jkaufman@dpslawgroup.com.

Assistant Attorneys General
The New Mexico Department of Justice is committed to recruiting high quality assistant attorneys general who are passionate about serving the citizens of New Mexico. There are opportunities in the following divisions: Civil Rights, Consumer Protection, Environmental Protection, Special Prosecutions, Criminal Appeals, Civil Appeals, Government Litigation and Government Counsel and Accountability. The New Mexico Department of Justice 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.nmdoj.gov. If you have questions, please reach out to Tim Maestas at tmaestas@nmdoj.gov.

Various Assistant City Attorney Positions
The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid in person/remote work schedule available. The Legal Department's attorneys provide a broad range of legal services to the City and represent it in legal proceedings in court and before state, federal and administrative bodies. Current open positions include: Employment/Labor: The City is seeking an attorney to represent it in litigation related to employment and labor law in New Mexico State and Federal Courts, before the City of Albuquerque Personnel Board, and before the City of Albuquerque Labor Board; Health, Housing and Homelessness and Youth and Family Services General Counsel: The City is seeking an attorney to serve as general counsel to the Department of Health, Housing and Homelessness and the Department of Youth and Family Services for contract review, and a broad range of general legal issues, including federal grant compliance, procurement, rulemaking and interpretation, and other duties as assigned; Aviation: The City is seeking an attorney who will focus on representation of the City's interests with respect to Aviation Department legal issues and regulatory compliance. The position will be responsible for interaction with Aviation Department administration, the Albuquerque Police Department, various other City departments, boards, commissions, and agencies, and various state and federal agencies, including the Federal Aviation Administration and the Transportation Security Administration; Municipal Affairs: The City is seeking an attorney to provide a broad range of general counsel legal services to the Mayor's Office, City Council, various City departments, boards, commissions, and agencies. The legal services provided by the division includes, but are not limited to, drafting legal opinions, reviewing and drafting ordinances and executive/administrative instructions, reviewing and drafting contracts, and providing general advice and counsel on day-to-day operations; Department of Municipal Development and General Services Department: The City is seeking an attorney to provide legal services to the City's Department of Municipal Development ("DMD") and General Services Department ("GSD") for contract review, and a broad range of general legal issues, including public works construction law and Capital Implementation projects, facilities, procurement, rulemaking, and interpretation, and other duties as assigned. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: experience with litigation, contract drafting and review, government agencies, government compliance, 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.

IPRA Attorney
New Mexico Department of Justice
The New Mexico Department of Justice seeks a dynamic and experienced individual to join our team as an attorney for fulfilling Inspection of Public Records Act (IPRA) requests. IPRA Attorneys are responsible for 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. IPRA Attorneys work closely with the Special Counsel for the Attorney General, Deputy Attorney General for Civil Affairs, and Director of Government Counsel & Accountability and collaborate with attorneys and legal professionals throughout the Office. Qualifications include having a 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; 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; 6 years of experience in litigation, with a demonstrated experience processing IPRA requests and 3 years of management experience preferred. To apply please submit the following documents to Tim Maestas at recruiting@nmag.gov: Cover letter detailing your interest in the role and your relevant experience, Resume/CV with a detailed overview of your educational and professional background, Writing samples showcasing your legal research and writing abilities, Contact information for three professional references. Applicants are also encouraged to visit the State Personnel website at www.spo.state.nm.us., or our website at www.nmag.gov for additional job opportunities. If you have questions, please reach out to Tim Maestas at tmaestas@nmag.gov.

Associate Attorney – Civil Litigation
Sutin, Thayer & Browne APC is looking to hire a full-time Associate Attorney with at least 4-5 years of relevant experience for our Litigation practice. Interest in commercial and governmental law is a plus. All candidates should visit our website and view our Practice Areas webpage, as well as our Careers webpage for instructions on how to apply. Visit sutinfirm.com.

Multiple Attorneys

The Rio Rancho City Attorney's Office is hiring multiple attorneys. We offer a rewarding work environment with outstanding benefits and great work-life balance! Responsibilities may include: representing the City in civil litigation and criminal prosecutions; providing advice to City departments regarding legal issues, policies, trainings, and contracts; and drafting legislation and ordinances. Additional duties may be assigned as necessary. Salary and position will be based on experience. To learn more about these opportunities, and to submit your application, please visit rrnm.gov/jobs.

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. Managing Attorney: Multiple positions; Staff Attorney Positions: Multiple positions; Paralegal : Multiple positions. Please visit our website for all current openings, NMLA benefits, Salary Scales and instructions on how to apply - https://newmexicolegalaid.isolvedhire.com/jobs/

Presbyterian Health Plan (PHP): Staff Attorney & Court Liaison

Presbyterian Health Plan (PHP) seeks a skilled Staff Attorney & Court Liaison to join our legal team. Reporting to the PHP Associate General Counsel, this in-house counsel position plays a critical role in providing legal advice and services to PHP. The successful candidate will be the Court Liaison under the Medicaid Turquoise Care contract, serving as the single point of contact for court system stakeholders. Responsibilities include ensuring member care coordination related to court orders and case dispositions, as well as coordinating civil commitments and communicating court-related follow-up. Qualifications include J.D. from accredited law school and active license to practice law in New Mexico, or the ability to become licensed in New Mexico, and a member in good standing of the New Mexico state bar. 3-5 years of experience practicing law required. Prefer experience in the health law field, with focus on healthcare regulatory compliance, contracting and transactions – along with knowledge of the NM court system. If you meet these qualifications and are passionate about making a difference in healthcare, please send your resume to emcguill@phs.org.

Full-Time Transactional Attorney

Blackgarden Law is looking for a full-time transactional Attorney with at least 2 years of meaningful experience in Business and Corporate Law. Corporate securities law is a requirement. This is an in-person or hybrid position. Visit our website at blackgardenlaw.com/careers for a full job description and application instructions.

Division Counsel

The NM Regulation & Licensing Department is hiring for the Boards and Commissions Division Counsel located in Santa Fe. This incumbent of the position will provides legal advice, research, analysis, and prepares legal and policy documents and resources, including procedures and training, related to operation of the Division. The Division Counsel reviews governing statutes and regulations, and provides recommendations for needed rule changes in order to keep boards and commissions, and the Division, in compliance with legislative and executive directives, and our ongoing effort to reduce unnecessary barriers and streamline the licensing process. Interested candidates must apply through https://careers.share.nm.gov and submit your application for position #34533 under job opening ID 145044.

Division General Counsel

The NM Regulation & Licensing Department is hiring for the Cannabis Control Division General Counsel located in Santa Fe. The position integrates policies and legal positions across a broad range of issues and cases; represents the Division; negotiates settlements and contracts; conducts administrative hearings addressing constitutional, statutory and regulatory requirements and writes recommendations or final decisions determining the relevant facts and applying relevant laws and regulations; determines strategy on specific matters, draft, evaluate, and review pleadings and appellate briefs, opinions, correspondence, proposed legislation and regulations, coordinates and conducts discovery and interviews witnesses and assists in developing broad legal strategies; interacts with legislators and legislative committees to advocate and advance the Division; and interacts extensively with private entities and all levels of government including legislators and assists in developing and implementing strategic plans in accordance with agency mission. Interested candidates must apply through https://careers.share.nm.gov and submit your application for position #10115297 under job opening ID 145052.

Associate Attorney

Quiñones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a full-time associate attorney with minimum 5 years of legal experience and willing to work minimum of 30 hours per week. Generous compensation and health benefits. Please send resume to quinoneslaw@cybermesa.com

Associate General Counsel

New Mexico State University (NMSU) seeks a highly efficient, organized and productive attorney to serve as Associate General Counsel. The selected candidate will report to the General Counsel and work with other university attorneys, outside counsel and university administrators. The successful candidate will be responsible for timely responding to public records disclosure requests (IPRA), subpoenas, and discovery requests. Additionally, the incumbent will work on state procurement and contracting matters, as well as intellectual property and other business transactions. Other matters may include employment, civil rights, public entity law, academic and student affairs, litigation support and other higher education issues. This position requires excellent writing skills, good business judgment, and the ability to work under limited supervision. NMSU is an equal opportunity and affirmative action employer. Select the link for complete job announcement and apply: http://careers.nmsu.edu/cw/en-us/job/500960. Requisition No. 500960

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 its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

Judge

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time Judge for the Pueblo Court with at least 5 years of legal experience to adjudicate criminal and civil cases. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply by July 12 for best consideration. Application instructions and position details at: https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/

(2) Attorney Associates (Full Time; At-Will) #00030752 & #10117078 Foreclosure Settlement Program

The Second Judicial District Court is accepting applications for two (2) Full Time At-Will Attorney Associate positions. These positions will be assigned to the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, Managing Attorney, and/or Supervising Attorney. The Attorney Associate will hold settlement facilitation conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting statistical data to Court administration. Communications occur telephonically, by email, by video conference and in-person. The Attorney Associate is independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associate will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law, or as a law clerk. Previous litigation experience and/or experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: $50.605 hourly, plus benefits. Send application or resume supplemental form with proof of education and one (1) writing sample to 2ndjobapply@nmcourts.gov or to Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87103. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at www.nmcourts.gov. OPEN UNTIL FILLED.

Civil Litigation Defense Firm Seeking Associate Attorney

Ray Peña McChristian, PC seeks new attorneys to join its Albuquerque office. RPM is an AV rated, regional civil defense firm with offices in Texas and New Mexico handling predominantly defense matters for businesses, insurers and government agencies. We have opportunities for associates who want to hit the ground running with interesting cases and strong mentors. The ideal candidate will have strong legal research and writing skills and will be comfortable working in a fast-paced environment. The successful candidate will be responsible for providing legal advice to clients, preparing legal documents, and representing clients in court proceedings, including trial. This is an excellent opportunity for a motivated individual to join a highly respected AV-rated law firm and gain valuable experience in the legal field. Salary for this role is competitive with a full benefits package, straightforward partner/shareholder track and a casual work environment in Uptown ABQ. If you join us, you will be well supported with the infrastructure of a multi-state firm and a group of professionals that want you to succeed. Apply by emailing your resume and a letter of interest to cray@raylaw.com.

Assistant General Counsel

The New Mexico Workers' Compensation Administration is accepting applications to fill its vacant Assistant General Counsel position. Minimum qualifications Juris Doctorate degree from an accredited school of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license (Rules 15-301.1 and 15-301.2 NMRA). The selected candidate reports to General Counsel of the agency. Principal duties of the position include: (1) attending hearings held by the Director for purposes of determining a proper recipient of benefits for an incapacitated worker or minor children of a deceased worker; (2) responding to subpoenas for WCA records and Inspection of Public Records Act requests; (3) assist with the WCA's legislative and rulemaking initiatives, including preparing fiscal impact reports during legislative session and drafting of rules; (4) respond to constituent inquires received from the Governor's Office, legislators and/or the general public; and (5) provide general legal support in legal representation of the Director and the agency on various legal subject encountered by the Office of General Counsel in team collaboration with two paralegals and General Counsel. Salary range: $77,354 - $139,238. To apply, visit the State Personnel website at www.spo.state.nm.us.

Public Defender

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to represent adult criminal defendants and juveniles in delinquency cases in Laguna Pueblo Court. No murder cases or hard felonies – largely low-level misdemeanors and DUIs. Office has assistant and significant behavioral resources are available as alternatives to incarceration. Active but manageable caseload. Leisurely commute from Albuquerque metro, Los Lunas, or Grants, with remote work available up to 2 days per week. Salary DOE. Apply now, will fill quickly. Application instructions and position details at: https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/

Experienced Full-Time Paralegal

Our law firm is a well-established and respected personal injury law firm in Santa Fe. We are seeking an experienced full-time paralegal to join our busy team. Position requires excellent attention to detail and organization as well as strong word processing and writing skills. Applicants must be able to multi-task and work in a fast-paced environment. Litigation experience is a plus. The right candidate will be friendly, dedicated and a team player. The firm offers 100% employer paid health insurance premiums, competitive salary, and a 401K plan with profit sharing. Please send a resume to santafepifirm@gmail.com

Receptionist/ Administrative Assistant

Law Firm seeking a Receptionist/ Administrative Assistant for litigation practice. The position requires someone who can communicate with potential and existing clients, manage case files, calendar, assist with billing, has strong computer skills, can perform other administrative tasks and proficient in Office 365. Benefits package, paid time off, and sick leave available. Full-time. Salary dependent on experience and background. Previous law firm experience strongly encouraged. Send resume and cover letter to admin@peiferlaw.com.

Legal Assistant Position
The Office of University General Counsel, New Mexico State University, invites qualified candidates to apply for an open legal assistant position. The successful applicant will independently respond to all forms of information requests (IPRA, discovery, subpoenas) with limited attorney supervision. Knowledge of IPRA, FERPA, HIPAA, and evidentiary rules is necessary to perform the duties of the position. Additional legal administrative duties are detailed on the NMSU webpage address provided below. Past experience in higher education and responding to IPRA and discovery requests is preferred. NMSU is an Equal Opportunity and Affirmative Action employer. Applications must be submitted electronically at: https://careers.nmsu.edu/cw/en-us/job/500924. Requisition No. 500924

Part-time Legal Assistant/Paralegal
Quinones Law Firm LLC is a well-established defense firm in Santa Fe, NM in search of a part-time legal assistant/paralegal with minimum 5 years of Legal Assistant/Paralegal experience. Please send resume to quinoneslaw@cybermesa.com

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

Services

Contract Paralegal
27 years civil litigation experience offering top quality full-service litigation support. Specializing in legal writing and medical records analysis and chronology. Reliable and exceptional work product. You will not be disappointed. Well-versed in legal and medical terminology. Send inquiries to ppslegalpro@gmail.com.

Office Space

820 Second Street NW
820 Second Street NW, office for rent, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

2024 *Bar Bulletin* Publishing and Submission Schedule

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

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

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

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

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WORK WITH US!

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The 13th Judicial District Attorney Has Positions Open for Trial Attorneys in Three Different Offices Bernalillo, Belen, and Grants, New Mexico

The 13th Judicial District Attorney prioritizes your work life balance and mental health, while ethically and vigorously prosecuting offenders.

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"I have worked at a few different District Attorney Office's across the State from the North to the South and in between. The 13th allows for greater discretion and flexibility than any other office I have worked in. Further, it is an atmosphere with little contentiousness, especially compared to other offices. If you wish to be a career prosecutor, this is where you belong." John L. – Trial Attorney

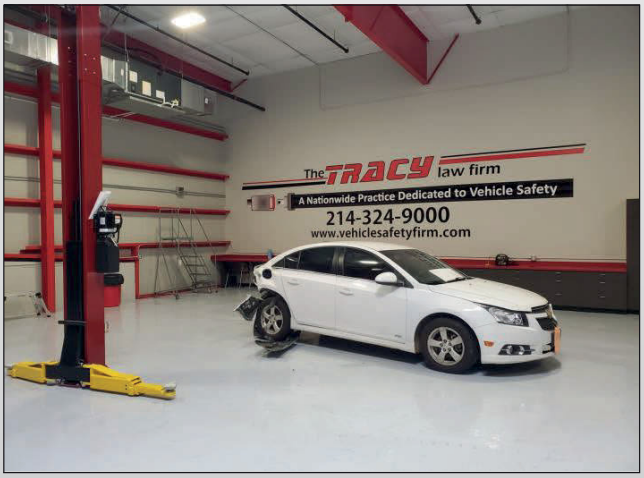
APPLY NOW https://www.13th.nmdas.com/careers

"I'm not only committed to a fair judicial process, but also to the creation and practice of principled policies for the People of the 13th Judicial District"

– District Attorney Barbara Romo

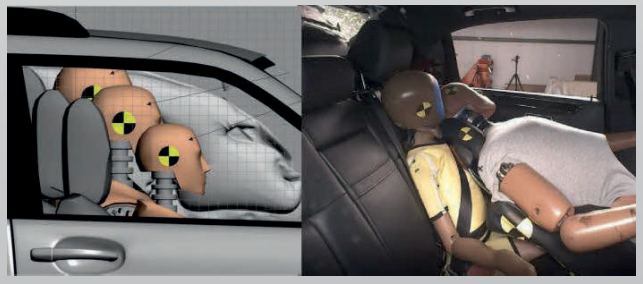
IS YOUR CASE AT A RECOVERY DEAD-END?

Maybe not because you may have a CRASHWORTHINESS case.

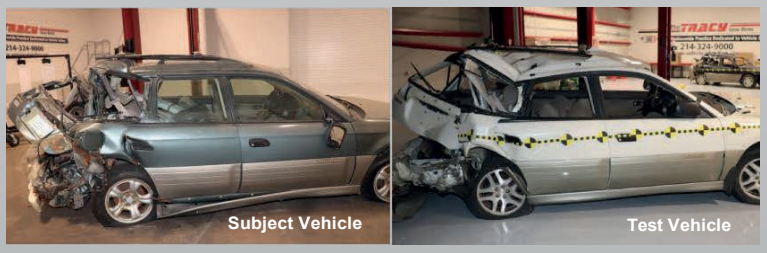


Crashworthiness

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



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



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