

BAR BULLETIN

September 13, 2023 • Volume 62, No. 17



Ghost Ranch, by Jonathan Miller (see page 6)

rattlesnakelaw.com

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New Mexico State Bar Foundation
Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education



SEPTEMBER 15

In-Person and Webcast

2023 Employment & Labor Law Institute

5.25 G, 1.0 EP
9 a.m.–4:30 p.m.

SEPTEMBER 19

Teleseminar

IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements

1.0 G
11 a.m.–Noon

SEPTEMBER 20

Webinar

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

1.0 EP
Noon–1 p.m.

SEPTEMBER 21

In-Person and Webcast

34th Annual Appellate Practice Institute

5.0 G, 1.0 EP
9 a.m.–4:30 p.m.

Webinar

Staying Secure Electronically

1.0 EP
Noon–1 p.m.

SEPTEMBER 22

Webinar

ChatGPT in the Legal Field: Benefits, Pitfalls, and Ethical Issues of Artificial Intelligence

1.0 EP
Noon–1 p.m.

SEPTEMBER 26

Teleseminar

Ethics, Disqualification and Sanctions in Litigation

1.0 EP
11 a.m.–Noon

SEPTEMBER 29

In-Person or Webcast

2023 Family Law Fall Institute

5.5 G, 1.0 EP
9 a.m.–4:45 p.m.

OCTOBER 6

In-Person or Webcast

2023 Health Law Symposium

3.0 G, 2.0 EP
9:30 a.m.–4 p.m.

OCTOBER 12

In-Person or Webcast

2023 Procurement Code Institute

3.0 G, 1.0 EP
8 a.m.–12:15 p.m.

OCTOBER 18

Webinar

Avoid Getting Hacked Off: Cybersecurity Best Practices

1.0 EP
Noon–1 p.m.

OCTOBER 19

Webinar

Your Inbox Is Not a Task List: Real World Task Management for Busy Lawyers

1.0 EP
11 a.m.–Noon

NOVEMBER 15

Webinar

Pac-Man, Tails, Prior Acts, Claims Made – Ugh, What Does It All Mean? What You Need to Know About Professional Liability Insurance

1.0 EP
Noon–1 p.m.

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CUDDY & McCARTHY, LLP

Attorneys at Law

CUDDY & McCARTHY, LLP WELCOMES CARLI M. MARSHALL



We are pleased to announce that Carli M. Marshall has joined Cuddy & McCarthy, LLP as a Senior Associate in our Albuquerque office. Her experience covers a wide variety of practice areas including construction defect, and general civil litigation. We are thrilled to have her as part of the Cuddy & McCarthy Team!

CUDDY & McCARTHY, LLP WELCOMES MARGARET A. LORENZ

We are excited to announce Margaret A. Lorenz (a/k/a Mia Lorenz) has joined the Firm as Of Counsel. Ms. Lorenz is licensed in both New Mexico and North Carolina and has joined Cuddy & McCarthy in our Albuquerque office. Ms. Lorenz's law practice focuses on estate planning, probate and real property. We are happy to welcome Mia to New Mexico and excited to have her as part of the Cuddy & McCarthy Team!



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506 S. Main Street, Suite 103C
Las Cruces, New Mexico 88001

www.cuddymccarthy.com



CUDDY & McCARTHY, LLP
Attorneys at Law

**CUDDY & McCARTHY WELCOMES SCOTT E. TURNER AND
SCOTT A. BECKMAN OF THE TURNER LAW FIRM**

We are pleased to announce that as of September 1, 2023, The Turner Law Firm has joined Cuddy & McCarthy, LLP in our Albuquerque Office. We are delighted to welcome Scott E. Turner and Scott A. Beckman to our group of talented and respected attorneys.



Scott E. Turner has joined us as a Partner of the Firm. Mr. Turner will continue to bring his knowledge and experience in representing his clients in the many areas of business law, real estate, homeowners' association disputes, collections and estate administration.

Scott A. Beckman has joined us as our newest associate of the Firm. His experience covers a wide variety of practice areas including business and corporate law, real estate, property, general civil litigation, and homeowners' association disputes.



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New Mexico**
Est. 1886

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Meetings

September

- 13**
Animal Law Section
Noon, virtual
- 15**
Appellate Section
Noon, virtual
- 19**
Solo and Small Firm Section
9 a.m., virtual
- 26**
Intellectual Property Law Section
Noon, virtual
- 29**
Immigration Law Section
Noon, virtual

October

- 6**
Elder Law Section
Noon, virtual
- 10**
Business Law Section
11 a.m., virtual

Workshops and Legal Clinics

September

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

October

- 4**
Divorce Options Workshop
6-8 p.m., virtual
- 10**
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, Virtual
For more details and to register, call
505-797-6005

- 25**
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

November

- 1**
Divorce Options Workshop
6-8 p.m., virtual

About Cover Image and Artist: Jonathan Miller is an attorney/author based out of Albuquerque. Jonathan travels around the state providing indigent criminal defense. He frequently stops along the highway to snap his photos on the way to court using his smart phone. He's also become addicted to the "layout app."

Notices

Please email notices desired for publication to notices@sbnm.org.

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

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

Supreme Court Law Library

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

N.M. Administrative Office of the Courts

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

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

Bernalillo County Metropolitan Court

Notice of Temporary Closure

The Bernalillo County Metropolitan Court will be closed on Oct. 20 for the court's annual training conference. Misdemeanor Custody Arraignment Hearings will be held that morning starting at 9 a.m. (MT) with Felony First Appearance Hearings immediately following. The courthouse will reopen on Oct. 23.

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will make all reasonable efforts to decide cases promptly.

Fifth Judicial District Court Notice of Mass Case Reassignment

Gov. Michelle Lujan Grisham has appointed Efren Cortez to fill the judgeship vacancy in the Fifth Judicial District Court, Lea County, Division III. Effective Aug. 19, a mass reassignment of cases occurred pursuant to Rule 23-109 and Rule 1-088.1, NMRA. Judge Efren Cortez will be assigned all cases previously assigned to Judge William Shoobridge and/or Division III of Lea County District Court. Pursuant to 1.088.1(C), parties who have not yet exercised a peremptory excusal will have 10 days from Sept. 13 to file their peremptory excusal.

Eighth Judicial District Court Notice of Mass Case Reassignments

Eighth Judicial District Court Chief Judge Emilio J. Chavez provides notice that as a result of the appointment of Judge Steven A. Romero to Division II of the Eighth Judicial District, the Court is re-assigning all Division II Judge cases to Judge Steven A. Romero effective Sept. 16. Pursuant to Supreme Court Rule 1.088.1 parties who have not yet exercised a peremptory excusal will have 10 days from Sept. 16 to excuse Judge Romero.

Twelfth Judicial District Court Notice of Reassignment of Cases

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

U.S. District Court, District of New Mexico Notice of Proposed Amendments to Local Rules of Criminal Procedure

Proposed amendments to the Local Rules of Criminal Procedure of the United

States District Court for the District of New Mexico are being considered. A "redlined" version (with the proposed amendments to 44.1(g) Representation of Corporation or Partnership) and a clean version of these proposed amendments are posted on the Court's website at www.nmd.uscourts.gov. Members of the Bar may submit comments by email to clerkofcourt@nmd.uscourts.gov or by mail to U.S. District Court, Clerk's Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: Cynthia Gonzales, no later than Sept. 30.

STATE BAR NEWS

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on July 27 at the Hyatt Regency Tamaya Resort & Spa, Santa Ana Pueblo, NM. Action taken at the meeting follows:

- Approved the May 12, 2023 meeting minutes;
- Supreme Court Chief Justice Shannon Bacon attended the meeting to discuss Rule 24-101(A), Rules Governing the New Mexico Bar, item number one-to aid the courts in improving the administration of justice, and stated that access to justice and procedural fairness are a big focus of the courts at this time. Details of the Court's current efforts in advancing access to justice and procedural fairness were discussed;
- Reported on an update to the 2023-2025 Three-Year Strategic Plan; the appellate case summaries are now being published in the Bar Bulletin in a timely fashion and are being emailed to members;
- Updated the indemnity clause in the Memorandum of Understanding between the State Bar and the Bar Foundation;
- Elected Aja Brooks as President-Elect and Allison Block-Chavez as Secretary-Treasurer by acclamation for 2024;
- Received a report that the ATJ Fund Grant Commission 2023-2024 granted awards to nine legal services providers in the amount of \$1.2 million dollars;

Correction to the 2023-24 Resource Deskbook & Membership Listing

New Mexico
Court of Appeals

505-827-4925

Corrections to Court of Appeals Opinions

In the *Bar Bulletin* publication issued August 23, 2023, **Opinion No. A-1-CA-39894** (p. 36) did not list its authors. Judge Zachary A. Ives is the author of Opinion No. A-1-CA-39894, with Chief Judge Jennifer L. Attrep and Judge Katherine A. Wray as the participants. Additionally, **Opinion No. A-1-CA-40111** (p. 38) listed incorrect authors. Its correct author is Judge Kristina Bogardus, with Judge J. Miles Hanisee and Judge Jacqueline R. Medina as participants.

- Received a report and ratified the action taken by the Executive Committee, which included: 1) approved the Annual Awards Committee recommendations for the 2023 award recipients; 2) approved the reappointment of Shasta Inman as the young lawyer representative to the ABA House of Delegates; 3) discussed the Committee on Women and the Legal Profession Pamela Minzner Award and requested the Policy and Bylaws Committee to explore the creation of a policy for committee awards for the Board's consideration; and 4) reviewed and approved the agenda for the July 27th Board meeting;
- Reported on the joint meeting of the State Bar and Bar Foundation Executive Committees, at which membership makeup of the Foundation Board and the related party status between the two organizations was discussed;
- Received a report from the Finance Committee, which included: 1) approved the May 12, 2023 meeting minutes; 2) accepted the June 2023 Financials; 3) reviewed the CPF, ATJ and JLAP Second Quarter 2023 Financials; and 4) received the draft Audit RFP and timeline;
- Received a report from the Annual Awards Committee on the 2023 recipients;
- Received a report from the Member Services Committee, which is revising the Committees Policy to provide expectations and guidelines for committees;
- Received reports from the Presidents of the State Bar and NM State Bar Foundation;
- Received a report from the Executive Director;
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions and bar commissioners on events in their districts; and
- Received information on the new mandatory Equity in Justice CLE credit.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Oct. 13 meeting.

Employee Assistance Program Q3 Free Webinars

The Solutions Group will be running three free webinars in the third quarter of 2023. Visit www.solutionsbiz.com to view the following upcoming webinars.

- Winning Practices for Boosting Children's Confidence (Sept. 13)

Equity in Justice Program Have Questions?

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

— *Featured* —

Member Benefit



MeetingBridge offers easy-to-use teleconferencing especially designed for law firms. You or your staff can set up calls and notify everyone in one simple step using our Invitation/R.S.V.P. tool. No reservations are required to conduct a call. Client codes can be entered for easy tracking. Operator assistance is available on every call by dialing *0.

Call 888-723-1200, or email sales@meetingbridge.com or visit meetingbridge.com/371.

Invitation to New Equity in Justice Book Club Meetings

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

New Mexico Lawyer Assistance Program Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pam.moore@sbnm.org 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 Oct. 5 and Jan. 11, 2024. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

UNM SCHOOL OF LAW Distinguished Achievement Award and Alumni Promise Award Honorees Announcement

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

Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by ap-

pointment 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.

The New Mexico Law Review Invitation to New Mexico Civil Rights Act Symposium

The New Mexico Law Review invites you to the New Mexico Civil Rights Act Symposium: Its Meaning and Application! The symposium will be on Oct. 28 from 9 a.m. to 5 p.m. (MT) at the UNM School of Law. There will be three keynote speakers, including Julie Murray and Matthew Segal, from the ACLU State Supreme Court Initiative, and Professor Joanna Schwartz from the UCLA School of Law. Additionally, there will be three locally hosted discussion panels focused on aspects of civil rights litigation and legislation. This event is approved for 5 general and 1 ethics MCLE credit. Contact Shannel Daniels at nmlrsymposium2023@unm.edu for any questions. Please register by Oct. 21 here: https://secure.touchnet.com/C21597_ustores/web/product_detail.jsp?PRODUCTID=3486&SINGLESTORE=true.

OTHER NEWS Equal Access to Justice Notice of Invitation to Celebration for Justice Chavez

Equal Access to Justice invites you to celebrate the Honorable Justice Edward Chavez on Sept. 20 from 8:30 to 10:30 a.m. (MT) at the State Bar of New Mexico. Marking the start of Equal Access to Justice's 35th anniversary, this special breakfast reception will feature presentations from leaders in our community and celebrate Justice Chavez. Join us for this memorable morning gathering to learn about the roots of legal aid in New Mexico and its continued relevance in our community today from keynote speaker, Justice Chavez. Reconnect with old friends,

meet new colleagues and be inspired to participate in the future of civil legal aid. To register for this event, please visit www.eaj-nm.org or call 505-339-8096. This event is sponsored by Rodey Law, Martinez, Hart, Sanchez, & Romero and Modrall Sperling.

N.M. Workers' Compensation Administration Notice of Judicial Vacancy

The Director of the New Mexico Workers' Compensation Administration hereby announces a vacancy for a Workers' Compensation Judge effective Oct. 16. Judge Reginald Woodard is not seeking reappointment. The primary location of the position is in Albuquerque, N.M., with periodic travel throughout the state. This position is an exempt position with an initial one-year term, and a possible appointment to a subsequent five-year term. Interested individuals may obtain a Judicial Application at www.workerscomp.nm.gov. The completed Judicial Application and supporting documentation must be received by the WCA at the Albuquerque office of the New Mexico Workers' Compensation Administration, attention Director Robert E. Doucette, Jr., no later than close of business on Sept. 29. A background check will be conducted prior to hiring. WCA judicial salaries are set by statute; please see NMSA sec. 52-5-2(B).

The Center for Civic Values Judges Needed for New Mexico Middle School Mock Trial Program

The New Mexico Middle School Mock Trial Program, open to any and all middle school students, needs judges for its next event. The event will be held in Las Cruces at the US Federal Court and the Third Judicial District Court in Las Cruces. Those interested in attending the event may sign up at <https://civicvalues.org/mock-trial/registration/middle-school-judge-volunteer-registration/> by Oct. 25. Please email any questions to Kristen Leeds at Kristen@civicvalues.org or by phone at 505-764-9417.

Legal Education

September

- | | | |
|--|--|---|
| <p>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</p> | <p>20 It's Always the Little Things: Best Office Practices and Procedures
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 29th Annual Law Clerk Meeting For N.M. Federal Law Clerks
9.9 G, 1.7 EP
Web Cast (Live Credits)
United States District Court, District of New Mexico
www.nmd.uscourts.gov</p> |
| <p>13 Using Trusts as an Integral Component of Elder Law Services
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Staying Secure Electronically
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Proven Techniques to Control Difficult Witnesses During Cross-Examination at Trial & at Depositions (In Person or Online)
1.5 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>14 Attachments to Pleadings and Motions--What is Proper
1.0 G
Live Program
Southern New Mexico Bar Association</p> | <p>21 34th Annual Appellate Practice Institute
1.0 G, 5.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 2023 Family Law Fall Institute
5.5 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>14 Don't Hack Your Way Through Cyber Security
1.0 G
Live Program
Albuquerque Bar Association
www.abqbar.org</p> | <p>22 ChatGPT in the Legal Field: Benefits, Pitfalls, and Ethical Issues of Artificial Intelligence
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>29 Clear and Effective Communication with Clients, Colleagues and Staff
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>15 2023 Employment & Labor Law Institute
5.25 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>24 Taking and Defending Depositions
31.0 G
Live Program
University of New Mexico Law School
lawschool.unm.edu</p> | |

October

- | | | |
|--|---|---|
| <p>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</p> | <p>6 2023 Health Law Symposium
3.0 G, 2.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 Avoid Getting Hacked Off: Cybersecurity Best Practices
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>4 Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set
1.0 G, 2.0 EP
Live-Moderated
The Ubuntuworks Project
www.ubuntuworksschool.org</p> | <p>12 2023 Procurement Code Insitute
3.0 G, 1.0 EP
In-Person or Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>18 N.M. Civil Rights Symposium
5.0 G, 1.0 EP
Live Program
University of New Mexico Law School
lawschool.unm.edu</p> |

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.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

INCREASE TO PER PAGE TRANSCRIPT FEE RATES

At its September 2022 session, the Judicial Conference approved a significant increase to the maximum per page original and copy transcript fee rates, effective October 1, 2023 (see attached chart). The increase of roughly 10 percent in each of the fiscal years 2024 and 2025, or roughly 20 percent overall, is aimed at keeping pace with inflation and helping courts recruit and retain qualified court reporters. The *Guide to Judiciary Policy*, Volume 6 (*Guide*), and transcript fee schedule on uscourts.gov will be updated to reflect these changes.

The District of New Mexico has adopted the proposed schedule of per page transcript fees, subject to the maximum rates established by the Judicial Conference. Transcripts ordered prior to the court's adoption of a new fee schedule should be billed at the rates in effect at the time the order was placed with the court reporter.

**New Original and Copy Transcript Fee Rates
(Effective Fiscal Years 2024 and 2025)**

Original Transcript Rates

Transcript Types	Original Rate	Increased Rate Fiscal Year 2024	Increased Rate Fiscal Year 2025
Ordinary Transcript (30-day)	\$3.65	\$4.00	\$4.40
14-Day Transcript	\$4.25	\$4.70	\$5.10
Expedited Transcript (7-day)	\$4.85	\$5.35	\$5.85
3-Day Transcript	\$5.45	\$6.00	\$6.55
Daily Transcript	\$6.05	\$6.70	\$7.30
Hourly Transcript	\$7.25	\$8.00	\$8.70
Realtime Transcript	One feed, \$3.05 per page; two-to- four feeds, \$2.10 per page; five or more feeds, \$1.50 per page.	One Feed, \$3.40; two-to-four feeds, \$2.35; five or more feeds, \$1.65.	One Feed, \$3.70; two-to-four feeds, \$2.55; five or more feeds, \$1.80.

Copy Rates

Transcript Types	First Copy	Increased First Copy Fiscal Year 2024	Increased First Copy Fiscal Year 2025	Add'l Copy	Increased Add'l Copy Fiscal Year 2024	Increased Add'l Copy Fiscal Year 2025
Ordinary Transcript (30-day)	\$.90	\$1.00	\$1.10	\$.60	\$.70	\$.75
14-Day Transcript	\$.90	\$1.00	\$1.10	\$.60	\$.70	\$.75
Expedited Transcript (7-day)	\$.90	\$1.00	\$1.10	\$.60	\$.70	\$.75
3-Day Transcript	\$1.05	\$1.20	\$1.30	\$.75	\$.85	\$.90
Daily Transcript	\$1.20	\$1.35	\$1.45	\$.90	\$1.00	\$1.10
Hourly Transcript	\$1.20	\$1.35	\$1.45	\$.90	\$1.00	\$1.10
Realtime Transcript	n/a	n/a	n/a	n/a	n/a	n/a

Board of Bar Commissioners Election Notice 2023



Notice is hereby given for the 2023 State Bar of New Mexico Board of Bar Commissioners election. Pursuant to Supreme Court Rule 24-101 NMRA, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico (State Bar).

The four commissioner positions described below expire December 31, 2023, and will be filled by this election. The positions are for three-year terms that run from January 1, 2024, through December 31, 2026. The election opens November 9, 2023, and closes at noon on November 30, 2023.

Nominations of State Bar active status members to fill the vacancies shall be made by petition of any ten (10) or more active status members of the State Bar who are in good standing and whose principal place of practice (address of record) is in the respective district. Active status State Bar members whose principal place of practice (address of record) is in El Paso County, Texas, may nominate members for the Third and Sixth Judicial Districts. Members of the State Bar may nominate (sign a petition for) more than one candidate for a position.

Nominations must be made by completing the Nomination Petition at the link below or completing the form on the next page. The nominee is responsible for collecting all nomination petitions and submitting them to the State Bar in either a single email or a single mailed packet **no later than 5:00 p.m. MT on October 11, 2023. Individual emails sent directly to the State Bar by a petitioner will not be counted.**

www.sbnm.org/BBCnomination2023

Primary Responsibilities of the Board of Bar Commissioners:

- › Carry out the organization's mission and purposes and the current Strategic Plan.
- › Ensure effective organization planning and evaluate the State Bar's programs and operations in line with the strategic plan and budget.
- › Ensure financial accountability for the organization.
- › Promote the programs and activities of the State Bar and communicate regularly with constituents regarding State Bar activities.
- › Attend Board meetings (up to six per year), including the Annual Meeting of the State Bar.
- › Establish and enforce bylaws and policies.
- › Represent the State Bar at local bar-related meetings and events.
- › Select, support, and annually evaluate the Executive Director.
- › Serve on internal Board and Supreme Court committees and boards.

First Judicial District – Two Positions

Los Alamos, Rio Arriba, and Santa Fe Counties

- › One currently held by Elizabeth J. Travis
- › One currently held by Carolyn A. Wolf
(ineligible for reelection)

Ninth and Tenth Judicial Districts – One Position

Curry, DeBaca, Harding, Quay and Roosevelt Counties

- › Currently held by Mitchell L. Mender

Third and Sixth Judicial Districts – One Position

Dona Ana, Grant, Hidalgo and Luna counties

- › Currently held by Rosenda Chavez-Lara

Send all nomination petitions in one packet to:

Executive Director Richard B. Spinello, Esq.
State Bar of New Mexico
PO Box 92860, Albuquerque, NM 87199-2860
5121 Masthead St. NE, Albuquerque, NM 87109
or Email: bbc@sbnm.org

— PETITIONS MUST BE RECEIVED BY 5 P.M. MT, OCT. 11 —

Direct inquiries to 505-797-6038 or kbecker@sbnm.org.



Nomination Petition for Board of Bar Commissioners

I, the undersigned, State Bar member in good standing and who has a principal place of practice (address of record) in the _____ Judicial District¹, hereby nominate _____, whose principal place of practice (address of record) is located in the _____ Judicial District.

Signature

Print Name

Address (principal place of practice)

Date

¹Members whose principal place of practice is located in El Paso County, Texas, are represented by, nominate and vote in the Third and Sixth Judicial Districts.

To make a nomination, complete all information in this petition and send to the nominee by either method below:

- **Electronically** by going to www.sbnm.org/BBCnomination2023; or
- **Hard copy** by printing the online form or completing this form and mailing or emailing it to the nominee.

*Do not submit this petition directly to the State Bar. The nominee is responsible for collecting all nomination petitions and submitting them to the State Bar in either a single email or a single mailed packet **no later than 5:00 p.m. MT on October 11, 2023.***

Celebrating the Honorable Justice Edward Chávez and his contributions to civil legal aid

**“Among all the
opportunities that New
Mexico has offered me,
none have more clearly
shaped me than my work
with legal aid.”**

– Honorable Justice Edward Chávez

An Equal Access to Justice 35th Anniversary Event

**Wednesday, September 20, 2023
8:30-10:30am, State Bar of New Mexico
*Register to reserve your seat***

**Keynote Speaker -
Justice Edward Chávez, retired NM Supreme Court Justice**

Presenters: Karen Meyers, consumer protection lawyer and EAJ founder;
Justice Richard C. Bosson, retired NM Supreme Court Justice;
Nick Mattison, partner, Feferman, Warren and Mattison;
and Sireesha Manne, executive director, New Mexico Center on
Law and Poverty, and special guests.



To reserve your seat, make a gift, or secure a sponsorship,
scan the QR code, visit www.eaj-nm.org/events
or call (505) 339-8096.



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New Mexico Commission on Access to Justice Expanding and improving civil legal assistance for New Mexicans

@accesstojustice.nmcourts.gov

The New Mexico Access to Justice Commission, as a commission of the New Mexico Supreme Court, sets priorities for civil legal providers around the state, makes recommendations to the Supreme Court to improve court services, and troubleshoots legal service issues statewide as they arise. The ATJ Commission regularly provides information about issues important to civil legal needs in New Mexico in the Bar Bulletin to keep members of the bar up-to-date.

Making an Impact: How to Engage in Pro Bono Legal Work in New Mexico

By Damon Hudson, Access to Justice Commissioner

Have you ever wanted to do pro bono legal work but need help figuring out where to start? You're not alone. This article is here to help, offering a roadmap for new and experienced attorneys eager to dive into the world of pro bono service. This article should assist you in finding several different opportunities and ideas that will not only welcome you into the fold but empower you to flourish in making a meaningful impact.

Why should I do pro bono work?

As you know, Rule 24-108 NMRA encourages 50 hours of pro bono public legal services per year or a \$500 financial contribution to organizations that provide legal services to persons of limited means in New Mexico. So, from that, what are some of the good reasons you should do pro bono work?

- **Skill Development:** Attorneys can enhance their legal skills, such as research, writing, negotiation and advocacy, by working on diverse pro bono cases that may differ from their regular practice.
- **Networking:** Pro bono work allows attorneys to expand their professional network by collaborating with other lawyers, judges and community organizations involved in public interest law.
- **Reputation Enhancement:** Pro bono work reflects a commitment to social justice, increasing an attorney's reputation among colleagues, potential clients and the community. Additionally, providing an opportunity to gain or improve experience in different fields within the broader practice of law.
- **Client Development:** Pro bono cases can lead to referrals and connections with potential paying clients who appreciate an attorney's dedication to public service.
- **Professional Growth:** Working on pro bono matters exposes attorneys to new areas of law, enabling professional growth and diversification of expertise.
- **Ultimately,** a license to practice law is a great way to better our community through solving legal problems for those without the ability to pay for an attorney.
- **Most pro bono programs** provide malpractice insurance separate from your employment and allow you to engage in pro bono service on one occasion without creating a representation relationship in the long term.

What about issues with conflicts with my current or potential clients?

Some of the critical ethical points to be aware of when signing up for pro bono work are:

- Under the NM Rules of Professional Conduct, generally, unless an attorney is directly aware of a conflict of interest or aware of another attorney associated with their firm that is disqualified from providing service to the client, the rules on conflict do not always apply. For more specific applications to your personal situation, please see the New Mexico Rules of Professional Conduct, 16-605.
- Some state and federal employees may be prohibited from engaging in this work, so some information here may not apply to those attorneys. Contact your place of employment to confirm your internal requirements for Public Attorneys.
- If you have further concerns, you can always contact the State Bar's Ethics Helpline at 1-800-326-8155 to discuss issues related to the Rules of Professional Conduct.

Okay, I get it, so what are some easy ways I can get involved with pro bono work?

Below is a non-exhaustive list of some great ways to get involved with pro bono legal services in New Mexico in no particular order.

▶ **New Mexico Legal Aid Volunteer Attorney Program**

What is it? The **Volunteer Attorney Program or VAP** connects low-income New Mexicans with New Mexico attorneys for direct representation or advice and counsel through legal clinics or telephonically.

How do I sign up? You can access the teleclinic attorney sign-up or the direct representation application here: <https://vapnm.org/volunteer-opportunities/>. You can engage in longer-term direct representation through the VAP program and limited-scope engagement through the different clinics Legal Aid puts on throughout the year.

› Modest Means Helpline (“MMH”)/Legal Resources for the Elderly Program (“LREP”)

What is it? The Modest Means Helpline (MMH) is a free legal helpline for New Mexico residents with income at or below 500% of the federal poverty guidelines and assists with civil legal matters, including family law, landlord-tenant, minor business issues, consumer matters and probate.

What is it? Legal Resources for the Elderly Program (LREP)
This is a free statewide helpline for NM residents that are 55 and older. The program is provided without income restrictions and assists those in that age range with debt problems/bankruptcy; employment is-sues; foreclosure; kinship guardianship; grandparent visitation; adult guardianship; landlord/tenant issues; Medicaid long-term care; Medicare; Powers of Attorney; Probate; Social Security Disability; Transfer on Death Deeds; and general estate planning.

How do I sign up? The signup pool to help with MMH or LREP can be found here: <https://www.sbnm.org/Member-Services/Pro-Bono-Opportunities>. If you signup here, you are automatically signed up for LREP and VAP unless you request otherwise.

› ABA Free Legal Answers

What is it? ABA Free Legal Answers program is a virtual legal advice portal where qualifying users can request brief advice about specific civil legal issues, and volunteer pro bono attorneys provide information and essential legal advice. Through this program, you can easily spend a few minutes corresponding with pro bono clients and assist them with their legal issues at your convenience.

How do I sign up? <https://nm.freelegalanswers.org/> Go here and click “Attorney Registration.” There are always open questions, and New Mexicans need free and convenient legal help like that offered through this program.

› Young Lawyer’s Division – Wills for Heroes, Veterans Clinics, and Ask-A-Lawyer Call-in Day

What is it? The Young Lawyers Division is a division of the State Bar that works on social, networking, and pro bono activities throughout the state. Most YLD Programs are published to the applicable bar districts seeking volunteers, or in the case of Ask-A-Lawyer Call-In Day, to the entire bar. If for some reason you have an idea for a pro-bono program you would like to put on, reach out, and we can look to find a way to make it happen with the YLD!

How do I sign up? The YLD generally solicits volunteers through directed State Bar emails to the applicable areas where service can be provided. This is the easiest way to sign up for volunteer activities, so keep an eye on your email inbox. You can also get involved with the YLD Board and help plan and prepare these pro bono events!

› DNA - People’s Legal Services

What is it? DNA provides legal assistance, advice, and representation in U.S. and tribal courts to help people living in poverty protect their property and assets, stay safe from physical, mental and financial abuse, avoid exploitation and safeguard their civil rights. DNA promotes tribal sovereignty and offers community legal education programs.

How do I sign up? Contact Armida Lara at alra@dnalegalservice.org. You can sign up to assist with pro bono case representation, self-help clinics, new client intake, community education presentations, serve as a guardian ad litem, and more!

› Advocacy, Inc.

What is it? Advocacy Inc. serves at-risk children and youth from birth to 18 years by providing legal advocacy and support through legal representation for children in foster care or state custody, guardianship, adoption and guardian ad litem services.

How do I sign up? <https://www.nmadvocracy.org/for-attorneys> is where attorneys can sign up to assist the organization in helping children by providing legal services set forth by the Administrative Office of the Court. Attorneys will attend regular training and be assigned a mentor for varying caseloads.

› New Mexico Immigrant Law Center

What is it? The NMILC seeks to make high-quality legal representation accessible to low-income immigrant communities. Attorneys can sign up to assist in representing youth who have been abandoned, neglected or abused in state court, work with survivors of domestic violence, sexual assault, and other serious crimes, work with immigrants in detention, support asylum seekers or support immigrants in your area of expertise.

How do I sign up? The pro bono inquiry form is available at this link: <https://www.nmilk.org/pro-bono-attorneys>

› Pegasus Legal Services for Children

What is it? Pegasus provides legal services to youth and children in dire circumstances, offering a unique range of services to homeless and runaway youth, teen parents, children in the abuse/neglect system, children being raised by their grandparents and children who have been denied appropriate educational services.

How do I sign up? Those interested in providing pro-bono services to support Pegasus in its mission can contact info@pegasuslaw.org or 505-244-1101.

This list is not exhaustive of the different pro bono opportunities with the many great civil legal service providers throughout the state. But this list is a start if you want to engage in pro bono service! Even further, if you cannot assist with any of these groups, often in firms and your practices, there are opportunities for pro bono legal work.

Go to the ATJ website for more information on how to do pro bono work and community events.
<https://accesstojustice.nmcourts.gov>

In my personal experience, I have found pro bono work exceptionally inviting. When I have encountered roadblocks, many attorneys have been available and willing to provide insight and advice on assisting clients in sticky situations. So, I encourage you to contact others in the practice area if you ever get stuck on a pro bono matter. Further, if you attend a volunteer event, there will always be support for you there to provide pro bono services for the clients.

I hope this article is helpful to you in finding a way to engage in pro bono work!

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 June 30, 2023

PUBLISHED OPINIONS

A-1-CA-39198	State v. G Chavez	Reverse/Remand	06/26/2023
A-1-CA-39694	S Chavez v. Convergys Corporation	Reverse/Remand	06/26/2023
A-1-CA-39757	M Hovey-Jaramillo v. Liberty Mutual	Reverse/Remand	06/26/2023
A-1-CA-40113	T Garcia v. NM Dept of Transportation	Affirm/Reverse/Remand	06/26/2023
A-1-CA-39585	State v. E Lea	Affirm	06/29/2023
A-1-CA-38510	State v. E Cebada	Affirm	06/30/2023
A-1-CA-39367	State v. J Johnson	Affirm	06/30/2023
A-1-CA-39549	N Henry v. J Gauman	Affirm	06/30/2023

UNPUBLISHED OPINIONS

A-1-CA-39943	State v. J Carroll	Dismiss	06/26/2023
A-1-CA-40626	R Baros v. J Dominguez	Affirm	06/26/2023
A-1-CA-40705	State v. S Chavez Enriquez	Affirm	06/26/2023
A-1-CA-40818	State v. C Williams	Affirm	06/26/2023
A-1-CA-40619	K Kruskal v. L Quintana	Affirm	06/27/2023
A-1-CA-40624	Tanoan Community Association v. B Ellis	Affirm	06/27/2023
A-1-CA-40779	L Hodges v. Lowes Food Market	Affirm	06/27/2023
A-1-CA-39782	Blochhouse LLC v. F Trujillo	Affirm	06/28/2023
A-1-CA-39964	B Crockett v. Northland Links, LLC	Affirm	06/28/2023
A-1-CA-40394	In the Matter of the Adoption Petition of Nicholas Wayne Montoya	Affirm	06/28/2023
A-1-CA-40396	State v. T James	Affirm/Reverse	06/28/2023
A-1-CA-40528	State v. J Sheridan	Reverse/Remand	06/28/2023
A-1-CA-40534	State v. M Heitz	Affirm	06/28/2023
A-1-CA-40610	In the Matter of F Burke Fenn	Affirm	06/28/2023
A-1-CA-40645	J Carrarro v. S Robinson	Affirm	06/28/2023
A-1-CA-40766	State v. J Gallegos	Affirm	06/28/2023
A-1-CA-40808	State v. A Smith	Affirm	06/28/2023
A-1-CA-40882	CYFD v. Brianna T	Affirm	06/28/2023
A-1-CA-40907	State v. A Rodriguez	Affirm	06/28/2023
A-1-CA-40908	C Bethke v. New Mexico State University	Affirm	06/28/2023
A-1-CA-40952	CYFD v. Kasie S.	Affirm	06/28/2023
A-1-CA-38511	C Nixon v. Hydrotech	Affirm	06/29/2023
A-1-CA-40596	State v. G Marez	Affirm	06/29/2023

Slip Opinions for Published Opinions may be read on the Court's website:

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

Effective July 7, 2023**UNPUBLISHED OPINIONS**

A-1-CA-39839	State v. C Martinez	Affirm	07/05/2023
A-1-CA-39617	A Hurt, MD. v. J Williams	Affirm	07/06/2023
A-1-CA-40393	CYFD v. Phelisha L.	Affirm	07/06/2023
A-1-CA-40749	US Bank Trust National Association v. M Martinez	Affirm	07/06/2023

Effective July 14, 2023**PUBLISHED OPINIONS**

A-1-CA-39570	C Gebler v. Valencia Regional	Affirm	07/13/2023
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UNPUBLISHED OPINIONS

A-1-CA-39806	C Phillips v. NM Department of Information Technology	Reverse/Remand	07/10/2023
A-1-CA-41083	State v. G Roger	Affirm	07/10/2023
A-1-CA-40940	L Lindsay v. R St. Louis, et al.	Affirm	07/11/2023
A-1-CA-39735	State v. G Gregor	Affirm/Vacate/Remand	07/12/2023
A-1-CA-39735	State v. G Gregor	Affirm/Vacate/Remand	07/13/2023
A-1-CA-39868	A Bustamante v. St. Theresa Healthcare	Reverse/Remand	07/13/2023
A-1-CA-40157	B Green v. Peak Medical Farmington, LLC	Reverse/Remand	07/13/2023

Effective July 21, 2023**PUBLISHED OPINIONS**

A-1-CA-39110	State v. C Coble	Affirm	07/17/2023
A-1-CA-39633	State v. L Garcia Pacheco	Affirm	07/17/2023
A-1-CA-40179	New Mexico Department of Health v. A Maestas	Vacate/Remand	07/17/2023
A-1-CA-40466	State v. C Archuleta	Affirm	07/19/2023

UNPUBLISHED OPINIONS

A-1-CA-38737	R Lay v. CC Jones Trucking	Affirm/Reverse/Remand	
A-1-CA-39867	State v. J Zamora	Affirm	
A-1-CA-39758	State v. C McCasland	Affirm	
A-1-CA-39648	State v. E Vega	Affirm	
A-1-CA-40591	State v. T Watson	Affirm	
A-1-CA-39606	J F Hernandez v. NM Racing Commission	Affirm	
A-1-CA-40513	State v. A Baray	Reverse/Remand	

Effective July 28, 2023

PUBLISHED OPINIONS

A-1-CA-38779	Process Equipment v. NM Tax & Rev	Affirm	07/25/2023
A-1-CA-39622	Four Hills Park Group, LLC v. L Masabarakiza	Affirm/Reverse	07/25/2023
A-1-CA-39807	State v. M Nieto	Affirm/Vacate/Remand	07/25/2023
A-1-CA-38912	E Rodriguez v. E Sanchez	Affirm	07/26/2023

UNPUBLISHED OPINIONS

A-1-CA-40338	B Sabeerin v. City of Albuquerque	Affirm	
A-1-CA-40451	Bruhn Enterprises Inc. v. C Gutierrez	Affirm	
A-1-CA-40790	State v. A Garcia	Reverse	
A-1-CA-38234	State v. O Delgadillo-Vasquez	Affirm/Reverse/Remand	
A-1-CA-39308	City of Roswell v. F Lucero	Affirm	
A-1-CA-39088	K Oakey v. Doctor on Call	Affirm	
A-1-CA-39894	State v. C Lopez	Affirm	
A-1-CA-40452	State v. G LeClair	Other	

Effective August 4, 2023

PUBLISHED OPINIONS

A-1-CA-39691	State v. D Leidy	Reverse/Remand	07/31/2023
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UNPUBLISHED OPINIONS

A-1-CA-39181	State v. A Otero	Affirm	07/31/2023
A-1-CA-39553	V Chapa v. Board of County Commissioners	Affirm	07/31/2023
A-1-CA-39955	C Simpson v. B Harris	Affirm	07/31/2023
A-1-CA-40062	State v. M Baisley	Affirm	07/31/2023
A-1-CA-40111	State v. V Garcia	Affirm	07/31/2023
A-1-CA-40406	Wells Fargo Bank v. A Orozco	Affirm	07/31/2023
A-1-CA-40735	H Champaign v. M Champaign	Affirm	07/31/2023
A-1-CA-39620	G Beltran v. Agave Health, Inc.	Affirm	08/01/2023
A-1-CA-39779	State v. S Beard	Affirm	08/01/2023
A-1-CA-40145	Barry Green v. Clovis Healthcare and Rehabilitation Center	Reverse/Remand	08/01/2023
A-1-CA-39793	State v. R Navarette	Reverse/Remand	08/03/2023

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-012
No: S-1-SC-38812 (filed May 22, 2023)

Q LINK WIRELESS LLC,

Appellant,

v.

**NEW MEXICO PUBLIC REGULATION
COMMISSION,**

Appellee.

**In the Matter of the Petition of Q Link Wireless LLC for Designation
as an Eligible Telecommunications Carrier for the Limited Purpose of
Providing Lifeline Service in the State of New Mexico,
NMPRC Case No. 12-00389.**

**APPEAL FROM THE NEW MEXICO PUBLIC REGULATION
COMMISSION**

The Law Office of Joseph Yar, P.C.
Joseph Yar
Albuquerque, NM

for Appellant

Russell R. Fisk
Associate General Counsel
Santa Fe, NM

for Appellee

OPINION

VIGIL, Justice.

I. INTRODUCTION

{1} Q Link Wireless LLC (Q Link) petitioned the New Mexico Public Regulation Commission (Commission) for designation as an eligible telecommunications carrier (ETC). The designation would have made Q Link eligible to access certain federal funds for providing telecommunications services to underserved communities in New Mexico. *See* NMSA 1978, § 63-9H-6 (2017, amended 2021); 47 U.S.C. § 214(e)(1). Following lengthy and protracted proceedings before the Commission's hearing examiner, Q Link filed a motion to withdraw its petition. The hearing examiner filed an Order Recommending Dismissal of Proceeding with Prejudice (Recommended Decision). The recommendation was to dismiss the petition and to ban Q Link from ever again filing a petition to obtain an ETC designation. The Commission adopted the Recommended Decision in full. Q Link appeals, and we reverse, concluding that

the Commission lacks express or implied statutory authority to ban Q Link from ever again seeking an ETC designation.

II. BACKGROUND

{2} In 2012, Q Link petitioned the Commission requesting an ETC designation to receive low-income federal universal service support funds pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (federal Telecommunications Act) (codified as amended in scattered Sections of 47 U.S.C.). The petition was filed "solely to provide Lifeline service to qualifying New Mexico households, for both tribal and non-tribal areas." Lifeline service is a service offered to "qualifying low-income consumers," allowing the consumer to pay a reduced charge for telephone or broadband internet access. 47 C.F.R. § 54.401(a) (2016). The petition was assigned to a hearing examiner for review and a recommendation.

{3} In November 2019, Q Link filed a motion to withdraw its petition for designation as an ETC "without prejudice to its reapplication at some future date." More

than a year later, the hearing examiner issued its Recommended Decision. The Recommended Decision treated Q Link's motion to withdraw "as a request for dismissal of the proceeding without prejudice for good cause," under 1.2.2.12(B) NMAC. The Recommended Decision recited an alleged "pattern of concealment, evasion, and misrepresentation . . . by Q Link" throughout the proceedings, and provided that "Q Link's repeated violations of the [h]earing [e]xaminer's bench request orders constitute sufficient cause to dismiss outright its [a]mended [p]etition with prejudice."

{4} The Recommended Decision concluded that "[t]he public interest . . . would not be served by designating Q Link as an ETC in New Mexico." The hearing examiner stated, "given its recurring disrespect for Commission processes that counterproductively subverted this proceeding time and again, Q Link has forfeited the opportunity to a hearing before this Commission on the merits of any future request for ETC designation." The hearing examiner then wrote, "if approved by the Commission, [the dismissal with prejudice] would constitute an adjudication on the merits conclusively rejecting Q Link's request for designation as an ETC in New Mexico and would effectively bar Q Link from seeking such relief from this Commission or its successor again." (Footnote omitted.)

{5} Q Link raised four exceptions to the Recommended Decision. First, Q Link argued the Recommended Decision was improperly based upon the hearing examiner's incorrect interpretation of information and documents that were irrelevant to Q Link's motion to withdraw. Second, Q Link asserted the hearing examiner considered extrajudicial information obtained through his own independent factual investigation. Third, Q Link argued that adopting the Recommended Decision would deprive Q Link of property rights without due process. Lastly, Q Link argued that the Commission lacked the statutory authority to adopt the Recommended Decision because there is no statute authorizing the Commission to dismiss the petition with prejudice and the Recommended Decision did not cite any such authority.

{6} The Commission adopted all of the findings of fact and conclusions of law of the Recommended Decision and rejected each of Q Link's exceptions. The Commission determined that the record cast strong doubt on Q Link's trustworthiness to serve the public interest and that Q Link "sought to conceal important information as to its adverse regulatory treatment in other states." In rejecting Q Link's third and

fourth exceptions, the Commission reasoned that although permanently banning Q Link from seeking an ETC designation is a severe sanction, the Recommended Decision presented a sufficient record to make a substantive finding on the merits that designating Q Link as an ETC would not be in the public interest. Finally, the Commission rejected Q Link's request for oral argument. See 1.2.2.37(D) NMAC.

{7} Q Link appeals pursuant to NMSA 1978, Section 63-9H-12 (1999), arguing each of the exceptions it made to the hearing examiner's Recommended Decision. Because it is dispositive, we address only one of Q Link's arguments: that the Commission does not have the authority to permanently ban Q Link from seeking an ETC designation.

III. THE COMMISSION LACKS AUTHORITY TO PERMANENTLY BAN Q LINK FROM SEEKING AN ETC DESIGNATION

{8} Q Link argues that the Commission cannot permanently bar a corporate entity from applying for an ETC designation by dismissing a petition with prejudice. Q Link emphasizes that while the Commission's regulations "permit a particular . . . proceeding or complaint to be dismissed with finality as to that proceeding," the regulations "do not permit the Commission to forever bar a company from seeking to conduct business" in the state. See 1.2.2.12(B) NMAC (allowing any party to move to dismiss all or a portion of a proceeding).

{9} In response, the Commission argues it "did not exceed its statutory authority by dismissing Q Link's [p]etition with prejudice." To support its assertion, the Commission cites federal statutes which set forth the requirements the Commission must take into account when evaluating an ETC petition. See 47 C.F.R. 54.101-54.203 (2021); see also 47 U.S.C. § 214(e) (2) (granting state commissions authority to designate ETCs if the requirements of Section 214(e)(1) are met).

{10} This Court "shall affirm the [C]ommission's order unless it is: (1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law." NMSA 1978, § 63-9H-13(B) (1999). On the last point, this Court considers whether the Commission's decision is "outside the scope of the agency's authority." *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regul. Comm'n*, 2006-NMSC-032, ¶ 9, 140 N.M. 6, 139 P.3d 166. "Agencies are created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes." *Qwest Corp. v. N.M. Pub. Regul. Comm'n*, 2006-

NMSC-042, ¶ 20, 140 N.M. 440, 143 P.3d 478. Thus, whether the Commission has the authority to permanently ban Q Link from filing a petition for an ETC designation is an issue of statutory interpretation.

{11} "Statutory interpretation is a question of law which we review de novo." *Id.* "Because statutory construction is outside the realm of the Commission's expertise, we afford little, if any, deference to the Commission on this matter." *Pub. Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, ¶ 14, 128 N.M. 309, 992 P.2d 860 (internal quotation marks and citation omitted). It is also a well-settled principle of statutory construction that the specific governs over the general. See *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, ¶ 14, 148 N.M. 692, 242 P.3d 259. "A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it." *Lopez ex rel. Lopez v. Barreras*, 1966-NMSC-209, ¶ 12, 77 N.M. 52, 419 P.2d 251 (internal quotation marks and citation omitted).

{12} With these principles in mind, this Court's primary concern is to examine the plain language of the relevant statutes and then give effect to the legislative intent. See *Pub. Serv. Co.*, 1999-NMSC-040, ¶ 18. We begin with the intersection of federal and state law relating to an ETC designation. We then turn to other New Mexico statutes and regulations governing telecommunications carriers.

{13} The federal Telecommunications Act, directs the Federal Communications Commission and the states to act jointly when establishing support mechanisms ensuring the delivery of basic telecommunications services to consumers. 47 U.S.C. §§ 254, 410. In order to preserve and advance universal service, the federal Telecommunications Act requires every carrier that provides interstate telecommunications services to contribute to a universal service fund. 47 U.S.C. § 254(d). A carrier may receive federal universal service funding to provide telecommunications services if the carrier is designated as an ETC. 47 U.S.C. § 214(e)(1). Designation as an ETC is left to the states using federal standards. *Id.* § 214(e)(2). The federal Telecommunications Act directs that "[a] State commission shall upon its own motion or upon request designate a common carrier that meets [federal requirements] as an [ETC]." 47 U.S.C. § 214(e)(2) (emphasis added); see also 47 C.F.R. § 54.401(d).

{14} Article XI, Section 2 of the New Mexico Constitution provides that the Commission "shall have responsibility for regulating public utilities as provided

by law . . . [and] may have responsibility for regulation of other public service companies *in such manner as the legislature shall provide.*" (Emphasis added.) Under its general powers and duties, "[t]he [C]ommission shall administer and enforce the laws with which it is charged and has every power conferred by law." NMSA 1978, § 62-19-9(A) (2020). Further, the Commission is given the discretion to "take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the [C]ommission is responsible and to enforce those orders by appropriate administrative action and court proceedings." Section 62-19-9(B)(5). These provisions limit the Commission to the power and authority expressly or impliedly conferred by applicable statutes. The governing statute here is the Rural Telecommunications Act of New Mexico (Rural Telecommunications Act), NMSA 1978, §§ 63-9H-1 to -14 (1999, as amended through 2021).

{15} The Rural Telecommunications Act is the state's counterpart to the federal Telecommunications Act. Pertinent here, the Commission must implement and maintain a fund, called the "state rural universal service fund," that is "financed by a surcharge on intrastate retail public telecommunications services." Section 63-9H-6(A), (B). The Commission is required to "establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of universal service at affordable rates." Section 63-9H-6(D)(1). A carrier that desires to receive support from the fund may petition the Commission for an ETC designation. Section 63-9H-6(E). "[U]pon a finding that granting the [petition] is in the public interest," *id.*, and "consistent with federal law," § 63-9H-6(D)(1), the Commission may grant the ETC designation.

{16} Thus, under the plain language of 47 U.S.C. Section 214(e)(2) and Section 63-9H-6, upon the filing of a request from a carrier for an ETC designation, the Commission must evaluate whether the carrier meets the federal requirements and whether an ETC designation would be in the public interest. Although Q Link did not seek state funds under the Rural Telecommunications Act, the Commission's Final Order created eligibility criteria that prevent Q Link from ever receiving federal or state universal service support in New Mexico. In other words, the Commission made a determination that no set of circumstances would justify Q Link as an ETC as long as Q Link exists as a corporation even though the reasons for the Commission's action may dissipate over time. See 18 C.J.S. *Corporations* § 67 (2018) ("Corporations continue in exis-

tence until terminated by constitutional or statutory provisions, until the expiration of the corporate charter, or until legally dissolved.”). Neither 47 U.S.C. Section 214(e)(2) nor Section 63-9H-6 authorize the Commission to make such a determination. Therefore, the Commission acted outside its authority.

{17} Apart from establishing eligibility criteria that prohibit Q Link from receiving federal or state service support in New Mexico, the hearing examiner converted Q link’s motion to withdraw to a motion to dismiss and recommended dismissal with prejudice to permanently bar Q Link from filing any petition in the future. Under the Commission’s rules, parties to a proceeding

may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the [C]ommission, or for other good cause shown. The presiding offi-

cer may recommend dismissal or the [C]ommission may dismiss a proceeding on [its] own motion.

1.2.2.12(B) NMAC. While the hearing examiner may recommend dismissal of a proceeding, and the Commission has the power to dismiss a proceeding on its own motion, the plain language of 1.2.2.12(B) NMAC does not evidence the power of the Commission to dismiss a petition for an ETC designation with prejudice to permanently bar a carrier from filing any petition in the future. Nor do we recognize any such authority in the Rural Telecommunications Act.

{18} In sum, neither the Recommended Decision nor the Final Order cite any authority allowing the Commission to dismiss Q Link’s petition with prejudice to permanently bar Q Link from ever filing a petition in the future. This Court has not found, and the Commission has not identified, any provision within federal or state law that allows the Commission to dismiss an ETC petition with prejudice with this consequence. We therefore conclude that

the Commission did not have the authority to dismiss Q Link’s petition with prejudice and bar Q Link from ever again seeking designation as an ETC.

IV. CONCLUSION

{19} For the foregoing reasons, we conclude that the Final Order adopting the Recommended Decision’s dismissal with prejudice is not in accordance with law because it is beyond the scope of the Commission’s authority. Accordingly, we vacate and annul the Commission’s Final Order and remand for further proceedings. *See* NMSA 1978, § 62-11-5 (1982) (“The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful”).

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

MICHAEL E. VIGIL, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-013
No: S-1-SC-38177 (filed June 22, 2023)

MARIO RUDOLFO,

Petitioner,

v.

ROBERT STEWARD, LCCC, Warden,
VINCENT HORTON, FCCF, Warden,

Respondents.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY

Cindy M. Mercer, District Judge

Burgess & Porter Law, LLC

Barrett G. Porter

Albuquerque, NM

for Petitioner

Hector H. Balderas, Attorney General

Walter Hart,

Assistant Attorney General

Santa Fe, NM

for Respondents

OPINION

VIGIL, Justice.

{1} A jury convicted Petitioner Mario Rudolfo of first-degree murder under a general verdict. The jury instructions contained two alternative theories for the jury to use as a basis for the first-degree murder conviction: (1) felony murder predicated on shooting at or from a motor vehicle and (2) willful and deliberate murder. Twelve years after Petitioner's conviction, this Court issued its opinion in *State v. Marquez*, 2016-NMSC-025, ¶ 2, 376 P.3d 815, holding that "the crime of shooting at or from a motor vehicle may not serve as the predicate felony in support of a felony murder charge." Now, Petitioner argues that the *Marquez* holding applies retroactively and asserts that his conviction for first-degree murder must be vacated.

{2} We hold that *Marquez* announced a new substantive rule which applies retroactively. As a result, we set aside the district court's denial of Petitioner's writ of habeas corpus, vacate Petitioner's first-degree murder conviction, and remand the case for a new trial on first-degree murder.

I. BACKGROUND

{3} In addition to his conviction for one count of first-degree murder, the jury also convicted Petitioner of attempted mur-

der, shooting at or from a motor vehicle, and tampering with evidence. The jury's general verdict did not indicate whether Petitioner's first-degree murder conviction was based upon the theory of felony murder or willful and deliberate murder.

{4} On direct appeal, Petitioner challenged his convictions alleging a double jeopardy violation, that the district court improperly failed to instruct the jury on self-defense, and that there was insufficient evidence to support Petitioner's tampering with evidence conviction. *State v. Rudolfo*, 2008-NMSC-036, ¶ 2, 144 N.M. 305, 187 P.3d 170. This Court affirmed his convictions for first-degree murder, attempted first-degree murder, and tampering with the evidence. However, we vacated Petitioner's conviction for shooting at or from a motor vehicle and held that the alternative theory of felony murder could subject Petitioner to a double jeopardy violation. *Id.* ¶¶ 3, 10-12.

{5} Petitioner then filed a petition for writ of habeas corpus in the district court, arguing that the holding from *Marquez*, 2016-NMSC-025, ¶ 23, is substantive, that it applies retroactively, and that this first-degree murder conviction should be converted to second-degree murder. The district court concluded that *Marquez* should not be applied retroactively because the case did not announce a substantive rule "but that it simply clarified the pro-

cedure for determining whether felonies qualify as predicate felonies." The district court denied Petitioner's writ of habeas corpus petition.

{6} Thereafter, Petitioner petitioned this Court for a writ of certiorari to review the district court's denial of his petition for writ of habeas corpus. See Rule 5-802(N) (2) NMRA; Rule 12-501 NMRA. We granted certiorari to address whether *Marquez* is afforded retroactive effect and to determine the implications of our decision on Petitioner's first-degree murder conviction.

II. DISCUSSION

{7} "It is within the inherent power of this Court to give its decision prospective or retroactive application without offending constitutional principles." *Kersey v. Hatch*, 2010-NMSC-020, ¶ 14, 148 N.M. 381, 237 P.3d 683 (internal quotation marks and citation omitted). "Retroactivity is a legal question, which we review de novo." *Id.* (internal quotation marks and citation omitted).

A. Threshold Requirements for Retroactivity Analysis

{8} For new case law to apply retroactively, a judicial opinion must have announced a new rule after a defendant's criminal conviction had been finalized. *Id.* ¶ 15. "A case is finalized when 'a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.'" *State v. Nunez*, 2000-NMSC-013, ¶ 114, 129 N.M. 63, 2 P.3d 264 (quoting *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987)). Here, Petitioner's conviction for first-degree murder was finalized in 2008 following his direct appeal. See *Rudolfo*, 2008-NMSC-036, ¶ 3.

{9} The parties and the district court agree that *Marquez* announced a new rule. An appellate opinion "need not overrule a prior decision in order to qualify as new." *Kersey*, 2010-NMSC-020, ¶ 18 (internal quotation marks and citation omitted). "Rather, an opinion announces a new rule if it breaks new ground, imposes new obligations on the government, or was not dictated by precedent." *Id.*

{10} In New Mexico, our laws "elevate second-degree murder to [first-degree murder] when the murder occurs during the commission of a dangerous felony." *Campos v. Bravo*, 2007-NMSC-021, ¶ 9, 141 N.M. 801, 161 P.3d 846; NMSA 1978, § 30-2-1(A)(2) (1994). Prior to *Marquez*, the predicate felony for felony murder had to "be independent of or collateral to the homicide." See *State v. Harrison*, 1977-NMSC-038, ¶ 9, 90 N.M. 439, 564 P.2d 1321, modified on other grounds by *State v.*

Ortega, 1991-NMSC-084, ¶ 26, 112 N.M. 554, 817 P.2d 1196. Following this rule, this Court employed a strict-elements test to determine whether a particular felony was independent of or collateral to a homicide. *State v. Duffy*, 1998-NMSC-014, ¶¶ 23-24, 126 N.M. 132, 967 P.2d 807, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. “Under this test, an offense [was] deemed to be a lesser-included offense of another only if all of the statutory elements of the lesser offense [were] completely embodied within the statutory elements of the greater offense such that it would [have been] impossible ever to commit the greater offense without also committing the lesser offense.” *Id.* ¶ 24 (internal quotation marks and citation omitted).

{11} In *Marquez*, this Court announced and applied a new test—the felonious purpose test—to determine whether an underlying felony is an appropriate collateral felony to support a charge of felony murder. 2016-NMSC-025, ¶ 19. The *Marquez* Court explained that under the felonious-purpose test, “a dangerous felony may only serve as a predicate to felony murder when the elements of any form of the predicate felony—looked at in the abstract—require a felonious purpose independent from the purpose of endangering the physical health of the victim.” *Id.* ¶ 24. “In other words, there must be a felonious purpose that is independent from the purpose of endangering the physical health of the victim before the dangerous felony can be used to elevate a second-degree murder to a first-degree murder.” *Id.*

{12} To reach its ultimate conclusion—that shooting at or from a motor vehicle cannot serve as the predicate felony for felony murder—the *Marquez* Court outlined the relationship between second-degree murder and the crime of battery. *Id.* ¶¶ 17, 18. The *Marquez* Court explained that battery “is the prototypical lesser-included offense of murder that fails to meet the collateral-felony requirement,” *id.* ¶ 17, because “all or virtually all murders include the commission of some underlying felony in the nature of an assault or battery.” *Id.* ¶ 16. The *Marquez* Court determined that “shooting at or from a motor vehicle ‘is an elevated form of aggravated battery’ and thus cannot be used as a predicate for felony murder.” *Id.* ¶ 23 (citation omitted). The Court reasoned that it “did not have a felonious purpose independent from the purpose of endangering the physical health of the victim because shooting from a motor vehicle must be accomplished with reckless disregard for the safety of a person.” *Id.* ¶ 25. Thus, shooting at or from a motor vehicle cannot serve as the predicate felony for felony murder. *Id.*

{13} Therefore, because *Marquez* broke new ground in announcing the felonious-purpose test for determining an applicable predicate felony for felony murder and because Petitioner’s conviction was finalized before *Marquez* was decided, the threshold requirements for retroactivity are satisfied.

B. Retroactive Application of *Marquez*

{14} In *Teague v. Lane*, 489 U.S. 288, 299-313 (1989), the United States Supreme Court clarified how retroactivity should be determined by a federal court on collateral review, such as on a writ of habeas corpus. Under United States Supreme Court precedent, new rules are not generally applied retroactively to cases on collateral review. *See Mackey v. United States*, 401 U.S. 667, 673-74 (1971). However, the *Teague* Court announced two exceptions to the general rule of nonretroactivity. *Teague*, 489 U.S. at 305-10. “First, a new rule should be applied retroactively if it places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe. Second, a new rule should be applied retroactively if it requires the observance of those procedures that are implicit in the concept of ordered liberty.” *Id.* at 307 (ellipsis, internal quotation marks, and citation omitted).

{15} We adopted the *Teague* standard in *Kersey*. 2010-NMSC-020, ¶ 25 (“[T]he *Teague* standard, which focuses on the function and purpose of the writ of habeas corpus, is the proper standard by which to determine whether new rules should apply retroactively to habeas corpus proceedings.”). Therefore, under New Mexico law, “new rules generally should not be afforded retroactive effect unless (1) the rule is substantive in nature, in that it alters the range of conduct or the class of persons that the law punishes, or (2) although procedural in nature, the rule announces a watershed rule of criminal procedure.” *Kersey*, 2010-NMSC-020, ¶ 25 (internal quotation marks and citation omitted); *see also Schriro v. Summerlin*, 542 U.S. 348, 351-53 (2004) (stating that a retroactively applicable new substantive rule “includes decisions that narrow the scope of a criminal statute by interpreting its terms”).

{16} On the other hand, procedural rules “regulate only the manner of determining the defendant’s culpability” and may not alter “the range of permissible methods for determining whether a defendant’s conduct is punishable.” *Schriro*, 542 U.S. at 353. Procedural rules “generally do not apply retroactively [and] do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise.” *Id.* at 352.

{17} In this case, we address only the first *Teague* exception adopted by *Kersey* because the parties do not argue that *Marquez* announced a watershed rule of criminal procedure. Petitioner argues that *Marquez* applies retroactively because its holding altered the range of conduct that felony murder punishes by changing the scope of the elements of the offense. Respondents disagree, arguing that *Marquez* did not change the substantive law regarding felony murder. Instead, Respondents contend that *Marquez* only announced a procedural methodology for determining whether a dangerous felony is a lesser-included offense of second-degree murder. {18} Generally, a felony with a purpose to “injure or kill” may not serve as a predicate felony in a felony murder conviction. *Marquez*, 2016-NMSC-025, ¶¶ 19, 24-25. Although the elements of felony murder remain the same, *Marquez* eliminated the possibility of using the crime of shooting at or from a motor vehicle as a predicate felony. *Id.* ¶¶ 2, 19. *Marquez* therefore narrowed the range of punishable conduct that could support a felony murder conviction. We hold that this is a substantive rule and thus conclude *Marquez* is afforded retroactive effect. Accordingly, we evaluate the legal consequences of this conclusion on Petitioner’s conviction.

C. Effect on Petitioner’s Conviction

{19} It is well settled that “a conviction under a general verdict must be reversed where it is based on more than one legal theory and at least one of those theories is legally, as opposed to factually, invalid.” *State v. Mailman*, 2010-NMSC-036, ¶ 12, 148 N.M. 702, 242 P.3d 269. Petitioner argues that because the verdict and instructions were general and did not indicate which theory the jury used to reach its conclusion, the Court must conclude that the jury could have made the finding of guilt based upon felony murder.

{20} This Court has previously examined whether a conviction under a general verdict should be vacated. *Campos*, 2007-NMSC-021. In *Campos*, the defendant challenged his felony murder conviction because it was unclear whether the jury used aggravated battery or aggravated burglary as the predicate felony for his felony murder conviction. *Id.* ¶ 1. The *Campos* Court noted that the defendant’s “conviction of felony murder would be legally void if the jury used aggravated battery with a deadly weapon as the predicate felony” because “it is not possible to commit second-degree murder without also committing some form of aggravated battery.” *Id.* ¶ 12. For that reason, under a fundamental-error analysis, the *Campos* Court concluded, “Error occurred at [the defendant’s] trial because one of the alternative bases for his conviction was legally inadequate.” *Id.* ¶ 17.

{21} The *Campos* Court reaffirmed that “a conviction under a general verdict must be reversed if one of the alternative bases of conviction is legally inadequate.” *Campos*, 2007-NMSC-021, ¶ 19 (quoting *State v. Olguin*, 1995-NMSC-077, ¶ 2, 120 N.M. 740, 906 P.2d 731 (relying on *Yates v. United States*, 354 U.S. 298, 326-27 (1957), *overruled on other grounds by Burks v. United States*, 437 U.S. 1, 2, 18 (1978))).

{22} In addition, the *Campos* Court established that a reviewing court must evaluate whether it is “impossible to tell which ground the jury selected” when returning the guilty verdict. *Id.* (internal quotation marks and citation omitted). The *Campos* Court ultimately found fundamental error occurred at the defendant’s trial and granted him a writ of habeas corpus. *Id.* ¶¶ 17, 22.

{23} In the present case, by applying *Marquez* retroactively, we have invalidated the theory of felony murder predicated on shooting at or from a motor vehicle. Because the parties provided the jury with a general verdict, we cannot conclusively determine whether the jury relied on an invalid theory of felony murder when convicting Petitioner of first-degree murder. In other words, it is impossible for us to determine which theory of first-degree murder the jury selected. See *Campos*, 2007-NMSC-021, ¶ 19.

{24} Petitioner asks this Court to reduce his conviction to second-degree murder because “it is reasonable to assume that the jury indeed relied upon a felony murder theory of the case for rendering their verdict.” Respondents in turn ask this Court to remand to the district court for a retrial on willful and deliberate murder. We note that the parties do not provide authority supporting their arguments regarding the proper remedy.

{25} For guidance, we look to *Campos*, 2007-NMSC-021, ¶ 17. The *Campos* Court noted that if the defendant had properly preserved the predicate felony issue by raising it on direct appeal rather than for the first time in a habeas petition—where the jury had not indicated which predicate felony was used to convict the defendant, *id.* ¶ 1—the *Campos* Court “would undoubtedly have vacated [the defendant’s] conviction and remanded for a new trial.” *Id.* ¶ 17.

{26} We also look to *State v. Downey*, in which this Court addressed “whether [the] defendant [was] entitled to a new trial, or whether his conviction may be affirmed on the alternate theory of culpability under which the case was submitted to the jury.” 2008-NMSC-061, ¶ 40, 145 N.M. 232, 195 P.3d 1244. Based on the prejudicial admission of improper expert witness testimony, the *Downey* Court concluded “that the

general verdict must be reversed because it may have rested on an invalid legal basis.” Accordingly, the *Downey* Court vacated the defendant’s conviction and remanded the case to the trial court for a new trial. *Id.*

{27} Therefore, because the theory of felony murder predicated on shooting at or from a motor vehicle is legally invalid, we vacate Petitioner’s first-degree murder conviction under the general verdict and remand to the district court for a new trial.

III. CONCLUSION

{28} *Marquez* announced a substantive rule of law by narrowing the scope of punishable conduct underlying the crime of felony murder. See *Marquez*, 2016-NMSC-025, ¶¶ 2, 19. Petitioner’s first-degree murder conviction must be vacated because it is impossible to determine whether the general verdict is based on the legally invalid theory of felony murder or on willful and deliberate murder. As a result, we set aside the district court’s denial of Petitioner’s habeas petition and remand this case for a new trial on the first-degree murder charge.

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

MICHAEL E. VIGIL, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

¹ This opinion does not disturb Petitioner’s convictions for attempted murder and shooting at or from a motor vehicle.

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/1/2023

No. A-1-CA-39779

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

SHANE BEARD,

Defendant-Appellant.

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

Emilio Chavez, District Court Judge

Raúl Torrez, Attorney General

Maris Veidemanis, Assistant Attorney General

Santa Fe, NM

for Appellee

Stalter Law LLC

Kenneth H. Stalter

Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Shane Beard appeals his two convictions of criminal sexual contact of a minor (child under thirteen), contrary to NMSA 1978, Section 30-9-13(B)(1) (2003). On appeal, Defendant makes six arguments: (1) his right against double jeopardy was violated by the manner in which the jury was instructed; (2) his constitutional right to a speedy trial was violated; (3) there was insufficient evidence that one of the incidents of sexual abuse occurred in New Mexico; (4) the district court abused its discretion in admitting certain testimony; (5) his due process rights were violated by the lengthy charging period; and (6) the cumulative effect of the errors in his trial deprived him of a fair trial. We affirm.

Zachary A. Ives, Judge

WE CONCUR:

Shammara H. Henderson, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39779>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/1/2023

No. A-1-CA-39620

A.B., GUSTAVO BELTRAN, and ALMA BELTRAN,
Plaintiffs,

v.

AGAVE HEALTH, INC.; TEAM BUILDERS COUNSELING SERVICES, INC.; LIFEWELL BEHAVIORAL WELLNESS; TURQUOISE HEALTH & WELLNESS, INC.; UNITED BEHAVIORAL HEALTH, INC. d/b/a OPTUM HEALTH NEW MEXICO (OHNM); MANUEL PRECIADO, and DELFINA PRECIADO,
Defendants.

FARMERS INSURANCE EXCHANGE, a California reciprocal company,
Plaintiff in Intervention,
and

A.B., GUSTAVO BELTRAN, and ALMA BELTRAN,
Involuntary Defendants in Intervention/
Counterplaintiffs-Appellants,

v.

FARMERS INSURANCE EXCHANGE, a California reciprocal company; PHILLIP M. BOX; and LORI OTERO,
Counterdefendants-Appellees

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

Francis J. Matthew, District Court Judge

Curtis & Co.
Lisa K. Curtis, Et al.
Albuquerque, NM

for Appellant

► Introduction of Opinion

Appellants Gustavo Beltran, Alma Beltran, and child A.B. appeal the district court's pretrial adjudication of their counterclaims against Appellees Farmers Insurance Exchange (Farmers), Phillip M. Box, and Lori Otero. The district court granted Farmers' and Ms. Otero's individual motions to dismiss for failure to state a claim, and the parties stipulated to Mr. Box's motion for summary judgment. Appellants now argue that the district court erred in adjudicating the claims pretrial because they had standing to bring their counterclaims under *Hovet v. Allstate Insurance Co.*, 2004-NMSC-010, 135 N.M. 397, 89 P.3d 69, and Appellees' duty of reasonable care to procure adequate insurance coverage extends to Appellants as foreseeable third-party beneficiaries. For the following reasons, we affirm.

Kristina Bogardus, Judge

WE CONCUR:

Megan P. Duffy, Judge

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

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39620>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/1/2023

No. A-1-CA-40145

BARRY GREEN, ESQ., as Personal Representative of the WRONGFUL DEATH ESTATE URAH LEE HODGE, Deceased,
Plaintiff-Appellee,

v.

CLOVIS HEALTHCARE AND REHABILITATION CENTER, LLC d/b/a CLOVIS HEALTHCARE AND REHABILITATION CENTER a/k/a CLOVIS HEALTHCARE AND REHABILITATION CENTER LLC and CLOVIS HC AND REHAB CENTER; SUMMIT CARE, LLC; SUMMIT CARE PARENT, LLC; FC-GEN OPERATIONS INVESTMENT, LLC; GEN OPERATIONS I, LLC; GEN OPERATIONS, II, LLC; GENESIS HEALTHCARE, INC.; GENESIS HEALTHCARE LLC; SKILLED HEALTHCARE, LLC; SUN HEALTHCARE GROUP, INC.; SUNDANCE REHABILITATION HOLDCO, INC.; and GENESIS ADMINISTRATIVE SERVICES LLC,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Kathleen McGarry Ellenwood,
District Court Judge

Pitman, Kalkhoff, Sicula & Dentice, SC
Jeffrey A. Pitman
Benjamin E. Reyes, Et al.
Santa Fe, NM

for Appellee

► Introduction of Opinion

This matter is on appeal from the district court's order denying Defendants' motion to compel arbitration in favor of Plaintiff, the personal representative of the wrongful death estate of Urah Hodge. Defendants argue that the district court erred in denying the motion to compel arbitration on grounds of substantive unconscionability because the court lacked the authority to make threshold arbitrability determinations.

J. Miles Hanisee, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40145>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/7/2023

No. A-1-CA-39554

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

SHAWN CASTALDI,

Defendant-Appellant.

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

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Leland M. Churan, Assistant Attorney General

Albuquerque, NM

for Appellee

Harrison, Hart & Davis, LLC

Nicholas T. Hart

Ramón A. Soto

Daniel J. Gallegos

Albuquerque, NM

for Appellant

► **Introduction of Opinion**

Defendant Shawn Castaldi appeals his conviction for one count of receiving stolen property (NMSA 1978, § 30-16-11 (2006)). Defendant argues: (1) the district court erred in denying his motion to suppress evidence because law enforcement's entry onto the property in question was unlawful; (2) his retrial violated his right to be free from double jeopardy due to prosecutorial misconduct that occurred at his first trial; and (3) his conviction is not supported by sufficient evidence. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39554>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/8/2023

No. A-1-CA-39879

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CARICIA LORENA CEBALLOS,

Defendant-Appellant.

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

Douglas R. Driggers, District Court Judge

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

for Appellee

Patrick J. Martinez & Associates
Patrick J. Martinez
Albuquerque, NM

for Appellant

► Introduction of Opinion

Defendant Caricia Ceballos appeals her conviction for child abuse resulting in great bodily harm (NMSA 1978, § 30-6-1(E) (2009)) on the sole ground that the district court erred in denying her motion to suppress statements she made to the police. We affirm.

Jennifer L. Attrep, Chief Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39879>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/10/2023

No. A-1-CA-39885

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MIGUEL MORENO VALENCIA,

Defendant-Appellant.

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

Yvette K. Gonzales, Metropolitan Court Judge

Raúl Torrez, Attorney General

Emily C. Tyson-Jorgenson,

Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Nina Lalevic, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

The metropolitan court found Defendant guilty of one count of aggravated driving under the influence of intoxicating liquor or drugs (DWI), contrary to NMSA 1978, Section 66-8-102(D)(3) (2016),¹ and an open alcoholic container violation, contrary to NMSA 1978, Section 66-8-138(B) (2013). On appeal, Defendant challenges two witnesses' in-court identifications at the virtual trial and raises three other arguments. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Zachary A. Ives, Judge

Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39885>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/15/2023

No. A-1-CA-39783

**AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 18,
AFL-CIO,**

Appellant-Respondent,

v.

DOÑA ANA COUNTY,

Appellee-Petitioner,

and

**DOÑA ANA COUNTY LABOR
MANAGEMENT RELATIONS BOARD,**

Appellee.

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

Marci E. Beyer, District Court Judge

Youtz & Valdez, P.C.

Shane Youtz

Stephen Curtice

James A. Montalbano

Albuquerque, NM

for Respondent

Nelson J. Goodin, County Attorney

Las Cruces, NM

for Petitioner

► Dispositional Order Quashing Writ of Certiorari as Improvidently Granted

1. This matter is before this Court upon an order of this Court granting the petition of Doña Ana County (Employer) and the Doña Ana County Labor Management Relations Board (the Labor Board) for a writ of certiorari to the District Court for the Third Judicial District under Rule 12-505 NMRA.

2. The petition for writ of certiorari sought review of the district court's order reversing the Labor Board's decision. The district court concluded the Labor Board's decision that Employer had not committed a practice prohibited by the Doña Ana County Labor Management Relations Ordinance, Doña Ana County, N.M. Vol. I., Part I, § 73.16 (A) (2016-2021) when it disciplined the president of the correction worker's union AFSC-ME Local 1529 (the Union), Sergeant Thomas Burns, was not supported by substantial evidence in the record. **View full PDF online.**

Jane B. Yohalem, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Kristina Bogardus, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39783>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/22/2023

No. A-1-CA-40962

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ISAIAH B.,

Child-Appellant.

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

Sarah V. Weaver, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Aletheia V.P. Allen, Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Thomas J. Lewis, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Isaiah B (Child), a juvenile adjudicated as delinquent under the children's code, appeals the order of the district's court extending legal custody of the Children, Youth and Families Department (CYFD) over Child past his two-year commitment. See NMSA 1978, § 32A-2-23(E) (2009). Child argues (1) the district's court incorrectly concluded that a decision to extend his commitment does not require proof beyond a reasonable doubt, and (2) there was insufficient evidence to extend his commitment. We affirm.

Kristina Bogardus, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40962>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/23/2023

No. A-1-CA-40379

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

BENJAMIN CLEMENTS,

Defendant-Appellee.

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

Shannon Murdock, District Court Judge

Raúl Torrez, Attorney General

Benjamin L. Lammons, Assistant Attorney General

Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Joelle N. Gonzales, Assistant Appellate Defender

Santa Fe, NM

for Appellee

► Introduction of Opinion

The State appeals the district court's denial of its motion to present preliminary hearing testimony at trial for a witness who had been declared unavailable. The State contends the district court misapplied the law surrounding the admission of preliminary hearing testimony and misinterpreted the law limiting the use of leading questions on direct examination. For the following reasons, we affirm the district court's denial of the State's motion.

Megan P. Duffy, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40379>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/23/2023

No. A-1-CA-36671

**JAVIER VALDIVIEZ and LUZ HIGINIA RUELAS
CORRAL,**

Plaintiffs-Appellants,

v.

**ROBERT B. GIBSON AUTO SALES, INC.
and FORD MOTOR COMPANY,**

Defendants,

and

**BRIDGESTONE AMERICAS TIRE
OPERATIONS, LLC,**

Defendant-Appellee.

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

Sarah M. Singleton, District Court Judge

Durham, Pittard & Spalding, L.L.P.

Rosalind B. Bienvenu

Caren I. Friedman

Justin R. Kaufman

Santa Fe, NM

for Appellants

Keleher & McLeod, P.A.

Thomas C. Bird

Arthur O. Beach

Albuquerque, NM

for Appellee

► Introduction of Opinion

Plaintiffs Javier Valdiviez and Luz Higinia Ruelas Corral (collectively, Plaintiffs) appeal the district court's order granting Defendant Bridgestone Americas Tire Operations, LLC's (Bridgestone) motion to dismiss for lack of personal jurisdiction. While the district court's order in this case related to both general and specific personal jurisdiction, the parties' arguments on appeal relate solely to the issue of whether the district court erred in determining it could not exercise specific personal jurisdiction over Bridgestone. This appeal presents a similar issue as raised in *Chavez v. Bridgestone Americas Tire Operations, LLC* (*Chavez III*), 2023-NMCA-022, ¶ 1, 527 P.3d 652, where we examined whether the district court could exercise specific personal jurisdiction over Bridgestone in the plaintiffs' wrongful death claim. Under *Chavez III* and for the reasons that follow, we reverse and remand for proceedings consistent with this opinion.

J. Miles Hanisee, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-36671>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/24/2023

No. A-1-CA-40837

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

Petitioner-Appellee,

v.

SHEYENNE M.,

Respondent-Appellant,

and

ANGEL G.D.L.,

Respondent,

IN THE MATTER OF AMADO D.L.,

Child.

**APPEAL FROM THE DISTRICT COURT OF DOÑA
ANA COUNTY Grace B. Duran, District Court
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

Susan C. Baker
El Prado, NM

for Appellant

Jennifer L. Munson
Las Cruces, NM

Guardian Ad Litem

► Introduction of Opinion

Respondent-Appellant Sheyenne M. (Mother) appeals the district court's judgment terminating her parental rights to her child (Child), asserting that New Mexico Children, Youth and Families Department (CYFD) failed to (1) make reasonable efforts to allow Mother to comply with her required treatment plan, and (2) consider a guardianship placement for Child with a preferred family member. For the reasons that follow, we affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Kristina Bogardus, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40837>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/28/2023

No. A-1-CA-39837

DALLAS J. BARTON,

Plaintiff-Appellant,

v.

NEW MEXICO RACING COMMISSION;

IZZY TREJO, in his individual capacity;

LEASA JOHNSON, in her individual capacity,

Defendants-Appellees.

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

Lisa C. Ortega, District Court Judge

Western Agriculture, Resource
and Business Advocates, LLP

A. Blair Dunn

Jared R. Vander Dussen

Albuquerque, NM

for Appellant

Park & Associates, LLC

Alfred A. Park

Geoffrey D. White

Albuquerque, NM

for Appellee New Mexico Racing Commission

► Introduction of Opinion

In this appeal, Plaintiff Dallas J. Barton argues that the district court erred in dismissing his complaint against the New Mexico Racing Commission for lack of jurisdiction. We affirm in part and reverse in part.

Megan P. Duffy, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Kristina Bogardus, Judge

(Concurring in part and dissenting in part)

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39837>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/28/2023

No. A-1-CA-39201

THERESE M. TRUJILLO,

Plaintiff-Appellant,
and

VIVA INNOVATIVE SOLUTIONS, LLC,

Plaintiff,

v.

LOS ALAMOS NATIONAL SECURITY, LLC,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF LOS ALAMOS COUNTY

Jason Lidyard, District Court Judge

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

for Appellant

Hinkle Shanor LLP
Jaclyn M. McLean
Ellen S. Casey
Santa Fe, NM

for Appellee

► Introduction of Opinion

This case was brought by Plaintiff Therese M. Trujillo against Defendant Los Alamos National Security, LLC (LANS) alleging discrimination on the basis of sex and national origin, sexual harassment, and retaliation in violation of the New Mexico Human Rights Act (Human Rights Act), NMSA 1978, Sections 28-1-1 to -15 (1969, as amended through 2023), and breach of the implied contract of employment and covenant of good faith and fair dealing created by LANS' personnel policies. All of Plaintiff's claims arose out of her work for LANS pursuant to a contract between Navarro Research & Engineering, Inc. (Navarro), Plaintiff's primary employer, and LANS, then the operating and management company for Los Alamos National Laboratory (LANL). Navarro agreed to provide qualified consultants in engineering for work on LANS' projects at LANL. Plaintiff appeals the district court's order granting LANS' motion for summary judgment and dismissing her complaint based on the district court's conclusion that Plaintiff failed to raise a genuine issue of material fact for trial on what the court found was an essential element of all of her causes of action: that LANS was her employer. **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
Kristina Bogardus, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39201>

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 8/29/2023

No. A-1-CA-40622

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

GERARDO MARQUEZ,

Defendant-Appellant.

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

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Maris Veidmanis, Assistant Attorney General

Santa Fe, NM

for Appellee

Lindsey Law Firm, LLC

Daniel R. Lindsey

Clovis, NM

for Appellant

► Introduction of Opinion

This case arises from the shooting death of Defendant Gerardo Marquez's former girlfriend (Victim), which took place in Portales, New Mexico at the house where Defendant and Victim lived together. Defendant appeals his conviction for second degree murder, contrary to NMSA 1978, Section 30-2-1(B) (1994). Defendant argues the district court erred by (1) limiting cross-examination of Defendant's cousin Pedro Peña, who testified for the State, and (2) admitting a video recording of police officers executing a search warrant of Defendant. We affirm.

Because this is a memorandum opinion and the parties are familiar with the facts and procedural background, we reserve discussion of the pertinent facts within the context of Defendant's arguments.

Kristina Bogardus, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

J. Miles Hanisee, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40622>

FORMAL OPINION

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

Filing Date: 8/15/2023

No. A-1-CA-40263

BLAIR BATTISHILL,
Plaintiff/Counterdefendant-Appellant,

v.

PHILLIP INGRAM,
Defendant/Counterplaintiff-Appellee.

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

Lee A. Kirksey, District Court Judge

Fargason, Booth, St. Clair, Richards & Wilkins, LLP

Damon Richards

Lubbock, TX

Gary C. Mitchell, LLC

Gary C. Mitchell

Ruidoso, NM

for Appellant

Kraft Law LLP

Richard L. Kraft

Roswell, NM

for Appellee

► Introduction of Opinion

Plaintiff Blair Battishill appeals the district court's grant of summary judgment in favor of Defendant Philip Ingram. The district court granted Defendant's motion pursuant to *Merrill v. Davis*, 1983-NMSC-070, ¶¶ 6-9, 100 N.M. 552, 673 P.2d 1285, where our Supreme Court held that unmarried, cohabiting adults cannot enter into an implied agreement to pool earnings and share accumulations acquired during cohabitation. Plaintiff argues that the district court "immediately viewed this case [as] a common law marriage matter . . . rather than [considering] the business arrangements of the parties" and therefore erred in failing to consider "the substantive law governing each [sic] cause of action." We affirm summary judgment for all claims except unjust enrichment, which we reverse in part.

Kristina Bogardus, Judge

WE CONCUR:

Jacqueline R. Medina, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40263>

FORMAL OPINION

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

Filing Date: 8/17/2023

No. A-1-CA-39697

**LIANA TRUJILLO, individually and
as the Personal Representative of the Wrongful
Death Estate of SEVERO ORTEGA,**
Plaintiff-Appellant,

v.

**PRESBYTERIAN HEALTHCARE SERVICES, INC.
d/b/a PRESBYTERIAN ESPAÑOLA HOSPITAL;
JAMES J. MONTESINOS, M.D.; and SAMUEL
SOUTHAM, M.D.,**
Defendants-Appellees,

and

**PATRICK R. MONTOYA, M.D.; VICTOR L.
SHERMAN, M.D.; WILLIAM MURRY RYAN,
M.D.; MELISSA SUGAR, M.D.; SALVEDEESWA
LAKSHMI-NARAYANAN, M.D.; and EUGENIO
RIVERA, JR., M.D.,**
Defendants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Francis J. Mathew, District Court Judge

Law Office of James H. Wood PC
Arslan S. Umarov
Zacary E. Wilson-Fetrow
Albuquerque, NM

for Appellant

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Edward Ricco
Brenda M. Saiz
Angelica Lopez, Et al.
Albuquerque, NM

for Appellee Presbyterian Healthcare Services

► Introduction of Opinion

This medical negligence case presents itself with an atypical procedural history that influences the outcome of our opinion. We consider two issues. First, did the district court err in granting Defendant Presbyterian Healthcare Services, Inc.'s (Presbyterian) motion for summary judgment on the vicarious liability claim against it for the actions of a non-employee radiologist who had been previously excused from the case via a stipulated order of dismissal? We conclude that the district court correctly applied this Court's ruling in *Valdez v. R-Way, LLC*, 2010-NMCA-068, 148 N.M. 477, 237 P.3d 1289. And, second, did the district court err in denying Plaintiff's Rule 1-060(B) NMRA motion for reconsideration asking the district court to revisit the judgment dismissing the radiologist, its order denying Plaintiff's partial motion seeking summary judgment as to Presbyterian's vicarious liability, and the summary judgment in favor of Presbyterian? [BIC 26-37] We hold that the district court did not err in denying the Rule 1-060(B) motion because the challenged orders were not final. We affirm.

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

WE CONCUR:

Jennifer L. Attrep, Chief Judge
Jacqueline R. Medina, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-39697>

FORMAL OPINION

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

Filing Date: 8/17/2023

No. A-1-CA-39537

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ADRIAN CALDERON,

Defendant-Appellant.

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

Jill M. Martinez, Metropolitan Court Judge

Raúl Torrez, Attorney General

Maris Veidemanis, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Allison H. Jaramillo, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► Introduction of Opinion

This case requires us to answer whether certain defendants who are prosecuted in metropolitan court have a right to appeal the denial of a motion to dismiss after a mistrial. The Legislature's 2019 amendment to NMSA 1978, Section 34-8A-6 (2019), created a right for defendants aggrieved by judgments rendered by the metropolitan court in specific criminal actions to appeal directly to this Court. Section 34-8A-6(D). As we explain below, that right is confined to appeals from final judgments and not interlocutory orders like a denial of a motion to dismiss. There being no provision in the New Mexico Constitution or statutes permitting such an appeal, we hold that defendants like the one in this case may only appeal from a final judgment entered after retrial. Defendant has not yet been retried and as such there is no final judgment from which to appeal. Therefore, we dismiss Defendant's appeal for lack of jurisdiction.

Shammara H. Henderson, Judge
(specially concurring)

WE CONCUR:

Kristina Bogardus, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39537>

FORMAL OPINION

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

Filing Date: 8/21/2023

**No. A-1-CA-40129 and No. A-1-CA-40264
(consolidated for purpose of opinion)**

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

**RHIANNON SALTWATER a/k/a
RHIANNON MARIE SALTWATER,**

Defendant-Appellee.

and

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

OCTAVIUS ATENE a/k/a OCTAVIUS DAN ATENE,

Defendant-Appellee.

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

Louis E. DePauli, Jr. and R. David Pederson,
District Court Judges

Raúl Torrez, Attorney General

Benjamin L. Lammons, Assistant Attorney General
(No. A-1-CA-40129)

Santa Fe, NM

Meryl Francolini, Assistant Attorney General

(No. A-1-CA-40264)

Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Melanie C. McNett, Assistant Appellate Defender
(No. A-1-CA-40129)

Santa Fe, NM

Steven J. Forsberg, Assistant Appellate Defender

(No. A-1-CA-40264)

Albuquerque, NM

for Appellees

► Introduction of Opinion

In 2019, the Legislature enacted a new statute that makes it a misdemeanor to drive while intoxicated with a minor in the vehicle, so long as the minor did not suffer great bodily harm or death (DWI with a minor). NMSA 1978, § 66-8-102.5 (2019). In the two cases before us, we are asked whether the general/specific statute rule requires a prosecutor to charge a defendant for DWI with a minor under Section 66-8-102.5 when that statute is violated, instead of child abuse by endangerment, contrary to NMSA 1978, § 30-6-1(D) (1) (2009). The district courts below concluded that it did, and dismissed child abuse by endangerment charges against Rhiannon Saltwater and Octavius Atene (collectively, Defendants), who were driving while intoxicated with minors in their vehicles. The State appeals, arguing that the district courts erred by misapplying the general/specific statute rule and impermissibly restricting prosecutorial charging discretion. We agree. The general/specific statute rule is inapplicable and does not require a prosecutor to charge DWI with a minor instead of child abuse by endangerment when the facts support both charges. **View full PDF online.**

Shammara H. Henderson, Judge

WE CONCUR:

J. Miles Hanisee, Judge

Jacqueline R. Medina, Judge

To read the entire opinion, please visit the following link: https://bit.ly/A-1-CA-40129_A-1-CA-40264

FORMAL OPINION

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

Filing Date: 8/22/2023

No. A-1-CA-40354

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

LUANNE YANNI,

Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT
OF BERNALILLO COUNTY

Clara Moran, Metropolitan Court Judge

Raúl Torrez, Attorney General

Emily C. Tyson-Jorgenson,

Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Joelle N. Gonzales, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► Introduction of Opinion

After a bench trial, Defendant Luanne Yanni was convicted in metropolitan court of driving while under the influence of drugs, contrary to NMSA 1978, Section 66-8-102(B) (2016). Defendant presents a two-part challenge to the sufficiency of the evidence on appeal. First, Defendant contends that the State did not present sufficient evidence to establish that she drove a vehicle the day she was arrested; therefore, Defendant argues, the corpus delicti of the offense was not established. Second, Defendant submits that the State did not present sufficient evidence to establish she was impaired by drugs or that such impairment was to a degree that she could not safely operate a motor vehicle. We agree with Defendant on the first issue and we reverse.

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

WE CONCUR:

Zachary A. Ives, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40354>

FORMAL OPINION

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

Filing Date: 8/22/2023

No. A-1-CA-39886

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CARLOS ALBERTO SUMMERS,

Defendant-Appellant.

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

Karen L. Townsend, District Court Judge

Raúl Torrez, Attorney General

Van Snow, Assistant Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Thomas J. Lewis, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► Introduction of Opinion

On June 5, 2019, Defendant was arrested for possession of burglary tools and trespassing. After Defendant pleaded no contest in the magistrate court to trespassing, the State, in a separate case, charged Defendant with a nonresidential burglary alleged to have also occurred on June 5, 2019. Defendant moved to dismiss in the second case arguing that the charges, in that case, violated the compulsory joinder rule and violated his double jeopardy rights. The district court denied the motion, and Defendant now appeals. Because we agree with Defendant that the State violated the compulsory joinder rule, Rule 5-203(A) NMRA, we reverse Defendant's conviction, and we do not reach Defendant's double jeopardy argument.

Gerald E. Baca, Judge

WE CONCUR:

Kristina Bogardus, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39886>

FORMAL OPINION

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Filing Date: 8/29/2023

No. A-1-CA-39774

MANUEL LERMA,
Plaintiff-Appellant,

v.

**STATE OF NEW MEXICO and NEW
MEXICO DEPARTMENT OF CORRECTIONS,**
Defendants-Appellees.

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

James Lawrence Sanchez, District Court Judge

The Gilpin Law Firm, LLC
Donald G. Gilpin
Kenneth C. Detro
Christopher P. Machin
Albuquerque, NM

for Appellant

Stiff, Garcia & Associates, LLC
John S. Stiff
Julia Y. Parsons
Albuquerque, NM

for Appellees

► Introduction of Opinion

Plaintiff Manuel Lerma appeals a district court order granting summary judgment in favor of Defendants State of New Mexico and New Mexico Department of Corrections (DOC) on Mr. Lerma's claim of retaliation under New Mexico's Whistleblower Protection Act (NMWPA).¹ See NMSA 1978, §§ 10-16C-1 to -6 (2010). Mr. Lerma's claims of error require us to assess the merits of DOC's four summary judgment theories: (1) that Mr. Lerma's communications to DOC are not protected by the NMWPA; (2) that DOC did not take any "adverse employment action," § 10-16C-2(D), against Mr. Lerma, as required by Section 10-16C-3; (3) that a retaliatory motive did not cause DOC to take the actions complained of by Mr. Lerma, see § 10-16C-3; and (4) that DOC established an affirmative defense because it took the actions complained of by Mr. Lerma for a "legitimate business purpose unrelated to conduct prohibited pursuant to the [NMWPA]" and "retaliatory action was not a motivating factor." Section 10-16C-4(B). Because we conclude that summary judgment was unwarranted under all four of DOC's theories, we reverse and remand for further proceedings.

Zachary A. Ives, Judge
WE CONCUR:
Gerald E. Baca, Judge
Michael D. Bustamante, Judge, retired,
sitting by designation

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-39774>



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Hurley Toevs Styles Hamblin & Panter, P.A. seeks to hire a transactional attorney with 3+ years' experience in corporate law, business acquisitions, estate planning, and/or tax. Candidates must have excellent communication, interpersonal skills and are comfortable working independently. Ideal candidate will have experience in taxation. We offer excellent benefits, competitive compensation, and a positive work environment. All inquiries are kept confidential. Send letter of interest, resume, and writing sample to haslam@hurleyfirm.com.

Prosecutors needed in Silver City and Deming

Prosecutors needed in Silver City and Deming. Practice law in Southwestern New Mexico, an area of natural beauty, with a diverse culture and reasonable costs of living. The Sixth Judicial District Attorney's Office is accepting resumes for two Deputy District Attorney positions in Silver City and a Senior Trial Prosecutor in Deming. We are looking for attorneys to handle a variety of criminal cases, in an atmosphere of collegiality and collaboration, in an office with a low employee turnover rate for both attorneys and staff. Salaries range from \$91,419 to \$114,274 for the Deputy positions and \$82,739 to \$103,424 for the Senior Trial position, depending on qualifications and experience. Deming and Silver City have all the quality-of-life benefits of a rural area, including outstanding outdoor recreational opportunities, and also have excellent local medical and educational facilities, dining, cultural experiences, shopping and entertainment. The area is a haven for those who enjoy countless year-round outdoor recreational activities, including hiking, fishing, hunting, camping, rock climbing, cycling and birding. See Silvercity.org and Demingnmtrue.com for more information. The communities have easy access to urban conveniences, including passenger air service from Silver City and Las Cruces, with one-hour flights to Albuquerque and Phoenix. Limited NM law license is available for attorneys licensed in other states. Please submit resume and letter of interest to Ehand@da.state.nm.us.

Deputy General Counsel – New Mexico Environment Department – Office of General Counsel

Looking for a rewarding career and growth opportunity? The New Mexico Environment Department (NMED) is seeking highly engaged talent to assist us in our mission to protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations. This position will oversee the legal cases and attorneys for the department in federal and state court and in administrative hearings, responsible for numerous state and federal laws such as: Clean Water Act, Clean Air Act, Open Meeting Act, State Procurement Code, State Personnel Act, Per Diem and Mileage Act. Additionally, this position involves reviewing potential legislation, civil litigation and drafting/editing agency rules. Employment Requirements: Juris doctorate degree from an ac-credited school of law and eight (8) years' experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license (Rules 15-301.1 and 15.301.2 NMRA). For more information on limited practice licenses, please visit <http://nmexam.org/limited-license>. Must possess and maintain a valid New Mexico Driver's License. Must possess and maintain a current Defensive Driving Course Certificate from the State of New Mexico or must pass and receive Defensive Driving Course Certification as a condition of continued employment. As a valued new employee to NMED, you will receive five (5) full days of leave in your leave balances right from your start date. All applications must be submitted online. For more information and to apply for the position, click, https://careers.share.state.nm.us/psp/hprdcg/EMPLOYEE/HRMS/c/HRS_HRAM_FL.HRS_CG_SEARCH_FL.GBL?Page=HRS_APP_JBPST_FL&Action=U&SiteId=1&FOCUS=Applicant&JobOpeningId=136095&PostingSeq=1.

Prosecutor

Pueblo of Laguna, NM - Full-time attorney to prosecute adult criminal defend-ants and juveniles in Laguna Pueblo Court for violating Laguna Pueblo law. Advocates for the Pueblo to achieve justice and rehabilitation. Works in office having a full-time assistant and victim's advocate, and is under supervision of the Pueblo Governor. Compensation DOE, open until filled. Follow this link to job announcement and application details - <https://www.lagunapueblo-nsn.gov/elected-officials/secretarys-office/human-resources/employment/>

General Counsel – New Mexico Environment Department

The General Counsel is appointed by the Governor and reports directly to the Cabinet Secretary of the New Mexico Environment Department. The General Counsel provides leadership and supervision to the legal personnel within the Office of General Counsel. The Office of General Counsel supports work across all Agency Divisions/Office, collaborates with other state agencies, and supports the Governor's Office priorities. Duties include, but are not limited to: 1) Leads and supervises the Office of General Counsel staff in providing legal advice across NMED and with other state and federal agencies. 2) Provides legal advice for the full range of NMED operations and programs, including rule making and policy development. 3) Supervise external counsel and contractors, as applicable. 4) Oversee litigation, contracting, and employment matters. 5) Provide expert legal, contractual, policy, and programmatic advice to the Secretary and other executive staff grounded in relevant law and in consideration operations and programs. 6) Represent NMED in legal matters, both internal and external. 7) Interpret executive and legislative orders, rules, regulations, and statutes. 8) Coordinate 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 NMED's mission. 9) Ensure that the Office of General Counsel activities align with administration priorities and NMED's mission. Ideal candidate qualifications: 1) Significant legal experience, preferably related to NMED program areas and administrative law (either at the state or federal level). 2) Demonstrated management and supervisory skills, such as recruiting, hiring, training, managing performance and conduct, assessing, and assigning workloads, coaching, and mentoring. 3) Demonstrated ability to analyze complex matters and appropriately identify legal and policy issues. 4) Demonstrated ability to interact successfully with employees from diverse personal and professional backgrounds, senior Administration officials, and members of the public. 5) Ability to develop and maintain strong, collaborative relationships at all levels. 6) Demonstrated ability to analyze, revise, and implement legislation and amendments, regulations, and policies. 7) Excellent written and oral communication skills. 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, and (ii) at least three professional references with contact information. A writing sample may be requested. If selected, a background check is required. For more information and to apply for the position, click, <https://www.nm.gov/app/apply.html?jobId=56>

New Mexico State Bar Foundation Helpline Staff Attorney

Are you tired of billable hours? Would you love not to have to go to court? Do you dream of a job that rarely requires evening and weekend work? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks a helpline staff attorney for its Modest Means Helpline. Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The position includes an excellent benefits package and competitive salary for legal work in the non-profit sector. Full Time (40 hours/week) Salary: \$60,000-\$65,000. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who have moderate or low income. Additionally, the attorney may conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico (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 lower-income community. To be considered, applicants must submit a cover letter and resume to hr@sbnm.org. In your cover letter, please explain why you are interested in working as a helpline attorney. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

Assistant County Attorney II, Santa Fe County

Santa Fe County is looking for an experienced attorney interested in creative problem solving and working in a collaborative environment on diverse issues that directly impact the community. The annual salary range for this position is \$46.33-\$64.86, depending upon qualifications. Santa Fe County provides competitive benefits and perks and an opportunity to work in the wonderful City Different. You must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for limited practice license. If you are interested in joining our amazing team, please apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities. For questions, you may also contact the County Attorney's Office directly at 505-986-6279 or tpdominguez@santafecountynm.gov.

Environment, Health and Safety Attorney Los Alamos National Laboratory Los Alamos, New Mexico

Los Alamos National Laboratory is a multidisciplinary research institution engaged in science and engineering on behalf of national security. We are currently seeking an Environment, Health, and Safety (ESH) Attorney to provide legal advice and counsel on a wide range of environmental litigation and compliance matters. The successful candidate will have a key role in advocating for and/or negotiating legal positions on significant ESH matters. Some of our Minimum Requirements Include: A Juris Doctorate degree from an American Bar Association (ABA) accredited law school with seven (7) years of experience after passing the Bar and admission to practice, including in ESH law; An active Bar membership in good standing (any jurisdiction); Excellent communication skills and ability to work cooperatively within a multi-disciplined legal organization, across business functions, and with various stakeholders, resolving complex legal issues in creative and effective ways. Some of our Desired Qualifications Include: Experience relating to working with federal or state government, familiarity with Federally Funded Research and Development Centers (FFRDCs), and/or federal Management and Operating Prime Contract experience; Demonstrated legal project management skills or other complex project management skills. Please see our job posting at lanl.jobs for the minimum and desired qualifications for this position. We Are Delivering Scientific Excellence. Los Alamos National Laboratory is more than a place to work. It is a catalyst for discovery, innovation, and achievement. It's one of the reasons we attract world-class talent who contribute greatly to our outstanding culture. Professional development, work/life balance and a diverse and inclusive team foster lasting career satisfaction. Our onsite cafeterias and medical, fitness and breastfeeding facilities, education assistance and generous compensation and benefits reflect our commitment to providing our people with all they need for personal and professional growth. Northern New Mexico offers an abundance of wildlife, culture, and adventures, including hiking trails and nearby ski resorts. Learn why Los Alamos has been rated #3 in the Best Counties to Live in the USA. Apply now: <https://lanl.jobs/search/jobdetails/esh-staff-attorney-3/0378bb96-d775-430c-baaf-3c42249dd452>. lanl.jobs, search IRC123894. Los Alamos National Laboratory is an equal opportunity employer and supports a diverse and inclusive workforce. All employment practices are based on qualification and merit, without regards to race, color, national origin, ancestry, religion, age, sex, gender identity, sexual orientation or preference, marital status, or spousal

affiliation, physical or mental disability, medical conditions, pregnancy, status as a protected veteran, genetic information, or citizenship within the limits imposed by federal laws and regulations. The Laboratory is also committed to making our workplace accessible to individuals with disabilities and will provide reasonable accommodations, upon request, for individuals to participate in the application and hiring process. To request such an accommodation, please send an email to applyhelp@lanl.gov or call 1-505-665-4444 option 1.

Child Support Attorney

Interested in working in a fun and challenging environment that positively impacts NM families? The New Mexico Human Services Department is accepting applications for Attorney positions in Farmington (HSD #22685 and #49411), Las Vegas (HSD #49402), Roswell (HSD #49707), Clovis (HSD #49410), Las Cruces (HSD #9223), and Alamogordo (HSD #9216). Primary duties will include the establishment and enforcement of child support. The ideal candidate will be a team player and have an interest in public service and domestic relations law. To apply for these positions, please fill out an application at <https://spo.state.nm.us>.

Associate Attorney

Batley Family Law, a nationally recognized family law firm, seeks an Associate Attorney to join our team. We handle complex Family Law cases and try to maintain a smaller case load which allows us the opportunity to best serve our clients. We are looking for an ambitious, dedicated and passionate attorney with 3+ years' experience who strives to do their best in an environment that encourages personal growth and development. Applicant must be able to work independently and collaborate with a team; the ability to think outside the box and attention to detail is a must. Must possess strong organizational skills, superior writing and communication skills and the ability to independently manage their own family law cases. Applicants must also possess a strong work ethic and commitment to delivering excellent client service. We offer a great benefits package for our employees which includes, PTO, Health, Dental, Vision, 401K. We also offer an employee bonus/incentive program separate from the employee's salary compensation. Please email cover letter and resume to lorrie@batleyfamilylaw.com

Attorneys

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

Assistant District Attorney

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

Executive Director Labor Relations—UNM Hospital

Make an impact on the lives of patients by ensuring our employees' needs are fulfilled, so they can deliver the best care possible. As our Executive Director of Labor Relations, you'll work with people across departments to ensure our hospital complies with labor and safety regulations and give guidance to employees, management and union reps alike. You'll shine as an active participant in union negotiations as a representative for management and play a key role in ensuring our teams work effectively together, guided by your exemplary leadership. If interested please go to unmhjobs.com and look for job # 3571 for the full job description and to complete an application.

Apply to be a Navajo Nation Judge

Seeking applicants for District Court Judge Judicial District Court, Navajo Nation Wide. The District Court Judge is Responsible for presiding over civil, criminal and family court cases; and provides policy direction and guidance in the operation of the Judicial District. For more information, please call the Judicial Branch Human Resources Office at (928) 871- 7025 or (928) 871-7023 or email applyJBHR@navajo-nsn.gov. Please visit <https://courts.navajo-nsn.gov> for details on qualifications, job description and how to apply.

Litigation Paralegal

Jackson Loman Stanford Downey & Stevens-Block, P.C. seeks detail-oriented paralegal with 3+ years of litigation experience, knowledge of court filing procedures, document management, discovery, calendaring and trial preparation. Active civil practice with positive team atmosphere. Salary DOE. Please send resumes by email to camillem@jacksonlomanlaw.com.

Full Time Admin Assistant/Legal

The UNM Office of University Counsel is currently accepting applications for a legal administrative assistant to support its Main Campus office. To apply, please submit a cover letter, resume, and application via UNM jobs at <https://unmjobs.unm.edu>, req25986. Please apply as soon as possible.

Paralegal

Paralegal for civil litigation defense law firm. 5+ years paralegal experience preferred including experience preparing medical records summaries. Strong organizational skills, motivated, attention to detail necessary and cooperative attitude. Full time, salary DOE, great benefits including health, dental & life insurance and 401K match. E-mail resume to: kayserk@civerolo.com.

Legal Assistant

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks Legal Assistant. Must be detail-oriented, organized, and have excellent communication skills. Bilingual in Spanish a plus. Competitive salary. Please e-mail your resume to karrants@stiffllaw.com

Paralegal or Legal Administrator

Terry & deGrauw, P.C. is seeking a paralegal or legal administrator to join our team. Strong writing, organization, and computer skills required. Prior experience in family law is not a requirement. We offer competitive pay, opportunities for bonuses, and benefits (health, vision, dental, 401(k), profit sharing, and paid time off). Email resumes to Kelly Squires at kss@tdgfamilylaw.com. All inquiries are confidential.

Legal Secretary

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

Legal Assistant

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

Legal Secretary/Assistant

Well established commercial civil litigation firm seeking experienced Legal Secretary/Assistant. Requirements include current working knowledge of State and Federal District Court rules and filing procedures, calendaring, trial preparation, document, and case management; ability to monitor, organize and distribute large volumes of information; proficient in MS Office, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal-use software; has excellent clerical, computer, and word processing skills. Competitive Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to e_info@abrfirm.com.

City of Albuquerque Paralegal

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

Services

Legal Writing and Research

Need help with writing? Legal writing on a contract basis – briefs, motions, memoranda, etc. Strong record of crafting winning legal arguments. Writing samples, resume available upon request. 206.693.1765 catezjd@gmail.com

Office Space

Office Suites-No Lease-All Inclusive

Virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead in a professional environment. 2 convenient locations-Journal Center and Riverside Plaza. 505-796-9600/ officealternatives.com.

Albuquerque Downtown Office Space

Office space available in downtown Albuquerque. Immediately south of the D.A.s office, on a diagonal corner to APD and just steps to all 3 courthouses. 500 sq ft \$500. mo. Tenant improvements permitted. Andriana 505-244-0530. text is best

Office Space Available

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

Miscellaneous

Want to Purchase

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

2023 Bar Bulletin Publishing and Submission Schedule

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

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

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

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

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The logo for Spence features a stylized, yellow, brush-stroke-like 'S' that curves around the word 'SPENCE' in a white, serif font.

SPENCE



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ABA Free Legal Answers is a virtual legal advice portal where qualifying users request brief advice about a specific civil legal issue and pro bono volunteer attorneys provide information and basic legal advice.

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The NEW MEXICO STATE BAR FOUNDATION is the State Administrator of the ABA Free Legal Answers Program