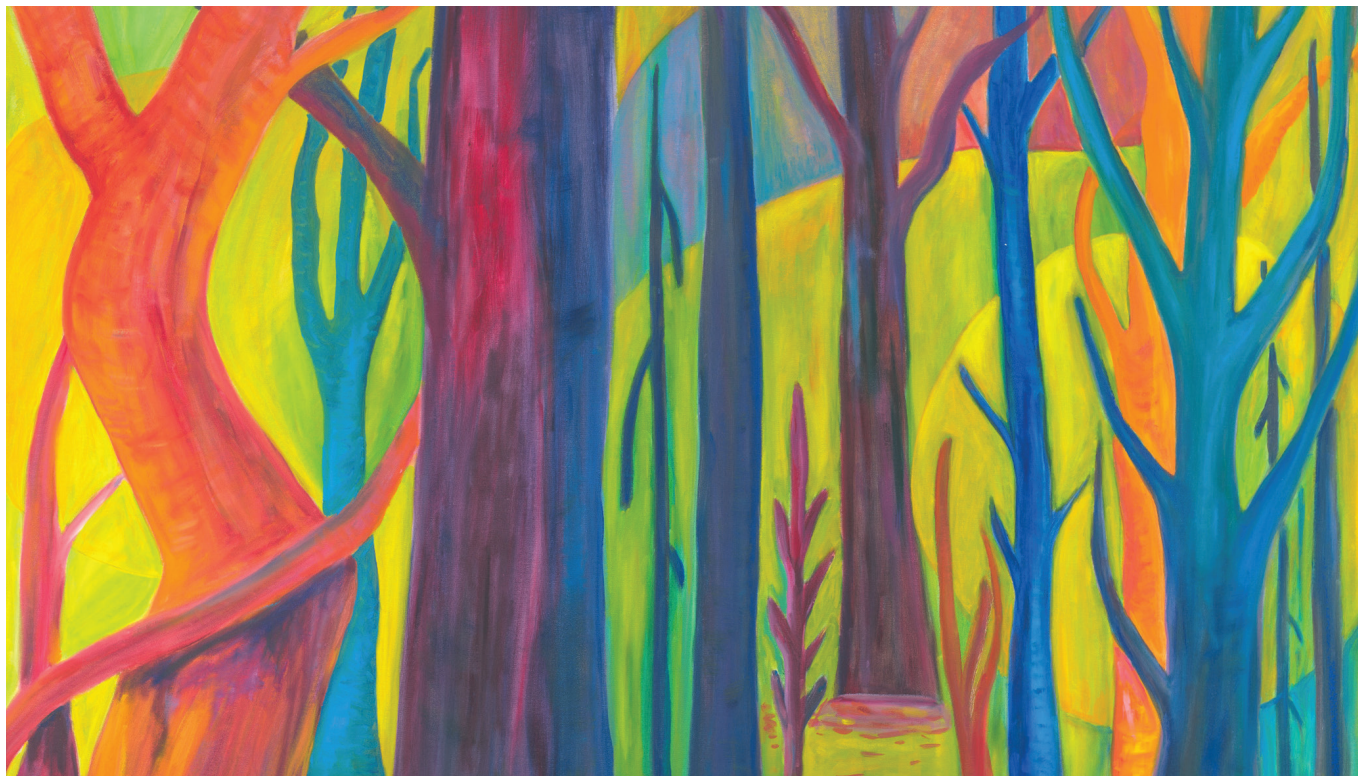


# BAR BULLETIN

June 12, 2024 • Volume 63, No. 6



*Moonlight in the Sacred Grove*, by Elizabeth Murray (see page 5)

[elizabethmurray.com](http://elizabethmurray.com)

## Inside This Issue

Clerk's Certificates.....	11
Spring 2024 New Attorney Swearing-In Ceremony.....	12
New Mexico Commission on Access to Justice: <i>Expanding and Improving Civil Legal Assistance for New Mexicans</i> .....	14
Rules/Orders.....	16
Equal Access to Justice 2023-24 Campaign.....	18
Fee Arbitration Program Volunteers: Thank You!.....	22
Public Censure.....	23

## From the New Mexico Supreme Court

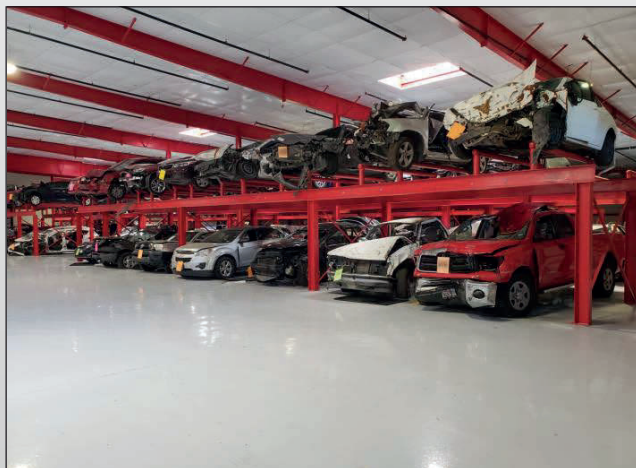
2024-NMSC-004: No. S-1-SC-38585: State v. Galindo.....	25
2024-NMSC-005: No. S-1-SC-39169: Sipp and Rader v. Buffalo Thunder, Inc., Et al.....	29
2024-NMSC-006: No. S-1-SC-38941: State v. Amador.....	34

## From the New Mexico Court of Appeals

Formal Opinions.....	39
Memorandum Opinions.....	40

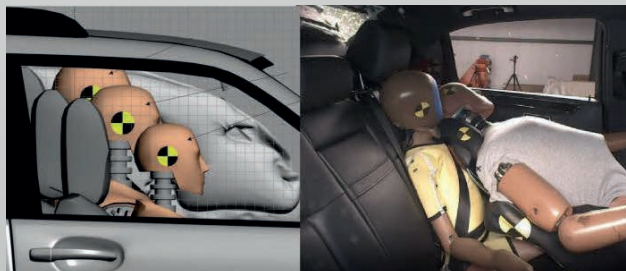
# IS YOUR CASE AT A RECOVERY DEAD-END?

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



## Crashworthiness

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



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



Subject Vehicle



Test Vehicle

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New Mexico State Bar Foundation  
Center for Legal Education

# CLE PROGRAMMING

from the Center for Legal Education



## JUNE 12

**Oops, Now What? What You Need To Know About Next Steps After Discovering That You've Made A Mistake**

1.0 EP  
Noon–1 p.m.  
*Webinar*

## JUNE 13

**The Good, the Bad and the Ugly: 2024 Cannabis Regulation Act Amendments**

1.0 G  
Noon–1 p.m.  
*Webinar*

## JUNE 13

**ChatGPT Unveiled: Revolutionizing the Practice of Law in the AI Era**

1.0 G  
11 a.m.–Noon  
*Webinar*

## JUNE 14

**Cross By Camera: How to Become a Master of REMOTE Cross-Examination**

2.0 G  
11 a.m.–1 p.m.  
*Webinar*

## JUNE 14

**Brave New World: Lawyer Ethics & AI**

1.0 EP  
11 a.m.–Noon  
*Teleseminar*

## JUNE 18

**Ethics, Juror Misconduct, and Jury Tampering: The Murdaugh Motion For New Trial**

2.0 EP  
11 a.m.–1 p.m.  
*Webinar*

## JUNE 18

**Settlements in Civil Litigation: Strategic Planning and Drafting**

1.0 G  
11 a.m.–Noon  
*Teleseminar*

## JUNE 20

**Change Your Outlook**

1.0 G  
11 a.m.–Noon  
*Webinar*

## JUNE 20

**Restructuring Real Estate Deals Gone Bad Part 1**

1.0 G  
11 a.m.–Noon  
*Teleseminar*

## JUNE 21

**Restructuring Real Estate Deals Gone Bad Part 2**

1.0 G  
11 a.m.–Noon  
*Teleseminar*

## JUNE 27

**Employment Based Immigration 101**

1.0 G  
Noon–1 p.m.  
*Webinar*

## Get a Head Start

on the **NEW Equity in Justice CLE Credit Requirement**

### JUNE 13

**Practical Lessons in Diversity, Equity & Inclusion in Law Practice**

1.0 EIJ  
11 a.m.–Noon  
*Teleseminar*

### JUNE 14

**(In)equity in Justice: Natural Resources and Environmental Law Equity Considerations**

1.0 EIJ  
Noon–1 p.m.  
*In-Person and Webinar*

### JUNE 18

**Elimination of Bias–Combating Age Bias in the Legal Field**

1.0 EIJ  
1–2 p.m.  
*Webinar*

### JUNE 26

**Democracy's Battle: Understanding the Legacy and Tactics of Voter Suppression**

1.0 EIJ  
Noon–1 p.m.  
*In-Person and Webinar*

### JUNE 28

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

1.0 EIJ  
11 a.m.–Noon  
*Webinar*

### JUNE 28

**Practical Tips & Strategies To Combat Implicit Biases In Law Firms and Society**

1.0 EIJ  
1–2 p.m.  
*Webinar*

More courses providing **Equity in Justice Credit** can be found in the Center for Legal Education

On-Demand/Self-Study library: <https://cle.sbnm.org/courses/8102>

Register online at [cle.sbnm.org](https://cle.sbnm.org) or call 505-797-6020





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[www.sbnm.org](http://www.sbnm.org)



## Table of Contents

Notices .....	6
Calendar for Legal Education .....	9
Opportunities for Pro Bono Services & Resources for the Public Calendars .....	10
Clerk's Certificates .....	11
Spring 2024 New Attorney Swearing-In Ceremony .....	12
New Mexico Commission on Access to Justice: <i>Expanding and Improving Civil Legal Assistance for New Mexicans</i> .....	14
Rules/Orders .....	16
Equal Access to Justice 2023-24 Campaign .....	18
Fee Arbitration Program Volunteer: Thank You! .....	22
Public Censure .....	23

#### From the New Mexico Supreme Court

2024-NMSC-004: No. S-1-SC-38585: State v. Galindo .....	25
2024-NMSC-005: No. S-1-SC-39169: Sipp and Rader v. Buffalo Thunder, Inc., Et al.....	29
2024-NMSC-006: No. S-1-SC-38941: State v. Amador .....	34

#### From the New Mexico Court of Appeals

Formal Opinions.....	39
Memorandum Opinions.....	40
Advertising .....	50

### Section, Division and Committee Meetings

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

**About Cover Image and Artist:** Elizabeth Murray is a painter, photographer, author, gardening expert and creativity workshop teacher in Monterey, California. She is well known for cultivating Monet's gardens in Giverny, France, photographing them for 35 years and writing award winning books that include *Passion: Ideas, Inspiration & Insights from the Painter's Gardens*. Her photographic series *Giverny Now: Photographs by Elizabeth Murray* traveled to major U.S. museums concurrent with the multi-year Monet exhibition *Monet - Late Paintings of Giverny From the Musee Marmottan*. Her watercolor and oil paintings have been in solo and group exhibitions in galleries and are in many private and corporate collections.

# Notices

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

## COURT NEWS

### New Mexico Supreme Court Rule-Making Activity

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

### Supreme Court Law Library

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

### N.M. Administrative Office of the Courts

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

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

### New Mexico Courts Launch New Website

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

## Professionalism Tip

### With respect to my clients:

I will advise my client against tactics that will delay resolution or which harass or drain the financial resources of the opposing party.

### Notice for Invoices for Court-Appointed Representations

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

### U.S. District Court, District of New Mexico Invitation to Discussion on Practicing Law in the U.S. District Court for the District of New Mexico

The United States District Court for the District of New Mexico invites New Mexico Associates, Summer Associates and law students to join Hon. William P. Johnson and Hon. James O. Browning in the Vermejo Courtroom for a discussion about practicing law in the United States District Court for the District of New Mexico. This event will take place on June 25 at 10 a.m. (MT) at the Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd NW, Albuquerque, N.M. 87102. Refreshments will be provided by the Bench & Bar Fund. RSVP to [USDCevents@nmd.uscourts.gov](mailto:USDCevents@nmd.uscourts.gov) to reserve a seat for this event.

### Bernalillo County Metropolitan Court Notice of Temporary Closures

The Bernalillo County Metropolitan Court will be closed from noon to 5 p.m. (MT) on June 12 and all day on June 13 for the Court's Annual Training Conference. Misdemeanor Custody Arraignment Hearings will be held both days starting at 9 a.m. (MT) with Felony First Appearance Hearings immediately following. The courthouse will reopen on June 14.

## STATE BAR NEWS

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

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

### Alternative Dispute Resolution Committee Notice of Quarterly Meetings

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

### Board of Bar Commissioners Appointment to NM Risk Management Advisory Board

There is currently a vacancy on the Risk Management Advisory Board for an unexpired four-year term, which expires June 30, 2026. Pursuant to Section 15-7-4 NMSA 1978, the President of the Board of Bar Commissioners makes one appointment to the Risk Management Advisory Board. The Advisory Board is charged with, among other duties, reviewing insurance policies to be purchased by the Risk Management Division, professional services and consulting contracts and



agreements, companies and agents that submit proposals, rules and regulations promulgated by the division, certificates of coverage to be issued by the division, and investments to be made by the division. Applicants must be licensed to practice law in New Mexico. Members who wish to apply to serve on the Board should send a letter of interest and brief resume by June 17 to [bbc@sbnm.org](mailto:bbc@sbnm.org).

### **Appointment to Rocky Mountain Mineral Law Foundation Board**

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

### **New Mexico Lawyer Assistance Program Monday Night Attorney Support Group**

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

### **NM LAP Committee Meetings**

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

New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

### **New Mexico Well-Being Committee Meetings**

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

### **The Solutions Group Employee Assistance Program**

Presented by the New Mexico Lawyer Assistance Program, the Solutions Group, the State Bar's Employee Assistance Program (EAP), extends its supportive reach by offering up to four complimentary counseling sessions per issue, per year, to address any mental or behavioral health challenges to all SBNM members and their direct family members. These counseling sessions are conducted by licensed and experienced therapists. In addition to this valuable service, the EAP also provides a range of other services, such as stress management education, webinars, critical incident stress debriefing, video counseling, and a 24/7 call center. The network of service providers is spread across the state, ensuring accessibility. When reaching out, please make sure to identify yourself with the NM LAP for seamless access to the EAP's array of services. Rest assured, all communications are treated with the utmost confidentiality. Contact 505-254-3555 to access your resources today.

### **New Mexico State Bar Foundation Pro Bono Opportunities**

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

— *Featured* —

**Member Benefit**



Clio's groundbreaking suite combines legal practice management software (Clio Manage) with client intake and legal CRM software (Clio Grow) to help legal professionals run their practices more successfully. Use Clio for client intake, case management, document management, time tracking, invoicing and online payments and a whole lot more.

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

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

You're invited to the New Mexico State Bar Foundation Golf Classic on Sept. 30 at 9 a.m. (MT) at the Tanoan Country Club in Albuquerque! Register to play form [jotform.com/sbnm/GolfClassic](https://jotform.com/sbnm/GolfClassic). All proceeds benefit the New Mexico State Bar Foundation. Sponsorship opportunities are also available. Visit [www.sbnm.org/NMS-BFGolfClassic2024](http://www.sbnm.org/NMS-BFGolfClassic2024) for more information.

## UNM SCHOOL OF LAW

### Law Library Hours

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

## WRITE ARTICLES for the Bar Bulletin!

The *Bar Bulletin* isn't just a place for information; it's a hub for discourse and perspectives on timely and relevant legal topics and cases! From A.I. and technology to family law and pro bono representation, we welcome you to send in articles on a variety of issues pertaining to New Mexico's legal community and beyond!

For information on submission guidelines and how to submit your articles, please visit [www.sbnm.org/submitarticle](http://www.sbnm.org/submitarticle).



State Bar of  
New Mexico  
Est. 1886

## ► Opportunities to Provide



*through the New Mexico State Bar Foundation Legal Service Programs*

Volunteers are needed for the **Modest Means Helpline** and the **Legal Resources for the Elderly Program** referral panels.

*\*By signing up for the referral panel, you will also be added to the NMLA Volunteer Attorney Program's pool.*

The New Mexico State Bar Foundation provides legal services programs to **increase access to justice for low-income New Mexicans.**

[www.sbnm.org/Member-Services/Pro-Bono-Opportunities](http://www.sbnm.org/Member-Services/Pro-Bono-Opportunities)



New Mexico  
State Bar Foundation

Sign-up  
today



# Legal Education Calendar

## June

1-30	<b>Self-Study - Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set with Eric Sotkin</b> 1.0 G, 2.0 EP Online On-Demand The Ubuntuworks Project www.ubuntuworksschool.org	14	<b>Cross By Camera: How to Become a Master of REMOTE Cross-Examination</b> 2.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	21	<b>The Mentally Tough Lawyer: How to Build Real-Time Resilience in Today's Stressful World</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org
12	<b>Oops, Now What? What You Need To Know About Next Steps After Discovering That You've Made a Mistake</b> 1.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org	14	<b>Brave New World: Lawyer Ethics and AI</b> 1.0 EP Teleseminar Center for Legal Education of NMSBF www.sbnm.org	21	<b>Women's Leadership Summit</b> 5.5 G Live Program New Mexico Society of CPAs www.nmscpa.org
13	<b>The Good, the Bad and the Ugly: 2024 Cannabis Regulation Act Amendments</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	18	<b>Elimination of Bias-Combating Age Bias in the Legal Field</b> 1.0 EIJ Webinar Center for Legal Education of NMSBF www.sbnm.org	24	<b>2024 Fundamentals of Federal Capital Defense</b> 12.2 G Live Program Administrative Office of the U.S. Courts www.uscourts.gov
13	<b>ChatGPT Unveiled: Revolutionizing the Practice of Law in the AI Era</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	18	<b>Ethics, Juror Misconduct, and Jury Tampering: The Murdaugh Motion For New Trial</b> 2.0 EP Webinar Center for Legal Education of NMSBF www.sbnm.org	25	<b>Luminarias Lighting the Path Forward</b> 13.7 G Live Program New Mexico Coalition of Sexual Assault Programs www.nmcsap.org
13	<b>Practical Lessons in Diversity, Equity &amp; Inclusion in Law Practice</b> 1.0 EIJ Teleseminar Center for Legal Education of NMSBF www.sbnm.org	18	<b>Settlements in Civil Litigation: Strategic Planning and Drafting</b> 1.0 G Telseminar Center for Legal Education of NMSBF www.sbnm.org	26	<b>2024 18th Annual NMTRI Tax Policy Conference</b> 9.0 G, 1.0 EP Live Program New Mexico Tax Research Institute www.nmtri.org
14	<b>(In)equity in Justice: Natural Resources and Environmental Law Equity Considerations</b> 1.0 EIJ In-Person & Webinar Center for Legal Education of NMSBF www.sbnm.org	18	<b>Going Forward Without the Victim</b> 1.0 G Webcast New Mexico Coalition of Sexual Assault Programs www.nmcsap.org	26	<b>Democracy's Battle: Understanding the Legacy and Tactics of Voter Suppression</b> 1.0 EIJ In-Person & Webinar Center for Legal Education of NMSBF www.sbnm.org
		20	<b>Change Your Outlook</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org	27	<b>Employment Based Immigration 101</b> 1.0 G Webinar Center for Legal Education of NMSBF www.sbnm.org

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to [notices@sbnm.org](mailto:notices@sbnm.org). Include course title, credits, location/course type, course provider and registration instructions. For a full list of MCLE-approved courses, visit <https://www.sbnm.org/Search-For-Courses>.



# Opportunities for Pro Bono Service CALENDAR

## June

- |   |   |  |
|---|---|--|
| <p><b>21 Law-La-Palooza Legal Fair</b><br/>In-Person<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Albuquerque</p> | <p><b>27 Asylum Initial Application and Work Permit Pro Se Clinic</b><br/>In-Person<br/>New Mexico Immigrant Law Center<br/><a href="https://www.nmilc.org/asylum">www.nmilc.org/asylum</a><br/>Location: Announced prior to clinic</p> | <p><b>28 Legal Fair</b><br/>In-Person<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Las Vegas, NM</p> |
|---|---|--|

## July

- |   |   |   |
|---|---|---|
| <p><b>3 Citizenship &amp; Residency Workshop</b><br/>In-Person<br/>New Mexico Immigrant Law Center<br/><a href="https://www.nmilc.org/citizenship">www.nmilc.org/citizenship</a><br/>Location: El Centro de Igualdad y Derechos</p> | <p><b>12 Legal Fair</b><br/>In-Person<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Taos</p> | <p><b>19 Legal Fair</b><br/>In-Person<br/>Eighth Judicial District Court Pro Bono Committee w/New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Taos</p> |
|---|---|---|

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



# Resources for the Public CALENDAR

## June

- |   |  |   |
|---|--|---|
| <p><b>21 Law-La-Palooza Legal Fair</b><br/>In-Person<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Albuquerque</p> | <p><b>26 Consumer Debt/Bankruptcy Workshop</b><br/>Virtual<br/>State Bar of New Mexico<br/>Call 505-797-6094 to register<br/>Location: Virtual</p> | <p><b>27 Asylum Initial Application and Work Permit Pro Se Clinic</b><br/>In-Person<br/>New Mexico Immigrant Law Center<br/><a href="https://www.nmilc.org/asylum">www.nmilc.org/asylum</a><br/>Location: Announced prior to clinic</p> |
| <p><b>28 Legal Fair</b><br/>In-Person<br/>New Mexico Legal Aid<br/><a href="https://bit.ly/NMLALegalFairSignUp">bit.ly/NMLALegalFairSignUp</a><br/>Location: Las Vegas, NM</p>              |  |   |

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



# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

## CLERK'S CERTIFICATE OF CHANGE TO WITHDRAWN STATUS

Effective April 19, 2024:  
**Anne E. Gibson**  
1060 S Main St  
Las Cruces, NM 88005-2919

**Boaz Aharon Weinstein**  
12750 Merit Drive, Suite 520  
Dallas, TX 75251

**Steven L. Lovett**  
1 Kellogg Cir  
Emporia, KS 66801-5415

## CLERK'S CERTIFICATE OF LIMITED ADMISSION

On May 15, 2024:  
**William Zachary Addison**  
New Mexico Legal Aid  
P.O. Box 25486  
Albuquerque, NM 87125  
866-416-1922

**Rossi Paola Vargas Daly**  
First Judicial District Attor-  
ney's Office  
327 Sandoval St # 2,  
Santa Fe, NM 87501  
575-8

**Paul Allan Garns**  
DNA-People's Legal Services  
2323 E. Greenlaw Lane, Suite 1  
Flagstaff, AZ 86004  
928-774-0653

## CLERK'S AMENDED CERTIFICATE OF INDEFI- NITE SUSPENSION

Effective March 12, 2024:  
**Francis J. Rio III**  
621-B N. Main Avenue  
Clovis, NM 88101  
575-935-1181  
riolawfirm@gmail.com

## CLERK'S CERTIFICATE OF ADMISSION

On May 7, 2024:  
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# Spring 2024 New Attorney Swearing-In Ceremony



*New attorneys raising their right hands as they are sworn into New Mexico's legal community.*

**O**n May 7, 2024, the Spring 2024 Swearing-In Ceremony was held at the University of New Mexico Continuing Education Conference Center, where new attorneys were sworn in as the newest licensees of the State Bar of New Mexico. The ceremony was well-attended by guests and prominent members of New Mexico's legal community. Supplemental programs and legal organizations hosted booths outside the auditorium to help jump-start the new attorneys' success in the legal field.

Noted speakers included New Mexico Supreme Court Chief Justice David K. Thomson, Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice Julie J. Vargas, Justice Briana H. Zamora, State Bar of New Mexico President-Elect Aja N. Brooks and Young Lawyers Division Chair Randy Taylor.

"You enter the practice of law in a State that seeks your help to establish justice for its people," President-Elect Brooks said in her remarks. "People who may have never spoken to a lawyer or seen the inside of a courtroom before they meet you, and of diverse backgrounds and cultures, will turn to you for advice."

YLD Chair Randy Taylor also gave inspiring remarks, providing an overview of the Young Lawyers Division's services, and encouraging the new attorneys to engage with the New Mexico legal community as they navigate their careers.



*State Bar of New Mexico President-Elect Aja N. Brooks giving remarks at the Spring 2024 Swearing-In Ceremony on behalf of President Erinna M. "Erin" Atkins.*



*(From right to left) State Bar of New Mexico Young Lawyers Division Chair Randy Taylor speaking at the Spring 2024 Swearing-In Ceremony standing next to New Mexico Supreme Court Justice Briana H. Zamora, Justice C. Shannon Bacon, Chief Justice David K. Thomson, Justice Michael E. Vigil and Justice Julie J. Vargas.*



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



be  
**inspired.**



## Save the Date!

### October 25, 2024

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

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

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

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

Contact Marcia Ulibarri at 505-797-6058 or [marketing@sbnm.org](mailto:marketing@sbnm.org) for more information.

[www.sbnm.org/AnnualMeeting2024](http://www.sbnm.org/AnnualMeeting2024)



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

@accesstojustice.nmcourts.gov

### New Mexico Supreme Court Commission on Access to Justice

*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.*

<https://accesstojustice.nmcourts.gov/>

### Helping You Help Others

There is no shortage of lawyers in New Mexico who want to help people by being able to provide them with legal advice on their pressing issues. That is why many people went to law school – to make a difference in the lives of those in our community. However, one worry that many lawyers have as they consider whether to sign up to provide pro bono legal advice through a legal clinic or through direct representation, is the concern about whether they have the subject matter expertise to truly help this person.

*“This is not my area”*

*“I’ve never done a foreclosure case”*

*“I don’t know anything about guardianships or custody issues”*

Although many may think there are plenty of attorneys who know more about particular topic areas and therefore their assistance is redundant or not helpful. This could not be further from the truth as there is a high need for all lawyers to participate and provide pro bono services in order to address the high need in the State. Fortunately, New Mexico Legal Aid and its partners have put together two important resources to help lawyers address their concerns about subject matter expertise and give them the confidence and resources to take on pro bono clients.

#### 1. The Volunteer Attorney Program (“VAP”) Pro Bono Collaborative ECHO

The Volunteer Attorney Program (“VAP”) Pro Bono Collaborative ECHO is a project to create a virtual community of legal practice in the State of New Mexico on a variety of different legal topics. This Pro Bono Collaborative ECHO project provides monthly free CLE’s to all who register on discrete topic areas that focus on the legal needs for low-income New Mexicans. Past virtual CLE’s included the following area:

- Adult Guardianships
- Income Tax
- Foreclosure Defense & Alternatives

During the 1.5 hour sessions, participants get instruction from subject matter experts through an interactive learning session. The sessions are not just a standard lecture presentation, but they include a hands-on case study for discussion as well as the ability to share and get feedback and guidance. One of the goals of the VAP Pro Bono Collaborative ECHO project is to create an environment where attorneys have mentorship and guidance through areas of the law that are regularly needed for low-income New Mexicans. Through this project, participants not only receive access to the CLE presentations, but also to the specific materials that are compiled for each specific topic area. The VAP Pro Bono Collaborative ECHO project provides lawyers with instruction on particular areas of the law and, critically, connects them to a network of peers and experts in the field for ongoing support.

In addition, as a part of joining the VAP Pro Bono Collaborative ECHO project, participants are added to New Mexico's Volunteer Attorney Pool ("VAP"). As a member of VAP, lawyers are not required to take on any specific case but are included in a group which is contacted to try to place pro se clients directly with a member of the bar willing to provide pro bono services. Legal Aid provides malpractice coverage for any representation of clients through the VAP program.

As the VAP Pro Bono Collaborative ECHO project is fully remote, lawyers in all parts of New Mexico are connected to their peers in other geographic locations.

To sign up for the VAP Pro Bono Collaborative ECHO and attend upcoming CLE sessions, go to <https://www.cognitofirms.com/VAPECHO/VAPProBonoCollaborativeECHO>.

For more information about the VAP Pro Bono Collaborative ECHO and the VAP program generally, go to <https://vapnm.org>.

## 2. Law Help New Mexico

Another resource that helps lawyers quickly find basic information about particular legal issues that regularly occur for low-income New Mexicans is the Law Help New Mexico website at <https://www.lawhelpnewmexico.org>. Legal Aid, with the help and support of Disability Rights New Mexico, Enlace Comunitario, Native American Disability Law Center, New Mexico Center on Law and Poverty, Pegasus Legal Services for Children, Senior Citizens Law Office, the State Bar of New Mexico and the United South Broadway Corporation, put together Law Help New Mexico to provide individuals with access to free and reliable information regarding a variety of civil legal issues. The website includes such areas as custody and guardianship, housing and tenant's rights, food and cash assistance programs, healthcare, debt/taxes, employment and workers' rights, disability rights, veterans' issues, probate and estate planning, and immigration issues.

Although the website is targeted for non-lawyers who are trying to access and understand their current legal issues, Law Help New Mexico also provides a great resource for lawyers as well. The website distills each specific legal issue into easy-to-understand language, provides information on Frequently Asked Questions, and includes Factsheets, forms, and resources relating to each topic. Finally, the website further identifies organizations and entities with expertise and specialization in those particular legal areas where additional help and support can be obtained.

This is a useful tool for lawyers to gain a quick and clear description of a particular legal issue and get some context before researching the particular statute or law on the subject matter. The website also helps lawyers by connecting them to the organizations that provide legal services on those particular issues and who have people who can be resources and provide guidance to a private attorney working on a pro bono matter.

To help navigate the Law Help New Mexico Website, the New Mexico Commission on Access to Justice created a virtual tour of the website at <https://www.youtube.com/watch?v=4kZH2dO2ioo>.

Providing pro bono services to New Mexicans in need is not only a moral obligation for lawyers but is a professional obligation as well. Fears of lack of expertise in particular legal areas should not be a barrier to providing these critically needed services for clients in need. If lawyers are intimidated by an area of the law, how must a non-lawyer pro se individual feel? Lawyers have the skills and ability to take their knowledge of their own area of expertise and spend some time learning about another to be able to provide real and meaningful assistance to low-income New Mexicans. Through the help of the VAP Pro Bono Collaborative ECHO project and with Law Help New Mexico, lawyers have resources and support to take on a pro bono matter in an area in which they ordinarily do not practice and, in doing so, make a big impact in the lives of New Mexicans who need it most.



For more information, visit the ATJ website.  
<https://accesstojustice.nmcourts.gov/>



# Rules/Orders

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

From the New Mexico Supreme Court

## **THE SUPREME COURT OF NEW MEXICO ANNOUNCES OUT-OF-CYCLE RULE AMENDMENTS**

In accordance with Rule 23-106.1 NMRA, the Supreme Court has approved out-of-cycle rule amendments. What follows is a summary of those amendments that the Court approved on May 17, 2024. The amendments are effective July 1, 2024. The full text of the amendments in markup format and the related orders are available on the Court's website at <https://supremecourt.nmcourts.gov/2024-approved-amendments-to-rules-and-forms/>. The approved rule amendments will also be available on NMOneSource.com.

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### **SUPREME COURT**

***Procedure for Local Rules Changes*** – New Rule 23-106.2 NMRA; Amended Rules 23-106 and 23-106.1 NMRA; and Withdrawn Rules 1-083 and 5-102 NMRA

The New Mexico Supreme Court has adopted a new rule and approved amendments to rules dealing with rule change requests. The new rule implements processes for local rule change requests. The Court has also approved the withdrawal of two rules that previously set out procedures for local rule change requests.

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### **THIRTEENTH JUDICIAL DISTRICT COURT**

***Case Management Program for Criminal Cases*** – Amended Rule LR3-303 NMRA

The New Mexico Supreme Court has approved amendments to a local rule of the Third Judicial District Court setting out the district's case management pilot program for criminal cases. The amendments clarify that a new probable cause determination is not required when charges are refiled within six months after the court dismisses a case without prejudice and a probable cause determination has previously been made by a preliminary hearing or grand jury.

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

<https://supremecourt.nmcourts.gov/2024-approved-amendments-to-rules-and-forms/>



*You're Invited!*

New Mexico  
State Bar Foundation

# GOLF

*Classic*

*Golf Registration Is  
NOW OPEN!*

**SEPTEMBER 30, 2024**  
**Tee Time: 9 a.m. (MT)**  
**Tanoan Country Club**  
10801 Academy Rd NE  
Albuquerque, N.M. 87111

► Tournament Players: \$175/player or \$650/foursome

**Register to play at: <https://form.jotform.com/sbnm/GolfClassic>**

*Golf registration closes on September 16.*

*All proceeds benefit the New Mexico State Bar Foundation.*



**Sponsorship opportunities for the New Mexico State Bar Foundation Golf Classic are available!**

Please contact Marcia Ulibarri at 505-797-6058 or [marcia.ulibarri@sbnm.org](mailto:marcia.ulibarri@sbnm.org) for sponsorship information.

Please contact Susan Simons at 505-288-2348 or [susan.simons@sbnm.org](mailto:susan.simons@sbnm.org) with any additional questions about the event.



**New Mexico  
State Bar Foundation**



# EQUAL ACCESS TO JUSTICE

## 2023-24 CAMPAIGN COMMITTEE

M. Karen Kilgore\*, co-chair  
David Stout \*, co-chair  
Dan Akenhead\*  
Hakim Bellamy  
Sonya Bellafant\*  
Barry Berenberg  
John Bigelow  
Denise Chanez  
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J. Ashley Cummings  
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Senator Bill Tallman  
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Jackie Munro Vahey  
Todd Wertheim

Asterisk (\*) indicates EAJ  
Board of Directors

## When our neighbors thrive, our community thrives. THANK YOU, DEFENDERS OF JUSTICE!

Over **\$410,000** was raised during Equal Access to Justice's 2023-24 Annual Campaign. We are deeply grateful for the partnership of **27 committee volunteers** and **319 attorneys, law firms, and community members** who came together to support civil legal aid. Thank you for investing in our community and helping break down barriers to justice!

For 35 years, **Equal Access to Justice** has been working to increase access to justice by raising vital funds for civil legal aid. New Mexico's legal aid nonprofits provide free legal assistance, representation, and systemic legal advocacy for underprivileged families. Additionally, they lead training series, host free legal clinics, prepare and distribute educational materials, and are frequently consulted for their expertise.

Every dollar raised through EAJ's annual campaign means more, unrestricted funding for **New Mexico Legal Aid**, **DNA People's Legal Services**, and the **New Mexico Center on Law and Poverty**. EAJ's non-competitive grants provide maximum flexibility to respond quickly to community needs; have no time-consuming administrative requirements; and address gaps in funding.

## LEADERS FOR JUSTICE

Thank you to the following individuals for their generous annual campaign gifts of \$1,000+, and to our Legacy Society members for their transformative, multi-year gifts totaling \$25,000 or more:

Paul F. Abrams, Legacy Society gift, <i>In Honor of Stuart Bluestone and Maria Garcia Geer</i>	Susan & Briggs Cheney Bruce Cottrell Marsha & David Freedman Kurt B. Gilbert & Elicia Montoya Stacey J. Goodwin Marianne & Dennis Hill Peggy & Michael L. Keleher, <i>In Memory of Art Beach</i> M. Karen Kilgore Barbara J. Koenig & Michael J. Maccini Erin K. McSherry Mary Metzgar, <i>In Memory of Bernie Metzgar</i> Susan Miller Richard C. Minzner & Sabieann Baca Minzner	Peg & Charles Moore Clifton B. Perry Honorable Lynn Pickard Kip Purcell & Georgia Will Roberta Cooper Ramo & Dr. Barry Ramo Edward R. Ricco & Mary Ann Sweeney Slater-Roessel Family Fund Patricia & Luis Stelzner David J. Stout Paula Tackett Senator Bill Tallman Bruce E. Thompson, <i>In Honor of Justice Ed Chávez</i> Rob Treinen Jana L. Walker Terry M. Word
Dan A. Akenhead Anonymous (3) John Arango, <i>In Memory of David Norvell</i> David E. Arnold Alex D. Beach, <i>In Memory of Arthur Beach</i> Bidtah Becker & Paul Spruhan Lori M. Bencoe John B. Bigelow Honorable Kristina Bogardus Mary Ann & Gary F. Brownell Honorable Michael D. Bustamante Honorable Edward L. Chávez		

Reflects annual campaign gifts received between 4/1/2023 - 3/31/2024.



## LEADERSHIP SOCIETY

Thank you to the many firms, solo practitioners, associations, and foundations for their generous annual campaign contributions supporting civil legal services in our community. Special recognition to **Peifer, Hanson, Mullins & Baker** for directing cy pres funds to EAJ!



### KEYSTONE SOCIETY (Gifts of \$25,000+)



### BEACONS OF JUSTICE (Gifts of \$5,000+)

Cuddy & McCarthy  
Thomas A. and Mary E. Dugan  
Foundation

Freedman, Boyd, Hollander & Goldberg  
Lerner & Rowe  
McGinn, Montoya, Love, Curry & Sievers

Merrion Family Foundation  
NM Defense Lawyers Association

### PILLARS OF JUSTICE (\$1,000+ per attorney)

Bruce Thompson Law Firm,  
*In Honor of Justice Ed Chávez*  
Freedman, Boyd, Hollander & Goldberg  
Hunt Law Firm

Law Office of J. Alison Cimino,  
*In Memory of Gwen Harrington*  
Law Office of Daymon Ely  
McGinn, Montoya, Love, Curry & Sievers

McGraw Law  
Singleton Schreiber  
Steffy Law Firm

### GUARDIANS OF JUSTICE (\$500+ per attorney)

Atkins & Walker Law  
Feferman, Warren & Mattison  
Greacen Associates  
The Jones Firm  
Lerner & Rowe

Martinez, Hart, Sanchez & Romero  
John B. Pound LLC  
The Law Office of Feliz A. Rael  
Rodey Law  
Salazar, Sullivan & Jasionowski

Rebecca Sitterly LLC  
Law Office of Alexandra Smith  
The Spence Law Firm  
Touchet Law Firm

### CHAMPIONS FOR JUSTICE (\$250-499 per attorney)

Anonymous  
Ben Sherman Law  
Cuddy & McCarthy  
Curtis & Co.

Law Offices of Stefanie J. Gulley  
Martone Law Firm  
Eileen R. Mandel Attorney at Law  
Modrall Sperling

Montgomery & Andrews  
Law Offices of Michael Stout

### ADVOCATES FOR JUSTICE (\$100-249 per attorney)

Aubrey Law Firm LLC  
Barnhouse, Keegan, Solimon & West  
The Bregman Law Firm  
Chavez Law Office  
Chestnut Law Offices

Davis Kelin Law Firm  
Fadduol, Cluff, Hardy & Conaway  
Mike Gallegos Attorney LLC  
Attorney M. Yvonne Gonzalez  
Miller Stratvert

Parnall Law Firm  
Rothstein Donatelli  
Saiz, Chanez, Sherrell & Kaemper

### FRIENDS OF JUSTICE (\$50-99 per attorney)

Aldridge, Actkinson & Rutter  
Dixon, Scholl, Carrillo  
German, Burnette & Associates

Hinkle Shanor  
Cheryl McLean Law Offices  
Myers, McCready & Myers

Ronald Taylor Law Office

Reflects annual campaign gifts received between 4/1/2023 - 3/31/2024.

**Expanding resources and advocacy for New Mexico's legal aid programs is a collective effort.**

EAJ values and recognizes our partners in this critical work: New Mexico Access to Justice Commission, New Mexico State Bar and Foundation, the New Mexico Civil Legal Services Corporation, policymaker champions, Volunteer Attorney Program, all the civil legal services providers, and you!

**Equal Access to Justice, PO Box 25941, Albuquerque, NM 87125 • (505) 339-8096 • [www.eaj-nm.org](http://www.eaj-nm.org)**



— STATE BAR OF NEW MEXICO —

# 2024 Annual Awards

## *Call for Nominations*

Nominations are being accepted for the **2024 State Bar of New Mexico Annual Awards** to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in the past year. The awards will be presented at the **2024 Annual Meeting on Fri., Oct. 25**, at the State Bar Center in Albuquerque, NM. All awards are limited to one recipient, whether living or deceased, with the exception of the Justice Pamela B. Minzner Professionalism Award, which can have two recipients—an attorney and a judge. Nominees may be nominated for more than one award category. Previous recipients for the past three years are listed below.

To view last year's recipients and the full list of previous recipients, visit:

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

### Distinguished Bar Service Award – Nonlawyer

- ◆ Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

*Previous recipients:* Mary Galves, Juan Abeyta, Bernice Ramos

### Excellence in Well-Being Award

- ◆ Many individuals have made significant contributions to the improvement of legal professional well-being including destigmatizing mental health, strengthening resiliency, and creating a synergic approach to work and life. This award was created to recognize an individual or organization that has made an outstanding positive contribution to the New Mexico legal community's well-being. As the State Bar of New Mexico is committed to improving the health and wellness of New Mexico's legal community, we strongly encourage self-nominations and peer nominations for any lawyer, judge or nonlawyer working in some capacity with the N.M. legal community.

*Previous recipients (created in 2022):* Joy Applewhite, Pamela Moore

- ◆ Recognizes attorneys who have provided valuable service and contributions to the legal profession, the State Bar of New Mexico and the public over a significant period of time.

*Previous recipients:* David Stout, Michael P. Fricke, Joey D. Moya

*\*This award was renamed in 2019 in memory of Judge Singleton (1949-2019) for her tireless commitment to access to justice and the provision of civil legal services to low-income New Mexicans. She also had a distinguished legal career for over four decades as an attorney and judge.*

### Judge Sarah M. Singleton\* Distinguished Service Award

- ◆ Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

**Previous recipients:** Justice Edward L. Chavez, Judge James J. Wechsler and Quentin P. Ray, Frederick M. Hart (posthumously) and F. Michael Hart

*\*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994 to 2007.*

### Justice Pamela B. Minzner\* Professionalism Award

- ◆ Recognizes outstanding, extraordinary law-related organizations or programs that serve the legal profession and the public.

**Previous recipients:** Judicial Branch IT Staff, Pueblo of Pojoaque Path to Wellness Court, Intellectual Property Law Section Pro Bono Fair, New Mexico Center on Law and Poverty

### Outstanding Legal Organization or Program Award

### Outstanding Young Lawyer of the Year Award

- ◆ Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

**Previous recipients:** Shasta N. Inman, Lauren E. Riley, Maslyn K. Locke

### Robert H. LaFollette\* Pro Bono Award

- ◆ Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

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# Public Censure

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From the New Mexico Supreme Court

From the New Mexico Supreme Court

**Filing Date: May 13, 2024**

No: S-1-SC-40160

**INQUIRY CONCERNING A JUDGE  
JSC Inquiry No. 2022-111**

**IN THE MATTER OF  
HON. DESERI SICHLER**  
Valencia County Magistrate Court

Phyllis A. Dominguez  
Marcus J. Blais  
Albuquerque, NM

for Petitioner The New Mexico  
Judicial Standards Commission

Julio P. Garcia  
Albuquerque, NM

for Respondent

## PUBLIC CENSURE

### PER CURIAM.

{1} This matter came before this Court on a petition to accept the *Stipulation Agreement and Consent to Discipline (Stipulation)* between the Judicial Standards Commission (Commission) and Hon. Deseri Sichler, a magistrate court judge in Valencia County.

{2} We granted the petition and approved the terms of the *Stipulation* adopting the Commission's request and Judge Sichler's stipulation to issuance of a Public Censure. We now publish this Public Censure in the State Bar of New Mexico *Bar Bulletin* in accordance with our order, the *Stipulation*, and Rule jsc-36(C)(5) NMRA.

#### I. BACKGROUND

{3} A complaint was filed against Judge Sichler with the Commission. The Commission completed its initial investigation, including completion of an informal conference, which allowed Judge Sichler to personally discuss the allegations with the Commission. The Commission filed a notice of formal proceedings against Judge Sichler on August 25, 2023. The Commission and Judge Sichler entered into the *Stipulation*. As part of the *Stipulation*,

Judge Sichler admitted to committing willful misconduct by engaging in the following acts, in violation of the Commission Rules:

- A. During Judge Sichler's 2022 campaign for Valencia County Magistrate Court Judge, Judge Sichler acted as campaign treasurer and personally accepted funds on behalf of her campaign, contrary to NMSA [1978,] Section 1-19-34(A) [(2019)].
- B. On or about March 7, 2022, Judge Sichler listed Russel D. Schmidt as her campaign treasurer on the Secretary of State's Campaign Finance portal/Campaign Finance Information System (CFIS) in her bid for Valencia County Magistrate Court judge but failed to remove him as treasurer when his consent was withdrawn and then began to act as her own treasurer until September 16, 2022, contrary to NMSA [1978,] Section 1-19-29(I) [(2019)].
- C. On or about March 7, 2022, Judge Sichler created the *Committee to Elect Deseri Sichler*

and listed herself as the sole contact person for the Committee. All contact information for the Committee, advertisements and her website contained her personal contact information including email, phone number, and mailing address.

*Stipulation* at 2.<sup>1</sup>

{4} Judge Sichler agrees that her conduct violated the following Rules of the Code of Judicial Conduct and committed willful misconduct in office: Rule 21-101 NMRA (requiring compliance with the law), Rule 21-102 NMRA (promoting confidence in the judiciary), Rule 21-402 NMRA (requiring compliance with election campaign laws), and Rule 21-404 NMRA (requiring campaign committees to be established). *Stipulation* at 2. Based upon these admitted violations, Judge Sichler agreed to receive a Public Censure to be published in the State Bar of New Mexico *Bar Bulletin*. *Id.* For the reasons discussed below, we issue this censure.

#### II. DISCUSSION

{5} Article VI, Section 32 of the New Mexico Constitution creates the Commission and provides that "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office." We have defined willful misconduct in office as "improper and wrong conduct of a judge acting in [the judge's] official capacity done intentionally, knowingly, and, generally, in bad faith. It is more than a mere error of judgment or an act of negligence." *In re Locatelli*, 2007-NMSC-029, ¶ 8, 141 N.M. 755, 161 P.3d 252 (citation omitted). In imposing discipline, we must be satisfied that willful misconduct is proven by clear and convincing evidence. *Id.* ¶ 7. "There need not be clear and convincing evidence to support each and every one of the Commission's evidentiary findings. Rather, we must be satisfied by clear and convincing evidence that there is willful judicial misconduct which merits discipline." *In re Castellano*, 1995-NMSC-007, ¶ 37, 119 N.M. 140, 889 P.2d 175; *accord In re Schwartz*, 2011-NMSC-019, ¶ 13, 149 N.M. 721, 255 P.3d 299.

{6} Judge Sichler agrees that she violated Rules 21-101, 21-102, 21-402, and 21-404 of the Code of Judicial Conduct. *Stipulation* at 2. While the Code of Judicial Conduct provides "some proof of what constitutes appropriate judicial conduct," violations of the Code "do not control the issue of whether discipline should be imposed." *Locatelli*, 2007-NMSC-029, ¶

<sup>1</sup> All references to agreements between the Commission and Judge Sichler, aside from the *Stipulation* filed, allude to conversations had between the parties.

## Public Censure

8 (citation omitted). We agree that Judge Sichler's conduct merits discipline, and for that reason, she should be formally reprimanded by censure.

{7} The preamble to the Code of Judicial Conduct states, "An independent, fair, and impartial judiciary is indispensable to our system of justice." Rule 21-001(A) NMRA. To promote the public's trust and to maintain and enhance confidence in the legal system, "[j]udges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives." Rule 21-001(B). The principles of the Code of Judicial Conduct require a judge to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Rule 21-102.

{8} We agree that the stipulated facts support the conclusion that Judge Sichler violated Rules 21-101, 21-102, 21-402, and 21-404 of the Code of Judicial Conduct. In violating the Code, Judge Sichler failed to follow and comply with election campaign laws and failed to uphold the public's confidence in the integrity and impartiality of the judicial election process.

{9} Rule 21-101 requires a judge to "respect and comply with the law, including the Code of Judicial Conduct." Rule 21-102 requires a judge to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety." *See also id.* comm. cmt. 5 ("Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.").

{10} Judge Sichler's actions violated Rules 21-101 and 21-102 of the Code of Judicial Conduct. Judge Sichler was required to designate a treasurer to file expenditure reports pursuant to Section 1-19-29(I). The treasurer she named in the expenditure report withdrew his consent, and Judge Sichler then acted as her own treasurer. This

action was contrary to statute and thus was a violation of Rule 21-101 ("A judge shall respect and comply with the law . . ."). Acting as treasurer allowed Judge Sichler to know who contributed to her campaign and know the monetary amounts of those contributions. Judge Sichler had intimate knowledge of campaign rules, having sought the office of treasurer for Valencia County in 2020. Judge Sichler's conduct created actual impropriety by violating Section 1-19-29(I) and is contrary to Rule 21-102 ("A judge . . . shall avoid impropriety and the appearance of impropriety"). {11} Rule 21-402(A)(1)(b) requires judges to "comply with all applicable election, election campaign, and election campaign fundraising laws and regulations." Rule 21-402(A)(1)(e) requires that judges, "if intending to accept funds from others or expend funds in excess of one thousand dollars (\$1,000), establish a campaign committee pursuant to the provisions of Rule 21-404." Rule 21-402(A)(2)(a) prohibits a judge from seeking to discover who has contributed to either the judge's own campaign or to the judge's opponent. Rule 21-404(A) states, in part, that "Candidates shall not personally solicit or personally accept contributions for their own campaigns. . . . The candidate shall take reasonable steps to ensure that his or her campaign committee complies with applicable provisions of this Code and other applicable law"

{12} Judge Sichler, acting as her own campaign treasurer, violated both Rule 21-402 and Rule 21-404 of the Code of Judicial Conduct. Section 62-19-34(A) of the Campaign Reporting Act requires judicial candidates to have a treasurer who is not the candidate. Judge Sichler failed to set up a valid campaign committee. Rule 21-402(A)(1)(e) requires a judicial candidate planning on accepting donations to set up a campaign committee pursuant to Rule 21-404. "This rule restricts contributions for campaigns for judicial office to sources and amounts that do not create an appearance of impropriety." Rule 21-402 comm. cmt. 1. Rule 21-404 requires a judicial candidate to set up a campaign committee to avoid personally soliciting or accepting contributions to the candidate's own campaign. Judge Sichler

set up a campaign committee through the Secretary of State entitled *The Committee to Elect Deseri Sichler*. Judge Sichler was the sole member of the Committee. She listed her personal phone number, home address, and personal email as the contact for the committee.

{13} Judge Sichler agrees that the violations of the rules erode the public's confidence in her ability to follow the law. The violations also reflect negatively on the New Mexico judiciary as a whole and are prejudicial to the effective administration of justice. Pursuant to this Court's power to discipline judges under the New Mexico Constitution Article VI, Section 32, and the Court's power of superintending control under the New Mexico Constitution Article VI, Section 3, Judge Sichler shall receive a Public Censure. Acceptance of judicial discipline protects the public, preserves the public's confidence in the integrity, independence, and impartiality of the judicial system, and enforces the standards of conduct established by Code of Judicial Conduct. *See* Rule 21-216 NMRA comm. cmt. ("Cooperation with investigations and proceedings of judicial . . . discipline agencies . . . instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.").

{14} This Court has considered the admitted facts and violations of the Code of Judicial Conduct and the approved *Stipulation*, and we hereby publicly censure Judge Sichler for willfully violating the established rules and standards that govern every New Mexico judge's conduct. We issue this Public Censure to strengthen the public's confidence in the integrity, impartiality, and independence of the judiciary and to remind all judges that misconduct which erodes the public's confidence will not be tolerated.

{15} For the foregoing reasons Hon. Deseri Sichler is hereby publicly censured for her admitted willful misconduct as set forth fully in the *Stipulation* which this Court accepted, adopted, and confirmed.

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

**DAVID K. THOMSON, Chief Justice**

**MICHAEL E. VIGIL, Justice**

**C. SHANNON BACON, Justice**

**JULIE J. VARGAS, Justice**

**BRIANA H. ZAMORA, Justice**



# Advance Opinions

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From the New Mexico Supreme Court

From the New Mexico Supreme Court

**Opinion Number: 2024-NMSC-004**  
No: S-1-SC-38585 (filed December 4, 2023)

**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**IGNACIO GALINDO,**  
Defendant-Appellant.

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

Angie K. Schneider, District Judge

Bennett J. Baur, Chief Public Defender  
Luz C. Valverde, Assistant Appellate  
Defender  
Santa Fe, NM  
  
for Appellant

Hector H. Balderas, Attorney General  
Walter M. Hart, III, Assistant Attorney  
General  
Santa Fe, NM  
  
for Appellee

## **OPINION**

### **BACON, Chief Justice.**

{1} In this direct appeal, Defendant-Appellant Ignacio Galindo (Appellant) seeks reversal of the district court's denial of a self-defense jury instruction. Appellant claims that the evidence introduced at trial is sufficient to raise a reasonable doubt as to whether he acted in self-defense, thus warranting the relevant instruction. In denying the requested instruction, the district court pointed to acts by Appellant supporting that he was the first aggressor. A jury found Appellant guilty of first-degree murder contrary to NMSA 1978, Section 30-2-1(A)(1) (1994), felony murder contrary to Section 30-2-1(A)(2), and eleven other charges.

{2} Central to this issue is whether Appellant's firing of a gunshot through an open window constituted an objectively reasonable response to the actions

of Kristen Rodriguez and Victim Daniel Martinez while they were inside Rodriguez's residence. Applying the defense-of-habitation doctrine, we conclude that Appellant's response was not objectively reasonable and accordingly affirm the district court's denial of the requested self-defense instruction.

### **I. BACKGROUND**

{3} Appellant and Rodriguez began a relationship in 2011 and had two children together but were living separately at the time of the relevant events, which occurred in Alamogordo on the night of August 16-17, 2018.

{4} Appellant testified that earlier on August 16 he had learned of Rodriguez's relationship with Victim. Appellant admitted at trial that he sent multiple "angry" texts to Rodriguez during that day including "Found out ur fucking Daniel..hes dead tonight."<sup>1</sup> Rodriguez testified that she shared that text with Victim and that they discussed its content.

{5} It is uncontested that, just before midnight at an Allsup's Convenience Store, Appellant and Victim encountered one another unexpectedly and exchanged antagonistic words, resulting in Victim striking Appellant in the face. Rodriguez testified that Victim told her about the encounter on the phone while driving back from the Allsup's and told her that he would not return right away because Appellant was following him. Rodriguez testified that she turned off the lights in her residence and hid by the couch until Victim returned.

{6} Appellant testified to committing the following acts after driving to Rodriguez's residence soon after 1:00 a.m. In order to "disable" their vehicles and "just to be an ass," Appellant sprayed expanding foam into the tailpipe of Rodriguez's vehicle and onto the door handle of Victim's vehicle. Appellant then "knock[ed]" or "pound[ed]" on Rodriguez's front door, followed closely by Rodriguez "yelling for [Appellant] to leave . . . , basically screaming for [Appellant] to leave, [and that] the police [had been called]." Appellant testified that he "just wanted to hear from [Rodriguez's] own mouth that she was messing around again and we were done" and that he knew Victim was inside but "didn't really have anything to say to him." Appellant then moved around the residence to Rodriguez's master bedroom window and knocked thereon "to see if I could get her to come out." Appellant then went to the living room window near the front door where he broke and removed part of the accordion-style panel of the air conditioner in that window.<sup>2</sup> During these events, Appellant and Rodriguez "were arguing," Rodriguez was "telling [Appellant] to leave," Appellant "was just yelling back at her that she needs to come outside and talk to [him]," and the two "were both screaming at each other." {7} Appellant testified that through the opening he had just caused in the window, he saw Rodriguez holding a handgun (Glock)<sup>3</sup> and saw Victim take it from her and take a step toward the door, at which point Appellant "kinda backed up [behind the] brick wall" between the front door and the front window. Appellant testified that he "heard a 'pop' which sounded like

<sup>1</sup> Testifying on redirect and responding to a question about the meaning of this text, Appellant stated, "To be honest, I was just threatening [Victim] . . . just really to scare him." Appellant then clarified that he did not mean it literally and that his intent was not to confront and kill Victim.

<sup>2</sup> Additionally, Rodriguez testified and Appellant does not contest that "once [Appellant] broke the piece off the AC unit, he reached in and pulled the curtains over."

<sup>3</sup> Rodriguez testified that she took the Glock out of the hallway closet "[b]ecause somebody was trying to break into my house, someone that had text me a very disturbing text, and just everything I been through with him; I was scared, I was terrified, I was very terrified . . . [of Appellant]."

a gunshot.”<sup>4</sup> Appellant then pulled out his gun and “didn’t look into the window but . . . reached around and . . . shot through the window inside the apartment.” Appellant testified that he “carr[ies] a firearm all the time,” that he was unable to see through the curtain but “kinda panicked really when [he] heard the shot,” and that he “didn’t know whether they were shooting the gun at [him] and [so he] pulled out [his] gun and . . . shot back.” Appellant testified that after firing the shot he left immediately in his truck, knowing that he had “fired inside the house . . . , but [he] did not know that anybody was hurt.”

{8} At the conference on jury instructions, the district court heard arguments regarding Appellant’s tendered modification of UJI 14-5171 NMRA (“Justifiable homicide; self-defense.”). Appellant’s tendered instruction included,

The killing is in self-defense if:

1. There was an appearance of immediate danger of death or great bodily harm to [Appellant] as a result of Kristen Rodriguez arming herself with a handgun and handing such gun to [Victim] who was heading toward the front door as [Appellant] was right outside such front door and [Appellant] heard what he believed to be a shot fired.

The State argued under *State v. Lucero*, 1998-NMSC-044, 126 N.M. 552, 972 P.2d 1143, that Appellant’s actions—his threatening text, breaching the front window, and refusing to leave after being told to do so—established that he was the first aggressor and thus was not entitled to a self-defense instruction. *See id.* ¶¶ 6-9. Defense counsel argued that Appellant’s testimony showed he was not the first aggressor because he arrived merely to talk and removed his holstered firearm only as a result of seeing Rodriguez and Victim’s drawn weapon and then hearing a shot. The district court denied the instruction in large part based on Appellant’s threatening text and his “additional steps” after being told to leave.

{9} A jury found Appellant guilty on all charges, and he was sentenced to life plus twenty years and six months, less three days. Appellant timely appealed to this Court, which has exclusive jurisdiction over “[a]ppeals from a judgment of the district court imposing a sentence of . . . life imprisonment.” N.M. Const. art. VI, § 2.

## II. DISCUSSION

{10} On appeal, Appellant argues that the

district court’s denial of his tendered self-defense instruction “deprived the jury of its fact-finding function and violated [his] rights to due process, to present a defense and to a jury determination on every element of the offense.”

### A. The Issue Was Preserved

{11} At the outset, we note the State’s assertion that Appellant did not preserve this issue for appeal, as “[t]he self-defense instruction requested by [Appellant] . . . contained no limiting provisions relevant to [the] right of defense of habitation of Victim and [Rodriguez] and thus constituted an incorrect statement of the law.” In response, Appellant argues that the court understood his position regarding self-defense and that defense of habitation was not raised below as a requirement to be included in the instruction.

{12} On this point we agree with Appellant’s citation of *Gallegos v. State*, in which this Court held that a flawed but minor modification of an otherwise correct uniform jury instruction was sufficient for preservation purposes where it “alert[ed] the mind of the court” to the challenged question of law. 1992-NMSC-014, ¶¶ 3-6, 113 N.M. 339, 825 P.2d 1249 (citing “SCRA 1986, 5-608(D)” —the 1975 amendment, identical to the current Rule 5-608(D) NMRA). The *Gallegos* Court concluded that the “correct written instruction” requirement of Rule 5-608(D) “must be read in light of the purpose of the Rule, which is to allow the court an opportunity to decide a question whose dimensions are not open to conjecture or after-the-fact interpretation.” 1992-NMSC-014, ¶ 6. Applying *Gallegos* here, the record is clear that for preservation purposes, the mind of the district court was sufficiently alerted to Appellant’s claim of error by the tendered self-defense instruction, and we do not address this issue further.

### B. Standard of Review and the Law of Self-Defense

{13} In *State v. Baroz*, this Court provided the following statements of law regarding the denial of a self-defense instruction:

The propriety of denying a jury instruction is a mixed question of law and fact that we review de novo. When, as in this case, a challenge to the jury instructions has been preserved, we review for reversible error. Failure to instruct on self-defense when there is a sufficient quantum of proof to warrant it is reversible error. We do not weigh the evidence but

rather determine whether there is sufficient evidence to raise a reasonable doubt about self-defense.

A defendant is only entitled to jury instructions on a self-defense theory if there is evidence presented to support every element of that theory. An instruction on self-defense requires evidence that (1) the defendant was put in fear by an apparent danger of immediate death or great bodily harm, (2) the killing resulted from that fear, and (3) the defendant acted reasonably when he or she killed. We have described the first two requirements as subjective in that they focus on the perception of the defendant at the time of the incident. In contrast, the third requirement is objective in that it focuses on the hypothetical behavior of a reasonable person acting under the same circumstances as the defendant.

Where there is enough evidence to raise a reasonable doubt in the mind of a juror about whether the defendant lawfully acted in self-defense such that reasonable minds could differ, the instruction should be given. When considering a defendant’s requested instructions, we view the evidence in the light most favorable to the giving of the requested instructions.

2017-NMSC-030, ¶¶ 13-15, 404 P.3d 769 (text only)<sup>5</sup> (citations omitted). Regarding the objective, third required element of self-defense, “[t]he law simply does not recognize any right to an acquittal based on a wholly unreasonable claim of a self-defense justification for taking the life of another.” *State v. Rudolfo*, 2008-NMSC-036, ¶ 20, 144 N.M. 305, 187 P.3d 170.

### C. Under the Defense-of-Habitation Doctrine, Rodriguez’s and Victim’s Conduct Was Lawful and Thus Appellant’s Responsive Use of Deadly Force Was Not Objectively Reasonable

{14} Appellant argues that the relevant instruction was warranted because he presented sufficient evidence of each of the three elements of self-defense to raise a reasonable doubt thereof. First, regarding his subjective fear, Appellant points to his testimony that when “[l]ooking through the window, he saw [Rodriguez] pull the

<sup>4</sup> The State argues that, apart from this testimony by Appellant, “there was no evidence any gun other than [Appellant’s .380 handgun] had been fired that night.” In response, Appellant points to “evidence at trial that while the Glock magazine held fifteen 9 mm rounds, only fourteen rounds were in the magazine once it was found.”

<sup>5</sup> The “text only” parenthetical as used in this opinion indicates omission (for enhanced readability) of all of the following nontextual marks that may be present in the source text: brackets, ellipses, and internal quotation marks.

Glock, he then saw [Victim] reach for it and [in response Appellant] stepped back [behind the brick wall]. Hearing what he believed to be a shot, he panicked and pulled his gun from its holster.” Second, regarding the killing resulting from his subjective fear, Appellant points to his testimony “that when he heard the shot, he panicked and fired through the [partially obscured] window.”

{15} Third, regarding whether his use of deadly force was objectively reasonable, Appellant argues that “[t]here was sufficient evidence from which a properly instructed jury could have found [Appellant] acted reasonably when he fired his gun.” He argues that his actions before Rodriguez armed herself—going “to the house to ‘mess with’” Rodriguez, vandalizing the vehicles, and “bang[ing] on the windows yelling for [Rodriguez] to come out and talk with him”—did not rise “to the level of deadly force.” Appellant points to “the defense evidence in support of the instruction”—seeing Rodriguez “pull the Glock,” seeing Victim “take it from her and step toward the front door,” and hearing a shot—as “sufficient to raise a reasonable doubt as to whether using deadly force was reasonable under the circumstances.”

{16} Based on the foregoing, Appellant argues that “it was for the jury to decide whether . . . his actions were reasonable under the circumstances” and that “the court’s failure to instruct the jury on . . . in essence, the only contested question . . . violated [Appellant’s] Sixth Amendment rights to present a defense.”

{17} In response, the State argues that the two subjective elements of self-defense are not sufficiently supported by Appellant’s “mere belief [that] he heard a ‘pop’ that sounded like a shot.” Without citing the record, the State further asserts that Appellant’s “testimony reflected his own uncertainty as to [who] had fired the alleged shot, . . . did not [include] anyone having pointed the gun at him . . . [and] indicate[d] that his action was fueled by reasons and emotions other than fear.” However, these allegations do not demonstrate that Appellant lacked fear or that Appellant did not fire the fatal shot in response to that fear. We conclude that the evidence of Appellant’s testimony was sufficient to support the two subjective elements of self-defense.

{18} Regarding the objective third element, the State argues that no reasonable juror could have concluded under the defense-of-habitation doctrine that the conduct of Victim and Rodriguez to which

Appellant testified was unlawful, and thus the State maintains that Appellant was not entitled to a self-defense instruction. The State argues, “Under the evidence presented, Victim and [Rodriguez] reasonably believed that [Appellant’s] intention in pursuing an assault upon [Rodriguez’s] residence was to commit a violent felony upon one or more occupants of that residence[, and therefore] even potentially deadly conduct on the[ir] part . . . was lawful as defense of habitation.” The State quotes *State v. Boyette*, 2008-NMSC-030, ¶ 15, 144 N.M. 184, 185 P.3d 355, for the proposition that defense of habitation “gives a person the right to use lethal force against an intruder when such force is necessary to prevent the commission of a felony in [that person’s] home.” See also *id.* ¶ 21 (clarifying that “the term ‘felony’ in the defense of habitation context is properly limited to those felonies involving violence”). The State also cites persuasive sources for the proposition that, relevant to Victim’s status in Rodriguez’s residence, the “right of defense of habitation extends to guests.”

{19} The State cites *State v. Southworth*, 2002-NMCA-091, 132 N.M. 615, 52 P.3d 987, as a case involving comparable circumstances that “addressed the role of the lawfulness of a victim’s conduct in relation to a claim of self-defense.” In *Southworth*, the victim came out of her house and fired a shotgun over the defendant’s head in conjunction with yelling at him to leave her property. *Id.* ¶ 4. The defendant took the shotgun from the victim, and the victim testified that the defendant then beat her with the weapon. *Id.* The two had previously been involved in a romantic relationship, and the victim testified that she was afraid of the defendant, who had been drinking prior to arriving. *Id.* ¶¶ 3-4. The defendant claimed self-defense predicated on a right to stand his ground but was convicted of aggravated battery and criminal trespass. *Id.* ¶¶ 6-9.

{20} The State points to *Southworth*’s proposition, *id.* ¶ 14, that the self-defense privilege only applies where a defendant’s use of force is in response to *unlawful* force. The State quotes the *Southworth* Court’s related conclusion, *id.* ¶ 15, that a separate jury instruction was required regarding “whether [the victim] ‘was entitled to use potentially deadly force against [the defendant] because, if [the victim] was justified in using potentially deadly force against [the defendant], [the defendant] had no right to stand his ground.’”

{21} As discussed next, we agree with the State’s reading of our defense-of-habitation precedent, approve the *Southworth* Court’s application thereof to the lawfulness of the use of force by the owner or householder of a residence, and confirm that the lawfulness of such use of force extends as well to a guest.

{22} New Mexico caselaw is clear that an inhabitant of a dwelling is entitled to significant latitude in the use of force in defense of habitation. *Boyette*, 2008-NMSC-030, ¶¶ 17-21 (“[D]efense of habitation justifies killing an intruder who is assaulting the defendant’s home with the intent of reaching its occupants and committing a felony against them . . . [and] allows one to kill to prevent an intruder’s forced entry.”); *State v. Couch*, 1946-NMSC-047, ¶¶ 28-30, 52 N.M. 127, 193 P.2d 405 (Defense-of-habitation doctrine “gives the householder the right to kill the aggressor, if such killing is necessary or apparently necessary to prevent or repel the felonious aggression . . . [and] gives the householder the right to meet force with force, [where] an attack upon a dwelling, and especially in the night, the law regards as equivalent to an assault on a . . . person.” (internal quotation marks and citation omitted)); *State v. Bailey*, 1921-NMSC-009, ¶ 30, 27 N.M. 145, 198 P. 529 (“[I]f the assault upon the habitation is for the purpose of reaching and committing a felony upon the dweller therein, or [a family member], this justifies resistance to the extent of killing, if necessary to prevent the felony.”).

{23} The *Southworth* Court correctly applied our precedent and the uniform jury instructions on defense of habitation in reaching the conclusion that a householder is “entitled to use deadly force” if the householder “ha[s] a reasonable fear” that a trespasser intends to commit a felony at that home “and if a reasonable person would have used such force.”<sup>6</sup> 2002-NMCA-091, ¶ 16; see UJI 14-5170 NMRA (instructing that killing in an attempt to prevent a felony in the householder’s home is justified if “[a] reasonable person in the same circumstances as the [householder] would have acted as the [householder] did”); *Couch*, 1946-NMSC-047, ¶ 28 (“[T]he law of defense of habitation and the resistance to the commission of a felony thereon . . . gives the householder the right to kill the aggressor, if such killing is necessary or apparently necessary to prevent or repel the felonious aggression.”). In addition, we recognize and approve the proposition that “[t]he defense-of-habitation privilege may be invoked by a

<sup>6</sup> We note that, notwithstanding this conclusion, the relevant question in *Southworth* was properly submitted to the jury where facts essential to determining the lawfulness of a householder’s use of deadly force were disputed. See 2002-NMCA-091, ¶¶ 15, 19. Here, in contrast, the facts necessary for determining the lawfulness of Rodriguez’s and Victim’s actions are uncontested or were provided by Appellant’s own testimony.



servant or guest of the owner as well as by the owner.” 1 Jens David Ohlin, *Wharton’s Criminal Law* § 14:12 (16th ed. 2021).

{24} It follows logically that if a householder or a guest of the householder was entitled to use deadly force under such circumstances, the trespasser’s use of deadly force in response to that lawful conduct cannot be objectively reasonable.

{25} Under uncontested evidence and his own testimony, Appellant committed provocative acts that constituted a basis for Rodriguez as the householder and Victim as her guest to reasonably believe that Appellant intended to commit a violent felony upon one or more of the dwellers in the habitation. See *Bailey*, 1921-NMSC-009, ¶ 30. These acts include his threatening text of which both Rodriguez and Victim were aware, knocking or pounding on the front door after 1:00 a.m., yelling in argument with Rodriguez even after being told to leave and that the police had been called, knocking on the master bedroom window, and forcibly breaking and reaching through the living room window. Relevantly, this Court has “determine[d] that putting one’s fingers behind a window screen affixed to a residential dwelling is an intrusion into an enclosed, private, prohibited space and constitutes an ‘entry’ for the purposes of New Mexico’s breaking-and-entering statute.” *State v. Holt*, 2016-NMSC-011, ¶ 18, 368 P.3d 409 (citing *NMSA 1978, § 30-14-8(A)* (1981)). Appellant’s own testimony established that he “entered” the home, which further supports the reasonableness of a belief by Rodriguez or Victim that Appellant intended to commit a violent felony upon one or both of them.

{26} Under these circumstances, Rodriguez and Victim were legally justified in their conduct that Appellant alleges. Because their actions were lawful, Appellant’s responsive use of force in firing a gunshot into the residence cannot constitute an objectively reasonable act of self-defense. Consequently, evidence was not presented to satisfy the objective element of self-defense, and the district court properly denied the self-defense jury instruction. See *State v. Gaines*, 2001-NMSC-036, ¶ 5, 131 N.M. 347, 36 P.3d 438 (“[W]hile an

accused is entitled to instruction on [the accused’s] theory of the case if evidence exists to support it, the court need not instruct if there is absence of such evidence.” (emphasis, internal quotation marks, and citation omitted)).

{27} We recognize that the defense-of-habitation doctrine was not raised below. However, under the “right-for-any-reason” doctrine, the district court was nonetheless correct to deny the instruction despite not weighing the defense-of-habitation doctrine in its determination. See *State v. Vargas*, 2008-NMSC-019, ¶ 8, 143 N.M. 692, 181 P.3d 684 (“Under the [right-for-any-reason] doctrine, we may affirm the district court’s order on grounds not relied upon by the district court if those grounds do not require us to look beyond the factual allegations that were raised and considered below.” (internal quotation marks and citation omitted)). Affirming the district court’s decision on defense-of-habitation grounds does not require us to look beyond the factual allegations considered by the district court when it considered the self-defense jury instruction and whether Appellant was the first aggressor. Therefore, it is not unfair to Appellant to apply the right-for-any-reason doctrine here. See *State v. Gomez*, 2003-NMSC-012, ¶ 7, 133 N.M. 763, 70 P.3d 753 (“While a decision of the trial court will be upheld if it is right for any reason, we will not rely on this doctrine if doing so would be unfair to the appellant.” (text only) (citations omitted)).

{28} Because we conclude that Appellant was not entitled to a self-defense instruction based on the defense-of-habitation doctrine, we do not consider the parties’ arguments concerning Appellant’s status as first aggressor.

#### **D. Appellant’s Other Arguments Are Without Merit**

{29} Appellant also argues that his earlier altercation with Victim at Allsup’s supports a finding of reasonableness of Appellant’s fear of Victim by a properly instructed jury, “since [Victim] had recently demonstrated he was willing to use force.” Appellant cites *State v. Branchal*, 1984-NMCA-063, ¶ 24, 101 N.M. 498, 684 P.2d 1163, for the proposition that courts may consider,

in addition to events at the time of the incident, “history between a defendant and the victim which raises a reasonable doubt about whether a victim’s actions placed a defendant in fear of imminent great bodily harm at the time of the alleged self-defense.” However, Appellant overstates the similarity between this case and *Branchal* in which an extensive history of violent and threatening conduct by the victim “was sufficient to raise an issue of fact with respect to the elements of a self-defense claim.” *Id.* ¶¶ 22, 24. Here, in contrast, the record reflects a mutual altercation between Appellant and Victim that resulted in a single punch—a very different degree of contextual history that is not sufficient to transform Appellant’s later use of deadly force into objectively reasonable conduct.

{30} Appellant also argues, quoting *State v. Coffin*, 1999-NMSC-038, ¶ 12, 128 N.M. 192, 991 P.2d 477, that “[a] person may act in self-defense against multiple attackers acting in concert . . . to the extent that each accomplice poses an immediate danger of death or great bodily harm.” In *Coffin*, the defendant asserted a theory of self-defense that both alleged assailants in a liquor store parking lot “posed an immediate threat of death or great bodily harm, that he feared death or great bodily harm and shot them as a result, and that he acted as a reasonable person would have acted in the same circumstances.” *Id.* ¶ 13. However, we conclude that *Coffin* is inapposite, as the issue here is whether a reasonable person would act as Appellant did in the same circumstances, regardless of whether that conduct responded to a single threat or “alleged concerted action.” See *id.* Lawful conduct by Rodriguez or Victim is not transformed into illegal use of force by virtue of their acting together. Accordingly, this argument fails.

#### **III. CONCLUSION**

{31} For the foregoing reasons, we affirm the judgment of the district court.

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

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

**MICHAEL E. VIGIL, Justice  
DAVID K. THOMSON, Justice  
JULIE J. VARGAS, Justice  
BRIANA H. ZAMORA, Justice**

From the New Mexico Supreme Court		
Opinion Number: 2024-NMSC-005		
No: S-1-SC-39169 (filed January 16, 2024)		
JEREMIAH SIPP a/k/a SAGE RADER, and HELLA RADER,		
Plaintiffs-Respondents,		
v.		
BUFFALO THUNDER, INC.; BUFFALO THUNDER DEVELOPMENT		
AUTHORITY; PUEBLO OF POJOAQUE; PUEBLO OF POJOAQUE GAMING COMMISSION;		
and POJOAQUE GAMING, INC.,		
Defendants-Petitioners.		
ORIGINAL PROCEEDING ON CERTIORARI		
David K. Thomson, District Judge		
Rey-Bear McLaughlin, LLP	VanAmberg, Rogers, Yepa, Abeita,	Sonosky, Chambers, Sachse, Mielke &
Daniel I.S.J. Rey-Bear	Gomez & Wilkinson, LLP	Brownell, LLP
Timothy H. McLaughlin	C. Bryant Rogers	David C. Mielke
Spokane, WA	David T. Gomez	Albuquerque, NM
for Petitioners	for Amicus Curiae Taos Pueblo	for Amici Curiae Pueblo of Isleta and
Valdez and White Law Firm, LLC	Pueblo of Laguna	San Felipe Enterprises
Timothy L. White	James M. Burson	Laguna Development Corporation
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Donna M. Connolly	Bernalillo, NM	Development Corporation
Santa Fe, NM	for Amicus Curiae Pueblo of Sandia	Michael B. Browde
for Amici Curiae Pueblos of Santa Ana	Frye & Kelly, P.C.	David J. Stout
and Santa Clara	Paul E. Frye	Albuquerque, NM
Chestnut Law Offices, P.A.	Albuquerque, NM	for Amicus Curiae New Mexico Trial
Ann Berkley Rodgers	for Amicus Curiae Ohkay Owingeh	Lawyers Association
Albuquerque, NM		
for Amicus Curiae Pueblo of Acoma		

OPINION

BACON, Chief Justice.

{1} The instant case requires us to determine whether the jurisdiction shifting from tribal court to state court authorized

under Section 8(A) (“Policy Concerning Protection of Visitors”) of New Mexico’s Tribal-State Class III Gaming Compact (the Compact)<sup>1</sup> was terminated under the Compact’s own terms by either *Pueblo of Santa Ana v. Nash*, 972 F. Supp. 2d 1254 (D.N.M. 2013), *appeal dismissed*, 10th Cir.

(13-2182 & 13-2191) (2014), or *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018), *cert. denied sub nom. McNeal v. Navajo Nation*, 139 S. Ct. 1600 (2019). The relevant terms of Section 8(A) provide that [f]or purposes of this Section, any such claim [for bodily injury or property damage] may

be brought in state district court, including claims arising on tribal land, *unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.*

(Emphasis added.)

{2} Pueblo of Pojoaque and several Pueblo-owned entities (Petitioners) assert that both *Nash* and *Dalley* terminated the jurisdiction shifting in Section 8(A) as each case constitutes a “final[] determin[ation] by a state or federal court” that such jurisdiction shifting is not permitted under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. Accordingly, Petitioners argue for reversal of the Court of Appeals’ opinion, which reversed the district court’s grant of Petitioners’ motion to dismiss for lack of subject matter jurisdiction. Jeremiah Sipp and Hella Rader (Respondents) argue for affirmance, asserting that the relevant jurisdiction shifting under Section 8(A) was not terminated by *Nash* or *Dalley* and thus the Court of Appeals’ remand of their personal-injury tort claims to the district court for further proceedings was proper.

{3} We reverse, holding under contract law that jurisdiction shifting under Section 8(A) of the Compact was terminated by *Nash*. We therefore do not reach the secondary issue of whether state jurisdiction over such claims is permissible under IGRA in light of *Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014).

# I. FACTUAL AND PROCEDURAL BACKGROUND

{4} IGRA creates the framework for states and Indian tribes to cooperate in regulating on-reservation tribal gaming. Under IGRA, a tribal-state gaming compact is required for an Indian tribe to have a Class III gaming facility, and the statute “prescribes the matters that are permissible subjects of gaming-compact negotiations between tribes and states.” *Mendoza v. Isleta Resort & Casino*, 2020-NMSC-006, ¶ 14, 460 P.3d 467. In 2005 and again in 2017, the Pueblo of Pojoaque and the State of New Mexico entered into the Compact. Section 8(A) of the Compact provides that visitors to Indian casinos may bring their bodily injury and property damage claims against tribal entities in state court unless a state or federal court finally determines that IGRA does not permit the shifting of jurisdiction over those claims to state court. This language terminating a visitor’s

option to choose state court jurisdiction is the subject of the instant dispute.

{5} Respondents filed a complaint for damages in state district court against Petitioners Buffalo Thunder, Inc., Buffalo Thunder Development Authority, the Pueblo of Pojoaque, the Pueblo of Pojoaque Gaming Commission, and Pojoaque Gaming, Inc. The complaint alleged that in the course of his employment for Dial Electric, Respondent Sipp was in the receiving area of the Buffalo Thunder casino when his head struck a large electric garage-type door which was unexpectedly and suddenly lowered by a casino employee. The complaint further alleged that Petitioners’ negligence directly resulted in Respondent Sipp being “rendered unconscious, causing him severe injuries, including but not limited to severe head and spinal injuries.” Respondent’s claims for damages included related medical costs and Respondent Hella Rader’s loss of consortium.

{6} Following a hearing, the district court granted Petitioners’ motion to dismiss for lack of subject matter jurisdiction. The district court concluded that Respondents’ claims did not fall within Section 8(A), and that “[t]herefore, [Respondents] ha[d] not established an express abrogation or waiver of [Petitioners’] sovereign immunity as required to establish subject matter jurisdiction” in state court. Respondents timely appealed.

{7} In the Court of Appeals, Respondents argued that the district court erred in granting Petitioners’ motion to dismiss, asserting that Section 8(A) of the Compact “expressly waives sovereign immunity and provides for state court jurisdiction over Plaintiffs’ claims.” *Sipp v. Buffalo Thunder, Inc.*, 2022-NMCA-015, ¶ 6, 505 P.3d 897. Petitioners’ counterarguments included that jurisdiction shifting under Section 8(A) had been terminated by both *Nash* and *Dalley*. *Id.* ¶ 7.

{8} The Court of Appeals held that Respondents sufficiently pleaded claims that fall under Section 8(A)’s waiver of sovereign immunity. *Id.* The Court further concluded that, “[b]ecause both *Nash* and *Dalley* explicitly restricted their holdings to their case-specific facts, and both cases left open the possibility that IGRA permits jurisdiction shifting for tort claims under different circumstances,” neither federal case triggered the “termination clause” at the end of Section 8(A). *Id.* ¶

14; *see id.* ¶ 9 (quoting Section 8(A)’s termination clause as “*unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court*”). Accordingly, the Court of Appeals concluded that “the district court in this case was not stripped of subject matter jurisdiction on these grounds.” *Id.* ¶ 14. In addition, the Court of Appeals rejected Petitioners’ argument that *Bay Mills*, 572 U.S. 782, directs a different result, concluding that “the [*Bay Mills*] Court did not pass upon the question addressed by *Dalley* and *Nash* . . . [and c]onsequently, *Bay Mills* is not dispositive of the question before us.” 2022-NMCA-015, ¶ 15. Under these considerations, the Court of Appeals remanded to the district court for further proceedings. *Id.* ¶¶ 14, 27. Petitioners timely petitioned this Court for a writ of certiorari.

{9} This appeal presents two questions: first, “Was the termination clause in the tort-claims provision of the [Compact] triggered once [*Nash*] and then [*Dalley*] each finally determined that IGRA does not permit shifting jurisdiction to state court over casino visitors’ tort claims?”; second, “Does the holding in [*Bay Mills*] that ‘class III gaming activity’ throughout [IGRA] unambiguously means only activity ‘involved in playing class III games’ ‘in the poker hall’ and not also ‘off-site’ operations, substantially limit the decision in *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, 141 N.M. 269, 154 P.3d 644, that IGRA authorizes state jurisdiction over casino visitor tort claims, to only claims directly related to such activity?”

{10} Following oral argument, we ordered the parties to brief what effect, if any, the following cases have on the questions before the Court: *C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, 112 N.M. 504, 817 P.2d 238; *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, 114 N.M. 778, 845 P.2d 1232; and *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844. In our order, we directed the parties to *Mendoza* for the proposition, “Gaming compacts are contracts between two parties,” in this case “the Pueblo and the State, and we treat them as such.” 2020-NMSC-006, ¶ 28 (text only)<sup>2</sup> (citation omitted). *See order, Sipp v. Buffalo Thunder, Inc.*, S-1-SC-39169 (N.M. Apr. 28, 2023).

<sup>1</sup> The Tribal-State Class III Gaming Compact at issue in this case was signed by the Pueblo of Pojoaque in 2005 and is contained in the case record. The standard 2001, 2007, and 2015 compact language as approved by the Legislature is available at NMSA 1978, Ch. 11, Art. 13, Appx. (2023). *See also* New Mexico Gaming Control Board, Tribal Compacts, <https://www.gcb.nm.gov/gaming/tribal/tribal-compacts/> (last visited Dec. 29, 2023).

<sup>2</sup> The “text only” parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.



## II. DISCUSSION

### A. Standard of Review

{11} “In reviewing an appeal from an order granting or denying a motion to dismiss for lack of jurisdiction, the determination of whether jurisdiction exists is a question of law which an appellate court reviews de novo.” *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 6, 132 N.M. 207, 46 P.3d 668.

### B. Both *Nash* and *Dalley* Qualify Under Section 8(A) of the Compact to Terminate Jurisdiction Shifting to State Court of Relevant Claims for Bodily Injury or Property Damage

{12} We first address whether either *Nash* or *Dalley* triggered the termination clause in Section 8(A) of the Compact, thereby terminating the Tribe’s limited waiver of sovereignty expressed in Section 8(A). As the parties agree, state jurisdiction in the instant case relies on this limited waiver. Accordingly, if either *Nash* or *Dalley* triggered the termination clause, then jurisdiction shifting of claims to state court such as Respondents’ ended under the Compact’s own terms in Section 8(A).

{13} Petitioners, citing New Mexico caselaw and secondary sources, first apply contract law to characterize the termination clause in Section 8(A) as “provid[ing] for what . . . is now technically called an *event that terminates a duty*, under which an event agreed on by the parties discharges a party’s contractual obligation.” (Emphasis added.) Petitioners implicitly argue that both *Nash* and *Dalley* constitute that triggering event provided in Section 8(A), thereby terminating the Tribe’s duty to waive its immunity from suit. Petitioners assert that both federal cases “‘finally determined’ the relevant issue under the Gaming Compact’s termination clause because they are both final court decisions.” Petitioners quote *Kersey v. Hatch* for the proposition that “a case is finalized when a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for filing a petition for certiorari elapsed or a petition for certiorari finally denied.” 2010-NMSC-020, ¶ 20, 148 N.M. 381, 237 P.3d 683 (text only) (citation omitted). Petitioners also assert that the finality of the decisions in *Nash* and *Dalley* is not rendered infirm by the “irrelevant” qualifiers in those cases on which the Court of Appeals relied for its contrary holding.

{14} Respondents assert that neither *Nash* nor *Dalley* triggered the termination clause because both cases “are inapposite, incorrectly decided, and not binding.” Respondents argue that the Court of Appeals

correctly interpreted the holdings of *Nash* and *Dalley* as not terminating Petitioners’ “agreement under the compact,” and argue as well that “a proper review of [both] cases shows that they are just wrong” on the merits.

{15} As discussed, we treat gaming compacts as contracts between the State and the Tribe. *Mendoza*, 2020-NMSC-006, ¶ 28; see *Gallegos*, 2002-NMSC-012, ¶ 30 (“Tribal-state gaming compacts are agreements, not legislation, and are interpreted as contracts.” (internal quotation marks and citation omitted)). “[W]e will not ignore the clear language of the Compact, nor can we relieve the parties to the Compact from their obligations thereunder.” *Doe*, 2007-NMSC-008, ¶ 15. “Contract interpretation is a matter of law that we review de novo.” *Rivera v. Am. Gen. Fin. Servs.*, 2011-NMSC-033, ¶ 27, 150 N.M. 398, 259 P.3d 803. In *Lyons*, we said:

The purpose, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive. . . . If a court concludes that there is no ambiguity, the words of the contract are to be given their ordinary and usual meaning. When interpreting an unambiguous contract, a court is limited to interpreting the contract which the parties made for themselves as a court may not alter or make a new agreement for the parties.

2013-NMSC-009, ¶ 23 (brackets, internal quotation marks, and citations omitted).

{16} We begin our analysis by examining the plain language of the contractual provision at the heart of this case, Section 8(A), which states in full:

The safety and protection of visitors to a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to assure that any such persons who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Tribe agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in a court of competent jurisdiction, at the visitor’s election, with respect to

claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, *unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court.*

(Emphasis added.)

{17} The plain language of the termination clause—a provision negotiated between the State of New Mexico and the Pueblo of Pojoaque—is clear and unambiguous in directing three relevant conclusions. First, the broad, inclusive language of “a state or federal court” directs that *any* state or federal court may qualify to trigger the termination clause. If the parties intended to limit the scope as to *which* state or federal courts qualify in this regard, they certainly could have done so. Instead, nothing in the parties’ contractual agreement embodied in Section 8(A) suggests any such limitation.

{18} Second, it follows logically that “finally determined” signifies a final result within the authority and capacity of such a state or federal court. In its ordinary and usual meaning, a court’s *final determination* of an issue signifies a disposition or order which resolves necessary issues and from which the parties may appeal. See *Handmaker v. Henney*, 1999-NMSC-043, ¶ 8, 128 N.M. 328, 992 P.2d 879 (“For purposes of appeal, an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” (internal quotation marks and citation omitted)); *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 14, 113 N.M. 231, 824 P.2d 1033 (“The general rule in New Mexico for determining the finality of a judgment is that an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” (internal quotation marks and citation omitted)); *Springer Transfer Co. v. Bd. of Comm’rs*, 1939-NMSC-047, ¶ 9, 43 N.M. 444, 94 P.2d 977 (“A final decree is one which disposes of the case or a distinct branch thereof. It is one which either terminates the action itself, or decides some matter litigated by the parties, or operates to divest some right, in such manner as to put it out of the power of the court.” (text only) (citations omitted)).<sup>3</sup> As with the meaning of “a state or federal court,” if the parties

<sup>3</sup> Though not addressed by the parties, we note that the principle of finality in this context is bolstered by the fact that no appellate review followed from *Nash* or *Dalley*. We also note that other cases with relevant holdings and where the time for appeal has lapsed have followed *Nash* and *Dalley*. See, e.g., *Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom*, 530 F. Supp. 3d 970, 987 (E.D. Cal. 2021) (“[C]hanging the venue of patron personal injury and employee claims from tribal court to state court is not a permitted topic of IGRA negotiation.”); *Pueblo of Pojoaque v. Wilson*, 619 F. Supp. 3d 1095, 1103 (D.N.M. 2022) (“The Court therefore finds, pursuant to *Dalley*, that the IGRA does not permit the shifting of jurisdiction over [plaintiff’s tort] claims to the state courts.”).

intended for “finally determined” to have a special meaning outside of its ordinary and usual meaning, they certainly could have expressed such an agreement.

{19} We note that Respondents asserted at oral argument that “finally determined” under New Mexico law means “determined by a court of final jurisdiction” and that thus only “a decision by this Court or the United States Supreme Court” could qualify to trigger the termination clause. However, Respondents did not argue this proposition in their briefs and have offered no authority for it. See *State ex rel. Off. of State Eng’r v. Romero*, 2022-NMSC-022, ¶ 2 n.1, 521 P.3d 56 (pointing out that this Court will not reach an issue for which a party “makes no argument and provides no facts in the briefing to help us answer that question”). In addition, we conclude that this proposition is refuted by the cases cited above defining finality.

{20} Third, the Compact directs that state jurisdiction of relevant claims terminates upon the event of a qualifying court finally determining that “IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court.” Under current contract law, we agree with Petitioners that a state or federal court finally determining such an interpretation of IGRA constitutes an “event that terminates a duty.” See Restatement (Second) of Contracts § 230 (1981).<sup>4</sup> Specifically, under the plain language of Section 8(A), that event would trigger the termination clause, thereby terminating the Tribe’s duty to provide its “limited waiver of immunity from suit.”

{21} Importantly, the unambiguous language of the termination clause provides for the termination of state court jurisdiction upon such event without regard to whether the state or federal court’s determination is contrary to any other court’s interpretation of IGRA. Stated differently, the event that triggers the termination clause need not be affirmed or followed by this Court or any other court. For this reason, Respondents’ arguments regarding *Doe* are misplaced, as the occurrence of the qualifying event terminates Petitioners’ duty regardless of prior caselaw. Further, this Court need not interpret IGRA itself but simply must determine whether *Nash* or *Dalley* interpreted IGRA in a manner that triggers the termination clause in Section 8(A).

{22} In *Nash*, the federal district court “enter[ed] a declaration that the [IGRA] does not authorize an allocation of jurisdiction from tribal court to state court over a personal injury claim arising from the allegedly negligent serving of alcohol on Indian land.” 972 F. Supp. 2d at 1266. The *Nash* Court determined that (1) “IGRA limits permissible subjects of negotiation” for tribal-state gaming compacts, and (2) § 2710(d)(3)(C)(ii) of IGRA, the only relevant subparagraph to mention jurisdiction, permits jurisdiction shifting “only as necessary for the enforcement of laws and regulations of the State or Indian tribe, that are directly related to, and necessary for, licensing and regulation of class III gaming activities.” 972 F. Supp. 2d at 1264-65. Concluding that “[a] personal injury claim arising from the negligent serving of alcohol has no bearing whatsoever on the licensing or regulation of class III gaming activities,” the *Nash* Court held that New Mexico state courts had no jurisdiction to hear the underlying personal injury claim. *Id.* at 1264-67.

{23} Citing precedent and IGRA, *Nash* expressly “conclude[d] that the IGRA does not permit such a jurisdictional shifting.” *Id.* at 1263-65 (citing *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); § 2710(d)(3)(C)(ii)). By its plain language, this conclusion within the federal district court’s final determination of the issue constitutes the qualifying event that terminates the Tribe’s duty to provide its “limited waiver of . . . immunity from suit.” Accordingly, we hold that *Nash* triggered the termination clause in Section 8(A), thereby rendering jurisdiction shifting to state court improper “with respect to claims for bodily injury or property damage,” including for Respondents’ claims here.

{24} While our holding regarding *Nash* resolves the issue before us, we nonetheless analyze *Dalley* based on its inclusion within the dispositive question on which we granted certiorari. In *Dalley*, the Tenth Circuit Court of Appeals similarly considered “whether IGRA authorizes tribes to enter into gaming compacts with states that allocate jurisdiction to state courts with respect to state-law tort claims.” 896 F.3d at 1205. *Dalley* analyzed § 2710(d)(3)(C) of IGRA as well as *Doe* and *Bay Mills* to determine whether state court jurisdiction applied to underlying personal-injury tort claims which arose from an alleged “slip-

and-fall” on the casino’s wet bathroom floor. 896 F.3d at 1202. The *Dalley* Court’s analysis included that jurisdiction shifting under IGRA Subparagraph (C)(ii)—“[n]otably, . . . the only clause in [§ 2710(d)(3)(C)] that explicitly authorizes tribes to allocate jurisdiction to the states”—did not pertain to “such tangential matters as the safety of walking surfaces in Class III casino restrooms.” 896 F.3d at 1210. The *Dalley* Court “conclude[d] that IGRA, under its plain terms, does not authorize tribes to allocate to states jurisdiction over tort claims like those brought by the [plaintiffs t]here.” *Id.* at 1218.

{25} We recognize that whether “IGRA authorizes” jurisdiction shifting under *Dalley* is not identical phrasing to whether “IGRA does not permit” jurisdiction shifting under Section 8(A). However, under the reasoning in *Dalley*, this is a distinction without a difference, as *Dalley* expressly clarified that a lack of authorization equates to a prohibition in this context:

It is axiomatic that absent clear congressional authorization, state courts lack jurisdiction to hear cases against Native Americans arising from conduct in Indian country. It is also a well-settled principle that “Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights.”

Consequently, congressional approval is necessary—i.e., it is a threshold requirement that must be met—before states and tribes can arrive at an agreement altering the scope of a state court’s jurisdiction over matters that occur on Indian land.

896 F.3d at 1204-05 (citations omitted). Under this reasoning, IGRA cannot permit what it does not authorize, and thus the Tenth Circuit Court’s final determination in *Dalley* that relevant jurisdiction shifting is *not authorized* under IGRA is functionally equivalent to determining that IGRA *does not permit* such jurisdiction shifting. Accordingly, we conclude that *Dalley*, like *Nash*, constitutes the qualifying event under Section 8(A) to trigger the Compact’s termination clause.

{26} Respondents’ arguments regarding *Nash* and *Dalley* are irrelevant, as they rely on stare decisis principles rather than contract law. Asserting that both cases “are inapposite, incorrectly decided, and

<sup>4</sup> We note that the term “condition subsequent” is no longer used by at least one authoritative treatise. See Restatement (Second) of Contracts § 224, Rep.’s Note (1981) (“This Section revises former § 250 to eliminate the terms ‘condition precedent’ and ‘condition subsequent.’ This terminology has long been criticized and has caused confusion when used in an attempt to answer questions related to the burdens of pleading and proof.”); see also *id.* § 230 (“[I]f under the terms of the contract the occurrence of an event is to terminate an obligor’s duty of immediate performance or one to pay damages for breach, that duty is discharged if the event occurs.”).

not binding.” Respondents implicitly invite us to review on the merits *Nash*’s and *Dalley*’s interpretations of IGRA. However, as we have established, the question here is whether either of those cases triggered the termination clause in Section 8(A), not whether we concur with the holding or reasoning of either case.

{27} We also address the Court of Appeals’ contrary conclusion regarding *Nash* and *Dalley*. See *Sipp*, 2022-NMCA-015, ¶¶ 9-14. The Court of Appeals stated that both cases “explicitly restricted their holdings to their case-specific facts” and “left open the possibility that IGRA permits jurisdiction shifting for tort claims under different circumstances,” and therefore “neither can be said to have ‘finally determined’” the relevant issue. *Id.* ¶ 14. This reasoning suggests that the only way a final determination by a state or federal court could trigger the termination clause in Section 8(A) is if that court thereby determined that *no* personal-injury tort claims are allowable under IGRA. We reject this view for two reasons.

{28} First, such a reading of “finally determined” would be outside the term’s ordinary and usual meaning for a state or federal court. The parties were free to articulate and adopt such a distinct meaning of the term but did not. Second, this view would render such a final determination impossible where IGRA expressly permits negotiation over some forms of relevant jurisdiction shifting: “Any Tribal-State compact . . . may include provisions relating to . . . the allocation of . . . civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations.” § 2710(d)(3)(C)(ii). Given this patent grant of permission in IGRA, which we need not interpret, the Court of Appeals’ reading of “finally determined” would render the termination clause a nullity, as no such absolute determination of the scope of IGRA could ever be possible. Nothing in Respondents’ arguments or the record supports such a reading or result. For these reasons, we reject the Court of Appeals’ conclusion that neither *Nash* nor *Dalley* triggered the termination clause.

### III. CONCLUSION

{29} Under the foregoing, we hold that both *Nash* and *Dalley* qualified under the plain language of Section 8(A) of the Compact to terminate jurisdiction shifting of personal-injury tort claims to state court. Accordingly, state courts do not possess subject matter jurisdiction to hear Respondent Sipp’s underlying claim, and we remand for dismissal with prejudice.

{30} Based on our holding, we do not reach the question of whether *Bay Mills* substantially limits the holding in *Doe*.

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

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

**MICHAEL E. VIGIL, Justice  
BRIANA H. ZAMORA, Justice  
JOSHUA A. ALLISON, Judge  
Sitting by designation  
DANIEL A. BRYANT, Judge  
Sitting by designation**



From the New Mexico Supreme Court

**Opinion Number: 2024-NMSC-006**

No: S-1-SC-38941 (filed February 19, 2024)

**STATE OF NEW MEXICO,**

Plaintiff-Respondent,

v.

**RUDOLPH AMADOR,**

Defendant-Petitioner.

**ORIGINAL PROCEEDING ON CERTIORARI**

Melissa A. Kennelly, District Judge

Bennett J. Baur, Chief Public Defender

Allison H. Jaramillo, Assistant Appel-

late Defender

Santa Fe, NM

for Petitioner

Hector H. Balderas, Attorney General

Van Snow, Assistant Attorney General

Albuquerque, NM

for Respondent

## OPINION

### VIGIL, Justice.

{1} Defendant Rudolph Amador was convicted of two counts of criminal sexual contact of a minor, contrary to NMSA 1978, Section 30-9-13(B)(1) (2003), and one count of child abuse, contrary to NMSA 1978, Section 30-6-1(D) (2009). The district court sua sponte filed a motion for a new trial, citing prosecutorial misconduct and ineffective assistance of counsel. After hearing argument, the district court ultimately ordered a new trial based on four instances of prosecutorial misconduct, but denied Defendant's argument that the retrial was barred. Defendant was retried and convicted on all three counts.

{2} Defendant appealed to the Court of Appeals, arguing that retrial was barred by double jeopardy under *State v. Breit*, 1996-NMSC-067, 122 N.M. 655, 930 P.2d 792, and that he received ineffective assistance of counsel. Docketing Statement, *State v. Amador*, A-1-CA-38665 (N.M. Ct. App. Dec. 27, 2019). The Court of Appeals rejected Defendant's arguments and affirmed his convictions. *State v. Amador*, A-1-CA-38665, mem. op. ¶ 1 (N.M. Ct. App. July 19, 2021) (nonprecedential).

{3} We granted Defendant's petition for

writ of certiorari on both issues. We reverse the Court of Appeals and hold that Defendant's second trial was barred by double jeopardy under Article II, Section 15 of the New Mexico Constitution.

#### I. BACKGROUND

##### A. District Court

{4} The charges arose from allegations that Defendant sexually abused his friend's eleven-year-old daughter when Defendant spent the night at his friend's house. The child's father testified that he was friends with Defendant, had known him for more than twenty years, and had invited Defendant to stay at his house for a couple of nights. The father also testified that his eleven-year-old daughter stayed with him on the second night.

{5} The child testified that she had her own bedroom, which she slept in that night. She woke up to Defendant touching her "front private part" and "back private part." She clarified that the contact to her vagina and buttocks was skin-to-skin, under her underwear. Defendant left her room once she started to wiggle and move away from him. After Defendant left her room, she ran to her father's room screaming, woke her father, and told him what had happened.

{6} The father testified that after his daughter woke him up and when he became aware of what had happened, he confronted Defendant, who was eating a

corn dog in the dark in the kitchen. Defendant denied touching the child. However, after confirming what had happened with his daughter, the father kicked Defendant out of the house.

{7} After the State rested, the prosecutor informed the court and defense counsel that he planned to impeach Defendant with a prior conviction for child abuse, should Defendant take the stand. Defense counsel agreed that Defendant had an "ancient prior," but she was unsure whether it fell within the ten-year window under Rule 11-609 NMRA. The prosecutor then stated that the prior conviction was a felony and fell within the ten-year window. The judge told the prosecutor he could impeach Defendant with the prior conviction, but he could not get into the specific facts of the offense.

{8} When Defendant took the stand, defense counsel opted to bring up the prior conviction during her direct examination by asking if he had "ever been charged with a felony." Defendant responded that he had been charged with child abuse in 2009. He explained that the charge was based on a fight with his seventeen-year-old stepson and that he ended up taking a plea deal, serving three years of probation. Defendant also testified that his girlfriend had three daughters, and that he had never been accused of any felonies involving them. Concerning his friend's daughter, Defendant testified that he had known her all her life and that he would never do anything like what he was accused of doing. He denied entering her room and touching her. In his closing argument at the end of the evidence, the prosecutor began with:

Basically, what this case is about, I mean, is the criminal sexual contact of a minor. Defendant says he didn't do it. Okay, and frankly, I think, you know, for someone who is not a *pedophile*, it's hard to understand why any grown man would touch a child. Isn't it? When you think about it, how . . . why would any grown man have any sexual interest in a child? It seems incomprehensible, but we know it happens all the time, don't we? I mean something we see a lot in the media, and even, I'm a lifelong Catholic, I love the Catholic Church, and even in an institution such as the Catholic Church, you know, as hard as it is to believe, as painful, I think as a Catholic to see, you know we have priests, even priests are now abusing these children. Some-



times, these priests go for years and years and years before they are caught. Umm . . . you know they have access to these kids, and they have . . .

(emphasis added). The judge cut off the closing and directed the parties to approach the bench. The judge informed the prosecutor that the argument was improper and that allowing it to go further could result in reversible error. The prosecutor continued his closing argument,

Uh...so...uh...Defendant said he never, he didn't do it, and then he cites, uh, then he says that he has three, three stepdaughters. We don't know, that's just what he says. And he did admit that he was a convicted, you know, felon. That's just what he says. That he didn't, he never touched his stepdaughters, we don't know . . .

Then, the prosecutor summarized the relevant evidence. Next, the prosecutor said, "This Defendant, here, this guy here, he touched a little eleven-year-old [girl's] vagina and buttocks, for whatever reason—because he's a *pedophile*, [unintelligible] to do something like that. Who knows what a *pedophile* looks like—we don't know, as we all know, *pedophiles* come in all shapes and forms" (emphasis added). The prosecutor then sought to describe the reasonable doubt standard:

Reasonable doubt is the sort of doubt you would use in making important decisions about important things in your life. Buy a car, buy a house, or what have you. In relation to this case, I would ask you to consider whether you feel safe enough, based on what you heard today, to let this guy stay in a house with another child.

Defense counsel failed to object at any point.

{9} Defense counsel gave her closing argument. She argued that there was no testimony to support the use of the word "pedophile" and that the State was bringing up the "ugly word" and Catholic priests in an attempt to get the jury to view Defendant in such a way. Defense counsel then argued that the child's testimony was inconsistent: she was coached, could have been dreaming, and did not testify as though she was traumatized—"not an ounce of nerves."

{10} In rebuttal, the prosecutor again referenced Defendant's stepdaughters by asking: "Where are the three stepdaughters?" The judge again asked counsel to approach the bench. The judge told the prosecutor, "You cannot comment [on] his failure to present evidence." After addressing the defense counsel's arguments, the

prosecutor moved on to discuss motive: "The motives of a *pedophile*, it is an inexplicable, a nonpedophile may think, why do they do things like that?" (emphasis added). Defense counsel objected, and the judge told the prosecutor that he was "walking very close to asking [D]efendant to prove himself innocent, that is not his burden, and you can't refer to him—you're not to refer to him as a pedophile again." The prosecutor returned to his argument, focusing again on the definition of reasonable doubt. Again, he asked the jurors whether they "would want a little girl alone in the house with the defendant."

{11} After the jury returned guilty verdicts for two counts of criminal sexual contact of a minor and one count of child abuse, the court asked the parties if they would like to proceed directly to sentencing. Defense counsel said there was something that needed to be clarified before moving forward:

Defense counsel: [Defendant] only has the one prior it was, it was either a conditional discharge or a deferred and so I think that's something we need to clear up before we move forward and uh . . . Prosecutor: It was a conditional discharge.

Defense counsel: It was?

Prosecutor: Yeah.

Judge: And he successfully completed that?

Defense counsel: Yes.

Prosecutor: I can't remember now, I think I have the, I gave her the information.

Defendant: Yes, he did.

Prosecutor: I think there was, there was some issue, but I think he . . .

Judge: You didn't tell me that, and you used it as a . . .

Prosecutor: I think he did complete it, uh . . . the conditional discharge [unintelligible].

Defendant: [unintelligible]

Prosecutor: I'm not sure. I don't remember but . . .

Judge: You represented to the court that it was a prior conviction, and for that reason, I allowed you to—and [defense counsel], you didn't object.

Defense counsel: I didn't know it was a conditional discharge until he told . . .

Judge: I allowed you to use it as a, as a, as impeachment evidence.

Prosecutor: Okay, well I'm not sure, I . . . I . . . I guess, uh, I didn't realize, uh.

Judge: Wow.

Prosecutor: And I can't remember. It's been some time since I

looked at it but uh . . . closely, but I think it may, it may have got violated, and I'm not sure your honor at this point. I'm not sure. Judge: Well, what you represented to the court was that he had a prior conviction that you were going to impeach him with.

Prosecutor: Right, and that's why. . .

Judge: And it's not a conviction if it is a completed conditional discharge. When they plead guilty, they are told if you successfully complete this, it does not count as a conviction.

Prosecutor: Okay.

Judge: And you represented to the court, you stand up here and told me as an officer of the court that he had a prior conviction and now you are telling me two hours later you're not really sure?

Prosecutor: Uh. . .

Judge: Mr. [prosecutor]? You're not really sure? You wouldn't know?

Prosecutor: I apologize. I guess I didn't think.

Judge: Apologize? You just got a conviction, so you used something improperly to obtain a conviction.

Prosecutor: Okay, and I guess I . . . that was my mistake and I [inaudible].

Defense counsel stated that she was "tempted . . . to ask the court for a mistrial" because the information on the conditional discharge was not disclosed. The judge then admonished defense counsel: "But you conceded that he had a prior conviction. We stood up here and talked, and had a conference, and you conceded he had a prior conviction, and now, two hours later, all of a sudden, oh well, it wasn't really a conviction." The prosecutor then said he "thought a conditional discharge would count as a prior conviction" for impeachment purposes. The judge responded, "No it's not. It's not a conviction for anything. It's considered not a conviction if it's successfully completed."

{12} Concerned with the "prosecutorial misconduct" and "visibly ineffective assistance of counsel," the judge filed a sua sponte motion for a new trial—enumerating the following specific instances of prosecutorial misconduct and ineffective assistance of counsel:

a. When the prosecutor learned that Defendant would testify[,] he represented to the court and defense counsel that Defendant had a prior conviction for child abuse which he would use for impeachment purposes. Defense

counsel did not object. When Defendant testified, [defense] counsel elicited the fact that Defendant had a prior conviction for child abuse[,] and defendant gave his version of the events that led to the “conviction.” However, after trial and after the jury had returned its guilty verdict, defense counsel advised the Court that Defendant did not[,] in fact[,] have a prior conviction for child abuse, but rather a conditional discharge where the Defendant had successfully completed his probation. The prosecutor stated that he thought a conditional discharge was synonymous with a prior conviction, which it is not.

- b. During closing argument the prosecutor repeatedly referred to Defendant as a “pedophile” and made reference to the Catholic Church clergy abuse scandal. The prosecutor also referred to himself as a Catholic. The prosecutor argued that normal people like himself and the jurors could not understand why pedophiles did what they did. Defense counsel failed to object to any of these arguments.
- c. During his closing argument[,] the prosecutor stated that the [D]efendant should have brought in certain evidence if he wanted the jurors to believe he was not guilty. This was an impermissible shift in the burden of proof.
- d. Defense counsel was patently unprepared for trial.
- e. During the course of the trial all of the prosecution witnesses referred to . . . [D]efendant as “the defendant.” They did not refer to him by name even though he was a family friend of 20 years. The prosecution had obviously instructed the witnesses, including the 12-year old child [and alleged victim], to refer to him as the defendant and not by his name. Defense counsel never objected.

Citing *State v. Grogan*, the judge emphasized her judicial “duty to maintain the integrity of the court” and set a hearing on the motion for a new trial. 2007-NMSC-039, ¶ 10, 142 N.M. 107, 163 P.3d 494.

{13} The day before the hearing on the motion, Defendant moved for a mistrial and to bar reprosecution under *Breit*, 1996-NMSC-067. At the hearing, the State, represented by new counsel, did not oppose a new trial but opposed a bar to retrial. In the State’s response to Defendant’s motion, the State argued that the prosecutorial misconduct by the initial prosecutor did “not rise to the level of the most severe prosecutorial transgressions.” The judge retired before ruling on the motion.

{14} The new judge who presided over Defendant’s case reviewed the audio recording of Defendant’s trial and the hearing on the sua sponte motion for a new trial. Similarly concerned that the prosecutor’s misconduct undermined the court’s integrity, the judge ordered a new trial based on four instances of prosecutorial misconduct in closing arguments: (1) the statement that Defendant “did admit he was a convicted felon,” (2) the statement that Defendant “touched a little eleven-year-old vagina and buttocks for whatever reasons—because he’s a pedophile,” (3) the statements about the reasonable doubt standard “effectively inverted the reasonable doubt standard by implying to the jury that they should convict Defendant if they had a reasonable doubt as to his innocence,” and (4) the line of argument about the Catholic Church and the prosecutor’s faith. Regarding ineffective assistance of counsel, the judge noted that defense counsel did not object to the statements made or request any curative instructions.

{15} As to Defendant’s double jeopardy challenge, the court determined that while the first two prongs of the *Breit* test were met, the third prong was not. The court found that “there is no indication that the prosecutor intended to provoke a mistrial—his conduct was simply overreaching and overzealous.” Thus, the issue boiled down to whether the prosecutor acted in willful disregard that a mistrial would result. The court found that because the prosecutor stopped his line of argument when admonished by the court and because his misconduct was primarily confined to the closing argument, his actions were “reckless and heedless,” not willful. The court also found that the prosecutor’s “statement that Defendant ‘did admit he was a convicted felon’ was negligently incorrect.” The judge denied Defendant’s motion to bar retrial, concluding that any “[p]rejudice to Defendant [could] be rectified by a new trial.”

{16} The case proceeded to a second trial where Defendant was again convicted of two counts of criminal sexual contact of a minor and one count of child abuse. Defendant appealed to the Court of Appeals.

## B. Court of Appeals

{17} On appeal, Defendant argued that double jeopardy barred the second trial and that he was deprived of effective assistance of counsel because his attorney had a conflict of interest. *Amador*, A-1-CA-38665, mem. op. ¶¶ 1, 5. The Court of Appeals rejected both arguments. *Id.* ¶ 6. The Court rejected Defendant’s *Breit* claim because the prosecutor’s conduct “did not rise to the level of willful disregard required to bar retrial.” *Id.* ¶¶ 2-4 (internal quotation marks omitted). While agreeing that “the prosecutor’s improper remarks may have influenced the jury’s determination of credibility,” the Court of Appeals said that because “the misconduct itself was limited to four discreet instances that occurred primarily during closing argument,” the misconduct was neither pervasive throughout the trial nor intended to inject unfair prejudice into the trial. *Id.* ¶ 4.

{18} In addition, the Court of Appeals reasoned, “while the prosecutor was negligently incorrect in his belief that Defendant’s conditional discharge could be used at trial as a prior felony, the prosecutor demonstrated his intent to avoid mistrial on this issue by notifying defense counsel—without objection—and the court of his intent to use a prior felony when Defendant testified.” *Id.* On the ineffective assistance of counsel issue, the court held that it would not presume prejudice where Defendant failed “to establish either the existence of an actual conflict of interest or that he received ineffective assistance of [counsel] during his second trial.” *Id.* ¶ 5. The Court of Appeals affirmed Defendant’s convictions. *Id.* ¶ 6.

## II. DISCUSSION

{19} Defendant timely filed a petition for writ of certiorari with this Court. The petition was granted on both issues: first, “[w]hether retrial should have been barred under *State v. Breit* based on the prosecutor’s pervasive misconduct,” and second, “[w]hether [Defendant] received ineffective assistance of counsel.” We limit our discussion to the dispositive issue of whether a retrial should have been barred based on prosecutorial misconduct.

{20} In *Breit*, this Court announced a three-prong test for determining when prosecutorial misconduct bars a second trial as violating double jeopardy under Article II, Section 15 of the New Mexico Constitution: (1) “when improper official conduct is so unfairly prejudicial to the defendant that it cannot be cured by means short of a mistrial or a motion for a new trial,” (2) “the official knows that the conduct is improper and prejudicial,” and (3) “the official either intends to provoke a mistrial or acts in willful disregard of the resulting mistrial, retrial, or reversal.” *Breit*, 1996-NMSC-067, ¶ 32.

{21} The State concedes that the first two prongs of the *Breit* test are met. Although we are not bound by it, we accept the State's concession, as the Court of Appeals only addressed *Breit*'s third willful disregard prong. *But see State v. Comitz*, 2019-NMSC-011, ¶ 25, 443 P.3d 1130 (declining to accept State's concession that some of the defendant's convictions violated double jeopardy).

#### A. Standard of Review

{22} "An appellate review of a prosecutorial misconduct claim presents a mixed question of law and fact." *State v. McClagherty*, 2008-NMSC-044, ¶ 39, 144 N.M. 483, 188 P.3d 1234. We "defer to the district court when it has made findings of fact that are supported by substantial evidence and [review] de novo the district court's application of the law to the facts." *Id.* On the ultimate question of whether a defendant's right to be free from double jeopardy was violated, our review is de novo. *Comitz*, 2019-NMSC-011, ¶ 26.

#### B. The Prosecutor Acted in Willful

##### Disregard of the Resulting Mistrial

{23} If a prosecutor "either intends to provoke a mistrial or acts in willful disregard of the resulting mistrial, retrial or reversal," the third prong of *Breit* is met. 1996-NMSC-067, ¶ 32 (emphasis added). There is no contention that the prosecutor here acted with an intent to provoke a mistrial; we therefore address whether the prosecutor acted with a willful disregard of the resulting mistrial, retrial, or reversal.

{24} "[Willful disregard] connotes a conscious and purposeful decision by the prosecutor to dismiss any concern that his or her conduct may lead to a mistrial or reversal." *Id.* ¶ 34 (internal quotation marks omitted). A prosecutor acts with "willful disregard" of a possible mistrial or reversal when he or she "is actually aware, or is presumed to be aware, of the potential consequences of his or her actions." *Id.* "The presumption that the prosecutor is aware of such consequences is established by the prosecutor's egregious conduct, not necessarily from an inference of a conscious and purposeful decision to bring about a mistrial." *McClagherty*, 2008-NMSC-044, ¶ 58. This is an objective standard. *Id.* ¶ 72. ("We clarify the holding in *Breit* that the standard by which courts should evaluate a prosecutor's conduct to determine whether the conduct is willful is an objective one in light of the totality of the circumstances of the trial."). That said, the threshold of willful disregard was intended to be high—"double jeopardy will rarely bar reprosecution if the misconduct is an isolated instance during the course of an otherwise fair trial." *Breit*, 1996-

NMSC-067, ¶ 33. That high threshold was met here.

{25} Defendant contends that the prosecutor acted in willful disregard of the resulting mistrial or reversal when he improperly represented Defendant's conditional discharge as a felony conviction to impeach Defendant and when he then argued Defendant was not credible in closing arguments. Defendant also contends that the prosecutor's misconduct was willful during closing argument, when he repeatedly called Defendant a pedophile, mentioned the Catholic Church clergy abuse scandal, inverted the reasonable doubt standard, and shifted the burden of proof to Defendant. The State, in turn, admits the prosecutor erred in representing Defendant had a prior felony conviction in his closing and rebuttal arguments. But, the State asserts that such errors are not egregious or pervasive enough to prove the prosecutor acted with willful disregard of a mistrial or new trial. We disagree with the State.

{26} We begin with the conditional discharge. After the State rested, the prosecutor informed the court that he would impeach Defendant with—what the prosecutor characterized as—a prior felony conviction for child abuse. The only way to refute the child's testimony was for Defendant to testify since they were the only ones present. In reliance on the prosecutor's representation, defense counsel brought up the conviction to lessen its impact on the jury. In urging the jury to find Defendant guilty, the prosecutor argued that Defendant was a convicted felon for child abuse and, therefore, should not be believed. The jury then found Defendant guilty of criminal sexual contact of a minor and child abuse. Two hours later, the prosecutor disclosed that Defendant received a conditional discharge, and his exchange with the judge demonstrates that he did not know a conditional discharge could not count as a prior felony conviction for impeachment purposes and that he was not clear on whether Defendant had, in fact, satisfactorily completed the terms of the conditional discharge. In denying Defendant's *Breit* motion, the judge described the prosecutor's incorrect representation as "negligently incorrect," not rising to the level of willful misconduct. We disagree.

{27} A basic, fundamental rule of evidence is that impeachment of a defendant in a criminal case is governed by Rule 11-609. The rule permits impeaching a testifying defendant's "character for truthfulness" with a felony conviction not older than ten years "if the probative value of the evidence outweighs its prejudicial

effect to that defendant." Rule 11-609(A)(1)(b). It is settled that the admission of a misdemeanor or felony conviction must be approached with great caution because it may cause undue, irreparable prejudice. *State v. Williams*, 1966-NMSC-145, ¶ 11, 76 N.M. 578, 417 P.2d 62. The reasons are part of the fabric of criminal law that any competent prosecutor knows:

When a person is put on trial for an offense, he is to be convicted, if at all, by evidence which shows that he is guilty of that offense, and not by evidence showing him guilty of other offenses wholly unconnected with the one charged, and the evidence on a trial should be confined to the question in issue. A man cannot be convicted of crime because he is a bad man generally or has committed other crimes for which he has not been punished, but proof of other crimes has a tendency to prejudice the minds of the triers against the accused and to predispose them to a belief in his guilt. In addition, there is the grave danger that the jury may be confused by the evidence relating to the distinct crime.

*State v. Rowell*, 1966-NMSC-231, ¶ 5, 77 N.M. 124, 419 P.2d 966 (quoting 1 Ronald A. Anderson, *Wharton's Criminal Evidence* § 332, at 497 (12th ed. 1955)). Simply stated, the danger is that the jury will believe that because the defendant has committed a crime in the past, the defendant is predisposed to commit crimes and return a conviction on this basis. *People v. Molineux*, 61 N.E. 286, 293-94 (N.Y. 1901); *People v. Emmel*, 127 N.E. 53, 57 (Ill. 1920). It is also well recognized that the danger of prejudice is even more remarkable when the conviction of a prior crime for the same offense on trial is admitted because the jury might believe "if a defendant did it before, the defendant probably did so this time." *State v. Fernandez*, 2023-NMSC-005, ¶ 17, 528 P.3d 621 (text only)<sup>1</sup> (quoting *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967)).

{28} There are "rules that every legal professional, no matter how inexperienced, is charged with knowing." *Breit*, 1996-NMSC-067, ¶ 33. These are such rules. Since 1966, the rule in New Mexico has been clear: "All reasonable care, and the utmost good faith, must be exercised by the prosecutor, when questioning an accused about prior convictions, [so] an accused is not prejudiced by suggestions that he has been convicted of a misdemeanor or felony, when . . . he has not been

<sup>1</sup> "(Text only)" indicates the omission of nonessential punctuation marks—including internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text otherwise unchanged.



so convicted.” *Williams*, 1966-NMSC-145, ¶ 11; see *Rowell*, 1966-NMSC-231, ¶ 6. The apparent dangers of unfair, undue prejudice clearly require due diligence. *Williams*, 1966-NMSC-145, ¶ 11. “Generally, the prosecutor has the burden of going further to verify the prior conviction[] before he can properly proceed to question the accused concerning the same.” *Id.* It is, therefore, a basic, fundamental principle that “a prosecutor[] who seeks to have a defendant make an admission concerning a felony when there has been no conviction[] hazards a reversal.” *State v. Miller*, 1979-NMCA-014, ¶ 22, 92 N.M. 520, 590 P.2d 1175. A basic rule of New Mexico law is that a conditional discharge is not a felony conviction. See *NMSA 1978, § 31-20-13* (1994); *In re Treinen*, 2006-NMSC-013, ¶ 4, 139 N.M. 318, 131 P.3d 1282 (per curiam).

{29} In *McClagherty*, we said there “must be a point at which lawyers are conclusively presumed to know what is proper and what is not.” 2008-NMSC-044, ¶ 49 (quoting *Pool v. Superior Court*, 677 P.2d 261, 270 (Ariz. 1984) (en banc)). That point was reached in this case. Simply researching the relevant statute shows that a conditional discharge is entered without an adjudication of guilt. Section 31-20-13(A) (stating, “the court may, without entering an adjudication of guilt, enter a conditional discharge”). Moreover, since at least 1998, our case law has been clear that a conditional discharge is *not* a conviction. *State v. Herbstman*, 1999-NMCA-014, ¶ 20, 126 N.M. 683, 974 P.2d 177 (rejecting the argument that a person who receives a conditional discharge has been convicted); *State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374 (stating that a conditional discharge cannot serve as a conviction unless a statute specifically so states). As such, even if the prosecutor did not actually know his conduct was improper and prejudicial, it must be presumed that the prosecutor was aware of the consequences of his actions and acted with willful disregard of a mistrial or reversal in exposing the jury to inadmissible, prejudicial evidence. If those responsible for enforcing the law do not understand basic evidentiary rules while wielding the considerable power of the State, it undermines the public’s confidence in the justice system. Tested against *Breit*’s objective standard, the prosecutor’s conduct was sufficiently egregious to trigger the bar of double jeopardy.

{30} The district court failed to assess the totality of the circumstances properly, especially the prosecutor’s apparent lack of understanding of the fundamental principles of impeachment by a felony conviction, coupled with a lack of diligence on his part. As we explained in *McClagherty*, we focus “on the effect of the prosecutorial misconduct on the defendant, regardless of the prosecutor’s intent.” 2008-NMSC-044, ¶ 26. The reason for this approach was clearly explained in *Breit*:

The object of constitutional double-jeopardy provisions is not to punish disreputable prosecutors. The purpose, rather, is to protect the defendant’s interest in having the prosecution completed by the original tribunal before whom the trial was commenced. Defendants should be protected from re prosecution once a prosecutor’s actions, *regardless of motive or intent*, rise to such an extreme that a new trial is the only recourse.

1996-NMSC-067, ¶ 22 (emphasis added) (citation omitted). Therefore, we reject the district court’s findings that the prosecutor had not “intended to provoke a mistrial” and that the prosecutor merely made a “negligently incorrect” statement as clearly erroneous. Clearly erroneous findings by the trial court are not entitled to deference. *McClagherty*, 2008-NMSC-044, ¶ 48.

{31} The prosecutor’s misconduct concerning the conditional discharge being represented as a prior felony, then using it to impeach Defendant’s credibility in the closing argument where Defendant’s credibility was critical may have been sufficient to conclude that *Breit* was a bar to Defendant’s second trial. See *McClagherty*, 2008-NMSC-044, ¶¶ 60, 70 (concluding that a single incident of misconduct at trial was a “willful disregard” of the potential for a mistrial, retrial, or reversal”). However, we need not decide that here because additional instances of prosecutorial misconduct prejudiced Defendant in this case.

{32} The prosecutor referred to Defendant as a pedophile *five times* in his closing argument and rebuttal, referred to the Catholic Church clergy abuse scandal, argued that Defendant should have brought his stepdaughters to testify, and asked the jurors to shift the burden of proof and protect other children from Defendant. These

arguments were also extremely prejudicial and improper. See *White v. State*, 228 So. 3d 893, 910-911 (Miss. Ct. App. 2017) (ruling that repeatedly calling the defendant a pedophile or molester was grounds for reversal); *Rodriguez v. State*, 210 So. 3d 750, 754 (Fla. Dist. Ct. App. 2017) (stating that, by calling the defendant a pedophile, the prosecutor “suggests the defendant has engaged in repeated sexual abuse of minors and raises a profiling argument, namely that because he is a pedophile, it is likely that he would sexually molest children, including this specific victim”); *People v. Lewis*, 116 N.Y.S.3d 49, 51-52 (N.Y. App. Div. 2019) (finding the prosecutor’s argument improper where it “referenced the sexual abuse scandals involving the Catholic Church and Orthodox Jewish communities” and stating that prosecutors “must stay within the four corners of the evidence and avoid irrelevant and inflammatory comments which have a tendency to prejudice the jury against the accused” (internal quotation marks and citation omitted)); *State v. Allen*, 2000-NMSC-002, ¶ 104, 128 N.M. 482, 994 P.2d 728 (“We agree with Defendant that it is improper for the prosecution to refer the jury to matters outside the record or to make certain kinds of ‘law and order’ appeals.”); *State v. Paiz*, 2006-NMCA-144, ¶ 58, 140 N.M. 815, 149 P.3d 579 (cautioning prosecutors not to invite jurors to put themselves in the victims’ place).

{33} These improper arguments compounded to prejudice the jury against Defendant and, combined, demonstrated the prosecutor’s willful disregard of the resulting mistrial.

### III. CONCLUSION

{34} For all the foregoing reasons, we hold that Defendant’s second trial was barred by double jeopardy under Article II, Section 15 of the New Mexico Constitution. The Court of Appeals is reversed, and the case is remanded to the district court to vacate Defendant’s convictions and discharge Defendant from any further prosecution in this matter.

{35} **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**



# FORMAL OPINION

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**Filing Date: 4/29/2024**

**No. A-1-CA-40686**

**TALBRIDGE CORPORATION,**  
Protestant-Appellee/Cross-Appellant,

v.

**NEW MEXICO TAXATION & REVENUE  
DEPARTMENT,**

Respondent-Appellant/Cross-Appellee,

**IN THE MATTER OF THE PROTEST OF  
THE ASSESSMENT ISSUED UNDER  
LETTER ID NO. L0479267504.**

**APPEAL FROM THE  
ADMINISTRATIVE HEARINGS OFFICE**

Chris Romero, Hearing Officer

Modrall Sperling Roehl Harris & Sisk, P.A.  
Zachary L. McCormick  
Albuquerque, NM

for Appellee

Raúl Torrez, Attorney General  
David Mittle, Special Assistant Attorney General  
Santa Fe, NM

for Appellant

## ► Introduction of Opinion

This appeal and cross-appeal arise in response to a decision and order of the Administrative Hearing Officer affirming in part and denying in part the New Mexico Taxation and Revenue Department's (the Department) assessment of unpaid gross receipts tax (GRT), pursuant to the New Mexico Gross Receipts and Compensating Tax Act, NMSA 1978, §§ 7-9-1 to -117 (1966, as amended through 2023), against Talbridge Corporation (Taxpayer) in the amount of \$484,974.10.1 The hearing officer determined that Taxpayer failed to establish it was a disclosed agent under Section 7-9-3.5(A)(3)(f) and thus not exempt from paying GRT on the reimbursement it received from Chevron, but nevertheless found that Taxpayer was exempt from paying GRT on the markup fee it received for the payroll services it performed solely out of state. **View full PDF online.**

Kristina Bogardus, 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-40686>

# MEMORANDUM OPINION

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

**Filing Date: 4/18/24**

**No. A-1-CA-40878**

**Sean Glackman,**  
Worker-Appellee,  
v.

**New Mexico Department of Transportation  
and State of New Mexico Risk Management,**  
Employer/Insurer-Appellants.

## **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

Shannon S. Riley, Workers' Compensation Judge

Jeffrey C. Brown  
Derek M. Thompson  
Albuquerque, NM

for Appellee  
Garcia Law Group, LLC  
Teague Williams  
Albuquerque, NM

for Appellants

## **► Introduction of Opinion**

The New Mexico Department of Transportation (DOT or Employer) appeals the ruling of the Workers' Compensation Judge (the WCJ) determining that Sean Glackman (Worker) is entitled to statutory modifier-based benefits under the Workers' Compensation Act (the Act), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2017). After a formal hearing, the WCJ awarded Worker permanent partial disability (PPD) modifiers, in addition to whole person impairment, on the basis that Worker's "retirement was reasonable under the facts of this case." Employer asserts that substantial evidence does not support the WCJ's findings and conclusions. We disagree and affirm.

Bruce D. Black, Pro Tem Judge

WE CONCUR:

J. Miles Hanisee, 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-40878>

# MEMORANDUM OPINION

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

**Filing Date: 4/22/24**

**No. A-1-CA-40578**

**FOX GUINN,**

Plaintiff/Counterdefendant-Appellee,

v.

**PEGGY WILLIAMS,**

Defendant/Counterplaintiff-Appellant.

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

Drew D. Tatum, District Court Judge

Floyd D. Wilson, P.C.

Floyd D. Wilson

Cedar Crest, NM

for Appellee

Lovell, Lovell, Isern & Farabough, LLP

Joe L. Lovell

Hannah L. Rivera

Amarillo, TX

for Appellant

## ► **Introduction of Opinion**

Defendant Peggy Williams appeals from a judgment entered against her by the district court following a bench trial. On appeal, Defendant argues that the district court erred by (1) concluding that Plaintiff Fox Guinn's claim was timely filed, (2) granting Plaintiff's claim for unjust enrichment, and (3) rejecting Plaintiff's counterclaims. Because we conclude that Plaintiff's claim was not time-barred, was supported by substantial evidence, and that Defendant's counterclaims were either granted, unpreserved or unsupported, 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-40578>



# MEMORANDUM OPINION

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**Filing Date: 4/23/24**

**No. A-1-CA-40545**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**WILLIAM NATHANIEL ODEN,**

Defendant-Appellant.

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

Dustin K. Hunter, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Charles J. Gutierrez, Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mallory E. Harwood, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant William Oden entered a conditional plea agreement in which he entered a plea of no contest to aggravated driving while under the influence of intoxicating liquor or drugs (fourth offense), contrary to NMSA 1978, Section 66-8-102(D)(1) (2016). Defendant argues (1) the denial of his motion to suppress was error because the arresting deputies either lacked reasonable suspicion to initiate a traffic stop or alternatively stopped Defendant on the basis of pretext; (2) if this Court determines he did not preserve a pretextual stop claim, his counsel was ineffective for not making one; and (3) the denial of his motion to dismiss was error because the State's purported discovery violation warranted dismissal. We affirm.

Jacqueline R. Medina, Judge

WE CONCUR:

Katherine A. Wray, 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-40545>

# MEMORANDUM OPINION

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

**Filing Date: 4/23/24**

**No. A-1-CA-40743**

**PHILLIP TRUJILLO and SALVADOR GONZALEZ,**

Plaintiffs-Appellants,

v.

**ROGER FOSTER; PATRICK SEGURA;  
TIMOTHY MENCHEGO; GREG AGUINO;  
BONADELLE CANDELARIA, in their  
individual capacities,**  
Defendants-Appellees.

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

James A. Noel, District Court Judge

Law Office of George Geran  
George T. Geran  
Santa Fe, NM

for Appellants

Rothstein Donatelli LLP  
Richard W. Hughes  
Santa Fe, NM

for Appellees

► **Introduction of Opinion**

Plaintiffs Phillip Trujillo and Salvador Gonzalez were terminated from their positions with the Pueblo of Santa Ana's (the Pueblo) Police Department (the Department) and sued Defendants Roger Foster, Patrick Segura, Timothy Menchego, Greg Aguino, and Bonadelle Candelaria, each in their individual capacity. The district court granted Defendants' motion to dismiss and (1) declined to exercise subject matter jurisdiction because to do so "would undermine the authority of tribal courts over Pueblo affairs, and thus would infringe on the right of the Pueblo's sovereign authority to govern itself"; and (2) determined that Defendants would be entitled to sovereign immunity if the state court had jurisdiction. Plaintiffs appeal, and we affirm.

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

To read the entire opinion, please visit  
the following link: <https://bit.ly/A-1-CA-40743>

# MEMORANDUM OPINION

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**Filing Date: 4/23/24**

**No. A-1-CA-41075**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**CARLOS MIGUEL MENDEZ,**

Defendant-Appellant.

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

Steven Blankinship, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Michael J. Thomas, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mary Barket, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Carlos Mendez appeals his conviction by a jury of aggravated driving while under the influence of intoxicating liquor or drugs (DUI) (0.16 or above), a fourth degree felony, contrary to NMSA 1978, Section 66-8-102(D)(1) (2016). Defendant argues that (1) his right to a speedy trial was violated; (2) the district court erred in denying his for-cause challenge to Juror 6; and (3) his sentence for one year of parole is illegal and must be vacated. We affirm his conviction but vacate his sentence for one year of parole.

Kristina Bogardus, Judge

WE CONCUR:

Megan P. Duffy, Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-41075>



# MEMORANDUM OPINION

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

**Filing Date: 4/24/24**

**No. A-1-CA-40205**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**SAMUEL NEAL,**

Defendant-Appellant.

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

Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Van Snow, Assistant Attorney General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Joelle N. Gonzales, Assistant Appellate Defender

Santa Fe, NM

for Appellant

► **Introduction of Opinion**

Defendant Samuel Neal was convicted of first-degree kidnapping, see NMSA 1978, § 30-4-1 (2003), second-degree criminal sexual penetration (CSP II), see NMSA 1978, § 30-9-11(E)(3) (2009), and third-degree aggravated battery inflicting great bodily harm, see NMSA 1978, § 30-3-5(A), (C) (1969). Defendant appeals and raises issues regarding (1) double jeopardy, (2) instructional error, (3) prosecutorial misconduct, and (4) the sufficiency of the evidence. We conclude that Defendant's convictions violate double jeopardy and remand to the district court to vacate the convictions for CSP II and aggravated battery with great bodily harm, and resentencing Defendant. Otherwise, we affirm.

Katherine A. Wray, Judge

WE CONCUR:

Jennifer L. Attrep, Chief Judge

Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40205>

# MEMORANDUM OPINION

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**Filing Date: 4/24/24**

**No. A-1-CA-40461**

**SARAH MAESTAS BARNES,**

Protestant-Appellee,

v.

**NEW MEXICO TAXATION & REVENUE DEPARTMENT,**

Respondent-Appellant,

**IN THE MATTER OF THE PROTEST  
TO ASSESSMENT ISSUED UNDER LETTER  
ID NO. 11302456752.**

**APPEAL FROM**

**THE ADMINISTRATIVE HEARINGS OFFICE**

Chris Romero, Administrative Hearing Officer

Spencer Fane LLP

Frank Crociata

Scott Woody

Phoenix, AZ

for Appellee

Raúl Torrez, Attorney General

Cordelia Anna Friedman, Special Assistant Attorney General

Santa Fe, NM

for Appellant

## ► Introduction of Opinion

New Mexico Taxation and Revenue Department (TRD) appeals from the Administrative Hearing Officer's (AHO) "Decision and Order" concluding that Taxpayer Sarah Maestas Barnes received no taxable gross receipts, granting Taxpayer's protest and abating, in full, the assessment against Taxpayer by TRD based on the alleged gross receipts. TRD argues on appeal that because Taxpayer's documentary evidence was unreliable or otherwise infirm, the AHO's conclusion was supported only by witness testimony. Based on this assertion, TRD further contends that witness testimony is alone insufficient to substantiate the AHO's conclusion that Taxpayer received no taxable gross receipts. For the following reasons, we affirm.

Gerald E. Baca, Judge

WE CONCUR:

Jane B. Yohalem, Judge

Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40461>

# MEMORANDUM OPINION

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

**Filing Date: 4/25/24**

**No. A-1-CA-40643**

**STATE OF NEW MEXICO,**

Plaintiff-Appellant,

v.

**SHANTELE CHAVEZ,**

Defendant-Appellee.

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

Melissa A. Kennelly, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Leland M. Churan, Assistant Attorney General

Albuquerque, NM

for Appellant

The Law Office of Ryan J. Villa

Richelle Anderson

Albuquerque, NM

for Appellee

## ► Introduction of Opinion

The State appeals the district court's order granting Defendant Shantelle Chavez's motion to dismiss for violating her speedy trial rights. Unpersuaded, we affirm.

Zachary A. Ives, Judge

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: <https://bit.ly/A-1-CA-40643>

# MEMORANDUM OPINION

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

**Filing Date: 4/29/2024**

**No. A-1-CA-40676**

**BETHANY DURLAND,**

Plaintiff-Appellant,

v.

**BREWER GROCERY, LLC,**

**d/b/a S&S SUPERMARKET**

Defendant-Appellee.

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

Fred Van Soelen, District Court Judge

Lindsey Law Firm, L.L.C.

Daniel R. Lindsey

Clovis, NM

for Appellant

David C. Larsen

Albuquerque, NM

for Appellee

## ► Introduction of Opinion

This case arises out of a trip and fall personal injury claim. Plaintiff Bethany Durland filed her complaint on November 17, 2021, but did not request or issue service of the complaint until she filed her first amended complaint on February 16, 2022. In the first amended complaint, she alleged that “on November 11, 2018, Plaintiff . . . was walking into the S&S Supermarket. . . . Just before entering the store, her foot got caught in a deep, wide crack in the cement walkway, and she fell forward onto her hands and knees, hitting her head on the ground.

[2] Defendant Brewer Grocery, LLC d/b/a S&S Supermarket filed its answer to the first amended complaint on March 24, 2022. Defendant then filed a motion to dismiss the first amended complaint based on the assertion that Plaintiff had failed to file the original complaint within the three-year statute of limitations as required under NMSA 1978, Section 37-1-8 (1976). Plaintiff filed a response contending that the discovery rule applied to her causes of action due to repeated misdiagnosis of the cause of her pain by her medical providers. After considering the pleadings, briefing, and arguments of the parties the district court granted Defendant’s motion to dismiss. We reverse.

Bruce D. Black, Judge Pro Tem

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-40676>



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13<sup>th</sup> DISTRICT ATTORNEY  
**BARBARA ROMO**

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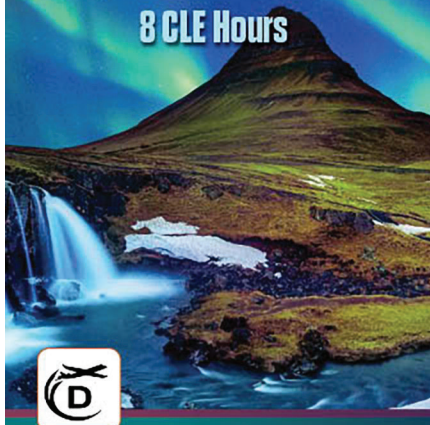
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We are pleased to announce the promotion of  
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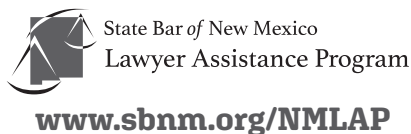
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The Eleventh Judicial District Attorney's Office, Div. II, in Gallup, New Mexico, McKinley County is seeking applicants for a Contract Prosecutor to assist in the prosecution of criminal misdemeanor cases, felony cases and conflict of interest cases.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

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Mann Morrow, PLLC, a litigation firm with offices in Las Cruces, NM and El Paso, TX, seeks an associate attorney to join our team. The ideal candidate will have up to five years of experience and be a team player with excellent communication (written and oral) and legal research skills, a strong work ethic, and a willingness to learn. The firm offers a competitive salary and benefits package, including health insurance and 401K, as well as flexibility and the ability to work remotely for the right candidate. Our firm offers the ability to have a healthy work life balance while residing in an affordable community with rich culture, adding a special (green chile) spice to your life. License to practice law in New Mexico or the ability to waive in is required. Mann Morrow specializes in medical negligence defense, though there are opportunities to work on a variety of case types within the firm. Please send a letter of interest, resume, references and writing sample to [angie.grossman@mannmorrow.com](mailto:angie.grossman@mannmorrow.com). All responses are confidential.

### Various Assistant City Attorney Positions

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

### Attorney Associate (Full Time; At-Will) #00030752 Foreclosure Settlement Program

The Second Judicial District Court is accepting applications for a Full Time At-Will Attorney Associate position. This position will be assigned to the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, Managing Attorney, and/or Supervising Attorney. The Attorney Associate will facilitate settlement facilitation conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting of statistical data to Court administration. Communications occur telephonically, by email, by video conference and in-person. The Attorney Associate is independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associate will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law, or as a law clerk. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$49.131 hourly, plus benefits. Send application or resume supplemental form with proof of education and one (1) writing sample to [2ndjobapply@nmcourts.gov](mailto:2ndjobapply@nmcourts.gov) or to Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at [www.nmcourts.gov](http://www.nmcourts.gov). OPEN UNTIL FILLED.

### Associate Attorney – Civil Litigation

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

### Full-Time Attorney

The Center for Biological Diversity's Climate Law Institute seeks a full-time attorney in New Mexico to address oil and gas production and pollution. This position is located in New Mexico, working remotely. The Climate Law Institute wages innovative legal and grassroots campaigns to protect people, wildlife and ecosystems from climate change and the fossil fuel industry. The New Mexico attorney will carry out regulatory and legal interventions to help New Mexico phase out oil and gas production as science demands. The successful candidate will work closely with a dynamic team of legal, science, organizing, and communications staff, as well as colleagues at allied organizations, and research and analyze potential legal and regulatory interventions on New Mexico oil and gas production. License to practice law in New Mexico and familiarity with New Mexico environmental and administrative law; candidates who wish to relocate to New Mexico and take the New Mexico bar will be considered; minimum five years legal experience. The Center for Biological Diversity deeply values, and is committed to sustaining and promoting, both biological and cultural diversity. We welcome, embrace and respect diversity of people, identities and cultures. For more information and to apply, please visit: <https://www.biologicaldiversity.org/about/jobs/>.

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

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

### Full-Time Transactional Attorney

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

### Paralegal

MARRS GRIEBEL LAW, LTD. is an Albuquerque law firm serving businesses and their owners who find themselves dealing with business disputes. We aim to provide our clients with responsive, sensible, and efficient legal services that meet their broader business objectives. We are seeking a paralegal to join the firm. Case management: including case status reports and planning, managing deadlines, calendaring, and planning and scheduling workflow; File management: including managing email and filing; Document management: including document review, organization, and analysis; preparing document summaries and indices; Working directly with clients regarding document retrieval and discovery response; Writing: including preparing drafts of letters, pleadings, notices, and discovery; Filing and service of pleadings, including directing calendaring in accordance with court (or arbitration) rules; Document production: including collecting, reviewing, organizing, numbering and producing documents; Assisting with deposition preparation, including the creation and organization of deposition exhibits; Assisting with trial preparation including the assembly of exhibits, witness binders and appendices for depositions and court filings; Assisting with trials and arbitration hearings; Summarizing deposition transcripts and exhibits; Researching case-related factual issues using in-house files and outside reference sources. Skills, Education and Experience Requirements: Organization and case management skills; Research and investigation skills; Basic legal writing skills, including ability to write and proof-read legal documents; Ability to prioritize workload and to self-direct workflow; Familiarity with New Mexico trial and appellate courts, Federal courts and arbitration proceedings; Managing medium to large-scale document production; Proficiency with Document Review Software (Adobe) and MS Suite; SharePoint experience preferred; Bachelor's Degree preferred; Legal education - Paralegal certificate from an ABA accredited program, or a combination of education and/or experience; 2+ years of significant and substantive litigation experience as a paralegal. To apply, please send resume to [hiring@marrslegal.com](mailto:hiring@marrslegal.com).

### Experienced Full-Time Paralegal

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

### Experienced Legal Assistant

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks experienced 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 [karrant@stiffllaw.com](mailto:karrant@stiffllaw.com)

### Part-time Legal Assistant/Paralegal

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

### Legal Assistant

Pueblo of Laguna, NM - Great employer and benefits, competitive pay DOE! Seeking full-time Legal Assistant for the Community Legal Services Office to assist with administration of criminal or civil cases. Leisurely commute from Albuquerque metro, Los Lunas, or Grants. Apply by or before June 1 for best consideration. Application instructions and position details at: [Employment | Pueblo of Laguna \(lagunapueblo-nsn.gov\)](http://Employment|PuebloofLaguna(lagunapueblo-nsn.gov))

## Office Space

### Uptown Office Suites

Two separate professional office suites for lease. Executive offices, support stations, and conference room(s). Approx. 1047 sq. ft. and 883 sq. ft. Will consider renting individual offices instead of entire suite. Furnished options available. Can include shared use of three conference rooms and reception services to greet guests and accept documents. Alarm, water, electric, and janitorial included. Exterior signage available. Convenient access to I-40. Contact Bryan (505) 268-700 or [bryanf@wolfandfoxpc.com](mailto:bryanf@wolfandfoxpc.com).





## APPLICANTS WANTED FOR NEW MEXICO STATE ETHICS COMMISSIONER

The State Ethics Commission, an independent state agency, ensures government integrity by enforcing New Mexico's ethics, campaign finance, and procurement laws.

### Qualifications

- **Registered voter:** must be a registered voter in New Mexico.
- **Continuous political affiliation:** may *not* have changed political party registration in the last 5 years.
- **Recently unconflicted:** in the past two years an applicant may *not* have been:
  - a state official, candidate, lobbyist, state employee, or government contractor; or
  - an office holder in a political party at the state or federal level.

### Duties

- **Enforcement authority:** authorizes staff to file and litigate civil enforcement actions.
- **Issue advisory opinions:** reviews and issues staff-authored advisory opinions.
- **Appellate review:** serves as appellate body for administrative cases involving state government.
- **Staff oversight:** meets bi-monthly to review staff operations.
- **Compensation:** per diem and mileage only.

Visit [sec.nm.gov](https://sec.nm.gov) to apply by July 1, 2024

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