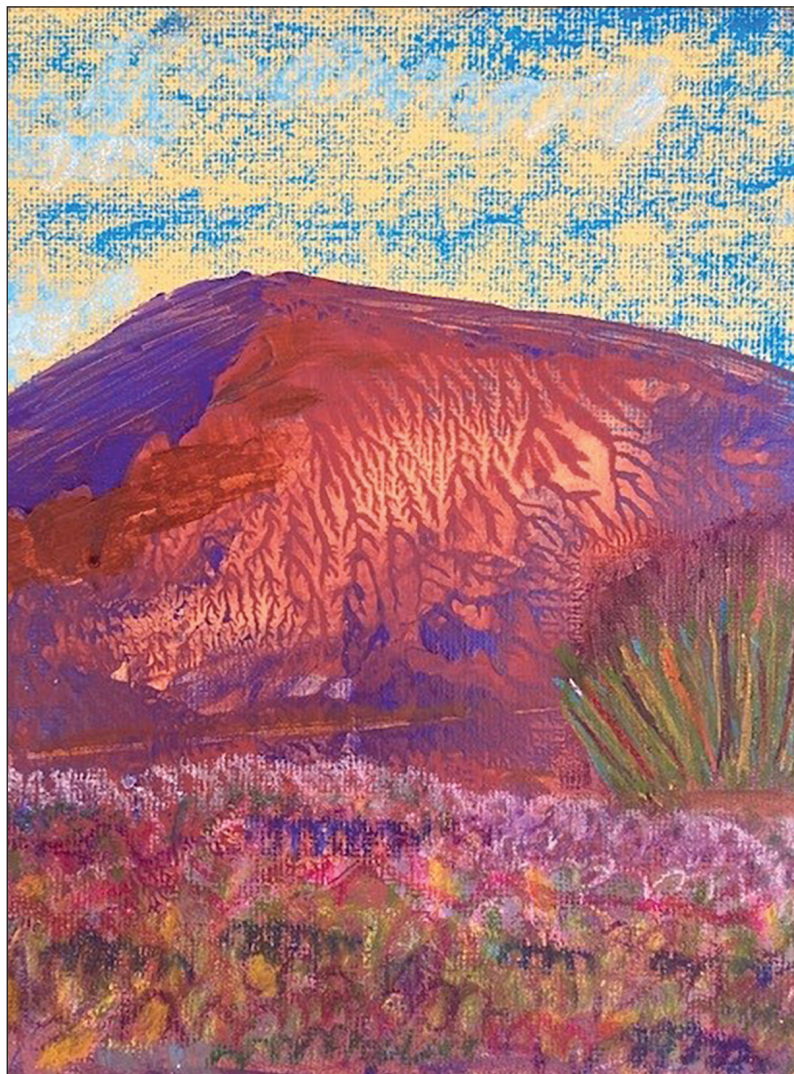


BAR BULLETIN

June 14, 2023 • Volume 62, No. 11



Untitled, by Randall Biggers (see page 4)

randallvbiggersart.com

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New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



JUNE 15

Webcast

REPLAY: Transgender Cultural Fluency (2022)

2.0 EP
Noon–2 p.m.

JUNE 15

Webinar

Learning Litigation Skills From “Where the Crawdads Sing”

1.0 G
11 a.m.–noon

JUNE 16

Webinar

2023 Legislative Update: Laws Impacting Immigrants

1.0 G
Noon–1 p.m.

JUNE 21

Webinar

Let me Ask You a Hypothetical Question for a “Friend”... Hot Topics in Ethics (2022)

1.0 EP
Noon–1 p.m.

JUNE 21

Webinar

Cybersecurity Awareness Training for Law Firm Employees: More Than 80% of Successful Attacks Involve an Employee!

1.0 G
Noon–1 p.m.

JUNE 22

Teleseminar

Smartphones, Tablets, and Other Devices in the Workplace

1.0 G
11 a.m.–noon

JUNE 22

Webinar

REPLAY: Foreclosure Pre-Filing Requirements Update (2022)

1.0 G
Noon–1 p.m.

JUNE 27

Webinar

Take Ethical Security Precautions with Email: When and How to Encrypt

1.0 G
1–2 p.m.

JUNE 27

Teleseminar

Ethics in Negotiations - Boasts, Shading, and Impropriety

1.0 EP
11 a.m.–noon

JUNE 28

Webinar

Clarence Darrow: Crimes, Causes, and the Courtroom

1.0 G
11 a.m.–2 p.m.

JUNE 29

Webinar

REPLAY: Overview of Prosecutorial Discretion in Immigration Court: Current Guidance & Strategies (2022)

1.0 G
Noon–1 p.m.

JULY 5

Webinar

Ethical Issues Relating to Smartphone Use

1.0 EP
11 a.m.–noon

JULY 13

In-Person and Webinar

Family Law Lunch n Learn: Savvy Social Security

1.0 G
Noon–1 p.m.

JULY 14

Webinar

How to Take Charge of Technology - Ethically and Mindfully

1.0 EP
11 a.m.–noon

JULY 18

Webinar

Battling Gender Bias: How Bill Cosby and Other Sexual Predators Escape Punishment

1.0 EP
11 a.m.–noon

JULY 19

Webinar

Please Help! I Feel So Conflicted Right Now! Common Conflict Issues

1.0 EP
Noon–1 p.m.

AUGUST 16

Webinar

Follow Me on Insta! Social Media in Your Practice - How, Why, and What are the Risks?

1.0 EP
Noon–1:00 p.m.

SEPTEMBER 20

Webinar

It's Always the Little Things: Best Office Practices and Procedures

1.0 EP
Noon–1:00 p.m.

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June 14, 2023 • Volume 62, No. 11

www.sbnm.org



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From the New Mexico Supreme Court

2022-NMSC-024: No. S-1-SC-38484 & S-1-SC-38546 (consolidated for purpose of opinion): State v. Torres, Et. al	13
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Meetings

June

16
Family Law Section
9 a.m., virtual

19
Children's Law Section
Noon, virtual

20
Appellate Section
Noon, virtual

27
Intellectual Property Law Section
Noon, virtual

30
Immigration Law Section
Noon, virtual

July

5
Employment and Labor Law Section
12:30 p.m., virtual

12
Animal Law Section
Noon, virtual

14
Cannabis Law Section
9 a.m., virtual

14
Prosecutors Section
Noon, virtual

20
Public Law Section
Noon, virtual

Workshops and Legal Clinics

June

28
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

July

5
Divorce Options Workshop
6-8 p.m., virtual

26
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

August

2
Divorce Options Workshop
6-8 p.m., virtual

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

September

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

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

October

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

About Cover Image and Artist: Randall Biggers is a retired Foreign Service Officer and Returned Peace Corps volunteer. When not doing abstract pieces he paints imaginary landscapes based on the Southwest out our window and on places from his travels in Turkey and Afghanistan. Visit the website: randallvbiggersart.com to see more.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

Second Judicial District Court Notice of Temporary Closure

The Second Judicial District Court will be closed on Friday, June 16 for staff training. The courthouse will reopen on June 20 following the Juneteenth holiday.

Fifth Judicial District Court Judicial Nominating Commission Candidate Announcement

The Fifth Judicial District Court Nominating Commission convened at the Lea County District Court located at 100 N. Love St., Lovington, N.M. 88260 on May 25 to interview applicants for the position in the Fifth Judicial District Court in Lovington, N.M. due to the retirement of the Honorable Judge William Shoobridge, effective May 1. The Commission recommends **Efren Andres Cortez** to Gov. Michelle Lujan Grisham for the position.

Twelfth Judicial District Court Judicial Nominating Commission Candidate Announcement

The Twelfth Judicial District Court Judicial Nominating Commission convened at the Otero County District Court located at 1000 New York Avenue,

Professionalism Tip

Judge's Preamble

As a judge, I will strive to ensure that judicial proceedings are fair, efficient and conducive to the ascertainment of the truth. In order to carry out that responsibility, I will comply with the letter and spirit of the Code of Judicial Conduct, and I will ensure that judicial proceedings are conducted with fitting dignity and decorum.

Alamogordo, NM, on May 26 to interview applicants for the position in the Twelfth Judicial District Court, due to the retirement of the Honorable Judge Steven E. Blankinship, effective May 13. The Commission recommends **Debora Gerads** and **Stephen Ochoa** for the vacant position to Gov. Michelle Lujan Grisham.

STATE BAR NEWS Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on May 12 at the State Bar Center in Albuquerque, N.M. Action taken at the meeting follows:

- Approved the Feb. 24, 2023 meeting minutes;
- Discussed Rule 24-101(A), Rules Governing the New Mexico Bar, and determined that the Board will review the mission and values to determine if the objectives meet the current values;
- Received an update on the State Bar IT Security;
- Received an update to the 2023-2025 Three-Year Strategic Plan to incorporate plans for case summaries;
- Held an executive session to discuss the evaluation of the executive director;
- Appointed Nadine Padilla to the DNA – People's Legal Services, Inc. Board for a four-year term;
- Approved a request for funding from the NM Youth & Government Program for the National Judicial Competition in Minneapolis and approved a contribution of \$1,000;
- Received a report on the Executive Committee meetings, which included: 1) approval of management recommendations of licensing late fee waiver requests, 2) discussion of the Committee on Women and the Legal Profession Pamela Minzner Award 3) approval of a sponsorship for the UNM School of Law 75th Anniversary Gala in the amount of \$1,000, 4) approval of UNM School of Law Annual Golf Classic sponsorship in the amount of

\$1,000; and 5) reviewed and approved the meeting agenda;

- Received a report from the Finance Committee, which included: 1) approval of the Feb. 24, meeting minutes, 2) received a presentation on and accepted the 2022 Combined Financial Audit by CLA, 3) accepted the March 2023 Financials, 4) reviewed the CPF, ATJ and JLAP First Quarter 2023 Financials, and 5) reported that the State Bar didn't qualify for an employee retention credit under the CARES Act of 2020;
- Received a report from the Policy and Bylaws Committee, which included: 1) approval of a new BBC Appointment Policy for the Board's appointments to outside entities in accordance with Article XIII, Section 13.1 of the State Bar Bylaws; and 2) approved a letter to NM Legal Aid regarding the new policy for vacancies on their board and requesting all applicants and supporting materials be provided to the Board for its consideration;
- Received a report on the Bar Leader Recruitment Committee, which is a pipeline for leadership and will assist with vacancies and appointments;
- Received a report on the Member Services Committee; the committee sent a survey to the committee chairs and will be reviewing the results; it will be developing a policy outlining staff support for the committees;
- Received an update on the Business Law Section;
- Received reports from the President of the State Bar and President of the NM State Bar Foundation;
- Received a report from the Executive Director;
- Received a report on ABA Day in Washington, D.C. attended by BBC Member Allison Block-Chavez who met with New Mexico's congressional delegation to discuss funding for the Legal Services Corporation;
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal

Divisions and bar commissioners on districts events; and

- Received the 2022 Client Protection Fund Annual Report.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the July 27th meeting.

Equity in Justice Program Have Questions?

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

New Mexico Court of Appeals Project Notice of New Opinions Project with the New Mexico Court of Appeals

As of June 1, the New Mexico Court of Appeals and the State Bar of New Mexico launched a joint project on distributing, via email, Court of Appeals opinions on the day the opinions are filed to all active State Bar of New Mexico members. The joint initiative with the Court of Appeals will provide significant and timely access to Court of Appeals opinions for the membership.

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

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

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on July 13, Oct. 5 and Jan. 11, 2024. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

— *Featured* —

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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.

Legal Education

June

1-30	Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set 1.0 G, 2.0 EP Online On-Demand The Ubuntuworks Project www.ubuntuworksschool.org	16	2023 Legislative Update: Laws Impacting Immigrants 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	26	RISE23 22.7 G, 11.0 EP Live Program National Association of Drug Court Professionals Live Program www.nadcp.org
14	80 Is Not the New 40: Unique Issues for Elders Seeking Divorce 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	21	Let me Ask You a Hypothetical Question for a “Friend” . . . Hot Topics in Ethics (2022) 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org	27	Take Ethical Security Precautions with Email: When and How to Encrypt 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org
15	REPLAY: Transgender Cultural Fluency (2022) 2.0 EP Webcast Center for Legal Education of NMSBF www.sbnm.org	21	Cybersecurity Awareness Training for Law Firm Employees: More Than 80% of Successful Attacks Involve an Employee! 1.0 G Webcast Center for Legal Education of NMSBF www.sbnm.org	29	Employment Law 2023: Legal Developments, Cutting-Edge Issues, and Workplace Trends 5.0 G Virtual Seminar U.S. Equal Employment Opportunity Commission www.eeoc.gov
15	New Exemption and Garnishment Law in New Mexico 1.0 G Live Program Bankruptcy Section of the State Bar of New Mexico www.sbnm.org	22	REPLAY: Foreclosure Pre-Filing Requirements Update (2022) 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	29	REPLAY: Overview of Prosecutorial Discretion in Immigration Court: Current Guidance & Strategies (2022) 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org

July

1-31	Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set 1.0 G, 2.0 EP Online On-Demand The Ubuntuworks Project www.ubuntuworksschool.org	12	Planning for End of Life: Updates to New Mexico Aid in Dying Law 1.0 G Webcast Center for Legal Education of NMSBF www.sbnm.org	14	How to Take Charge of Technology - Ethically and Mindfully 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org
5	Ethical Issues Relating to Smartphone Use 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org	13	Family Law Lunch n Learn: Savvy Social Security 1.25 G Webinar Center for Legal Education of NMSBF www.sbnm.org	18	Battling Gender Bias: How Bill Cosby and Other Sexual Predators Escape Punishment 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org

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

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective April 21, 2023

PUBLISHED OPINIONS

A-1-CA-39508	State v. D Pate	Affirm	04/19/2023
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UNPUBLISHED OPINIONS

A-1-CA-40282	State v. D Little	Affirm/Reverse	04/17/2023
A-1-CA-40305	State v. K Murphy	Affirm	04/17/2023
A-1-CA-40369	State v. D Fossett	Affirm	04/17/2023
A-1-CA-40678	State v. L Hamilton	Affirm	04/17/2023
A-1-CA-40698	CYFD v. Benjamin E.	Affirm	04/17/2023
A-1-CA-40731	State v. W Gilsdorf	Affirm	04/17/2023
A-1-CA-40796	CYFD v. Kimberly M	Affirm	04/17/2023
A-1-CA-38987	R Hernandez v. City of Carlsbad	Affirm	04/19/2023
A-1-CA-39211	S Chavez v. Tecolote Land Grant	Affirm	04/19/2023
A-1-CA-39763	State v. C Andazola	Affirm	04/20/2023

Effective April 28, 2023

PUBLISHED OPINIONS

A-1-CA-39468	A Martinez v. NM Taxation & Revenue Department	Affirm	04/24/2023
A-1-CA-39429	White Sands Construction v. City of Las Cruces	Affirm/Reverse/Remand	04/27/2023
A-1-CA-37758	N Henry v. NM Livestock	Reverse/Remand	04/28/2023
A-1-CA-39290	L Lucero v. Core Civic	Reverse/Remand	04/28/2023
A-1-CA-40149	State v. M Dirickson	Affirm	04/28/2023

UNPUBLISHED OPINIONS

A-1-CA-38427	T Livingston v. Board of County Commissioners of Otero County	Affirm	04/24/2023
A-1-CA-36269	State Engineer v. M Garcia	Affirm	04/25/2023
A-1-CA-40006	State v. I Ojeda-Lira	Affirm	04/25/2023
A-1-CA-40540	State v. R Bullard, Jr.	Affirm	04/25/2023
A-1-CA-39277	M Plomer v. Workers' Compensation Administration	Affirm	04/28/2023
A-1-CA-40499	A Dunn v. M Lujan Grisham	Affirm	04/28/2023
A-1-CA-40621	G Harrison v. K Stewart	Affirm	04/28/2023
A-1-CA-40669	State v. Kayda D.	Affirm	04/28/2023

Effective May 5, 2023

UNPUBLISHED OPINIONS

A-1-CA-39234	State v. J Ponce	Affirm/Reverse/Remand	05/02/2023
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Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

STATE BAR OF NEW MEXICO 2023 ANNUAL MEETING

Hyatt Regency Tamaya Resort & Spa • July 27–29

www.sbnm.org/AnnualMeeting2023

Registration Open Through July 19



KEYNOTE ADDRESS:

ANTHONY C. THOMPSON

Anthony C. Thompson is a Professor of Clinical Law Emeritus at New York University School of Law. He has published a number of books, including "Dangerous Leaders," which examines how education in leadership is integral to legal education as a whole. He will discuss this topic and more at this year's Annual Meeting.



BREAKOUT TRACK:

UNM School of Law - Back to School

Join professors from the **UNM School of Law** and take a deep dive into fascinating core subject areas of law, including Contracts, Torts, Criminal Law, Civil Procedure, and Constitutional Law. Through our comprehensive examination of these fundamental legal topics, you will gain a thorough understanding of key concepts and principles and discover how they relate to real-world legal challenges.



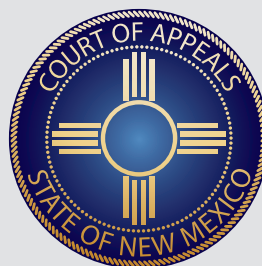
BREAKOUT TRACK:

Technology

Legal professionals utilize various technological tools to enhance their productivity and accuracy, including case management software, document management software, legal research tools and practice management software. Join **Barron K. Henley** of Affinity Consulting as he explains how these tools aid in organizing and retrieving documents, managing case information, conducting legal research, analyzing electronic documents, communicating securely, and managing workflow, expenses, time, and billing.



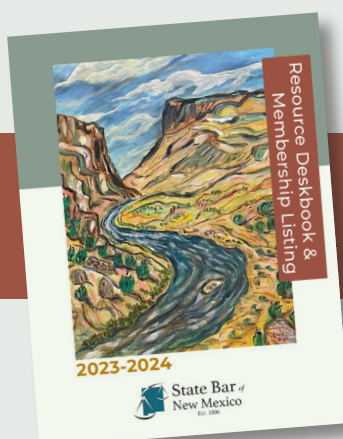
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As of June 1, the **New Mexico Court of Appeals** and the **State Bar of New Mexico** have launched a joint project focused on distributing, via email, Court of Appeals opinions on the day the opinions are filed to all active State Bar of New Mexico members. This joint initiative with the Court of Appeals will provide significant and timely access to Court of Appeals opinions for the membership.



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

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- A summary of license requirements and deadlines
- A membership directory of active, inactive, paralegal and law student members

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**State Bar of
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2023 University of New Mexico School of Law Swearing-In Ceremony

By Brandon McIntyre



*State Bar of New Mexico
President Ben Sherman*

On May 15, 2023, 72 graduates from the University of New Mexico School of Law were sworn as members of the State Bar of New Mexico. The swearing-in ceremony, which is only the second one held after a long hiatus due to the COVID-19 pandemic, was very well-attended and featured multiple prominent speakers. Supreme Court Chief Clerk Elizabeth A. Garcia gave the oath of attorneys to the incoming lawyers and legal professionals while Chief Justice C. Shannon Bacon, Senior Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas and Justice Briana H. Zamora provided additional, heartfelt remarks. The event's other prominent speakers included State Bar of New Mexico President Benjamin I. Sherman, Young Lawyers Division Chair Damon Hudson and retired Judge and Chair of the Board of Bar Examiners Henry A. Alaniz.

"The State Bar has been the uniting and binding organization for attorneys serving the legal profession and the public in New Mexico for over 137 years," President Sherman stated in his remarks. "Again, congratulations on this extraordinary accomplishment. I look forward to meeting you as you start your attorney journey!"

"You just took an oath that you 'will never reject from any consideration personal to yourself the cause of the defenseless and the oppressed,'" Chief Justice Bacon said in her speech. "You are in a unique position to serve those without means. To meet this portion of your oath, always embrace your pro bono work and responsibilities. By giving to others in need, you will undoubtedly benefit from doing so by becoming a better lawyer."



*Lucinda ("Cindy") Silva, Esq. providing her
remarks at the swearing-in ceremony*



*Margaret ("Peggy") Graham, Esq. giving her remarks
at the swearing-in ceremony*



*Damon Hudson, Chair of the Young Lawyers Division,
speaking at the swearing-in ceremony*



*Graduates taking the oath at the conclusion
of the ceremony*

Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-024

No: S-1-SC-38484 & S-1-SC-38546 (consolidated for the purpose of opinion)
(filed October 3, 2022)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,

v.

GERARDO TORRES,
Defendant-Respondent,
and

STATE OF NEW MEXICO,
Plaintiff-Petitioner,

v.

KENDALE HENDRIX,
Defendant-Respondent,

CONSOLIDATED WITH

STATE OF NEW MEXICO,
Plaintiff-Petitioner

v.

SKEETER W. CHADWICK,
Defendant-Respondent

ORIGINAL PROCEEDING ON CERTIORARI

Steven Blankinship, District Judge

Hector H. Balderas, Attorney General
Benjamin L. Lammons,
Assistant Attorney General
Santa Fe, NM

for Petitioner

Bennett J. Baur, Chief Public Defender
Victor E. Sanchez, Jr.,
Assistant Appellate Defender

Caitlin C.M. Smith,
Associate Appellate Defender
Santa Fe, NM

for Respondents Gerardo Torres
and Kendale Hendrix

Gary C. Mitchell, P.C.
Gary C. Mitchell
Ruidoso, NM

for Respondent Skeeter W. Chadwick

OPINION

THOMSON, Justice.

I. INTRODUCTION

{1} In this consolidated matter, Defendants Gerardo Torres, Kendale Hendrix, and Skeeter Chadwick challenge their indictments under double-jeopardy principles, standing accused of stealing

several head of cattle from ranches in Otero County. The State charged each Defendant with one count of livestock larceny per animal allegedly stolen, resulting in multiple-count criminal informations. Prior to trial, Defendants filed motions to merge or dismiss the multiple charges, asserting that they instead may only be prosecuted for each episode of theft. The Twelfth Judicial District Court agreed with

Defendants and dismissed the charges that it determined to be multiplicitous. On interlocutory appeals by the State, the Court of Appeals affirmed the orders of the district court in all three cases. *State v. Torres*, 2021-NMCA-045, ¶ 29, 495 P.3d 1141 (affirming in both *Torres* and *Hendrix*); *State v. Chadwick*, A-1-CA-38561, mem. op. ¶ 5 (N.M. Ct. App., Sept. 30, 2020) (nonprecedential). The State petitioned for certiorari, and we granted review and consolidated the appeals.

{2} We affirm the Court of Appeals conclusion that the livestock larceny statute, NMSA 1978, § 30-16-1(G) (2006), does not express an intent to prosecute Defendants for an alleged larceny of each animal. *Torres*, 2021-NMCA-045, ¶ 21. However, we reach this result through a different path and write to explain our reasoning. In particular, we rely on the two-step analysis developed by this Court in *Herron v. State*, 1991-NMSC-012, ¶¶ 6, 15, 111 N.M. 357, 805 P.2d 624, which provides framework for construing the unit of prosecution of a statute applied to multiple counts charged against a defendant. Using *Herron*, we ascertain that the Legislature has not expressed an intent to authorize multiple punishments for livestock larceny, § 30-16-1(G), based on the theft of multiple animals. We construe the statute as instead expressing an intent to prosecute Defendants for each episode of theft. We remand for further proceedings.

II. BACKGROUND

{3} Because each Defendant challenged the multiple counts of livestock larceny in his indictment prior to conviction as violative of the Double Jeopardy Clause, we consider whether the indictment of each was multiplicitous, which is “the charging of a single offense in several counts.” *State v. Lente*, 2019-NMSC-020, ¶ 25, 453 P.3d 416 (internal quotation marks and citation omitted); see *Herron*, 1991-NMSC-012, ¶ 6 n.4 (“We use the term ‘multiplicity’ to describe the situation when an indictment charges a single offense in different counts.”). Our analysis draws factual background from affidavits and grand jury testimony supporting each indictment.

A. Factual Background

{4} In July 2017, an operations manager at Crossroads Cattle Company’s ranch in Otero County was branding calves in the ranch’s Wimberly pasture. The operations manager noticed a significant discrepancy between the number of calves expected in the pasture and the number of calves branded. Suspicions arose that some calves had been stolen because the pasture was remote and situated in such a way as to make cattle easily amenable to undetected theft.

Another ranch hand later informed the operations manager that he had helped Defendant Torres round up calves from the pasture and may have unwittingly assisted in the theft. Defendant Torres later confessed to stealing thirteen head of cattle from the ranch. Records from a Texas livestock auction house showed that Defendant Torres sold eighteen calves at the auction house on two occasions, in January 2017 and March 2017. The State charged Defendant Torres with eighteen counts of livestock larceny, one for each animal.

{5} In a factually unrelated incident, Defendants Hendrix and Chadwick allegedly rustled twenty-five unbranded calves from Defendant Chadwick's employer, the Canada Cattle Company. The theft was discovered in August 2018 when an off-duty livestock inspector observed Defendant Hendrix's truck hauling cattle near Carlsbad. The inspector recognized a distinctive mark on the side of the truck and observed two occupants, later identified as Defendants Hendrix and Chadwick. The inspector was suspicious that the cattle had been stolen because they had not been inspected prior to shipment, as required by law. See NMSA 1978, § 77-9-30 (1999). The inspector contacted an area supervisor from the New Mexico Livestock Board and reported the suspected theft.

{6} The Livestock Board investigator determined that Defendants were probably hauling the cattle to an auction house near San Angelo, Texas. The area supervisor alerted Texas Rangers to a possible theft, and the Rangers confiscated twenty-four calves from Defendants Chadwick and Hendrix upon their arrival at the auction house. Another calf was too ill to be unloaded from the trailer. This calf was later euthanized, and Defendant Hendrix disposed of its carcass. The Livestock Board area supervisor confirmed that all twenty-five calves had been stolen from the Canada ranch and that the calves were taken from a herd that had been quarantined to prevent the spread of a livestock disease. The State charged Defendants Chadwick and Hendrix with twenty-five counts of livestock larceny, one count for each head.

B. Procedural History

{7} Prior to trial, each of the three Defendants filed motions to merge the multiple livestock larceny charges in their respective cases, arguing that their charges should be merged under the common-law single-larceny doctrine or double-jeopardy principles. The Twelfth Judicial District Court granted each of these motions, reducing Defendant Torres's eighteen livestock larceny charges to

two counts and Defendant Chadwick's and Defendant Hendrix's twenty-five livestock larceny charges each to one count each.

{8} On appeal, the Court of Appeals affirmed the district court's orders in the proceedings against Defendant Torres and Defendant Hendrix, also concluding that these Defendants could not be punished for each animal stolen during a single episode of theft.¹ *Torres*, 2021-NMCA-045, ¶¶ 28-29. The Court of Appeals reasoned that Section 30-16-1(G) was ambiguous and that the statute's unit of prosecution could not be ascertained under *Herron's* unit-of-prosecution framework. *Id.* ¶ 13. Stepping outside of the *Herron* framework, the Court of Appeals relied on the common-law rule known as the single-larceny doctrine, stating that "[w]hen we apply the single-larceny doctrine to interpret the unit of prosecution in the larceny of livestock provision, it clarifies that a taking of multiple head of cattle at the same time and place (single transaction), or a series of takings from a single owner with a single criminal intent (single intent), constitute[s] but one larceny" and holding that Defendants Torres and Hendrix could be prosecuted for each episode of theft—respectively, two episodes for Defendant Torres and one for Defendant Hendrix. *Id.* ¶¶ 27-28.

{9} The State petitioned for certiorari review. We granted the petitions and consolidated all three proceedings for review.

III. STANDARD OF REVIEW

{10} The United States and New Mexico Constitutions provide that an individual shall not "be twice put in jeopardy" for "the same offense." U.S. Const. amend. V; N.M. Const. art. II, § 15; see *Benton v. Maryland*, 395 U.S. 784, 794 (1969) (concluding that the Due Process Clause of the Fourteenth Amendment makes the double-jeopardy protections of the Fifth Amendment applicable to the states). We have explained that "[t]he double jeopardy clause . . . affords three levels of protection to a criminal defendant" in that (1) "[i]t protects against a second prosecution for the same offense after acquittal," (2) "[i]t protects against a second prosecution for the same offense after conviction," and (3) "it protects against multiple punishments for the same offense." *State v. Gallegos*, 2011-NMSC-027, ¶ 30, 149 N.M. 704, 254 P.3d 655.

{11} In this appeal, Defendants focus on the double-jeopardy protection against multiple punishments for the same offense. See *Swafford v. State*, 1991-NMSC-043, ¶ 8, 112 N.M. 3, 810 P.2d 1223 ("The pivotal question in multiple punishment cases is whether the defendant is being punished

twice for the *same offense*"). Although this question is one of constitutional dimension, we must ultimately inquire into legislative intent, because "in the multiple punishment context, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Id.* ¶ 7 (brackets, internal quotation marks, and citation omitted).

{12} "Multiple punishment problems can arise from both 'double-description' claims, in which a single act results in multiple charges under different criminal statutes, and 'unit-of-prosecution' claims, in which an individual is convicted of multiple violations of the same criminal statute." *State v. Bernal*, 2006-NMSC-050, ¶ 7, 140 N.M. 644, 146 P.3d 289 (citation omitted). Defendants stand accused of multiple counts of livestock larceny, so we here consider the intended unit of prosecution of Section 30-16-1(G). See *Swafford*, 1991-NMSC-043, ¶ 8 (explaining that "unit of prosecution" challenges are appropriate when "the defendant has been charged with multiple violations of a single statute based on a single course of conduct"). In a unit-of-prosecution case, "the relevant inquiry . . . is whether the legislature intended punishment for the [defendant's] entire course of conduct or for each discrete act." *Id.* "This analysis requires courts to determine the unit of prosecution intended by the Legislature by employing a two-part test, both parts of which are concerned with legislative intent." *State v. Swick*, 2012-NMSC-018, ¶ 33, 279 P.3d 747. We review this question of law de novo. *State v. Olsson*, 2014-NMSC-012, ¶ 14, 324 P.3d 1230.

IV. DISCUSSION

A. We Construe the Unit of Prosecution of a Statute Using *Herron's* Two-Step Framework

{13} In *Herron*, this Court elucidated a two-step framework for analyzing questions regarding the intended unit of prosecution of a criminal statute. 1991-NMSC-012, ¶¶ 6, 15. Both steps of our *Herron* analysis focus on discerning "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." *State v. Benally*, 2021-NMSC-027, ¶ 12, 493 P.3d 366. Thus, "[w]e are mindful that both stages of the unit of prosecution analysis turn on legislative intent." *Gallegos*, 2011-NMSC-027, ¶ 32. We first briefly outline these two steps and then apply them to this statute.

¹ The Court of Appeals memorandum opinion in Chadwick, A-1-CA-38561, mem. op. ¶ 4, affirmed the merger of Defendant Chadwick's charges under its reasoning in *Torres*, 2021-NMCA-045.

1. Step one: construing the statutory offense

{14} Under the first step of the *Herron* framework, the Court examines the charging statute for the intended unit of prosecution or, in other words, construes the statutory language “to determine what conduct the Legislature has defined as a statutory offense.” *Benally*, 2021-NMSC-027, ¶ 13 (brackets, internal quotation marks, and citation omitted). In construing the intended unit of prosecution of a statute, the Court considers “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 Court determines that the statute defines the unit of prosecution, “then the [C]ourt follows that language and the inquiry is complete.” *Olsson*, 2014-NMSC-012, ¶ 18.

{15} If, after consideration of the applicable canons of construction, the Court is still unable to construe the intended unit of prosecution, then the Court applies the rule of lenity and resolves the ambiguity in favor of the defendant. *Swafford*, 1991-NMSC-043, ¶ 34 (“Unless an intent to punish separately can be found through application of the canons of construction . . . , lenity is indicated, and in that event, it is to be presumed the legislature did not intend pyramiding punishments for the same offense.”). The rule of lenity essentially recognizes that a criminal defendant should be given “fair warning” as to what conduct is prohibited and as to what level of punishment will be accorded to that prohibited conduct. *State v. Santillanes*, 2001-NMSC-018, ¶ 34, 130 N.M. 464, 27 P.3d 456 (“[I]n the context of assessing a legislative intent to create multiple punishments, the application of the rule of lenity is consistent with the rule’s purposes of ensuring that criminal statutes will provide fair warning concerning conduct rendered illegal.” (brackets, internal quotation marks, and citation omitted)). However, “we will construe a statute in favor of a defendant only when a reasonable doubt persists about a statute’s intended unit of prosecution even *after* resort to the statute’s wording, structure, legislative history, legislative purpose, and the quantum of punishment prescribed.” *Benally*, 2021-NMSC-027, ¶ 15 (internal quotation marks and citation omitted). This is because “the meaning of language is inherently contextual,” and thus a “court should rely on lenity only if, after seizing everything from which aid can be derived, it is left with an ambiguous statute.” *State v. Edmondson*, 1991-NMCA-069, ¶ 12, 112 N.M. 654, 818 P.2d 855 (brackets and internal quotation marks omitted) (quoting *Moskal v. United States*, 498 U.S. 103, 108

(1990)). If lenity is warranted, we will “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.” *Benally*, 2021-NMSC-027, ¶ 16 (brackets, ellipsis, internal quotation marks, and citation omitted).

2. Step two: indicia of distinctness

{16} The second step of the unit-of-prosecution framework analyzes the indicia of distinctness in light of the facts and circumstances of the case. *See Herron*, 1991-NMSC-012, ¶ 15; *State v. Ramirez*, 2018-NMSC-003, ¶ 56, 409 P.3d 902. This inquiry considers whether a defendant’s course of conduct gives rise to a single, “same statutory offense” or whether the defendant’s acts were distinct as to give rise to multiple statutory offenses. *See Benally*, 2021-NMSC-027, ¶¶ 17, 23 (“[I]f we can reasonably infer that a defendant’s acts were distinct under the applicable indicia of distinctness, then we will presume that the defendant has not received more punishments than were statutorily authorized.”); *see also Swafford*, 1991-NMSC-043, ¶ 26 (“Clearly, if the defendant commits two discrete acts violative of the same statutory offense but separated by sufficient indicia of distinctness, then a court may impose separate, consecutive punishments for each offense.”). Because the Court must be “mindful that both stages of the unit of prosecution analysis turn on legislative intent,” our analysis of the indicia of distinctness is also “guided by the statute at issue, including its language, history, and purpose, as well as the quantum of punishment that is prescribed.” *Gallegos*, 2011-NMSC-027, ¶¶ 32-33. Thus, “[i]n examining the indicia of distinctness, courts may inquire as to the interests protected by the criminal statute, since the ultimate goal is to determine whether the legislature intended multiple punishments.” *Bernal*, 2006-NMSC-050, ¶ 14; *see also Swafford*, 1991-NMSC-043, ¶ 27 (“The conduct question depends to a large degree on the elements of the charged offenses and the facts presented at trial.”). Deciding whether a defendant’s acts were sufficiently distinct so as constitute separate offenses may involve factual determinations resolved by a jury. *Herron*, 1991-NMSC-012, ¶ 16. Whether the Legislature intended punishment for the entire course of conduct or for each discrete act is a question of law subject to de novo review. *See, e.g., Benally*, 2021-NMSC-027, ¶ 11 (indicating that *Benally* was “a unit of prosecution case where the relevant inquiry” was “whether the Legislature intended punishment for the entire course of conduct or for each discrete act. We review this question de novo.” (brackets, internal quotation marks, and

citations omitted)). Under this standard, we consider whether, on the facts herein, each Defendant’s multiple charges violate double jeopardy.

{17} If, after analysis of a defendant’s conduct under the indicia of distinctness, the Court “can reasonably infer that a defendant’s acts were distinct” offenses of the statute, “then we will presume that the defendant has not received more punishments than were statutorily authorized.” *Id.* ¶ 23; *see also State v. Morro*, 1999-NMCA-118, ¶ 10, 127 N.M. 763, 987 P.2d 420 (describing the indicia of distinctness as a “presumption” of legislative intent “that a defendant can be prosecuted for two separate offenses if the defendant’s acts are ‘separated by sufficient indicia of distinctness’” (citation omitted)). If, however, the defendant’s acts did not reasonably give rise to multiple distinct offenses of the statute, then the Court presumes that the Legislature did not authorize multiple punishments. *See Herron*, 1991-NMSC-012, ¶¶ 21-22; *see also Bernal*, 2006-NMSC-050, ¶ 14 (“If the acts are not sufficiently distinct, then the rule of lenity mandates an interpretation that the legislature did not intend multiple punishments, and a defendant cannot be punished for multiple crimes.”).

B. Section 30-16-1(G) Does Not

Authorize Multiple Punishments Based on the Number of Animals Stolen in a Single Episode

{18} Applying the first step of our *Herron* framework, we hold that Section 30-16-1(G) does not express an intent to prosecute Defendants for each animal they have allegedly stolen; instead, the statute expresses an intent to prosecute Defendants for each episode of theft.

1. Statutory language

{19} We begin with an analysis of the statutory language as the “primary indicator of legislative intent.” *Olsson*, 2014-NMSC-012, ¶ 18. New Mexico’s larceny statute defines larceny as “the stealing of anything of value that belongs to another.” Section 30-16-1(A). Subsection (G), the subsection with which we are primarily concerned, provides, “Whoever commits larceny when the property of value stolen is livestock is guilty of a third degree felony regardless of its value.” Section 30-16-1(G). {20} The parties advocate for vastly different readings of this language. They primarily center their dispute on the word *livestock*, with each party suggesting that the word supports the party’s proffered unit of prosecution. The Court of Appeals concluded that the word *livestock* could be “both singular and plural” and thus “provide[d] no clear indication of a unit-of-prosecution.” *Torres*, 2021-NMCA-045, ¶ 13 (internal quotation marks omitted) (quoting *State v. Tidey*, 2018-NMCA-014,

¶ 10, 409 P.3d 1019). We disagree with the Court of Appeals conclusion that, because the word *livestock* can be read as singular or plural, the wording of the statute provides no clear indication of a unit of prosecution.

{21} The New Mexico Criminal Code does not define the term *livestock*. Nevertheless, various other statutory provisions define *livestock* as referring to herds or groups of domesticated animals. See, e.g., NMSA 1978, § 7-35-2(D) (2018) (“As used in the Property Tax Code . . . ‘livestock’ means cattle, buffalo, horses, mules, sheep, goats, swine, ratites and other domestic animals useful to humans.”); NMSA 1978, § 77-2-1.1(A) (2015) (“As used in the Livestock Code . . . ‘animals’ or ‘livestock’ means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico.”); NMSA 1978, § 77-1B-2(K) (2017, repealed effective July 1, 2024) (“[L]ivestock means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.”); NMSA 1978, § 77-16-2 (1977) (“[L]ivestock shall include domestic animals such as cattle, horses, sheep, hogs, goats and buffaloes.”). In ordinary usage, *livestock* is a noncount or mass noun, which is neither singular nor plural, but describes an “aggregation” which is “taken as an indeterminate whole.”² Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 22 (2016). Thus, we understand *livestock* to refer either to a single animal or to multiple animals in indeterminate numbers.

{22} In contrast to the Court of Appeals, we do not conclude that this indeterminacy renders the statutory language ambiguous. As a general principle, the use of singular or plural language in a criminal statute may, in some circumstances, clarify the intended unit of prosecution. See, e.g., Ramirez, 2018-NMSC-003, ¶¶ 52-53 (“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.”). However, the use of singular or plural language is not always dispositive as to legislative intent. See, e.g., NMSA 1978, § 12-2A-5(A) (1997) (“Use of the singular number includes the plural, and use of the plural number includes the singular.”). We view this canon as relevant here. Specifically, the word *livestock*, which is neither singular nor plural, suggests that the Legislature did not contemplate a unit of prosecution based on the count or number of animals stolen in a single episode of theft.

{23} The language of the livestock larceny statute supports this reading. The statute punishes the larceny of livestock as “a third degree felony regardless of its value.” Section 30-16-1(G) (emphasis added). This contrasts with the portion of the larceny statute addressing the theft of generic property, which provides for “gradations of punishment based on the monetary value of the property.” *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 41, 136 N.M. 309, 98 P.3d 699; see also *State v. Graves*, 1915-NMSC-076, ¶ 7, 21 N.M. 556, 157 P. 160 (concluding that an 1884 statute prohibiting the larceny of livestock was not impliedly repealed by an 1891 act addressing general larceny, explaining that livestock larceny is “an act in special form, enacted for the particular protection of livestock, while the other was a general act defining the punishment of larceny, graded according to the value of the property stolen”). Subsections (B) through (F) of the larceny statute address the theft of generic property, with gradations of punishment accorded in relation to the value of property stolen. Compare § 30-16-1(B) (punishing the larceny of property valued at \$250 or less as a petty misdemeanor), with § 30-16-1(F) (punishing the larceny of property valued over \$20,000 as a second-degree felony). See also *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 41, (discussing the structure of the larceny statute). Subsection (H) punishes, as a fourth-degree felony, the theft of the specific property of a firearm valued less than \$2,500. Section 30-16-1(H). The Leg-

islature’s choice to punish the livestock larceny “regardless of its value” suggests that neither the potential market value of the property stolen nor, by logical extension, the number of animals stolen is relevant to prosecution under Section 30-16-1(G). As it stands, the language of the statute does not draw divisions based on number.

{24} In short, the State’s suggested per-animal unit of prosecution is neither supported nor contemplated by the statutory language, and we will not construe Section 30-16-1(G) as meting out punishment for each animal stolen when the statute contemplates prosecution for the theft of anywhere from a single animal to an entire herd. Cf. *Swick*, 2012-NMSC-018, ¶ 35 (refusing the state’s asserted unit of prosecution of the aggravated burglary statute because the state’s “contentions are not supported or contemplated by the statute and we therefore decline to divide one offense into separate means used to accomplish the ultimate goal”). Although the unit of prosecution under Section 30-16-1(G) is not immediately clear based on the statutory language alone, what is clear is that it does not support a unit of prosecution based on the number of animals stolen. Rather, we understand the language as focusing prosecution on the prohibited act of larceny itself. See § 30-16-1(A), (G) (“Larceny consists of the stealing of anything of value that belongs to another . . . [, and w]hoever commits larceny when the property of value stolen is livestock is guilty of a third degree felony regardless of its value.” (emphasis added)).

2. Legislative history

{25} Our reading of Section 30-16-1(G) as creating a unit of prosecution based on an episode of theft is also supported by the history of the statute. Once the practice of livestock raising gained foothold, the ownership and keeping of livestock became of vital significance to many New Mexicans. See Carol Raish & Alice McSweeney, *Livestock Ranching and Traditional Culture in Northern New Mexico*, 41 Nat. Res. J. 713, 714-18 (2001). Even today, the ranching industry remains an economic mainstay of the state.³

² It also should be noted that “[m]any nouns can be both count . . . and mass . . . depending on the sense.” Bryan A. Garner, *Garner’s Modern English Usage*, 227 (4th ed. 2016). Indeed, the Oxford Dictionary identifies “livestock” as either a mass or a plural noun. *Livestock*, Oxford Advanced American Dictionary, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/livestock (last visited Sept. 20, 2022) (“noun (uncountable, plural)”; see also *Livestock*, Black’s Law Dictionary (11th ed. 2019) (defining “livestock” in the plural as “n. (18c) Farm animals; specif., domestic animals and fowls . . .”). Thus, the term livestock is potentially either a mass noun or a plural noun, depending on use. Either usage suggests that the Legislature did not intend to authorize multiple punishments based on the number of animals stolen.

³ See U.S. Dep’t of Agric., 2017 Census of Agriculture – New Mexico, Vol. 1, Part 31, at 9, https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_State_Level/New_Mexico/nmv1.pdf (last visited Sept. 20, 2022) (reporting approximately \$1.93 billion in market value of agricultural products sold in the 2017 calendar year for New Mexico farms producing “[l]ivestock, poultry, and their products”).

{26} Since the mid-nineteenth century, our territorial and state legislatures have made special provision for the punishment of livestock larceny.⁴ Throughout this time, “New Mexico has consistently treated the larceny of livestock differently from the larceny of other things, in that the punishment for the larceny of livestock has never depended upon the value of the particular animal stolen.” *State v. Pacheco*, 1969-NMCA-127, ¶ 12, 81 N.M. 97, 463 P.2d 521; *see also State v. Lucero*, 1913-NMSC-011, ¶ 3, 17 N.M. 484, 131 P. 491 (recognizing that “value is not material” in a prosecution for livestock larceny). This special treatment has been accorded to the crime of livestock larceny in order “to protect the ownership of a certain class of property.” *Pacheco*, 1969-NMCA-127, ¶¶ 12, 15 (internal quotation marks and citation omitted). As such, laws prohibiting the larceny of livestock often operated as part of comprehensive regulatory schemes designed to protect the owners and keepers of livestock and New Mexico’s ranching industry. *See id.*; 1897 Compiled Laws of New Mexico, Title II, §§ 64-240 (setting forth the New Mexico “Animals” code, of which the 1884 livestock larceny statutes were a part).

{27} The livestock larceny statute was amended to its present form in 1963, with the most notable changes being the substitution of the word *livestock* for the former statutory listings of the “animal or animals,” NMSA 1953, §§ 40-4-17, -18, and the incorporation of the crime as a subsection of the larceny statute under the revised Criminal Code. 1963 N.M. Laws, Ch. 303, § 16-1; NMSA 1953, § 40A-16-1 (1963) (Vol. 6, Repl. 1964). By 1963, technological advancements had transformed the historic crime of livestock larceny in that the wider availability of motorized vehicles and trailers enabled the theft of a greater number of animals in a single episode of theft. Yet, we understand that

many of the policies that motivated our territorial and early state legislatures in punishing livestock larceny also likely motivated our 1963 Legislature in enacting what is now Section 30-16-1(G). *Cf. Pacheco*, 1969-NMCA-127, ¶ 15 (quoting *Wilburn v. Territory*, 1900-NMSC-028, ¶ 7, 10 N.M. 402, 62 P. 968 (describing, as the purpose of laws prohibiting livestock larceny, to protect the industry of stock raising), *overruled on other grounds as recognized by State v. Smith*, 1915-NMSC-085, ¶ 6, 21 N.M. 173, 153 P. 256).

{28} In the first years of statehood, this Court considered a question of duplicity under the 1884 livestock larceny statutes. *State v. Klasner*, 1914-NMSC-015, ¶¶ 1-5, 19 N.M. 474, 145 P. 679. Duplicity is a question that is corollary to the question of multiplicity that we consider here. *See Herron*, 1991-NMSC-012, ¶ 6 n.4 (“We use the term ‘multiplicity’ to describe the situation when an indictment charges a single offense in different counts.”); 41 Am. Jur. 2d, *Indictments and Informations* § 198 (2015) (“A duplicitous count of an indictment or information joins two or more distinct and separate offenses in the same count.”). The defendant in *Klasner* was charged with taking the animals “at the same time and place.” *Klasner*, 1914-NMSC-015, ¶ 2. This Court concluded that an indictment charging the defendant in one count with stealing several head of cattle from multiple owners was not faulty due to duplicity. *Id.* ¶ 5. The Court held that the taking of multiple animals from multiple owners at one time was “but a single act or transaction in violation of the law against larceny,” and thus the indictment could be said to allege “but a single offense.” *Id.* ¶¶ 3, 5 (internal quotation marks and citation omitted).

{29} As a basis for its holding, *Klasner* applied the same doctrine applied by the Court of Appeals in this case: the single-larceny doctrine. *Id.* ¶¶ 3-5. The

single-larceny doctrine was expressly adopted by this Court in *State v. Allen*, 1955-NMSC-015, ¶¶ 4-7, 59 N.M. 139, 280 P.2d 298. It counsels, “when several articles of property are stolen by the defendant from the same owner at the same time and at the same place, only one larceny is committed.” *State v. Rowell*, 1995-NMSC-079, ¶ 15, 121 N.M. 111, 908 P.2d 1379 (brackets and internal quotation marks omitted) (quoting 3 Charles E. Torcia, *Wharton’s Criminal Law* § 358 (14th ed. 1980)). The doctrine is justified by the rationale that “there has been but one transaction” or “but one criminal intent” in the act of theft. *State v. Boeglin*, 1977-NMCA-004, ¶¶ 7-8, 90 N.M. 93, 559 P.2d 1220; *see also* 50 Am. Jur. 2d, *Larceny* § 4 (2017) (“The rationale behind the rule is that the taking of several articles at the same time from the same place is pursuant to a single intent and design and is part of a single scheme or continuing course of conduct.” (footnote omitted)). In the multiple-punishment context this doctrine is best explained by the analogy, as “a theft of one thousand dollars is one theft and not a thousand thefts, and the defendant can be prosecuted only once for the offense.” *Boeglin*, 1977-NMCA-004, ¶ 9.

{30} In the opinion now under review, the Court of Appeals relied on the single-larceny doctrine to resolve what it perceived to be a stalemate in its *Herron* analysis. *Torres*, 2021-NMCA-045, ¶¶ 22-28. We disagree with that reasoning, as we do not view the doctrine as providing an alternative to *Herron*’s unit-of-prosecution framework. *Cf. State v. Bernard*, 2015-NMCA-089, ¶ 21, 355 P.3d 831 (“We decline to extend the single-larceny doctrine to this case. Even though our courts have recognized the validity of the single-larceny doctrine, we see no indication that the doctrine supersedes the well-established two-step legislative intent inquiry in a unit of prosecution case.” (citation omitted)).

⁴ Multiple laws have been enacted to address various methods of unlawfully taking livestock, such as by the driving away, selling, or butchering of the animal or animals; but for laws specifically addressing the larceny of livestock, see Kearny Code of Laws, Crimes and Punishments, Art. I, § 4 (1846) (“[A]ny person convicted of stealing any horse, mare, gelding, mule, ass, sheep, hog or goat, shall be sentenced to not more than seven, nor less than two years imprisonment at hard labor, or to receive not more than one hundred nor less than twenty stripes well laid on his bare back.”); Revised Laws of the Territory of New Mexico, Art. XXIII, Ch. LII, § 37 (1865) (punishing theft of a “horse, mare, colt, or filly, horse-mule or mare-mule, ass or jennet, bullock, cow or calf, sheep, goat or hog” with “not less than thirty lashes, well laid on his bare back, nor more than sixty” and confinement “until the costs of the prosecution are paid and the sentence fully complied with”); 1880 Gen. Laws of New Mexico, Art. XXIII, Ch. LII, § 37 (1870) (“Every person who shall be convicted of stealing a horse, mare, colt or filly, horse-mule or mare-mule, ass or jennet, bullock, cow or calf, sheep, goat or hog . . . shall be fined not less than ten dollars nor more than five hundred dollars, or be imprisoned not less than one month nor more than five years, or both, in the discretion of the court.”); 1884 Compiled Laws of New Mexico, Title II, Ch. 1, § 68 (punishing the stealing of “any neat cattle, horse, mule, sheep, goat, swine, or ass” with one to five years imprisonment and a fine of \$500 to \$5,000); 1884 Compiled Laws of New Mexico, Title II, Ch. 1, § 69 (explaining that “[a]ll cases which are by this act declared to be larceny, and in all cases of felonious taking . . . of any animal or animals herein referred to, the same shall be deemed . . . grand larceny” which is punished by imprisonment for one to ten years, “notwithstanding the value of such animal or animals may be less than twenty dollars”). The 1884 livestock larceny statutes persisted in essentially the same form until 1963. *See* 1897 Compiled Laws of New Mexico, Title II, Ch. 1, §§ 79-80; NMSA 1915, Ch. XXVI, Art. XX, §§ 1613-14; NMSA 1929, Ch. 35, Art. 24, §§ 35-2405 to -2406; NMSA 1941, Ch. 41, Art. 4, §§ 41-419 to -420; NMSA 1953, §§ 40-4-17 to -18 (repealed 1963); NMSA 1953, § 40A-16-1 (1963) (Vol. 6, Repl. 1964) (“Whoever commits larceny when the thing of value stolen is livestock is guilty of a third degree felony regardless of its value.”).

{31} We again emphasize that “the relevant inquiry” in a unit-of-prosecution analysis “is whether the legislature intended punishment for the entire course of conduct or for each discrete act.” *Swafford*, 1991-NMSC-043, ¶ 8. We have explained that “the [single-larceny] doctrine is a canon of construction used when the Legislature’s intent regarding multiple punishments is ambiguous.” *Alvarez-Lopez*, 2004-NMSC-030, ¶ 43. However, we will not apply the single-larceny doctrine if legislative intent is unambiguous, *id.*, or if the doctrine appears contrary to legislative intent. See *Rowell*, 1995-NMSC-079, ¶¶ 15-20 (noting that the Legislature worked to restrict the application of the single-larceny doctrine to embezzlement cases after *State v. Brooks*, 1994-NMSC-062, 117 N.M. 751, 877 P.2d 557, and declining incidentally to extend the doctrine to attempted fraud under the Computer Crimes Act); see also *State v. Boergadine*, 2005-NMCA-028, ¶ 29, 137 N.M. 92, 107 P.3d 532 (declining to extend the single-larceny doctrine to fraud pursuant to legislative outcomes of *Brooks*). The single-larceny doctrine may at times appear redundant to the unit-of-prosecution analysis. See *State v. Brown*, 1992-NMCA-028, ¶ 13, 113 N.M. 631, 830 P.2d 183 (analyzing the unit of prosecution of generic larceny under the *Herron* framework and noting that “had we applied [the single-larceny doctrine] rather than *Herron*, we would have reached the same result”). Nevertheless, resort to the single-larceny doctrine in lieu of full consideration of legislative intent under *Herron*’s framework may lead to inconsistency in results. Cf. *Morro*, 1999-NMCA-118, ¶ 22 (noting potential inconsistency between the unit-of-prosecution analysis and the single-larceny doctrine because “[t]he single-larceny doctrine is a departure from the general rule that multiple charges are appropriate when there are multiple victims”). We thus disavow the single-larceny doctrine as a separate basis for our decision.

{32} We acknowledge that the single-larceny doctrine remains useful in a legislative-intent analysis insofar as it informs our historical understanding of the livestock larceny statute. Cf. *Morro*, 1999-NMCA-118, ¶ 23 (“When there is a long history regarding the unit of prosecution under a particular statute, as there is with the single-larceny doctrine, then principles of stare decisis in statutory interpretation argue strongly for continuing that interpretation, even when the tools—that is, canons—of statutory interpretation have evolved with respect to analyzing the question.”). Applied in this way, the doctrine suggests that the Legislature was aware that the theft of multiple head of cattle at the same time and in the same place has

been construed to give rise to a single offense. *Klasner*, 1914-NMSC-015, ¶¶ 1-5; see also NMSA 1978, § 12-2A-20(B)(2) (1997) (identifying as an aid to statutory construction “a judicial construction of the same or similar statute or rule of this or another state”). Given the construction long accorded to the crime of livestock larceny, the Legislature could have defined a different unit of prosecution when it promulgated Section 30-16-1(G). Cf. NMSA 1915, §§ 1624, 1625 (1897) (prohibiting the detaining of another person’s cattle for purposes of milking and providing that “[t]he taking up and detention of each and every cow or calf . . . shall constitute a separate offense”). But the Legislature did not do so. We therefore view *Klasner* and the history of Section 30-16-1(G) as supporting our conclusion that the Legislature did not intend a unit of prosecution based on the number of animals stolen in an episode of theft.

3. Legislative purpose

{33} In *Wilburn*, 1900-NMSC-028, ¶ 7, this Court described the purpose of laws prohibiting livestock larceny as “either to prevent a kind of thefts peculiarly easy of commission and difficult of discovery and punishment, or to afford special protection to the important industry of stock-raising, or . . . upon both these considerations.” While the parties do not dispute the applicability of this purpose to the present appeal, they do dispute what this purpose reveals about the unit of prosecution of Section 30-16-1(G).

{34} The State argues that this legislative purpose reveals a unit of prosecution based on the number of animals stolen. The State asserts that, if the unit of prosecution were held to be otherwise, then rustlers will be incentivized to steal as many head as possible in one episode of theft. Defendants, on the other hand, argue that Section 30-16-1(G) promotes the legislative purpose of prevention by relieving the State from the discovery and punishment burdens of establishing either the value or the precise number of animals taken. Defendants assert that this purpose reveals that the unit of prosecution is for each episode of livestock theft.

{35} We agree with Defendants. Specifically, we conclude that the purpose of Section 30-16-1(G) protects livestock owners by facilitating prosecution of a crime that historically and still remains “peculiarly easy of commission and difficult of discovery and punishment.” *Pacheco*, 1969-NMCA-127, ¶ 15 (internal quotation marks and citation omitted). We reach this conclusion, in part, by construing Section 30-16-1(G) in light of New Mexico’s Livestock Code, NMSA 1978, §§ 77-2-1 to 77-18-6 (1869, as amended through 2017), and other laws addressing livestock. Con-

sistent with the history of livestock larceny, Section 30-16-1(G) clearly is intended to work in collaboration with these statutes and thus should be considered a part of a comprehensive regulatory scheme addressing livestock in New Mexico. See § 12-2A-20(B)(2) (articulating that “the following aids to construction may be considered in ascertaining the meaning of [a statute]: . . . a statute or rule on the same or a related subject, even if it was enacted or adopted at a different time”); 2B Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Constr.* § 51:3, at 222 (7th ed. 2012) (“Statutes are *in pari materia*—pertain to the same subject matter—when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.” (footnote omitted)). We thus construe Section 30-16-1(G) in *pari materia* with these livestock laws and relevant provisions of the Livestock Code.

{36} The stated purpose of the Livestock Code in pertinent part is “to control disease, to prevent the theft or illegal movement of livestock and to oversee the New Mexico meat inspection program.” Section 77-2-1. In pursuit of that purpose, the Livestock Code contains provisions addressing the control of livestock diseases, §§ 77-3-1 to -18, the marking or branding of animals, §§ 77-9-2 to -57, and the inspection of livestock prior to transport, §§ 77-9-41, -42. The Livestock Code also grants authority to the New Mexico Livestock Board to oversee and regulate livestock, §§ 77-2-1 to -32.

{37} The State argues that the Livestock Code reveals a legislative intent to prosecute livestock larceny on a per-animal basis and particularly relies for this argument on *Bernard*, 2015-NMCA-089, ¶¶ 15-31. In *Bernard*, the Court of Appeals analyzed the unit of prosecution for receiving or transferring a stolen motor vehicle, NMSA 1978, § 30-16D-4(A) (2009). See *Bernard*, 2015-NMCA-089, ¶¶ 18-19. As part of its analysis of the indicia of distinctness, the *Bernard* Court noted that the stolen vehicles were “subject to broad regulation by the State under a highly specific statutory scheme found in the Motor Vehicle Code and the Criminal Code.” 2015-NMCA-089, ¶ 28. That statutory scheme tracked individually identified vehicles as a means to deter vehicle theft. *Id.* ¶¶ 28-30. In light of this scheme, the *Bernard* Court concluded that the defendant’s receipt of each one of four stolen vehicles was sufficiently distinct to warrant four separate offenses of Section 30-16D-4(A). *Id.* ¶ 31.

{38} Applying *Bernard*, the State suggests that the Livestock Code is a highly specific regulatory scheme that tracks animals like the Motor Vehicle Code tracks vehicles. We disagree. The Livestock Code does

not track individual *animals*, but instead tracks an individual *person's* ownership of these animals. *See, e.g.*, § 77-2-7.1 (making brands that are recorded with the New Mexico Livestock Board as the “personal property of the person in whose name they are recorded,” which can be “transferred in the same manner as other personal property”); § 77-9-3(A) (“A person who owns livestock shall have and adopt a brand for them Each brand shall be recorded in the office of the [Livestock Board.]”); § 77-2-7.7. (“It is unlawful for an owner of livestock in originally marking or branding livestock to make use of or keep up more than one mark or brand.”); *see also* NMSA 1978, § 39-6-1 (1889) (addressing the levy of “any writ of attachment, replevin or execution under the laws of this state upon any livestock or herd of cattle that are ranging at large with other livestock or cattle” through the filing of a copy of the writ on the livestock owner’s brand). The portion of the Livestock Code setting forth the requirements for “Brands, Ownership, Transportation and Sale of Animals,” §§ 77-9-2 to -57, specifically emphasizes that a person must maintain proof of ownership of livestock as a means to prevent theft. *See, e.g.*, §§ 77-9-45, -46, -51 (addressing circumstances in which a livestock inspector may seize livestock due to the failure of a person in possession of livestock to provide proof of ownership).

{39} The Legislature has also specifically provided that “[i]n the prosecution of any offense arising under the laws of this state in regard to the unlawful taking . . . of animals of the bovine kind, the description ‘neat cattle’ in any indictment shall be deemed sufficient” NMSA 1978, § 31-7-1 (1895). An indictment identifies stolen livestock through a description of the livestock owner’s brand. *See id.* (“[T]he proof of the brand by a certified copy of the registration thereof in the brand book . . . shall be sufficient to identify all horses, mules, asses or neat cattle, and shall be prima facie proof that the person owning the recorded brand is the owner of the animal branded with such brand.”). This suggests that the Legislature did not contemplate that prosecutions for livestock larceny would draw distinctions based on the description or identity of an animal.

{40} We thus view the Livestock Code as creating a regulatory scheme with an overriding purpose of protecting livestock ownership by deterring livestock theft. Section 30-16-1(G) assists in this purpose by relieving the state of the burden of establishing either the value or the number of animals stolen in an episode of theft and by making livestock larceny a third-degree felony whenever livestock is stolen, irrespective of the enormity of the livestock owner’s loss.

{41} The facts on current appeal, which included investigations by employees of the New Mexico Livestock Board, aptly demonstrate how Section 30-16-1(G) operates in tandem with relevant provisions of the Livestock Code to facilitate discovery and prosecution of livestock theft. Defendant Torres’s alleged crime was discovered when an operations manager at the Crossroads Cattle Company’s ranch noted a discrepancy between the estimated number of calves expected in a pasture and the number of calves inventoried. Pursuant to a report from the ranch to the Livestock Board, investigators were able to link Defendant Torres to the sale of eighteen calves on two dates through the records maintained by a livestock auction house. *See, e.g.*, § 77-10-3(C) (requiring operators of New Mexico licensed auction houses to allow the Livestock Board “to have convenient access to the . . . books and records or any livestock that may be in [the operator’s] possession at all reasonable times for the purpose of inspection”); § 77-10-4 (requiring the operator to notify the Livestock Board of any livestock received). Using these records, prosecutors were able to determine precisely how many animals Defendant Torres stole and connect him potentially with two episodes of theft.

{42} Similarly, the Livestock Code also facilitated discovery of Defendants Chadwick’s and Hendrix’s alleged crime. This theft was first discovered when an off-duty livestock inspector saw these Defendants transporting cattle that had not been inspected and approved for shipment. *See, e.g.*, §§ 77-9-42 to -43 (requiring inspection prior to transportation of livestock). This legislative scheme likewise allowed investigators to identify these Defendants and to inspect and confiscate the stolen animals when they arrived at the auction house. *See, e.g.*, § 77-9-45 (“If any duly authorized inspector should find any livestock or carcasses in the possession of any person . . . [who] cannot furnish other satisfactory proof of lawful ownership or said inspector has good reason to believe that said livestock or carcasses, are stolen, said inspector shall . . . seize and take possession of same.”). Thus, the overall legislative scheme assisted in the discovery and investigation of an offense which otherwise may have escaped prosecution.

{43} We therefore conclude that the holding in *Bernard*, 2015-NMCA-089, ¶¶ 28-30, is inapposite. The Motor Vehicle Code at issue in *Bernard* establishes “a vehicle registration system that maintains a history of individual vehicle ownership, requires distinct identifiers to be assigned and affixed to vehicles, and monitors the transfer of vehicles from other states and between owners.” *Id.* ¶ 29. The Livestock Code, on the other hand, establishes a system focused on maintaining a record of persons owning livestock, but is not concerned with establishing the identity

of any animal so owned. Thus, analysis of the purpose of the livestock larceny statute, § 30-16-1(G), does not support the State’s asserted per-animal unit of prosecution.

4. Quantum of punishment

{44} Our conclusion that livestock larceny does not support multiple punishments for the theft of multiple animals in a single episode is also supported by the quantum of punishment. *Benally*, 2021-NMSC-027, ¶¶ 31-32 (considering the severity and comparative length of a sentence based on multiple punishments in construing a crime’s unit of prosecution). Livestock larceny, § 30-16-1(G), is a third-degree felony with a basic sentence of three years and a potential fine not exceeding \$5,000. NMSA 1978, § 31-18-15(A)(11), (E)(11) (2016, amended 2022). If multiple punishments were to be permitted, Defendant Torres would face a potential sentence of fifty-four years imprisonment and fines totaling \$90,000; Defendants Chadwick and Hendrix each would face potential imprisonment of seventy-five years and fines totaling \$125,000.

{45} Defendants contend that potential sentences of this severity argue against prosecution for each animal stolen. Defendants posit that if this Court accepts the State’s analysis, a hypothetical rustler who steals one-hundred head of cattle would face a three-hundred year sentence. The State counters that “the specter of a 300-year prison term” is “highly improbable” because Article II, Section 13 of the New Mexico Constitution “prohibits the infliction of ‘cruel and unusual punishment.’”

{46} The State’s suggestion that the Constitution will limit the potential cruelty of this hypothetical rustler’s sentence is at odds with the canon of constitutional avoidance. *See, e.g., State v. Radosevich*, 2018-NMSC-028, ¶ 8, 419 P.3d 176 (“[W]e must be guided by the ‘well-established principle of statutory construction that statutes should be construed, if possible, to avoid constitutional questions.’”); NMSA 1978, § 12-2A-18(A) (3) (1997) (“A statute or rule is construed, if possible, to . . . avoid an unconstitutional, absurd or unachievable result.”). The analysis provided herein avoids the need to test the constitutional limits of a Section 30-16-1(G) prosecution.

{47} Defendants also point out that their potential sentences for stealing a herd of livestock are, by the State’s assertions, much greater than even the most serious category of generic larceny, which punishes theft of property valued over \$20,000 as a second-degree felony carrying a basic sentence of nine years. Section 30-16-1(F); § 31-18-15(A)(7) (2016). Defendants would be incarcerated for much longer than nine years if each potential term of imprisonment were to run consecutively. We agree that this disparity is telling and further confirms that the Legislature did not intend Defendants

to receive multiple punishments for the theft of multiple head of cattle in a single episode.

{48} We conclude that the wording, structure, purpose, history, and quantum of punishment of the livestock larceny statute, § 30-16-1(G), do not express an intent to prosecute Defendants for each animal stolen. We construe the statute as expressing an intent to prosecute Defendants for each distinct episode of theft. Because we were able to construe the intended unit of prosecution of Section 30-16-1(G) through consideration of the preceding canons of construction, we do not resort to the rule of lenity for this conclusion. *Benally*, 2021-NMSC-027, ¶¶ 14-15. We therefore hold that Defendants' indictments are multiplicitous.

C. Defendants May Be Prosecuted for Each Distinct Episode of Livestock Larceny

{49} Defendants raised the issue of multiplicity prior to conviction. Multiplicity is not fatal to an indictment, and a trial court in its discretion may dismiss the multiplicitous charges, may require the state to elect between charges, or may proceed to trial with appropriate jury instructions. *See, e.g., United States v. Johnson*, 130 F.3d 1420, 1426-27 (10th Cir. 1997) ("A decision of whether to require the prosecution to elect between multiplicitous counts before trial is within the discretion of the trial court."); *United States v. Roy*, 408 F.3d 484, 491 (8th Cir. 2005) ("Although the prosecutor did not elect between or consolidate the multiplicitous counts, multiplicitous indictments may be saved at the trial stage if the district court submits an appropriate instruction to the jury"); *see also* 42 C.J.S. *Indictments* § 230, at 709 (2017) (noting that multiplicity is not fatal to an indictment and listing remedies for multiplicity as including dismissal of the multiplicitous counts, the state's election of counts, or the vacating of convictions). We conclude that the district court did not abuse its discretion in electing to dismiss

all but one of the livestock larceny charges in Defendants Chadwick's and Hendrix's indictments and in electing to dismiss all but two of the livestock larceny charges in Defendant Torres's indictment. *See, e.g., State v. Lymon*, 2021-NMSC-021, ¶ 12, 488 P.3d 610 ("An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case" or "when the trial court misapprehends or misapplies the law." (internal quotation marks and citation omitted)).

{50} "When an indictment includes multiple counts charging a violation of the same statutory provision and a claim of multiplicity is raised, an inquiring court must determine whether the facts undergirding each count can be treated as a distinct unit of prosecution." *Lente*, 2019-NMSC-020, ¶ 26 (internal quotation marks and citation omitted). In ascertaining which of Defendants' charges may be treated as distinct units of prosecution, we are guided by the second step of our *Herron* analysis. *Herron*, 1991-NMSC-012, ¶ 15. In *Herron*, we articulated six indicia of distinctness that we may use to clarify which of a defendant's acts gave rise to a discrete statutory offense: (1) the time between the defendant's acts, (2) the location of the victims, (3) the existence of intervening events between acts, (4) the sequence in commission of the acts, (5) the defendant's intent, and (6) the number of victims. *Id.* However, the Court has explained that the six indicia identified in *Herron* "serve as a general policy for examining distinctness" but that these indicia do not provide a "mechanical formula" for analysis. *Benally*, 2021-NMSC-027, ¶ 19 (internal quotation marks and citation omitted). The specific indicia analyzed are dependent on the interests protected by the statute at issue "because our focus under this second step is whether a defendant's acts can be distinguished as discrete violations of the conduct the Legislature intended to proscribe." *Id.* ¶ 18.

{51} As relevant to the crime of larceny of generic property, § 30-16-1(B)-(F), our Court of Appeals has considered "the time between the criminal acts, the location of the property when it was taken, the existence of any intervening events, distinctions in the manner of committing the thefts, the defendant's intent, and the number of victims." *Brown*, 1992-NMCA-028, ¶ 9. Although *Brown* considered the indicia of distinctness relevant to the crime of larceny of generic property, § 30-1-16(B)-(F), we view these indicia as also relevant to the crime of livestock larceny, § 30-16-1(G). In keeping with the history and purpose of the livestock larceny statute, we clarify that the victims of livestock larceny are the owners of the livestock.

{52} Defendants Chadwick and Hendrix—who allegedly stole livestock on one occasion, from one location, and from one owner—each should be prosecuted for no more than one offense of Section 30-16-1(G). Defendant Torres—who allegedly stole livestock on potentially two occasions, from one location and from one owner—should be prosecuted for no more than two offenses of Section 30-16-1(G). Resolution of whether Defendant Torres may be punished for two offenses of Section 30-16-1(G) will depend on the jury's findings on outstanding factual issues and on whether the two offenses were distinct. *Herron*, 1991-NMSC-012, ¶¶ 15, 16.

V. CONCLUSION

{53} In view of the foregoing, we affirm the holding of the Court of Appeals, with amendments to its reasoning as reflected herein. We remand each of these three matters to the Twelfth Judicial District Court for further proceedings consistent with our opinion.

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

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-058

Filing Date: June 29, 2022

No. A-1-CA-38060

BRYCE FRANKLIN,
Plaintiff-Appellant
v.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY and REGINA CHACON
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Matthew J. Wilson, District Judge

Bryce Franklin
Las Cruces, NM

Pro Se Appellant

Keitha A. Leonard
Santa Fe, NM

for Appellees

► Introduction of Opinion

Plaintiff Bryce Franklin appeals from the district court's order granting summary judgment in favor of Defendants New Mexico Department of Public Safety (DPS) and Regina Chacon and from the district court's order denying Plaintiff's motion to reconsider. Plaintiff raises a matter of first impression and contends that Defendants failed to provide a proper and reasonable opportunity to inspect public records, as required by the Inspection of Public Records Act (IPRA), NMSA 1978 §§ 14-2-1 to -12 (1947, as amended through 2019). Because we agree that Defendants' response to Plaintiff's IPRA request was not reasonable under the circumstances, we reverse and remand for further proceedings.

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

To read the full opinion, visit: <https://bit.ly/2022-NMCA-058-A-1-CA-38060>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-059

Filing Date: June 29, 2022

No. A-1-CA-39180

STATE OF NEW MEXICO,

Plaintiff-Appellee

v.

FERMIN MORENO-ORTIZ

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

James Waylon Counts, District Judge

Hector H. Balderas, Attorney General
Maris Veidemanis,
Assistant Attorney General
Santa Fe, NM

for Appellee

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

for Appellant

► Introduction of Opinion

Defendant Fermin Moreno-Ortiz appeals his conviction for one count of criminal sexual penetration (CSP) in the third degree, contrary to NMSA 1978, Section 30-9-11(F) (2009). Defendant challenges the sufficiency of the evidence supporting his conviction and argues that a witness's statement offered by the prosecution that Defendant is "savage and tries to hook up with all the girls" is inadmissible character evidence requiring reversal.

We conclude that sufficient evidence in the record supports Defendant's conviction, and that, although the witness's statement was character evidence which was inadmissible under Rule 11-404(A)(1) NMRA, Defendant did not object. Because its admission was not plain error requiring reversal, we affirm Defendant's conviction.

Jane B. Yohalem, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/2022-NMCA-059-A-1-CA-39180>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-060

Filing Date: June 30, 2022

No. A-1-CA-39391

ANN MORROW & ASSOCIATES,
Appellant-Petitioner
v.
NEW MEXICO HUMAN SERVICES DIVISION
Appellee-Respondent.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan P. Biedscheid, District Judge

Davis & Gilchrist, P.C.
Bryan J. Davis
Ellen A. Geske
Albuquerque, NM

for Petitioner

New Mexico Human Services
Department
John R. Emery, Deputy General Counsel
Santa Fe, NM

for Respondent

► Introduction of Opinion

We are presented with a legal question: Under its regulations, can the State recoup as an overpayment the entire amount it paid on a claim for medical services rendered when part of the services billed for were provided and part were not? Concluding that it cannot, we reverse and remand for further proceedings.

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

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39391>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-061

Filing Date: July 22, 2022

No. A-1-CA-37810

WILD HORSE OBSERVERS ASSOCIATION, INC.,

Plaintiff-Appellee

v.

NEW MEXICO LIVESTOCK BOARD,

Defendants-Appellant.

and

SHELLEY MCALISTER, NATHAN LIPPERT, AND TEEATTA LIPPERT,

Defendants by Intervention

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY

Daniel A. Bryant, District Judge

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Michael S. Neas, Susan Blumenthal, Carolyn
Kennedy, and Lynn Montgomery

► Introduction of Opinion

In this appeal, we again examine the protection afforded to New Mexico's free-roaming horses under NMSA 1978, Section 77-18-5 (2007). We first did so seven years ago, when we concluded in *Wild Horse Observers Association, Inc. v. New Mexico Livestock Board*, (Wild Horse I) that certain undomesticated, unowned, free-roaming horses could not be characterized as "livestock" or "estrays" rather than as "wild horses." 2016-NMCA-001, ¶ 16, 363 P.3d 1222. In the case at hand, the New Mexico Livestock Board (the Board) appeals from a district court order granting declaratory and injunctive relief sought by Wild Horse Observers Association, Inc. (WHOA) under the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975), and the Livestock Code, NMSA 1978, §§ 77-2-1 to -18-6 (1869, as amended through 2015). As was the case in *Wild Horse I*, the Board wishes to classify certain horses—this time corralled by a private citizen onto private property—as stray livestock, rather than as wild horses. We agree with the district court that the Board may not do so; however, we reverse the district court's determination that when the Board unlawfully captures horses on private land, the testing requirements of Section 77-18-5(B) apply, potentially triggering the unjustified removal of wild horses from their natural habitat. See *id.* (providing that a wild horse "captured on public land shall have its conformation, history and deoxyribonucleic acid tested [DNA]"). We remand for further proceedings consistent with this opinion and for additional consideration of attorney fees.

J. Miles Hanisee, Chief Judge

WE CONCUR:

Zachary A. Ives, Judge

Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-37810>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-062

Filing Date: July 25, 2022

No. A-1-CA-38464

STATE OF NEW MEXICO,

Plaintiff-Appellee

v.

JAIME CERDA

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Angie K. Schneider, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM
Walter Hart, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
William O'Connell, Assistant Appellate
Defender
Santa Fe, NM

for Appellant

► Introduction of Opinion

Defendant Jaime Cerda appeals from the district court's refusal to apply presentence confinement credit to the second of his two consecutive sentences based on convictions for related offenses when he had already been given credit for that time toward his first sentence. Defendant relies on this Court's decision in *State v. Ramzy*, 1982-NMCA-113, 98 N.M. 436, 649 P.2d 504, to claim that presentence confinement time can be credited to each of two consecutive sentences for related offenses if the sentences are imposed in separate proceedings, at different times. We agree with the district court that Defendant is not entitled to the same presentence confinement credit against both sentences: presentence confinement credit is imposed once against consecutive sentences in the aggregate, whether the sentencing occurs in separate proceedings or in a single proceeding. We decline the State's invitation to overrule *Ramzy* and affirm the district court's sentencing decision.

Jane B. Yohalem, Judge

WE CONCUR:

Kristina Bogardus, Judge

Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38464>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-063

Filing Date: July 29, 2022

No. A-1-CA-38499

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee

v.

RUBEN C.

Respondent-Appellant.

and

MAISIE Y.,

Respondent,

IN THE MATTER OF JUPITER C., JOVIAN C., JAYDEN C., AND JAIZIE C.,
Children

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Grace B. Duran, District Judge

Children, Youth & Families Department
Rebecca J. Liggett, Chief Children's Court Attorney
Robert Retherford, Children's Court Attorney
Santa Fe, NM

for Appellee

Susan C. Baker
El Prado, NM

for Appellant

ChavezLaw, LLC
Rosenda M. Chavez
Sunland Park, NM

Guardian Ad Litem

► Introduction of Opinion

Ruben C. (Father) and Maisie Y. (Mother) are the parents of Jupiter C., Jayden C., Jovian C., and Jaizie C. (collectively, Children). Children are eligible for enrollment with Father's tribe, the Choctaw Nation (the Nation), and are thus Indian children for purposes of the Indian Child Welfare Act of 1978 (ICWA).

Upon petition by the Children, Youth and Families Department (CYFD), Children were adjudicated abused and neglected by Father and Mother. CYFD thereafter moved to terminate Father and Mother's parental rights. At the conclusion of concurrent termination of parental rights (TPR) trials, the district court terminated both Father and Mother's parental rights to Children.

On appeal, both parents separately challenged the district court's application of ICWA. We addressed Mother's appeal in State ex rel. Children, Youth & Families Department v. Maisie Y., 2021-NMCA-023, 489 P.3d 964. Although this Court reversed and remanded Mother's case for a new TPR trial on other grounds, we clarified New Mexico law regarding standards of proof in termination of parental rights cases subject to ICWA. See id. ¶ 11. Specifically, we held that in cases subject to ICWA, New Mexico law requires the following: (1) all grounds to terminate parental rights, including determinations of abuse and neglect, must be proven beyond a reasonable doubt; (2) judicial notice of prior adjudications of abuse and neglect made under the clear and convincing evidence standard, without more, is insufficient; and (3) the active efforts requirement of ICWA must be proven beyond a reasonable doubt. Id. ¶¶ 16-31.

In light of our holdings in *Maisie Y.*, this appeal presents a number of novel issues including: (1) whether the presumption of retroactivity in civil cases applies to cases under the Abuse and Neglect Act (ANA) and if so, whether that presumption has been overcome here; (2) whether an exception to the requirement that issues be adequately preserved for review applies to the issues presented in Father's appeal; (3) whether our holdings in *Maisie Y.* require us to reverse the termination of Father's parental rights, despite Father's failure to preserve these claims of error; and finally, (4) if reversal is required, what remedy is appropriate on remand.

For the reasons discussed below, we conclude that (1) the presumption of retroactivity in civil cases applies to cases under the ANA, and that the presumption is not overcome in this instance; (2) the nature of the fundamental rights at stake in this case, viewed in the context of ICWA, compel us to exercise our discretion to review Father's claims despite his failure to preserve the claims of error; (3) *Maisie Y.* requires reversal; and (4) the district court must hold a new TPR trial on remand.

Jacqueline R. Medina, Judge

WE CONCUR:

Jennifer L. Attrep, Judge

Zachary A. Ives, Judge

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-064

Filing Date: May 23, 2022

No. A-1-CA-38923

STATE OF NEW MEXICO,

Plaintiff-Appellee

v.

JUANA AMADOR DELAO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Steven Blankinship, District Judge

Hector H. Balderas, Attorney General
Maris Veidemanis,
Assistant Attorney General
Santa Fe, NM

for Appellee

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

for Appellant

► Introduction of Opinion

Defendant Juana Amador DeLaO appeals her convictions for four counts of fraud, contrary to NMSA 1978, Section 30-16-6(E) (2006), and thirteen counts of failing to disclose facts to obtain public assistance, contrary to NMSA 1978, Section 30-40-1(D), (E) (2006). The charges related to Defendant's application for and receipt of several forms of public assistance benefits: Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Medicaid, and food stamps (SNAP). Defendant invites us to reverse her convictions based on her contentions that the charges under Section 30-16-6 and Section 30-40-1 are either entirely preempted by federal law or they are duplicative. Alternatively, Defendant seeks remand for "a new and fair trial before a properly instructed jury." We conclude that under these circumstances, convictions pursuant to both Section 30-16-6 (fraud) and Section 30-40-1 (failure to disclose facts to obtain public assistance) impose multiple unsanctioned punishments. We therefore affirm in part, reverse in part, and remand for the district court to vacate Defendant's convictions under Section 30-40-1. Otherwise, we affirm.

Katherine A. Wray, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Zachary A. Ives, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38923>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-065

Filing Date: June 23, 2022

No. A-1-CA-39025

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
KENTOINE JWAYNE PENMAN,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

Mark Terrence Sanchez, District Judge

Hector H. Balderas, Attorney General
Maris Veidemanis,
Assistant Attorney General
Santa Fe, NM

for Appellee

Kennedy Kennedy & Ives
Joseph P. Kennedy
Laura Schauer Ives
Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Kentoine Penman entered a conditional plea of no contest to two counts of possession of a controlled substance (NMSA 1978, § 30-31-23(A) (2011, amended 2021)); one count of battery upon a peace officer (NMSA 1978, § 30-22-24 (1971)); one count of assault on a peace officer (NMSA 1978, § 30-22-21(A)(1) (1971)); one count of resisting, evading or obstructing an officer (NMSA 1978, § 30-22-1(D) (1981)); one count of pedestrians on roadways (NMSA 1978, § 66-7-339 (1978, amended 2018)); and one count of possession of marijuana (Section 30-31-23(B)(1)). Defendant reserved the right to appeal the denial of two pretrial motions (1) to dismiss the criminal information, pursuant to State v. Foulentfont, 1995-NMCA-028, 119 N.M. 788, 895 P.2d 1329 (Foulentfont Motion), and to suppress all evidence and statements obtained as a result of an unlawful seizure; and (2) to suppress all evidence and testimony obtained in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution, pursuant to State v. Ochoa, 2009-NMCA-002, 146 N.M. 32, 206 P.3d 143 (Ochoa Motion). We reverse the denial of the motion to dismiss as to the count of the pedestrians on roadways charge, but affirm the denial of the counts of battery, assault, and resisting, evading or obstructing an officer charges. We also affirm the district court's denial of Defendant's Ochoa Motion, holding that under the new crime exception, evidence of the battery; assault; resisting, evading or obstructing an officer; controlled substances; and marijuana charges are admissible.

Jacqueline R. Medina, Judge
WE CONCUR:
J. Miles Hanisee, Chief Judge
Jennifer L. Attrep

To read the full opinion, visit: <https://bit.ly/A-1-CA-39025>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-066

Filing Date: July 11, 2022

No. A-1-CA-37878

MAILE SOON,
Petitioner-Appellee,
v.
JEANNINE KAMMANN,
Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Gerard J. Lavelle, District Judge

Thomas C. Montoya
Albuquerque, NM

for Appellee

ACLU of NM Foundation
Elinor Rushforth, Staff Attorney
Maureen A. Sanders,
Cooperating Attorney
Albuquerque, NM

for Appellant

► Introduction of Opinion

As part of their divorce proceedings, Maile Soon and Jeannine Kammann engaged in a protracted dispute over Kammann's parentage of twin children conceived via artificial insemination and delivered by Soon during the parties' marriage. Soon challenged Kammann's standing to adjudicate parentage under the New Mexico Uniform Parentage Act (NMUPA), NMSA 1978, §§ 40-11A-101 to -903 (2009, as amended through 2021), because Kammann was not biologically or genetically related to the children. Soon also argued that Kammann did not consent to Soon's insemination procedure as required to establish parentage under the NMUPA's assisted reproduction provisions. The district court ruled in favor of Soon and adjudicated Kammann not to be a parent of the children.

We address two questions presented by Kammann's appeal: (1) whether undisputed evidence that Kammann shares no genetic relationship with the children is sufficient to rebut the statutory presumption of parentage that arises when children are born during the marriage; and (2) whether the statutory requirements to establish parentage by consent to assisted reproduction limit the evidence a district court may consider to only those written records signed for the specific procedure that resulted in the pregnancy. We conclude that the answer to both questions is no and reverse.

Megan P. Duffy, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-37878>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2022-NMCA-062

Filing Date: July 25, 2022

No. A-1-CA-38464

STATE OF NEW MEXICO,

Plaintiff-Appellee

v.

JAIME CERDA

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Angie K. Schneider, District Judge

Hector H. Balderas, Attorney General

Santa Fe, NM

John J. Woykovsky,

Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Charles D. Agoos,

Assistant Appellate Defender

Santa Fe, NM

for Appellant

► Introduction of Opinion

Defendant Florencio K. Moncayo appeals his convictions for possession of a controlled substance and possession of drug paraphernalia. He challenges the sufficiency of the evidence to support his conviction for possession of a controlled substance, claiming that the presence of a residue, which cannot be measured or used, is insufficient either to establish possession of a controlled substance, or to establish Defendant's knowledge that the residue was a controlled substance. Defendant also contends that his convictions for both possession of a controlled substance and possession of drug paraphernalia violate double jeopardy. Finding no merit in Defendant's claims, we affirm.

Jane B. Yohalem, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Jacqueline R. Medina

To read the full opinion, visit: <https://bit.ly/A-1-CA-37911>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-001

Filing Date: August 11, 2022

No. A-1-CA-38615

AUGUSTIN PLAINS RANCH, LLC,
Applicant/Appellant-Appellant,
v.
JOHN D'ANTONIO, P.E., New Mexico
State Engineer,
Appellee-Appellee,

APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY

Matthew G. Reynolds, District Judge

Montgomery & Andrews, P.A.
Jeffrey J. Wechsler
Kari E. Olson
Kaleb W. Brooks
Santa Fe, NM

Draper & Draper LLC
John B. Draper
Santa Fe, NM

for Appellant

Hector H. Balderas, Attorney General
Gregory C. Ridgley, General Counsel
Nathaniel Chakeres, Deputy General
Counsel
Maureen C. Dolan,
Special Assistant Attorney General
Simi Jain, Special Assistant Attorney
General
Santa Fe, NM

Attorney at Law LLC
L. Christopher Lindeen, Special Assistant
Attorney General
Santa Fe, NM

Abramowitz and Franks
Martha C. Franks
Santa Fe, NM

for Appellee New Mexico State
Engineers

Domenici Law Firm, PC
Pete Domenici
Lorraine Hollingsworth
Albuquerque, NM
for Appellee Catron County Board of
County
Commissioners

New Mexico Environmental Law Center
Gail Evans
Douglas Meiklejohn
Charles de Saillan
Eric D. Jantz
Maslyn Locke
Santa Fe, NM

for Appellees
(not otherwise separately listed)

Davidson Law Firm, LLC
Tessa T. Davidson
Corrales, NM

for Appellees Helen A.
Hand and Hand Living Trust

Coppler Law Firm, P.C.
Frank R. Coppler
John L. Appel
Santa Fe, NM

for Appellee City of Truth
or Consequences, NM
Navajo Nation Department of Justice
Daniel G. Moquin
Lisa Yellow Eagle
Window Rock, Navajo Nation, AZ

for Appellee Navajo Nation

Hennighausen Olsen & McCrea, L.L.P.
A.J. Olsen
Gabriella T. Miller
Roswell, NM

for Appellee Pecos Valley Artesian Con-
servancy District

Steffani A. Cochran, General Counsel
Bernalillo, NM

for Appellee Pueblo of Sandia

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

for Appellee Pueblo of Santa Ana

Advocates for Community and Environ-
ment
Simeon Herskovits
Iris Thornton
El Prado, NM

for Appellee San Augustin Water Coali-
tion

Samantha Ruscavage-Barz
Daniel Timmons
Santa Fe, NM

for Appellee Wildearth Guardians
for Appellant

NEW MEXICO COURT OF APPEALS OPINION

► Introduction of Opinion

After reviewing the State Engineer's decision to deny Appellant Augustin Plains Ranch, LLC's (Applicant) application to appropriate groundwater, the district court dismissed with prejudice Applicant's 2014 Application to appropriate groundwater from the San Agustin Basin. We reverse and remand because we determine the district court erred in applying collateral estoppel.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Katherine A. Wray

To read the full opinion, visit: <https://bit.ly/A-1-CA-38615>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-002

Filing Date: August 29, 2022

No. A-1-CA-39323

CATHERINE C. FINN,
Plaintiff-Appellant,
v.

SEAN D. TULLOCK and LOS ALAMOS
NATIONAL SECURITY, LLC,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF LOS ALAMOS COUNTY

Jason Lidyard, District Judge

Keller & Keller, LLC
Michael G. Duran
Samantha L. Drum
Albuquerque, NM
Grayson Law Office
Brian G. Grayson
Albuquerque, NM

for Appellant

Hinkle Shanor LLP
S. Barry Paisner
Dioscoro "Andy" Blanco
Santa Fe, NM

for Appellees

► **Introduction of Opinion**

The district court dismissed Plaintiff Catherine Finn's tort action against Los Alamos National Security, LLC, (LANS) and Sean Tullock (together, Defendants), because Plaintiff's claim arose in the course and scope of her employment by LANS, thus triggering the exclusive jurisdiction of the Workers' Compensation Act (WCA), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2017). See § 52-1-9(A) (the Exclusivity Provision). Plaintiff appeals. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Kristina Bogardus, Judge

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-39323>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-003

Filing Date: August 31, 2022

No. A-1-CA-39557

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH & FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
GENEVA C.,
Respondent-Appellant,

IN THE MATTER OF ARTHUR F. and ISRAEL F.,
Children.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
William E. Parnall, District Judge

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

for Appellee

Law Offices of Nancy L. Simmons, P.C.
Nancy L. Simmons
Albuquerque, NM

for Appellant

Law Firm of Alexander D. Crecca, P.C.
Sara Seymour Crecca
Albuquerque, NM

Guardian Ad Litem

► Introduction of Opinion

Geneva C. (Mother), a qualified individual with an intellectual disability as defined by the Americans with Disabilities Act (ADA), appeals the termination of her parental rights to her two children (Children). Mother's parental rights were terminated pursuant to NMSA 1978, Section 32A-4-28(B)(2) (2005, amended 2022), of the New Mexico Abuse and Neglect Act, NMSA 1978, §§ 32A-4-1 to -35 (1993, as amended through 2022). Mother raises three issues on appeal. She first contends that the Children, Youth and Families Department (CYFD) failed to satisfy the reasonable efforts requirement of Section 32A-4-28(B)(2) because CYFD's efforts failed to include reasonable accommodation for Mother's disability as required by the ADA. Mother next contends that CYFD failed to carry its burden to show by substantial, clear and convincing evidence that, with the assistance of reasonable efforts by CYFD, she was unlikely to be able to adequately parent Children in the foreseeable future. Third, Mother challenges the refusal of the district court to appoint a guardian ad litem (GAL) to assist her.

We agree with Mother that the state law requirement that CYFD make reasonable efforts to assist a parent incorporates the ADA requirement that the services provided by CYFD reasonably accommodate a parent's disability. We further hold that when the district court finds at the outset of an abuse and neglect case that the parent is a qualified individual with a disability, as defined by the ADA, and orders that specific accommodations be made, as the court did in this case, CYFD must provide those accommodations. Because CYFD did not timely provide the accommodations ordered by the district court at the dispositional hearing, seek modification of the court's order, or advise the district court of these failures, the district court's finding that CYFD provided reasonable accommodations for Mother's intellectual disability in compliance with the ADA and with Section 32A-4-28(B)(2) was not fully informed. We therefore

NEW MEXICO COURT OF APPEALS OPINION

reverse the termination of Mother's parental rights on this basis and remand to the district court for reconsideration of its decision with full knowledge of the facts of this case.

Additionally, because the question will likely arise again on remand, we briefly address Mother's argument that the district court abused its discretion and denied Mother due process when it refused to appoint a GAL to assist her in understanding the legal proceedings, understanding and complying with her treatment plan, and making decisions in her own best interests. We hold that the district court properly relied on the evidence in the record concerning Mother's needs and abilities and that the court neither abused its discretion nor denied Mother due process when it found that appointment of a GAL was unnecessary and instead required CYFD to provide Mother the assistance of a social worker skilled in working with parents with disabilities.

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Judge

Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39557>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-004

Filing Date: October 17, 2022

No. A-1-CA-39311

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JASON EVANS a/k/a

JASON EDWARD EVANS,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

Curtis R. Gurley, District Judge

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

for Appellant

Bennett J. Baur, Chief Public Defender
William O'Connell, Assistant Appellate Defender
Santa Fe, NM

for Appellee

► Introduction of Opinion

In this case, we are asked to consider whether a preliminary hearing is required in a case in which Defendant Jason Evans is charged only with misdemeanors. The State's appeal arises from the district court's order dismissing six misdemeanor charges filed against Defendant. The State argues that the district court erred when (1) it interpreted Rule 5-201(C) NMRA, which governs charges by criminal information to require a preliminary hearing when a defendant's charges are limited to misdemeanors; and (2) it relied on the State's erroneous statement that "Defendant waived preliminary hearing" as an alternative reason for dismissal. We reverse and remand.

Kristina Bogardus, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Katherine A. Wray, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39311>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-005

Filing Date: August 9, 2022

No. A-1-CA-38023

BRUCE PUMA and KATHLEEN PUMA, for Themselves and All Others Similarly Situated,
Plaintiffs-Appellees/Cross-Appellants,

v.

WAL-MART STORES EAST, LP; APPLICA CONSUMER PRODUCTS, INC.; and THE BLACK & DECKER CORPORATION,
Defendants-Appellants/Cross-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

C. Shannon Bacon, District Judge

Floyd D. Wilson, P.C.
Floyd D. Wilson,
Cedar Crest, NM

Freedman Boyd Hollander Goldberg Urias &
Ward, P.A.

David A. Freedman
Christopher A. Dodd
Albuquerque, NM

for Appellee

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

Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Jennifer G. Anderson
Albuquerque, NM

Mitchell, Silberberg & Knupp LLP
Jeffrey Richardson
Gilbert S. Lee
Los Angeles, CA

for Appellants

McCoy Leavitt Laskey LLC
H. Brook Laskey
Albuquerque, NM

Goldberg Segalla LLP
Laura A. Colca
Buffalo, NY

for Amicus Curiae Society of Product Licensors
Committed to Excellence

► Introduction of Opinion

This appeal and cross-appeal arise in response to the district court's decisions relating to Bruce and Kathleen Puma's (the Pumas) claim that Wal-Mart Stores East LP, Applica Consumers Products, Inc., and The Black & Decker Corporation (collectively, Defendants) violated the Unfair Practices Act (the UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). The parties argue whether the district court correctly determined or erred in (1) concluding that Defendants violated the UPA; (2) denying the Pumas damages based on unjust enrichment; and (3) awarding the Pumas certain attorney fees. We affirm in part and reverse in part.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-38023>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-006

Filing Date: September 21, 2022

No. A-1-CA-38797

**THE ACEQUIA COMPOUND OWNERS'
ASSOCIATION, INC.,**

Plaintiff-Appellee,

v.

ORCHARD METAL CAPITAL CORP.,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Francis J. Mathew, District Judge

Katz Herdman MacGillivray & Fullerton PC
Frank T. Herdman
Brecken N. Larson
Santa Fe, NM

for Appellee

Holland & Hart LLP
Larry J. Montaña
Julia Broggi
Santa Fe, NM

for Appellant

► Introduction of Opinion

Defendant Orchard Metal Capital Corporation (OMC) appeals the district court's entry of partial summary judgment and an injunction in favor of Plaintiff the Acequia Compound Association (the Association), as well as the dismissal without prejudice of the Association's remaining claim. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Jane B. Yohalem, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38797>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-007

Filing Date: October 18, 2022

No. A-1-CA-38333

CELINA HERNANDEZ and DAVID HERNANDEZ, Individually, and ARTHUR BUSTOS, as Personal Representative of the Wrongful Death Estate of CAIN HERNANDEZ,

Plaintiffs-Appellants,

v.

ROBERT REUTER, M.D. and ONLINE RADIOLOGY MEDICAL GROUP, a foreign corporation,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY

Abigail Aragon, District Judge

The Spence Law Firm NM, LLC
Dennis K. Wallin
Alisa C. Lauer
Erin M. Marshall
Albuquerque, NM

Fine Law Firm
Mark D. Fine
Albuquerque, NM

for Appellants

Lorenz Law
Alice T. Lorenz
Albuquerque, NM

for Appellees

► Introduction of Opinion

Cain Hernandez died from a heart condition when he was just five days old. His parents, Celina and David Hernandez, and the personal representative of Cain's wrongful death estate, Arthur Bustos (collectively, Plaintiffs), brought this medical malpractice action against Robert Reuter, M.D., and Online Radiology Medical Group, Dr. Reuter's practice (collectively, Defendants), for negligence, alleging that Dr. Reuter failed to detect Cain's enlarged heart when he read Cain's chest x-ray, and failed to make a differential diagnosis of a congenital heart defect. Plaintiffs alleged that, as a result of Dr. Reuter's negligence, Cain's treating physicians failed to timely provide lifesaving treatment for Cain's heart defect.

The district court granted summary judgment to Dr. Reuter and Online Radiology based on Plaintiffs' failure to establish causation with expert medical testimony. Concluding that Plaintiffs raised a genuine issue of material fact as to causation requiring resolution at a trial on the merits, we reverse and remand.

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-38333>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-008

Filing Date: October 20, 2022

No. A-1-CA-38029

**FELIBERTO ULIBARRI, in his capacity as Trustee of the FELIBERTO AND
DOMITILIA ULIBARRI REVOCABLE TRUST, and RONALD ULIBARRI,**
Plaintiffs-Appellants/Cross-Appellees,

v.

**JEFFERY JESIONOWSKI, YOLANDA M. CANO f/k/a YOLANDA M. MONTANO; KATHERINE LECKRONE; ELENA LAVICTOIRE;
TONY ESQUIBEL; CATHERINE ESQUIBEL; CHRISTINA ESQUIBEL; and PAUL ESQUIBEL,**
Defendants-Appellees,

and

SJS INVESTMENTS, LLC, a New Mexico limited liability company,
Defendant-Appellee/Cross-Appellant.

APPEAL FROM THE DISTRICT COURT OF RIO ARriba COUNTY
David K. Thomson, District Judge

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

for Appellants

Moses, Dunn, Farmer & Tuthill, P.C.
Joseph L. Werntz
Albuquerque, NM

for Appellee SJS Investment, LLC

► Introduction of Opinion

This case presents vexing, but not unusual, issues arising from a dispute between neighboring landowners in rural northern New Mexico. Plaintiffs below (the Ulibarris) claimed that they had easements rights to cross Defendants SJS Investments, LLC's (SJS) property over four dirt trails described as "Roads." The district court tried the matter in a bifurcated proceeding. A jury found that the Ulibarris have prescriptive easements over the four Roads. After the jury trial, the district court held a bench trial to determine the scope of use allowable under the easements. The district court's final judgment adopted the jury verdict as its own regarding the existence of prescriptive easements over the four Roads, described limits on the Ulibarris' use of the Roads, and concluded that, in addition to the prescriptive rights found by the jury, the Ulibarris have easements by estoppel over Roads 1 and 2, and easements by necessity over Roads 3 and 4.

The Ulibarris appeal, challenging the limits placed on their use of Road 2. SJS cross-appeals, arguing: (1) there was insufficient evidence to support finding a prescriptive easement as to Road 1; (2) the district court erred in refusing a jury instruction explaining implied permission in the context of easement law; (3) the district court erred as a matter of law in finding an easement by estoppel as to Roads 1 and 2; and (4) the district court erred in finding prescriptive easements as to Roads 3 and 4. We affirm in part and reverse in part.

Michael D. Bustamante, Judge, retired, sitting by designation.
WE CONCUR:
J. Miles Hanisee, Chief Judge
Kristina Bogardus, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38029>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-009

Filing Date: October 25, 2022

No. A-1-CA-39107

CAROLYN C. CASTILLO,

Plaintiff-Appellant,

v.

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY a/k/a ALLSTATE,

Defendant-Appellee.

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

for Appellants

Moses, Dunn, Farmer & Tuthill, P.C.
Joseph L. Werntz
Albuquerque, NM

for Appellee SJS Investment, LLC

► Introduction of Opinion

An arbitration panel awarded Plaintiff Carolyn Castillo \$425,000 following her claim against Allstate Property & Casualty Insurance Company (Allstate) for underinsured motorist benefits. The district court subsequently modified the award on Allstate's motion to vacate or modify, reducing it to \$275,000. Castillo appeals the district court's final judgment as well as its denial of her motion to reconsider modification of the award. Castillo argues that (1) her 2011 Polaris Ranger RZR (the RZR, pronounced "razor") is considered a vehicle under the New Mexico Mandatory Financial Responsibility Act (MFRA), NMSA 1978, §§ 66-5-201 to -239 (1955, as amended through 2016); (2) her policy insuring the RZR should be reformed because Allstate failed to offer uninsured/underinsured motorist (UM/UIM) coverage on the off-road vehicle policy for the RZR and obtain affirmative rejection of such coverage in violation of New Mexico law; and (3) Allstate waived the application of the New Mexico statutory offset per the language of Castillo's automobile insurance policy.

Upon review of application of the Off-Highway Motor Vehicle Act (OHMVA), NMSA 1978, §§ 66-3-1001 to -1021 (1975, as amended through 2017) to the circumstances of this case, this Court holds that Castillo's RZR is not subject to the MFRA because it is an off-highway motor vehicle only operated on the highway for the purpose of crossing. As such, Allstate was not required to offer UM/UIM coverage or obtain a signed coverage rejection for the policy insuring Castillo's RZR. We also hold that the district court correctly found that Castillo's recovery from the tortfeasor's insurer should be taken from the applicable policy limits as opposed to the award made by the arbitration panel. We therefore affirm.

Jacqueline R. Medina, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39107>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-010

Filing Date: October 28, 2022

No. A-1-CA-39874

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

CHRISTOPHER GARCIA,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Brett Loveless, District Judge

Hector H. Balderas, Attorney General

Emily C. Tyson-Jorgenson,

Assistant Attorney General

Santa Fe, NM

for Appellant

Law Office of Erlinda O. Johnson

Erlinda O. Johnson

Albuquerque, NM

for Appellee

► Introduction of Opinion

Defendant Christopher Garcia was charged in the Second Judicial District Court with felon in possession of a firearm, contrary to NMSA 1978, Section 30-7-16(A)(1) (2020, amended 2022). The State appeals from the district court's dismissal of this charge at preliminary hearing. See NMSA 1978, § 39-3-3(B)(1) (1972) (allowing the state to appeal to this Court from "a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts"). The district court dismissed with leave to refile based on the State's failure to offer admissible evidence establishing that Defendant had a prior felony conviction, an essential element of the offense charged.

The sole evidence of Defendant's prior conviction offered by the State was in the form of documents printed from Odyssey, the electronic filing and record-keeping system used by New Mexico courts. The State argued that the documents were self-authenticating under Rule 11-902 NMRA, New Mexico Supreme Court Order No. 13-8500 (Aug. 28, 2013) (Order 13-8500), and by a letter construing that order drafted by Second Judicial District Court Chief Judge Nash in 2014 and circulated to the district court judges (the Odyssey Letter). The district court concluded that the documents were not properly authenticated under Rule 11-902, and were, therefore, inadmissible. After finding sua sponte that judicial notice under Rule 11-201 NMRA was also not appropriate under the circumstances, and rejecting the State's reliance on the catch-all exception to the hearsay rule, Rule 11-807 NMRA, the court dismissed the felon in possession of a firearm charge without prejudice. Finding no error by the district court, we affirm.

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Judge

Jacqueline R. Medina, Judge

To read the full opinion, visit: <https://bit.ly/2023-NMCA-010-A-1-CA-39874>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-011

Filing Date: October 31, 2022

No. A-1-CA-38176

GRANT W. PRICE,

Petitioner-Appellee,

v.

NEW MEXICO SOIL AND WATER CONSERVATION COMMISSION, including its

Commissioners, DUSTON HUNT a/k/a DUDLEY HUNT, J. STEVEN GLASS,

JOSE VARELA-LOPEZ, GABE ESTRADA, JOHN NORRIS, and JOHN SANCHEZ, JR. a/k/a CHARLIE SANCHEZ, JR.,

Respondents-Appellants.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

James T. Martin, District Judge

Peter Goodman
Mesilla Park, NM

Michael W. Lilley
Las Cruces, NM

Sanders & Westbrook, PC
Maureen A. Sanders
Albuquerque, NM

for Appellee

Hector H. Balderas, Attorney General
Nicholas M. Sydow, Civil Appellate Chief
Amye Green, Assistant Attorney General
Santa Fe, NM

for Appellants

► Introduction of Opinion

The question in this appeal is whether the constitutional principle of “one person, one vote” applies to the election of supervisors to a soil and water conservation district’s board of supervisors, the governing body of the district. Soil and water conservation districts are governmental entities created by the New Mexico Soil and Water Conservation District Act (the Act), NMSA 1978, Sections 73-20-25 to -48 (1965, as amended through 2019), to encourage the conservation and development of New Mexico’s soil, water, and natural resources.

Petitioner Grant Price filed a petition for writ of mandamus in the district court in 2017 objecting to the adoption of geographic voting zones with significantly unequal population for the election of the Doña Ana County Soil and Water Conservation District’s (the District) board of supervisors. Petitioner initially named both the District and the Soil and Water Conservation Commission (the Commission), which had approved the voting map drawn by the District, as Respondents. Petitioner complained that the voting zones as drawn violated the United States Constitution’s “one person, one vote” requirement, diluting the voting power of Petitioner and the other residents of Zone 4, the zone that includes the City of Las Cruces. The district court agreed, finding that the District’s voting zones “impermissibly dilute and diminish the voting rights of Zone 4 residents.” The significantly unequal distribution of the population among the voting zones found by the district court resulted, for example, in a single vote cast in Zone 3 having nearly four times the weight of a vote cast in Zone 4.

Based on these findings of fact, the district court concluded that the Commission’s approval of the voting zones was not authorized by the Legislature, was inconsistent with the Commission’s statutory duty under Section 73-20-39 of the Act to ensure proper and equitable representation of district voters, and was in violation of the “one person, one vote” mandate of the United States Constitution as well.

NEW MEXICO COURT OF APPEALS OPINION

We agree that Section 73-20-39 does not authorize the adoption of geographic voting zones for the election of district supervisors, which deviate from the “one person, one vote” requirement of the Equal Protection Clause. We therefore affirm the district court’s grant of a writ of mandamus requiring the Commission to “rescind its approval for the current geographic [electoral] zones within the . . . District.”

Jacqueline R. Medina, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38176>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-012

Filing Date: December 6, 2022

No. A-1-CA-39786

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JERRY GILBERT ESPINOZA,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY

Melissa A. Kennelly, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

Van Snow, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

Steven J. Forsberg, Assistant Appellate Defender
Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Jerry Espinoza appeals the jury's conviction on one count of criminal sexual penetration of a minor (CSPM) in the first degree, contrary to NMSA 1978, Section 30-9-11(D) (2007, amended 2009), and one count of incest in the third degree, contrary to NMSA 1978, Section 30-10-3 (1963). Defendant contends the district court improperly admitted DNA evidence and other expert testimony. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

J. Miles Hanisee, Chief Judge

Jane B. Yohalem, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39786>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-013

Filing Date: October 31, 2022

No. A-1-CA-39142

GEORGE CHENG,

Plaintiff-Appellee,

v.

BRIAN RABEY,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Manuel I. Arrieta, District Judge

George Cheng
Las Cruces, NM

Pro Se Appellee

New Mexico Legal Aid, Inc.
Thomas Prettyman
Albuquerque, NM

for Appellant

► Introduction of Opinion

Following a de novo appeal from magistrate court, the district court affirmed a judgment issued against Brian Rabey (Tenant), finding that Tenant had entered a written lease agreement with George Cheng (Landlord) and breached that agreement by failing to pay rent in August 2018. The district court also denied Tenant's counterclaims for abatement and equitable relief. On appeal, Tenant argues that Landlord's petition for restitution should have been dismissed for lack of jurisdiction because Landlord did not allow Tenant the three days to cure his nonpayment of rent as required by the Uniform Owner-Resident Relations Act (UORRA), NMSA 1978, §§ 47-8-1 to -52 (1975, as amended through 2007). Tenant's argument relies on the assumption that the Uniform Statute and Rule Construction Act (USRCA), NMSA 1978, §§ 12-2A-1 to -20 (1997), applies to the interpretation of the UORRA. The district court found that Tenant abandoned this argument, but Tenant argues that subject matter jurisdiction is not waivable and that Tenant raised the issue throughout the proceedings below. In the alternative, Tenant argues that Landlord's petition for restitution should have been dismissed because it did not state the proper amount due to cure nonpayment of rent. Tenant also argues that the district court erred in not awarding him his withheld water payments or abatement for repairs not made. We hold that the district court erred in finding Tenant waived his jurisdictional argument and that Landlord's petition should have been dismissed as untimely filed. Therefore, we reverse on that issue. As such, we do not reach whether Landlord's petition stated the proper amount due. We otherwise affirm the judgment of the district court.

Jacqueline R. Medina, Judge

WE CONCUR:

Kristina Bogardus, Judge

Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-39142>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-014

Filing Date: August 31, 2022

No. A-1-CA-38271

**ESTHER COLLADO, Deceased, by the Personal Representative of the WRONGFUL
DEATH ESTATE, MERLINDA PEREA,**
Plaintiff-Appellee/Cross-Appellant,

v.

**FIESTA PARK HEALTHCARE, LLC d/b/a MEDICAL RESORT AT FIESTA
PARK (THE); ENCHANTED HEALTH DEVELOPMENT, LLC; and WW MANAGEMENT, LLC,**
Defendants-Appellants/Cross-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Nan G. Nash, District Judge Pro Tem

Pitman, Kalkhoff, Sicula & Dentice, SC
Jeffrey A. Pitman
Benjamin E. Reyes
Milwaukee, WI

Feliz Angelica Rael
Albuquerque, NM

for Appellees

Holland & Hart LLP
Larry J. Montañño
Julia Broggi
Santa Fe, NM

Hogan Lovells
Catherine E. Stetson
Washington, DC

for Appellants

► Introduction of Opinion

Plaintiff, the personal representative of the wrongful death estate of Esther Collado sued Defendants Fiesta Park Healthcare, LLC d/b/a Medical Resort at Fiesta Park (the Medical Resort), Enchanted Health Development, LLC (Enchanted), and WW Management, LLC (WWM), asserting that they were negligent in the care they provided for Mrs. Collado. The jury found that each of the Defendants were negligent and caused injury or damages to Mrs. Collado and allocated a percentage of the negligence to each Defendant. The jury also found that Defendants were engaged in a joint venture.

After entry of judgment on the jury's verdict, Defendants filed a renewed motion for judgment as a matter of law (JMOL), or in the alternative a new trial, on the joint venture claim. The district court determined that the evidence did not support the jury instruction on joint venture and granted Defendants' motion. The district court did not, however, order a new trial. Instead, the district court amended the judgment "to eliminate the provisions imposing joint and several liability on Defendants for Plaintiff's claims against them."

Plaintiff and Defendants each appeal the district court's ruling on the posttrial JMOL. Plaintiff argues that the district court erred in granting the motion for JMOL, while Defendants argue that the district court erred in not also ordering a new trial. Defendants additionally appeal the district court's admission of expert testimony and the evidence supporting aspects of the jury's verdict. We reverse the district court's order granting the JMOL, affirm all other aspects of district court's rulings, and remand for entry of judgment reflecting the jury's verdict.

Jacqueline R. Medina, Judge
WE CONCUR:
Kristina Bogardus, Judge
Shammara H. Henderson, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38271>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-015

Filing Date: November 15, 2022

No. A-1-CA-39723

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

SHAWN D. DOYAL,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Steven Blankinship, District Judge

Hector H. Balderas, Attorney General
Laurie Blevins, Assistant Attorney General
Santa Fe, NM

for Appellee

Gary C. Mitchell, P.C.
Gary C. Mitchell
Ruidoso, NM

for Appellant

► Introduction of Opinion

Defendant Shawn D. Doyal appeals his conviction for great bodily injury by vehicle (reckless driving), contrary to NMSA 1978, Section 66-8-101(E) (2016). Defendant argues (1) the district court erred in failing to give Defendant's requested jury instructions; (2) the evidence was insufficient to support his conviction; and (3) the district court erred in the manner in which it seated the witnesses and the jury during the trial due to COVID-19 considerations. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

Shammara H. Henderson, Judge

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

To read the full opinion, visit: <https://bit.ly/A-1-CA-39723>

NEW MEXICO COURT OF APPEALS OPINION

Opinion Number: 2023-NMCA-016

Filing Date: August 8, 2022

No. A-1-CA-38175

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GEORGE CALAGUAS BRYANT,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Steven E. Blankinship, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM
M. Victoria Wilson,
Assistant Attorney General
Albuquerque, NM

for Appellee

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

for Appellant

► Introduction of Opinion

Following a jury trial, Defendant George Bryant was convicted of two counts of attempted first degree murder with a firearm, contrary to NMSA 1978, Sections 30-2-1(A)(1) (1994), and 30-28-1 (1963); one count of shooting at or from a motor vehicle resulting in great bodily harm, a second degree felony, contrary to NMSA 1978, Section 30-3-8(B) (1993); and one count of shooting at or from a motor vehicle resulting in injury, a third degree felony, contrary to Section 30-3-8(B). Defendant raises six issues on appeal: (1) the district court erred in vacating the conviction with the greater sentence following the determination that his convictions would have resulted in double jeopardy; (2) the district court erred in failing to give the jury a lesser included offense instruction; (3) the district court erred in denying Defendant's motion to suppress; (4) the State failed to present sufficient evidence that Defendant was the shooter; (5) the State committed a Brady violation when it failed to send gunshot residue (GSR) swabs to the crime lab for analysis; and (6) the district court erred in denying Defendant's motion for a new trial. For the reasons that follow, we reinstate Defendant's previously vacated conviction for attempted first degree murder, vacate his conviction for shooting at or from a motor vehicle resulting in great bodily harm, and remand to the district court for entry of an amended judgment and sentence in conformity with this opinion. We perceive no error in the remaining issues raised by Defendant, and therefore, affirm in those respects.

Shammara H. Henderson, Judge
WE CONCUR:
Kristina Bogardus, Judge
Gerald E. Baca, Judge

To read the full opinion, visit: <https://bit.ly/A-1-CA-38175>

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Ellen Geske Has Joined Davis Kelin

Ellen works primarily in the areas of medical malpractice, legal malpractice, catastrophic injury, wrongful death, and insurance bad faith. She came to New Mexico in 2006 and has called it home ever since. Before living in New Mexico, Ellen received her undergraduate degree from Southern Illinois University in political science, with a minor in German studies.



Eventually, Ellen enrolled in law school at the University of New Mexico School of Law, where she ultimately graduated cum laude. During law school, Ellen served on the board of the Student Health Law Society, competed in the National Health Law Moot Court Competition, served on the University of New Mexico Health Sciences Center's Bio Ethics Committee, and clerked for a medical malpractice defense firm.

Following law school, Ellen practiced at a medical malpractice defense firm, where she learned her heart was not in defense work and she was better suited for representing plaintiffs rather than defendants. With this realization, Ellen left to clerk for the Honorable C. Shannon Bacon at the New Mexico Supreme Court to develop her analytical skills. While at the Court, Ellen fine-tuned her writing and research skills and developed a passion for legal analysis and writing.

After her clerkship, that passion resulted in Ellen obtaining a published opinion in the area of health law and representing several clients in an appellate capacity, along with representing clients in the areas of legal malpractice, health law, personal injury, and employment matters. Currently, Ellen serves on the Board of Editors for the New Mexico Trial Lawyer Journal and the New Mexico Women's Bar Association. She cares deeply about women's issues and supporting the people of New Mexico.

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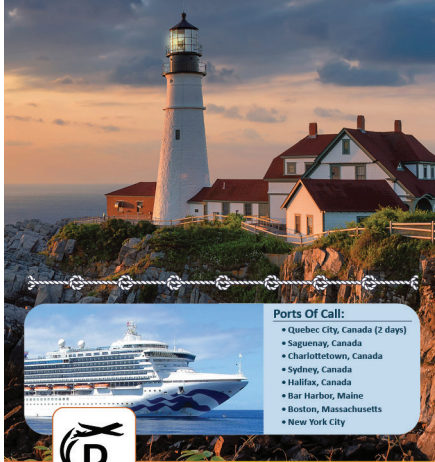


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New Mexico State Bar Foundation
Center for Legal Education

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refunds or roll-over of unused credits.

Positions

Civil Litigation Defense Firm Seeking Associate and Senior Associate Attorneys

Ray Pena McChristian, PC seeks both new attorneys and attorneys with 3+ years of experience to join its Albuquerque office either as Associates or Senior Associates on a Shareholder track. 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. If you're a seasoned NM lawyer and have clients to bring, we have the infrastructure to grow your practice the right way. And if you're a new or young lawyer we also have plenty of work to take your skills to the next level. RPM offers a highly competitive compensation package along with a great office environment in Uptown ABQ and a team of excellent legal support professionals. Email your resume and a letter of interest to cray@raylaw.com.

Prosecutors

Immediate openings for Prosecutors in Las Vegas, New Mexico. Work with a diverse team of professionals, a manageable caseload with a competitive salary in a great workplace environment. If you are interested in learning more about the positions or wish to apply, contact us at (505) 425-6746, or forward your letter of interest and resumé to Thomas A. Clayton, District Attorney, c/o Mary Lou Umbarger, Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701 or e-mail: mumbarger@da.state.nm.us

Tribal In-House Attorney

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to provide legal advice, draft codes and policies, and protect government interests. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply now, open until filled. Application instructions and position details at: <https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/>

Associate Attorney

Frazier & Ramirez Law is seeking a New Mexico licensed attorney with experience in litigation. Experience in family law is not required but would be a bonus. We offer a competitive salary based on experience plus benefits. We are a growing firm looking for the right attorney who will work hard, has developed excellence as a habit and who shows a willingness to grow with us. Please submit a letter of interest, writing sample and resume to sean@frazierramirezlaw.com. All inquiries will remain confidential.

Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

Attorney

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

Associate Attorney

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

Tribal Public Defender

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney with 2 or more years of experience to represent adult criminal defendants and juveniles in delinquency cases in Laguna Pueblo Court. No murder cases and significant behavioral resources as alternatives to incarceration. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply now, open until filled. Application instructions and position details at: <https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/>

Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

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

NM FOG Legal Director

The New Mexico Foundation for Open Government (FOG) seeks a full-time attorney interested in protecting the First Amendment and New Mexico's open records laws. We seek a highly motivated self-starter with civil trial court experience to strategically select and pursue lawsuits that will advance FOG's mission, which includes enforcing and protecting the New Mexico Inspection of Public Records Act (IPRA), Open Meetings Act (OMA), and The First Amendment. Remote work is an option. Some travel. Candidates are asked to send a cover letter detailing experience, education and background and a sample legal brief to info@nmfog.org. NM FOG has a panel of experienced volunteer lawyers who can provide advice and support for this position when requested. Salary range \$80,000 to \$120,000.

Hearing Officer (RFP 23-OGC-001)

The NM Department of Health published Notice of a Request for Proposals for the Provision of Hearing Officer Services in Adjudicative and Rulemaking Hearings (RFP no. 23-OGC-001) in the May 10, 2023 issue (Issue 9) of the NM Bar Bulletin. Please review that Notice for complete information to respond by June 7, 2023. All questions about the contents of the RFP document shall be directed to: Procurement Manager: Mark Lujan, Procurement Manager Address: P.O. Box 26110, 1190 South St. Francis Dr., Ste. N-3052 Santa Fe, NM 87505 Email: Mark.Lujan@doh.nm.gov.

Tribal Prosecutor

Pueblo of Laguna, NM – Great employer and benefits, competitive pay DOE! Seeking full-time attorney to prosecute adult criminal defendants and juveniles in delinquency cases in Laguna Pueblo Court. No murder cases and significant behavioral resources as alternatives to incarceration. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply now, open until filled. Application instructions and position details at: <https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/>

Experienced Attorney

Senior Citizens' Law Office, Inc. (SCLO) seeks an experienced attorney to provide free legal services to low-income seniors aged 60 and older in a variety of areas of elder law. The ideal candidate should be patient with and sensitive to seniors. This position can be part-time or full-time, depending on the interest of the applicant. Salary is DOE with a generous benefits package. See SCLO's website at www.sclonm.org for our complete job ad.

SAUSA Attorney

1st Judicial District Attorney

The United States Attorney's Office for the District of New Mexico has a Special Assistant United States (SAUSA) vacancy. Duty station will be in the United States Attorney's Office in Albuquerque, New Mexico. The attorney selected will be assigned a variety of firearms, violent crimes and narcotics-related criminal investigations and prosecutions. Requirements: Licensed attorney to practice law in good standing either in New Mexico or another state with a New Mexico limited license, plus a minimum of four (4) years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. Must be eligible to be licensed to practice law in the Federal District Court in the District of New Mexico and the Tenth Circuit Court of Appeals. This is a non-federal position and the employer is the Office of the First Judicial District Attorney. The terms, conditions and salary of this position will be administered by the Office of the First Judicial District Attorney. The selectee will be cross-designated as a SAUSA. This position does not confer status as a federal employee. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us

Senior Trial Attorney

1st Judicial District Attorney

The First Judicial District Attorney's Office is seeking an experienced attorney in the Espanola Office. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us

New Mexico Public Education Department – Attorney Position

The New Mexico Public Education Department (PED) is seeking an attorney to fill a position within its Office of General Counsel. Strong writing and interpersonal skills are essential. More details about positions and how to apply are provided on the State Personnel Office website at <http://www.spo.state.nm.us/>. Please check the website periodically for updates to the list of available positions.

Trial Attorney

1st Judicial District Attorney

The First Judicial District Attorney's Office is seeking a Trial Attorney located in the Santa Fe Office. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us

Public Benefits Attorney

New Mexico Center on Law and Poverty seeks a full-time attorney to join our Public Benefits team to address hunger and improve the administration of the public safety net for low-income New Mexicans, including SNAP, TANF, childcare assistance, and other programs. Attorneys provide legal representation, litigation, regulatory comments and administrative advocacy, policy advocacy including legislative efforts, and community outreach and coalition-building. Required: minimum two years of legal experience; strong leadership skills; commitment to economic, racial, and gender justice. Preferred: Spanish, Indigenous language, or other language fluency; management experience. Salary and responsibilities commensurate with experience. Apply in confidence by emailing your resume and a cover letter that describes what interests you about the mission of NMCLP to contact@nmpovertylaw.org. We are an equal opportunity employer committed to a healthy, collaborative, and inclusive work environment for a diverse staff. We strongly encourage applications from Black, Native, and indigenous people, people of color, immigrants, LGBTQ+, and New Mexicans and individuals of multiple backgrounds and identities.

Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney – Employment/Labor; Assistant City Attorney – Property & Finance; Assistant City Attorney – Municipal Affairs (IPRA); Assistant City Attorney – Litigation. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

Assistant General Counsel State of New Mexico Early Childhood Education and Care Department Office of General Counsel

The New Mexico Early Childhood Education and Care Department (ECECD), Office of General Counsel, is seeking to hire an Assistant General Counsel. The Assistant General Counsel will provide high level and critical expertise to advance ECECD's mission by advising the department on its contracts, human resources issues, regulatory and licensing oversight, and other subject matters. Specifically, this position is responsible for advising the department on numerous areas of state and federal law, including, but not limited to, early childhood education and care programs, State Personnel Act, Inspection of Public Records Act, State Procurement Code, HIPAA, FERPA, Family Medical Leave issues, Fair Labor Standards, and Americans with Disabilities Act. This position will work closely with other personnel in the Office of General Counsel and the department leadership to provide legal representation in complex and sensitive matters, including in administrative hearings and any litigation involving the department. The Assistant General Counsel is expected to apply a high level of legal expertise along with clear oral and written communication. Please go to www.spo.nm.us/work-for-new-mexico or contact Shelley Strong, General Counsel, at shelley.strong@eeced.nm.gov.

Appeals and Motions Attorney

The Federal Public Defender for the District of New Mexico is seeking experienced Appeals and Motions Attorneys for both our Albuquerque and Las Cruces offices. The Federal Public Defender provides legal representation in federal criminal cases and related matters. We are committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. Duties and responsibilities include drafting appellate briefs, petitions for certiorari, complex motions on novel legal questions and other substantive motions in district court (suppression motions, trial-related motions, sentencing challenges) as well as, at times, being part of a trial team. In-person oral arguments and associated travel may be required. Qualifications: A working knowledge of federal criminal law and procedure are preferred. Candidates must be able to prioritize projects and work both independently and collaboratively; have excellent legal research and writing skills; a strong work ethic; a demonstrated commitment to criminal defense or related areas of practice; good interpersonal communication skills; and a sense of humor is a plus. Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. Starting salary ranges from \$57,118 to \$138,236 and is determined by experience, qualifications, location, and budgetary constraints. Positions are full-time with comprehensive benefits including: health, vision, dental and life benefits, FSA & HSA, EAP, earned PTO/sick leave, paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contributions, public service loan forgiveness if qualified, and prior federal service credit. How to Apply: In one PDF document, please submit a statement of interest (including for which office(s) you are applying), detailed resume of experience, three references and a writing sample to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org. Reference 2023-05 in the subject for Albuquerque and 2023-06 in the subject for Las Cruces. Closing Date July 9, 2023. For complete job announcement and more information about our office, please visit <https://nm.fd.org/>

Request For Proposals Domestic Violence Special Commissioner RFP #24-06

The State of New Mexico Third Judicial District Court is seeking responses for Request for Proposals from qualified attorneys to serve as Special Commissioner for Domestic Violence cases. The selected attorney will be awarded a contract for (1) year with up to three (3) additional one (1)-year extensions. Compensation will be negotiated. Responsibilities include, but may not be limited to: Reviewing Petitions for Protective Orders and Affidavits of Violation pursuant to the New Mexico Family Violence Protection Act and Rule 1-053.1 NMRA 1978; Conducting hearings and prepare appropriate orders resulting from those hearings; Providing a minimum of ten (10) office hours per week in addition to presiding over cases assigned for hearings; Contractor shall abide by Rules 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct. Cover letter and resume outlining qualifications and experience are to be included with all proposals. For a complete copy of the proposal requirements, please contact Bob Tyfair at (575) 528-8380. The Third Judicial District Court reserves the right to reject any or all proposals. All proposals are to be marked "RFP 24-06 SEALED PROPOSAL FOR DOMESTIC VIOLENCE SPECIAL COMMISSIONER". Proposals must be received no later than 2:00 p.m. on Friday, July 14, 2023. Please submit to: Bob Tyfair, Chief Procurement Officer, Third Judicial District Court, 201 W. Picacho Las Cruces, NM 88005

Community Development Director

Under limited supervision of City Manager, performs a variety of professional, administrative, and managerial duties related to planning, directing, organizing, and controlling the Community Development Department including planning, zoning, building inspections, business licenses, and code enforcement. Qualifications include Bachelor's Degree in land use planning, urban planning, public administration, business administration, environmental design, civil engineering, or closely related field from an accredited four year college/university; five years of responsible experience performing the above duties of which two years in supervisory capacity in public government is preferred; OR equivalent combination of education/training/experience. Position is Exempt/ Salary range: \$95,976.11 - \$ 131,754.48. Apply online and view full description at <https://roswellnmemployees.munisselfservice.com/employmentopportunities/default.aspx>

Senior Trial Attorney

Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Torrance County (Estancia, NM). Estancia is an hour drive from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be \$76,611 - \$95,763, and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans in the country. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us.

Associate Attorney

The Albuquerque, NM office of Rothstein Donatelli LLP is seeking an associate attorney for its civil rights practice group. The Firm is looking for a New Mexico licensed attorney with at least 2 years or more of litigation experience. The candidate should possess a demonstrated commitment to the welfare of individual clients and maintain the highest quality of legal practice, especially legal research and writing skills. The ideal candidate will have experience litigating civil rights cases and/or representing survivors of sexual abuse. The associate must be skilled in managing complex litigation and providing staff direction. Rothstein Donatelli has offices in Albuquerque and Santa Fe, New Mexico, as well as in Tempe, Arizona. The Rothstein Donatelli LLP practice areas include civil rights and discrimination law, representation of survivors of sexual abuse, criminal defense, complex civil litigation, appeals and post-conviction work, and Indian law. Rothstein Donatelli is committed to social justice and vigorously protecting the rights of its clients. Rothstein Donatelli LLP provides equal employment opportunities to all employees and applicants for employment without regard to race, color, ancestry, national origin, gender, sexual orientation, marital status, religion, age, disability, sex or gender identity, results of genetic testing, or service in the military. Equal employment opportunity applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training. The Firm expressly prohibits any form of unlawful employee harassment or discrimination based on any of the characteristics mentioned above. Improper interference with the ability of other employees to perform their expected job duties is absolutely not tolerated. The Firm is committed to achieving a diverse workforce and an inclusive environment. Interested candidates should send a resume, references, and writing sample to Manya Snyder at info@rothsteinlaw.com.

Staff Attorneys – New Mexico State Bar Foundation Helplines

Are you tired of billable hours? Would you love not to have to go to court? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks helpline staff attorneys for its two legal helplines: Legal Resources for the Elderly Program (LREP) and the Modest Means Helpline. One position is full-time (40 hours/week) and one is part-time (30 hours/week). Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The positions include an excellent benefits package and competitive salary for legal work in the non-profit sector. Full Time (40 hours/week) Salary: \$60,000-\$65,000. Part Time (30 hours/week) Salary: \$45,000-\$50,000. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who are either seniors or who have moderate or low income. Additionally, the attorney will conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico (travel and some overnight stays required). Applicants must be licensed to practice law in New Mexico, and able to work as part of a busy team in a fast-paced environment. Excellent customer service and computer skills are required. Fluency in Spanish is a plus as is a demonstrable interest in issues affecting the senior community or the lower-income community. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced litigation 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 firm 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

(2) Attorney Associates (U) (Full Time; At-Will)

#10115519 & #10115520

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, and/or Managing Attorney. The Attorney Associates will facilitate 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 of statistical data to Court administration. Communications occur telephonically, by email, by video conference and in-person. The Attorney Associates are 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 Associates 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. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$45.442 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, 87102. 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. CLOSES: July 12, 2023 at 5:00 p.m.

Litigation Attorney

Extremely busy Journal Center civil litigation firm is accepting resumes for an associate attorney with 5+ years of experience. Candidates should possess strong research and writing skills and a desire to represent injured parties. Practice areas include civil litigation/personal injury and tort matters. Litigation experience preferred, but not a deal breaker. Salary commensurate with experience. Please forward a letter of interest along with a Resume and writing sample to: paralegal3@bluslaw@gmail.com.

Pursue Justice as a Federal Prosecutor

If you care about justice, if you want to make a difference, or if you are looking for an exciting and challenging career, this is the position for you! The mission of the U.S. Attorney's Office for the District of New Mexico is to uphold the rule of law, keep New Mexico and the nation safe, and to protect civil rights. Criminal AUSAs located in the District of New Mexico prosecute a wide variety of federal crime, breaches of national security, child exploitation, public corruption, transnational organized crime, crime on Native American lands, and violent crime. Qualifications: We welcome applicants from the many communities, identities, races, ethnicities, backgrounds, abilities, religions, and cultures of the United States who share our commitment to public service. Applicants must possess a J.D. Degree, be an active member in good standing of a bar (any jurisdiction) and have at least one (1) year of post-J.D. legal or other relevant experience. Salary: AUSA pay is administratively determined based, in part, on the number of years of professional attorney experience. The pay for this position is as follows, including locality pay: Albuquerque, N.M., Salary is \$69,777 to \$182,509, which includes a 17.63% locality pay. Las Cruces, N.M., Salary is \$69,107 to \$180,756, which includes a 16.50% locality pay. All applicants must apply through USAJobs. The complete vacancy announcement may be viewed at <https://www.usajobs.gov/> by searching for 23-NM-11971858-AUSA in the keywords text box. This job will close on July 6, 2023.

Attorney Senior

The New Mexico Judicial Branch is seeking an Attorney Senior for the Administrative Office of the Courts Court Education Services Division. The Attorney Senior works closely with the CES Director to plan, organize, direct, and manage legal education sessions for judges, judicial officers, and court staff. Among other duties, this team member will assist with legal research, policy development, online and in-person judicial and staff education initiatives. The office location is in Albuquerque or Santa Fe, New Mexico. The salary range is \$33,785 - \$67,570 per hour. To apply : www.nmcourts.gov under Career Opportunities. Equal Opportunity Employer

General Counsel, New Mexico Energy, Minerals and Natural Resources Department

About the Office: The Energy, Minerals and Natural Resources Department (EMNRD) strives to become a national model for an energy and natural resources agency with deep policy expertise, transparent processes, and a cohesive mission that balances conservation and development. EMNRD contains six divisions: Energy Conservation and Management, Forestry, State Parks, Oil Conservation, Mining and Minerals, and Administrative Services. The department has over 500 full-time employees working in Santa Fe and in field offices and state parks across the state.

Job Description: This position serves at the pleasure of the Governor of the State of New Mexico through the Secretary of EMNRD and is located at EMNRD's headquarters in Santa Fe, NM. Duties include, but are not limited to: Supervise and manage the Office of General Counsel staff in providing legal advice to OFS and EMNRD divisions and coordinating on legal matters with other state and federal agencies. Legal advice covers the full range of EMNRD operations and programs, including rule making and policy development; Supervise external counsel and contractors, as applicable; Oversee litigation, contracting, and employment matters involving EMNRD; Provide expert legal, contractual, policy, and programmatic advice to the Secretary and other EMNRD executive staff grounded in relevant law and EMNRD operations and programs; Represent EMNRD in legal matters, both internal and external; Interpret executive and legislative orders, rules, regulations, and statutes relevant to EMNRD; Coordinate EMNRD's legislative review and engagement duties, including drafting of fiscal impact reports, confidential bill analyses and assisting with the preparation of legislation that helps advance both the administration's priorities and EMNRD's mission; Ensure that the Office of General Counsel activities align with administration priorities and EMNRD's mission; Ideal candidates for this position will have the following preferred qualifications: Significant legal experience, preferably related to energy, minerals, or natural resources, and administrative law (either at the state or federal level); Demonstrated management and supervisory skills, such as recruiting, hiring, training, managing performance and conduct, assessing and assigning workloads, coaching, and mentoring; Demonstrated ability to analyze complex matters and appropriately identify legal and policy issues. Excellent written and oral communication skills. Demonstrated ability to interact successfully with employees from diverse personal and professional backgrounds, senior Administration officials, and members of the public. Ability to develop and maintain strong, collaborative relationships at all levels. Demonstrated ability to analyze,

revise, and implement legislation and amendments, regulations, and policies. Minimum Qualifications: Applicants must have a J.D. degree from an accredited law school and at least five years of experience in the practice of law; Applicants must either be (i) an active member of the New Mexico bar, (ii) qualified to apply for a limited practice license (Rules 15-301.1 and 15-301.2 NMRA), or (iii) admission by motion (Rule 15-107 NMRA); and Applicants must have a minimum of two years of legal, or equivalent, supervisory experience. Salary: \$115,000-\$125,000. Travel: Occasional travel may be required. Application Process: To apply applicants must submit: (i) their resume and a cover letter that highlights their interest in the position and addresses in detail how they meet the qualifications above, and (ii) at least three professional references with contact information. A writing sample may be requested. Selected applicants will be subjected to background checks and other pre-employment screenings. Please submit complete applications via email to Ms. Lois C. Pedro at loisc.pedro@emnrd.nm.gov. Please clearly identify in the subject line the position for which you are applying.

Legal Assistant/Records Custodian State of New Mexico Early Childhood Education and Care Department Office of General Counsel

The New Mexico Early Childhood Education and Care Department, Office of the General Counsel, is seeking a Legal Assistant/Records Custodian. The Legal Assistant/Records Custodian will, under attorney guidance, manage all Inspection of Public Record (IPRA) requests submitted to the department following all legal requirements including all HIPAA, IPRA and other applicable state and federal laws in responding to each. This position will also be responsible for the coordination of legislative bill analysis and tracking during the legislative session and assist the Office of General Counsel with any other tasks as needed. Please go to www.spo.nm.us/work-for-new-mexico for additional details and to apply or contact Brendan Egan, Deputy General counsel at brendan.egan2@cecd.nm.gov.

2023 Bar Bulletin Publishing and Submission Schedule

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

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

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

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

Experienced Civil Litigation Paralegal Needed

Albuquerque Plaintiffs firm with a significant focus on medical malpractice seeking experienced civil litigation paralegal. Upon hiring, the paralegal will be involved in all stages of litigation from discovery to trial prep/assistance. Ideal candidate will have seven years of prior experience in civil litigation with knowledge of State and Federal District Court rules and filing procedures, factual and legal online research and document management and processing. Remote work allowed. All inquiries confidential. Salary DOE, benefits included. Email resume and cover letter to: info@collinsattorneys.com

Legal Secretary

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Miscellaneous

Search for Will

Searching for a Will and or Family Trust for Kimberly W. Brown, deceased, late of Albuquerque New Mexico. If you prepared either and or have the originals or copies please contact Edward J. Roibal, Attorney, 505-247-4404 or email ed@roibal.com.

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