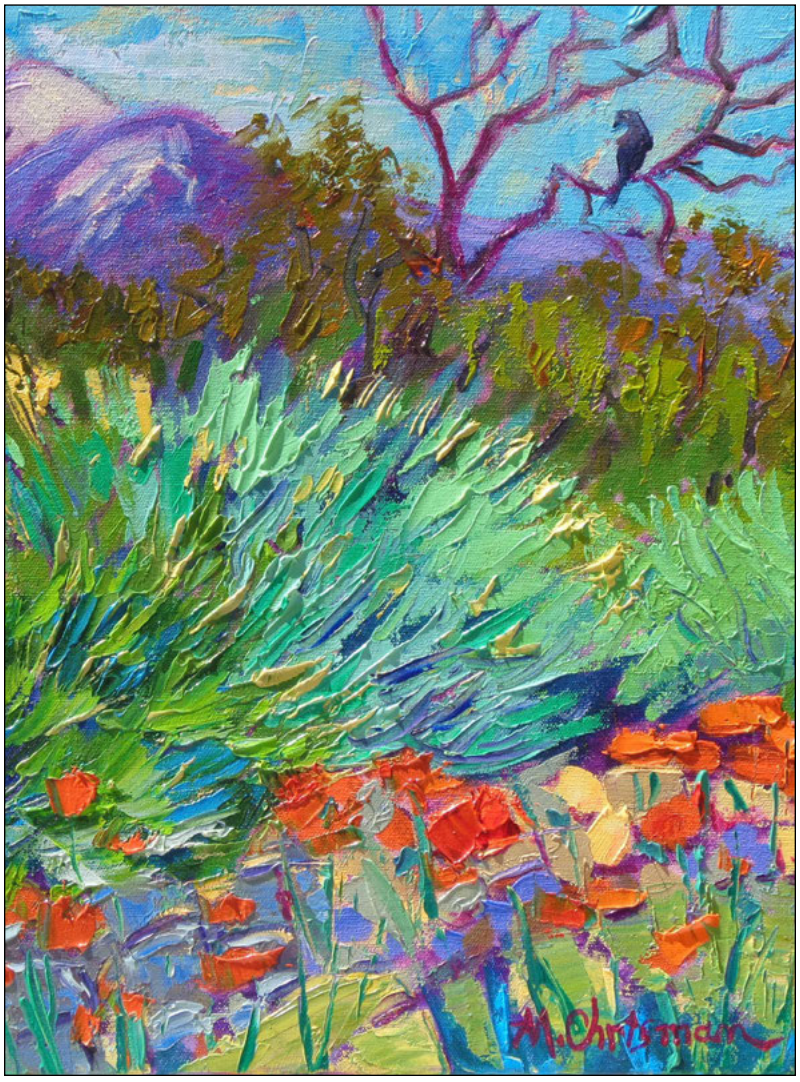
Official Publication of the State Bar of New Mexico

Bar Bulletin

January 6, 2016 • Volume 55, No. 1



Stairway to the Garden, 16x16, by Michelle Chrisman Weems Art Gallery

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HASTA LA VISTA, TIM!

Your smiling face, quick wit and subtle guidance will be missed by your friends and colleagues at Sheehan & Sheehan. We wish you and Scottie the best as you embark on your retirement.

VAYA CON DIOS

SHEEHAN & SHEEHAN, P.A.
Attorneys at Law | Est. 1954

STATE BAR of NEW MEXICO

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505-797-6094

Cover Artist: Michelle Chrisman's landscapes are painted "en plein air." She considers herself a contemporary colorist and modernist, but most of all a visual poet. She is drawn to the visual beauty of New Mexico and the West, the desert, and the variety of three cultures. She paints alla prima in direct response to the landscape. Chrisman teaches annual painting workshops for Ghost Ranch in Abiquiu and for the New Mexico Art League and Harwood Art Center in Albuquerque. She can be reached via email at MichelleChrisman78@gmail.com and her website is www.MichelleChrisman.com.

Notices

Court News

New Mexico Supreme Court Commission on Access to Justice

Meeting Notice

The next meeting of the Commission on Access to Justice is noon to 4 p.m., Jan. 8, at the State Bar Center. Interested parties from the private bar and the public are welcome to attend. For more information about the Commission, visit www.nmbar.org.

Court of Appeals

Announcement of Vacancy

A vacancy on the Court of Appeals will exist as of Jan. 1, due to the retirement of Hon. Cynthia Fry, effective Dec. 31, 2015. The chambers for this position will be in Santa Fe. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the Court. Alfred Mathewson, chair of the Appellate Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: www.lawschool.unm.edu/judsel/application.php. The deadline for applications is 5 p.m., Jan. 19. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Appellate Court Judicial Nominating Commission will meet beginning at 9 a.m., Jan. 27, to interview applicants for the position at the Supreme Court Building in Santa Fe. The Commission meeting is open to the public and those who want to comment on any of the candidates will have an opportunity to be heard.

Second Judicial District Court

Announcement of Vacancy and New Application Period

In response to Gov. Susana Martinez' request for additional names to fill the vacancy on the Court which exists in Albuquerque, due to the appointment of the Hon. Judith Nakamura to the New Mexico Supreme Court, the dean of the UNM School of Law, designated by the New Mexico Constitution to chair the Second Judicial District Nominating Committee, is soliciting additional applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Constitution. Applications and more information about the position can be found at www.lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., Jan. 7. Applications received by the initial Dec. 1 deadline remain viable and those individuals need not reapply at this time. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The date and time of the reconvening of the Second Judicial Nominating Committee will be 9 a.m., Jan. 14, at the Bernalillo County Courthouse in Albuquerque. The Committee meeting will be open to the public, and with comments will have an opportunity to be heard.

U.S. District Court for the District of New Mexico

Investiture of U.S. Magistrate Judge Laura Fashing

Hon. Laura Fashing will be sworn in as U.S. Magistrate Judge for the U.S. District Court for the District of New Mexico, at 4 p.m., Jan. 15, in the Rio Grande Courtroom, third floor, of the Pete V. Domenici U.S. Courthouse, 333 Lomas Boulevard NW, Albuquerque. A reception hosted by the Federal Bench and Bar of the United States District Court for the District of New Mexico, will follow from 6 to 8:30 p.m., at the Albuquerque Country Club, 601 Laguna Boulevard S.W. All members of the bench and bar are invited to attend; however, reservations are requested. R.S.V.P. to 505-348-2001 or usdcevents@nmcourt.fed.us.

State Bar News

Attorney Support Groups

- Jan. 11, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (the group meets on the second Monday of the month). To increase access, teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- Feb. 1, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)
- March 21, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Professionalism Tip

With respect to my clients:

I will work to achieve lawful objectives in all other matters, as expeditiously and economically as possible.

2016 Licensing Notification

Must be Completed by Feb. 1

2016 State Bar licensing fees and certifications were due Dec. 31, 2015, and must be completed by Feb. 1 to avoid non-compliance and related late fees. Complete annual licensing requirements at www.nmbar.org. Payment by credit and debit card are available (will incur a service charge). For more information, call 505-797-6083 or email license@nmbar.org. For help logging in or other website troubleshooting, call 505-797-6086 or email aarmijo@nmbar.org. Those who have already completed their licensing requirements should disregard this notice.

Animal Law Section

Jean and Peter Ossorio Speak About the Mexican Gray Wolf

Jean and Peter Ossorio present "NEPA Days and Lobo Nights," an illustrated account of their personal involvement with the reintroduction of the Mexican gray wolf (*Canis lupus baileyi*), or, el lobo. The presentation will be noon, Jan. 22, at the State Bar Center. Jean (a retired teacher) and Peter (a retired federal prosecutor) have participated in nearly every public meeting and NEPA/ESA action since the first release of lobos in the wild in 1998. Since then they have tent-camped in New Mexico and Arizona wolf country over 350 nights and seen over 40 of these elusive, imperiled and intelligent canines. Cookies and drinks provided. R.S.V.P. to Evann Kleinschmidt at ekleinschmidt@nmbar.org.

Board of Bar Commissioners

Third Bar Commissioner District Vacancy

A vacancy exists in the Third Bar Commissioner District, representing Los Alamos, Rio Arriba, Sandoval and Santa Fe counties. The Board will make the appointment at its Feb. 26 meeting to fill the vacancy, with a

term ending Dec. 31, 2016, until the next regular election of Commissioners. Active status members with a principal place of practice located in the Third Bar Commissioner District are eligible to apply. Applicants should plan to attend the 2016 Board meetings scheduled for May 6, July 28 (in conjunction with the State Bar of New Mexico Annual Meeting at Buffalo Thunder Resort), Sept. 30 and Dec. 14 (Santa Fe). Members interested in serving on the Board should submit a letter of interest and résumé to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 7199-2860; fax to 828-3765; or email to jconte@nmbar.org by Feb. 12.

Solo and Small Firm Section

Presentation with Valerie Plame

Valerie Plame, respected former intelligence agent, has recently returned from assignment in Jordan and will speak on the international refugee situation, ISIS, Edward Snowden and other national security issues and more when she presen ts at the Solo and Small Firm Section luncheon at noon, Jan. 19, at the State Bar Center. The luncheon is free and open to all members of the bench and bar. Lunch is provided to those who R.S.V.P. to Evann Kleinschmidt at ekleinschmidt@nmbar.org. The Section has scheduled exciting and current speakers through April. (visit www.nmbar.org > About Us > Sections > Solo and Small Firm.)

Young Lawyers Division

Volunteers Needed for UNM Mock Interview Program

The Young Lawyers Division is seeking volunteer attorneys to serve as interviewers from 9 to 11 a.m., Jan. 30, for the annual UNM School of Law Mock Interview Program. The mock interviews and coordinated critiques of résumés assist UNM School of Law students with preparation for job interviews. Judges and attorneys from all practice areas, both public and private sectors, are needed. A brief training session will be held at 8:30 a.m. at the law school preceding the interviews. Breakfast will be provided. To volunteer, contact YLD Board Member Sean FitzPatrick, sfitzpatrickesq@gmail.com or 607-743-8500 by Jan. 22.

Volunteers Needed for Veterans Legal Clinic

The Young Lawyers Division and the New Mexico Veterans Affairs Health Care System are holding clinics for the Veterans Civil Justice Legal Initiative from 9 a.m.–noon, the second Tuesday of each month at the New Mexico Veterans Memorial, 1100 Louisiana Blvd. SE, Albuquerque. Breakfast and orientation for volunteers begin at 8:30 a.m. No special training or certification is required. Volunteers can give advice and counsel in their preferred practice area(s). The next clinic is Tuesday, Jan. 12. Those who are interested in volunteering or have questions should contact Keith Mier at kcm@sutinfirm.com or 505-883-3395.

UNM

Law Library

Hours Through Jan. 10, 2016

Building & Circulation	
Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10a.m.–6p.m.
Sunday	Noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed

Other Bars

Albuquerque Lawyers Club

January Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its January meeting. Judge James O. Browning will present "The New Discovery Rules in the Amended Federal Rules of Civil Procedure; Will They Make Any Difference?" at noon, Jan. 6, 2016, at Seasons Rotisserie and Grille, 2031 Mountain Road NW, Albuquerque. The event is free to members and $30 non-members. For more information, email ydennig@Sandia.gov.

American Bar Association

Seeking Writers for *Litigation News*

The American Bar Association Section of Litigation's national news magazine, *Litigation News*, seeks writers interested in joining the editorial board as contributing editors. Contributing editors write four articles per year and attend two ABA conferences (at least partial reimbursement available). *Litigation News* is published quarterly in print and adds stories at least weekly to its online version. Its print circulation exceeds 50,000. Those interested should send a résumé and writing sample to LitNewsWriteOn@gmail.com by Jan. 22, 2016. *Litigation News* will notify those applicants selected to participate in the annual write-on competition by Feb. 5, 2016.

Featured

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First Judicial District Bar Association

January Luncheon with Justice Charles W. Daniels

Justice Charles Daniels of the New Mexico Supreme Court will speak at the First Judicial District Bar Association's January luncheon about the proposed constitutional amendment to permit denial of pretrial release based on dangerousness rather than lack of money and other bail reforms. The luncheon will be noon to 1 p.m., Jan. 11, 2016, at the Santa Fe Hilton. Attendance is $15 and includes a buffet lunch. For more information or to R.S.V.P. contact Lucas Conley at lconley@montand.com or 505-986-2657.

Three Law Students Receive Senior Lawyers Division Attorney Memorial Scholarship

By Evann Kleinschmidt

Scholarship recipients, Lora Zommer, Rebekah Reyes and Diego Urbina

(Back row, from left) Diego Urbina, Dean Alfred Methewson, Dean Sergio Pareja, Senior Lawyers Division Chair Brad Zeikus; (front row, from left) Lora Zommer, Rebekah Reyes, and State Bar President Martha Chicoski.

For the second year in a row, the Senior Lawyers Division presented three $2,500 scholarships to UNM School of Law students in memory of attorneys who have died in the past 12 months. Many family members and colleagues of these attorneys attended the ceremony. This year, the third scholarship was made available due to the generosity of the family of J.W. Neal and support from Estelle Read, wife of Stan Read. The scholarship recipients, Rebekah Reyes, Diego Urbina and Lora Zommer were selected based on their academic performance, career plan and an essay. The scholarships were presented on Nov. 19, 2015, at the State Bar Center.

2015 State Bar President Martha Chicoski thanked the Senior Lawyers Division Board of Directors for their vision, saying that senior lawyers are our community's core, bringing stability and experience. SLD Chair Bradford H. Zeikus read the list of in memoriam and introduced the scholarship recipients, noting that they are very deserving young people. UNM School of Law co-deans Alfred Methewson and Sergio Pareja congratulated the students and spoke about the great need for financial aid, especially in New Mexico's small but wonderful legal community.

Rebekah Reyes expressed her sincere gratitude and mentioned late attorney Frank M. Bond, who was close to her family and had been a mentor and and is inspiration for her career. Diego Urbina, a first generation collage attendee, was humbled by the honor and thanked his parents saying, "without you, I'm nothing." Finally, Lora Zommer told the audience about her passion for working with seniors and her commitment to continue serving this group.

For more photos, student essays and the list of in memoriam, visit www.nmbar.org > About Us > divisions > Senior Lawyers Division.

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STATE BAR of NEW MEXICO

Legal Education

January

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1.0 G
National Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **What's in a Trademarked Name: *Pro Football Inc. v. Blackhorse***
1.0 G
Live Seminar
H. Vearle Payne Inn of Court
505-321-1461

13 **Employees v. Independent Contractors: Employment & Tax Law Issues**
1.0 G
National Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 **Ethics of Preparing Witnesses**
1.0 G
National Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

22 **Lawyer Ethics: When a Client Won't Pay YOur Fees**
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National Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Professionalism for the Ethical Lawyer**
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National Teleseminar
Center for Legal Education of NMSBF
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Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective November 20, 2015

Petitions for Writ of Certiorari Filed and Pending:

			Date Petition Filed
No. 35,603	State v. County of Valencia	COA 33,903	11/19/15
No. 35,602	State v. Astorga	COA 32,374	11/19/15
No. 35,599	Tafoya v. Stewart	12-501	11/19/15
No. 35,598	Fenner v. N.M. Taxation and Revenue Dept.	COA 34,365	11/18/15
No. 35,596	State v. Lucero	COA 34,360	11/10/15
No. 35,595	State v. Axtolis	COA 33,664	11/10/15
No. 35,594	State v. Hernandez	COA 33,156	11/10/15
No. 35,593	Quintana v. Hatch	12-501	11/06/15
No. 35,591	State v. Anderson	COA 32,663	11/06/15
No. 35,588	Torrez v. State	12-501	11/04/15
No. 35,587	State v. Vannatter	COA 34,813	11/04/15
No. 35,585	State v. Para	COA 34,577	11/04/15
No. 35, 584	State v. Hobbs	COA 32,838	11/03/15
No. 35,582	State v. Abeyta	COA 33,485	11/02/15
No. 35,581	Salgado v. Morris	12-501	11/02/15
No. 35,586	Saldana v. Mercantel	12-501	10/30/15
No. 35,580	State v. Cuevas	COA 32,757	10/30/15
No. 35,579	State v. Harper	COA 34,697	10/30/15
No. 35,578	State v. McDaniel	COA 31,501	10/29/15
No. 35,573	Greentree Solid Waste v. County of Lincoln	COA 33,628	10/28/15
No. 35,576	Oakleaf v. Frawner	12-501	10/23/15
No. 35,575	Thompson v. Frawner	12-501	10/23/15
No. 35,555	Flores-Soto v. Wrigley	12-501	10/09/15
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No. 35,522	Denham v. State	12-501	09/21/15
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No. 35,495	Stengel v. Roark	12-501	08/21/15
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No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,474	State v. Ross	COA 33,966	08/17/15
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No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,454	Alley v. State	12-501	07/29/15
No. 35,440	Gonzales v. Franco	12-501	07/22/15
No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,416	State v. Heredia	COA 32,937	07/15/15
No. 35,415	State v. McClain	12-501	07/15/15
No. 35,399	Lopez v. State	12-501	07/09/15
No. 35,374	Loughborough v. Garcia	12-501	06/23/15
No. 35,375	Martinez v. State	12-501	06/22/15
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No. 34,680	Wing v. Janecka	12-501	07/14/14
No. 34,777	State v. Dorais	COA 32,235	07/02/14
No. 34,790	Venie v. Velasquz	COA 33,427	06/27/14
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No. 34,706	Camacho v. Sanchez	12-501	05/13/14
No. 34,563	Benavidez v. State	12-501	02/25/14
No. 34,303	Gutierrez v. State	12-501	07/30/13
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No. 33,539	Contreras v. State	12-501	07/12/12
No. 33,630	Utley v. State	12-501	06/07/12

Certiorari Granted but Not Yet Submitted to the Court:

(Parties preparing briefs)			Date Writ Issued
No. 33,725	State v. Pasillas	COA 31,513	09/14/12
No. 33,877	State v. Alvarez	COA 31,987	12/06/12
No. 33,930	State v. Rodriguez	COA 30,938	01/18/13
No. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13
No. 34,274	State v. Nolen	12-501	11/20/13
No. 34,443	Aragon v. State	12-501	02/14/14
No. 34,522	Hobson v. Hatch	12-501	03/28/14
No. 34,582	State v. Sanchez	COA 32,862	04/11/14
No. 34,694	State v. Salazar	COA 33,232	06/06/14
No. 34,669	Hart v. Otero County Prison	12-501	06/06/14
No. 34,650	Scott v. Morales	COA 32,475	06/06/14
No. 34,784	Silva v. Lovelace Health Systems, Inc.	COA 31,723	08/01/14
No. 34,728	Martinez v. Bravo	12-501	10/10/14
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No. 34,949	State v. Chacon	COA 33,748	05/11/15
No. 35,298	State v. Holt	COA 33,090	06/19/15
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No. 35,286	Flores v. Herrera	COA 32,693/33,413	06/19/15
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No. 35,302	Cahn v. Berryman	COA 33,087	07/17/15
No. 35,318	State v. Dunn	COA 34,273	08/07/15
No. 35,386	State v. Cordova	COA 32,820	08/07/15
No. 35,278	Smith v. Frawner	12-501	08/26/15
No. 35,398	Armenta v. A.S. Homer, Inc.	COA 33,813	08/26/15
No. 35,427	State v. Mercer-Smith	COA 31,941/28,294	08/26/15
No. 35,446	State Engineer v. Diamond K Bar Ranch	COA 34,103	08/26/15
No. 35,451	State v. Garcia	COA 33,249	08/26/15
No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	08/31/15
No. 35,426	Rodriguez v. Brand West Dairy	COA 33,675/33,104	08/31/15
No. 35,499	Romero v. Ladlow Transit Services	COA 33,032	09/25/15
No. 35,456	Haynes v. Presbyterian Healthcare Services	COA 34,489	09/25/15
No. 35,437	State v. Tafoya	COA 34,218	09/25/15
No. 35,395	State v. Bailey	COA 32,521	09/25/15

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)			Submission Date
No. 33,969	Safeway, Inc. v. Rooter 2000 Plumbing	COA 30,196	08/28/13
No. 33,884	Acosta v. Shell Western Exploration and Production, Inc.	COA 29,502	10/28/13
No. 34,146	Madrid v. Brinker Restaurant	COA 31,244	12/09/13
No. 34,093	Cordova v. Cline	COA 30,546	01/15/14
No. 34,287	Hamaatsa v. Pueblo of San Felipe	COA 31,297	03/26/14
No. 34,613	Ramirez v. State	COA 31,820	12/17/14
No. 34,798	State v. Maestas	COA 31,666	03/25/15
No. 34,630	State v. Ochoa	COA 31,243	04/13/15
No. 34,789	Tran v. Bennett	COA 32,677	04/13/15
No. 34,997	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,993	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,726	Deutsche Bank v. Johnston	COA 31,503	08/24/15
No. 34,826	State v. Trammel	COA 31,097	08/26/15
No. 34,866	State v. Yazzie	COA 32,476	08/26/15
No. 35,049	State v. Surratt	COA 32,881	10/13/15
No. 35,035	State v. Stephenson	COA 31,273	10/15/15
No. 35,478	Morris v. Brandenburg	COA 33,630	10/26/15
No. 34,946	State v. Kuykendall	COA 32,612	11/12/15
No. 34,945	State v. Kuykendall	COA 32,612	11/12/15

Opinion on Writ of Certiorari:

			Date Opinion Filed
No. 34,549	State v. Nichols	COA 30,783	11/19/15
No. 34,546	N.M. Dept. Workforce Solutions v. Garduno	COA 32,026	11/19/15
No. 34,974	Moses v. Skandera	COA 33,002	11/12/15
No. 34,637	State v. Serros	COA 31,975	11/12/15
No. 34,548	State v. Davis	COA 28,219	10/19/15

Petition for Writ of Certiorari Denied:

			Date Order Filed
No. 35,568	State v. Aranzola	COA 32,505	11/17/15
No. 35,567	State v. Ruiz	COA 32,992	11/17/15
No. 35,562	Scott v. New	COA 34,556	11/17/15
No. 33,979	State v. Suskiewich	COA 33,979	11/17/15
No. 34,881	Paz v. Horton	12-501	11/17/15
No. 35,559	State v. Shelby	COA 34,682	11/10/15
No. 35,511	Brinsfield v. Hatch	12-501	11/10/15
No. 35,558	State v. Hernandez	COA 33,525	11/10/15
No. 35,341	Martin v. State	12-501	11/10/15
No. 35,269	Peterson v. Ortiz	12-501	11/10/15
No. 35,217	Hernandez v. Horton	12-501	11/10/15
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No. 35,545	State v. Lemanski	COA 33,846	11/05/15
No. 35,544	State v. Trujeque	COA 34,519	11/05/15
No. 35,452	Kirk v. Mercantel	12-501	11/05/15
No. 35,411	Tayler v. State	12-501	11/05/15
No. 35,542	City of Roswell v. Marin	COA 34,286	10/23/15
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No. 35,518	State v. Yanke	COA 34,474	10/21/15
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No. 35,368	Griego v. Horton	12-501	10/21/15

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
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Effective December 18, 2015

Published Opinions

No. 33896	2nd Jud Dist Bernalillo JQ-13-12, CYFD v ALFONSO M E (reverse and remand) 12/14/2015	
No. 33982	1st Jud Dist Rio Arriba Cv-14-38, NNM FEDERATION v NNM COLLEGE (reverse and remand)	12/14/2015
No. 33593	2nd Jud Dist Bernalillo CV-11-136, T BRAWLEY v BD OF REGENTS (affirm)	12/16/2015
No. 33283	2nd Jud Dist Bernalillo CV-07-5153, PULTE HOMES v INDIANA LUMBER (reverse and remand)	12/17/2015

Unublished Opinions

No. 34557	2nd Jud Dist Bernalillo JQ-13-30, CYFD v NATALIA C (reverse and remand)	12/14/2015
No. 34678	2nd Jud Dist Bernalillo JQ-12-67, CYFD v. JAMES T (affirm)	12/14/2015
No. 34677	2nd Jud Dist Bernalillo JQ-12-67, CYFD v. ALICIA T (affirm)	12/14/2015
No. 32777	5th Jud Dist Lea CR-10-303, STATE v J BROWN (reverse and remand)	12/16/2015
No. 33531	6th Jud Dist Luna CR-11-240, STATE v W ASARISI (affirm)	12/16/2015
No. 33786	13th Jud Dist Valencia CV-13-1280, T ROBLEZ v CENTRAL NM CORRECTIONAL FACILITY (reverse and remand)	12/16/2015
No. 34332	5th Jud Dist Eddy CR-14-140, STATE v B CARPENTER (affirm)	12/16/2015
No. 33019	2nd Jud Dist Bernalillo CR-10-2352, STATE v D GUTIERREZ (affirm)	12/16/2015
No. 34237	11th Jud Dist San Juan LR-14-65-8, STATE v C DELGARITO (affirm)	12/16/2015
No. 34556	12th Jud Dist Otero CR-14-150, STATE v P ANCIRA (affirm)	12/16/2015
No. 33225	12th Jud Dist Otero CV-04-356, J MARCHAND v R MARCHAND (affirm)	12/17/2015
No. 34815	2nd Jud Dist Bernalillo LR-14-54, STATE v R VIGIL (affirm)	12/17/2015
No. 34010	11th Jud Dist San Juan CR-13-438, STATE v S FARLEY (reverse)	12/17/2015
No. 34264	5th Jud Dist Lea CR-13-197, STATE v E ROMERO (affirm)	12/17/2015
No. 34482	9th Jud Dist Curry JQ-13-19, CYFD v JEREMY C (affirm)	12/17/2015

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective December 2, 2015

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

None to report at this time.

Recently Approved Rule Changes Since Release of 2015 NMRA:

For 2014 year-end rule amendments that became effective December 31, 2014, and which now appear in the 2015 NMRA, please see the November 5, 2014, issue of the Bar Bulletin *or visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx.*

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

From the New Mexico Supreme Court

Opinion Number: 2015-NMSC-028

STATE OF NEW MEXICO, EX REL.,
GARY K. KING, NEW MEXICO ATTORNEY GENERAL,
Petitioner,
v.
HON. SHERI RAPHAELSON, First Judicial District Court Judge,
Respondent
No. 34,985 (filed August 20, 2015)

ORIGINAL PROCEEDING

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Opinion

Richard C. Bosson, Justice

{1} Under Article VI, Section 33 of the New Mexico Constitution, a district judge elected to that position in a partisan election is thereafter "subject to retention or rejection in like manner at the general election every sixth year." Section 33 does not specify when this six-year term begins, particularly when the elected judge succeeds a predecessor who has not completed his or her full term in office. In that case, does the successor judge's election mark the beginning of a new six-year term, or does the successor judge assume the six-year term of the predecessor judge? The answer determines when the successor judge must stand for nonpartisan retention election. For the reasons that follow, we hold that under the New Mexico Constitution a judge elected in a partisan election is subject to retention in the sixth year of the predecessor judge's term. Our holding is consistent with the intent and purpose of our New Mexico Constitution.

BACKGROUND

{2} In 2009, Governor Bill Richardson appointed District Judge Sheri Raphaelson to fill a vacancy in Division V of the First Judicial District Court created when then-District Judge Timothy L. Garcia was appointed to the New Mexico Court of Appeals, leaving an unexpired term of office. A year later, as required by Article VI, Section 35 of the New Mexico Constitution (providing that the appointee "shall serve until the next general election" and that at the election a judge "shall be chosen . . . and shall hold the office until the expiration of the original term"), Judge Raphaelson successfully ran in a partisan election to remain in office as Judge Garcia's successor. Thereafter, Judge Raphaelson had only to run for retention, but in what year?

{3} On March 11, 2014, Judge Raphaelson filed a declaration of candidacy to place her name on the ballot for retention in the 2014 general election in accordance with Article VI, Section 34 of the New Mexico Constitution and NMSA 1978, Section 1-8-26 (2013). In the general election, only 55.87 percent of the votes cast were in favor of Judge Raphaelson's retention, falling short of the 57 percent necessary to retain the office as stipulated by Article VI, Section 33(A) of the New Mexico Constitution.[1]

{4} Days after the 2014 general election, despite her unsuccessful retention election, Judge Raphaelson publically declared her intent to remain on the bench until January 1, 2017, not January 1, 2015. Judge Raphaelson contended for the first time that her six-year term of office had begun on January 1, 2011, after her successful partisan election, and that she had mistakenly stood for retention prematurely.

{5} On November 21, 2014, the State of New Mexico, through the Office of the Attorney General, filed a petition for writ of quo warranto with this Court seeking to remove Judge Raphaelson from the bench due to her unsuccessful retention election. After hearing oral arguments, we issued the writ requested by the Attorney General removing Judge Raphaelson from judicial office effective January 1, 2015. We issue this opinion to explain our reasoning.

DISCUSSION

{6} Beginning at statehood, New Mexico judges were elected and reelected at periodic partisan elections. That changed in 1988 when the electorate amended the New Mexico Constitution.

{7} "In 1988, the Constitution was amended to institute a merit selection system, in which the governor now fills judicial vacancies by appointment from a list of applicants who are evaluated on a variety of merit-based factors and recommended by a judicial nominating commission." *State ex rel. Richardson v. Fifth Judicial Dist. Nominating Comm'n*, 2007-NMSC-023, ¶ 16, 141 N.M. 657, 160 P.3d 566 (internal footnote omitted); *see also* N.M. Const. art. VI, §§ 35-37. Of particular significance to this case, "[t]he appointed judge is then subject to one partisan election in the next general election, after which he or she is subject to nonpartisan retention election, requiring a fifty-seven percent supermajority to be retained in office." *State ex rel. Richardson*, 2007-NMSC-023, ¶ 16; *see also* N.M. Const. art. VI, §§ 33, 35-37. "The 1988 amendment to the New Mexico Constitution adopting the new judicial selection system was the culmination of over fifty years of efforts to reform the method of selecting judges." Leo M. Romero, *Judicial Selection in New Mexico: A Hybrid of Commission Nomination and Partisan Election*, 30 N.M. L. Rev. 177, 181 (2000).

{8} Judge Raphaelson argues that Article VI, Section 33, which implements the retention requirement, controls her term in office. Paragraph C of Section 33 states

[1]*See* New Mexico Secretary of State Official Election Results, *available at* http://electionresults.sos.state.nm.us/resultsSW.aspx?type=JDX&map=CTY (last viewed on July 21, 2015).

that "[e]ach district judge shall be subject to retention or rejection in like manner at the general election every sixth year." Judge Raphaelson interprets this provision to mean that her six-year term began after her partisan election to succeed Judge Garcia in 2010. Therefore, under Judge Raphaelson's interpretation, her term in office would not expire until December 31, 2016. Notwithstanding the unfavorable results of the 2014 retention election, Judge Raphaelson maintains that she should be allowed to remain on the bench through that date. The 2014 retention election was, therefore, a "nullity because Judge Raphaelson's term was not up and had not expired and she was not subject to retention" until 2016.

{9} The Attorney General disagrees, arguing that Judge Raphaelson has misconstrued the 1988 amendments to the Constitution. According to the Attorney General, Judge Raphaelson was properly up for retention in the 2014 general election pursuant to Article VI, Sections 33, 35, and 36 of the New Mexico Constitution. Having not garnered 57 percent of the votes cast on her retention, Judge Raphaelson was required to vacate her position by January 1, 2015. *See* N.M. Const. art. VI, § 34 (stating that the office of district judge "becomes vacant on January 1 immediately following the general election at which the . . . judge is rejected by more than forty-three percent of those voting on the question of retention or rejection").

{10} We analyze these competing positions and conclude that the Attorney General's interpretation is more reasonable considering both the text and the purpose of the 1988 constitutional amendments. We explain our reasoning.

In 2010 Judge Raphaelson was elected to complete Judge Garcia's six-year term in office, not to begin a new six-year term

{11} "In construing the New Mexico Constitution, this Court must ascertain the intent and objectives of the framers." *See In re Generic Investigation into Cable Television Servs.*, 1985-NMSC-087, ¶ 10, 103 N.M. 345, 707 P.2d 1155. In doing so, "[t]he provisions of the Constitution should not be considered in isolation, but rather should be construed as a whole." *See id.* ¶ 13; *see also Block v. Vigil-Giron*, 2004-NMSC-003, ¶ 9, 135 N.M. 24, 84 P.3d 72 ("In general, we interpret constitutional provisions as a harmonious whole . . . .").

{12} Judge Raphaelson's argument relies on interpreting Section 33 of the Constitution in isolation when it prescribes that a district judge shall be subject to retention "at the general election every sixth year." But Section 33 does not prescribe when a judge's six-year term begins, so we cannot confine our analysis to that one paragraph. As the Attorney General rightly points out, Sections 35 and 36 expressly define the term of a judge, like Judge Raphaelson, who is elected to the bench following the interim appointment process. Therefore, in determining when Judge Raphaelson's term begins and ends, we must construe Section 33 in conjunction with Sections 35 and 36. *See Generic Investigation*, 1985-NMSC-087, ¶ 13.

{13} Although Section 35 addresses the appointment and election of *appellate* judges, that section, with some exceptions pertaining to the makeup of the judicial nominating committee, is made applicable to district judges as well by Section 36. *See* N.M. Const. art. VI, § 36 ("Each and every provision of Section 35 of Article 6 of this constitution shall apply to the district judges nominating committee . . . .") (internal quotation marks omitted). Thus, we look to Section 35 for guidance. After describing the manner in which the nominating committee operates and the governor's appointment power, Section 35 provides: "Any person appointed shall serve until the next general election. That person's successor shall be chosen at such election and shall hold the office until the expiration of *the original term*." (Emphasis added.)

{14} The inclusion of the phrase "original term" in Section 35 is important. The successor judge—whether appointed or elected—holds the office for the remainder of the "original term." Therefore, in calculating the time at which the successor judge will first be subject to a retention election, we look to the date that the "original term" expires. At the very least, the text of Section 35 implies that we focus on the "original term" to calculate the time of future retention elections, particularly in the absence of any other language in the 1988 amendments indicating a contrary result.

{15} Here, the "original term" was the term for which Judge Raphaelson's predecessor, Judge Garcia, was retained. In 2008, the people retained Judge Garcia for a new six-year term beginning January 1, 2009.[2] Had Judge Garcia remained on the district court, his term would have ended six years after his retention, on December 31, 2014, and he would have been subject to another retention vote in the 2014 general election. *See* N.M. Const. art. VI, § 33(C) ("Each district judge shall be subject to retention or rejection in like manner at the general election every sixth year.").

{16} However, on November 12, 2008, days after Judge Garcia's successful retention election, Governor Richardson appointed Judge Garcia to the Court of Appeals, leaving his district court seat vacant.[3] After the constitutional nomination process was complete, Governor Richardson appointed Judge Raphaelson early in 2009 to fill that vacancy "until the next general election," which took place in November 2010. *See* N.M. Const. art. VI, § 35 ("Any person appointed shall serve until the next general election."). At that partisan election, the voters chose Judge Raphaelson to succeed Judge Garcia and "hold the office until the expiration of the *original term*." *See id.* (emphasis added). Because the "original term" was that of Judge Garcia, Judge Raphaelson was subject to a retention vote at the same time Judge Garcia would have been—the 2014 general election. During that election, she did not receive 57 percent of the vote in her favor, and therefore her seat became vacant on January 1, 2015. *See* N.M. Const. art. VI, § 34 ("The office of any justice or judge subject to the provisions of Article 6, Section 33 of this constitution becomes vacant on January 1 immediately following the general election at which the justice or judge is rejected by more than forty-three percent of those voting on the question of retention or rejection.").

New Mexico's judicial selection system was designed so that all district judges are up for retention at the same time

{17} As previously stated, Section 35 stipulates that "[a]ny person appointed shall serve until the next general election. *That person's successor* shall be chosen at such election and shall hold the office until the expiration of the original term." (Emphasis added.)

{18} Judge Raphaelson argues that the phrase "original term" in Section 35 must be read in context with the phrase "that person's successor." According to Judge Raphaelson, "that person's successor" is

[2]*See* http://www.nmjpec.org/en/judge-evaluation?election_id=119&year=2008 (last viewed on July 21, 2015).
[3]*See* https://coa.nmcourts.gov/bios/garcia.php (last viewed on July 22, 2015).

the judge elected to succeed the appointed judge at the first partisan election. If the winner of the partisan election is someone other than the appointed judge, then he or she becomes the "successor" to the appointed judge and serves the remainder of the "original term."

{19} When, however, the appointed judge is herself successful at the partisan election, Judge Raphaelson maintains that she is not a "successor" judge, as contemplated by Section 35, but is merely one continuing in office. According to Judge Raphaelson, therefore, the phrase "[t]hat person's successor . . . shall hold the office until the expiration of the original term" does not apply because she is not a "successor" to herself. Thus, she would have this Court create a new term of office for appointed judges who succeed at the partisan election, one that would cast aside the "original term" and begin anew with a six-year term upon election.

{20} We concede that Judge Raphaelson's position is not inherently unreasonable, particularly if it were supported by some affirmative language in the 1988 amendments. But the text of the Constitution yields no such support. Judge Raphaelson's argument attempts to add a substantive distinction between an appointed judge who wins a subsequent partisan election and an appointed judge who loses a subsequent partisan election. Whatever the policy arguments might be in support of such a distinction, the text of Section 35 ignores them.

{21} Of equal importance, we would have to consider the question without regard to context and the history of both the 1988 amendments and the constitutional language that preceded it. Such an examination reaffirms our initial conclusion that the phrase "original term" applies in all situations, regardless of whether the winner at the partisan general election is the appointed judge or a new judge. In a word, New Mexico has consistently followed a practice of uniformity going back many years, one that requires all judges statewide to stand for retention at the same time, a practice modeled on years of history that preceded even the 1988 amendments. We now turn to those lessons of history.

{22} "The historical purposes of the constitutional provision are instructive in determining the obvious spirit . . . utilized in [its drafting]." *State v. Boyse*, 2013-NMSC-024, ¶ 16, 303 P.3d 830 (internal quotation marks and citation omitted, alterations in original). The U.S. Supreme Court has observed that "[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions." *See N.L.R.B. v. Noel Canning*, ___ U.S. ___, 134 S.Ct. 2550, 2559 (2014) (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929) (alterations in original)). Similarly, this Court has noted the relevancy of past practice in interpreting constitutional and statutory issues. *See Jones v. Murdoch*, 2009-NMSC-002, ¶ 28, 145 N.M. 473, 200 P.3d 523 ("[I]n light of past practice, it would be unreasonable to conclude that the Legislature decided to explicitly give the target the right to alert the grand jury to the existence of exculpatory evidence while nevertheless allowing the prosecutor to reject such offers without a check."); *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 32, 125 N.M. 343, 961 P.2d 768 (holding that "the past practices of the New Mexico Legislature and Executive are instructive" in determining whether the executive branch had exceeded its constitutional powers in enacting and implementing certain welfare regulations).

{23} Prior to the adoption of the 1988 amendments, "our Constitution required partisan election of the entire judiciary, with the governor filling judicial vacancies by appointment." *State ex rel. Richardson*, 2007-NMSC-023, ¶ 16 (internal citations omitted). This Court held under the previous system, that the terms for all district court judges were designed to be on the same schedule, beginning and ending at the same time every six years regardless of when or whether the seat became vacant or newly occupied. *See State ex rel. Swope v. Mechem*, 1954-NMSC-011, ¶ 22, 58 N.M. 1, 265 P.2d 336 ("[U]nder all equations of vacancy in these offices, excepting only a vacancy occurring by the creation of a new judge . . . the terms of district judges . . . will begin and end at the same time.").

{24} *Swope* involved three district judges who were appointed by former Governor Edwin Mechem, two in 1949 and one in 1951. *See id.* ¶ 1. Each of the three district judges ran and were elected in the first general election following their appointments, Judges Swope and Harris in 1950 and Judge Bonem in 1952. *See id.* ¶ 2. All three judges then intended to run again in 1954 when "the terms of all other district judges [would] expire." *See id.* Governor Mechem, however, notified the three judges that he would not include their offices in the 1954 election proclamation along with all other district judges. The governor contended, as Judge Raphaelson does here, that each judge held his respective office for six years from the date of that judge's election. *See id.* This Court concluded, based on former Article XX, Section 4 of the New Mexico Constitution, that the terms of office for all district judges began and ended at the same time: the 1954 general election. *See Swope*, 1954-NMSC-011, ¶¶ 20-22.

{25} The language of former Article XX, Section 4 is substantially similar to the language of current Article VI, Section 35. *Compare* N.M. Const. art. XX, § 4 (1912) ("[T]he governor shall fill such vacancy by appointment, and such appointee shall hold such office until the next general election. His successor shall be chosen at such election and shall hold his office until the expiration of the original term.") *with* N.M. Const. art. VI, § 35 ("Any person appointed shall serve until the next general election. That person's successor shall be chosen at such election and shall hold the office until the expiration of the original term.").

{26} This Court held that Governor Mechem's interpretation of the last sentence of Article XX would render the word "expiration" as well as the whole sentence meaningless. *See Swope*, 1954-NMSC-011, ¶ 21 ("If it be said that 'original term,' as applied to these two offices, means any four or six years respectively between two general elections, then the word 'expiration,' in fact, the whole sentence becomes surplusage and meaningless."). This Court concluded, therefore, that under Article XX, Section 4, "there can be no doubt that the appointee or his successor elected at the general election following his appointment serves only until the termination date of the term of the original incumbent." *Swope*, 1954-NMSC-011 ¶ 21. "This means that, under all equations of vacancy in these offices, excepting only a vacancy occurring by the creation of a new judge . . . , the terms of district judges . . . will begin and end at the same time." *Id.* ¶ 22.[44] The Court concluded, as we have in this opinion, that if the drafters of the Constitution "desired to make an exception of this one isolated case, it is hard to believe that it would not have been spelled out with particularity." *Id.* Concluding that the drafters had a valid interest in preserving concurrent terms for all district judges, this Court entered its writ of mandamus

[4]Our holding in the present case also does not address the question of newly created judgeships.

compelling the governor to place the three judicial positions on the 1954 ballot. *Id.*

{27} The *Swope* opinion encapsulates the common understanding and interpretation of terms of office for district judges, not only at the time, but up to the successful amendment of the Constitution in 1988. In light of this Court's clear holding in *Swope,* the framers of the 1988 amendments had a choice. They could have altered the definition of a term of office, much as the Attorney General argued unsuccessfully in 1954 and Judge Raphaelson does here. But they did not do so. Far from a change in direction, the 1988 amendments enshrine the same understanding and interpretation as *Swope*. Under paragraph E of Article VI, Section 33:

> Every . . . district judge . . . holding office on January 1 next following the date of the election at which this amendment is adopted shall be deemed to have fulfilled the requirements of Subsection A of this section [regarding partisan election] and the . . . judge shall be eligible for retention or rejection by the electorate at the general election next preceding the end of the term of which the . . . judge was last elected prior to the adoption of this amendment.

{28} In other words, any district judge holding office on January 1, 1989, was deemed to have been elected in a partisan election and eligible for retention "at the general election next preceding the end of the term of which the . . . judge was last elected." Because, as confirmed in *Swope*, all district judges were elected at the same time every six years prior to the adoption of Article VI, Section 33, paragraph E ensured that all district judges would stand for retention at the same time every six years under the new system.

{29} The history of the Division V seat on the First Judicial District Court, which Judge Raphaelson held, illustrates this point. Division V of the First Judicial District was created in 1980. *See* 1980 N.M. Laws, ch. 141. Governor Bruce King appointed J. Michael Francke to fill the new position on May 6, 1980. Judge Francke held that office until 1983, when it was filled by the appointment of Arthur Encinias. Judge Encinias held the position at the time the 1988 constitutional amendments were adopted. Accordingly, Judge Encinias successfully ran for retention in 1990, the first year retention elections were held for all district judges across the state.[5] *See* N.M. Const. art. VI, § 33(E); *see also* Romero, *supra*, at 182 ("All judges sitting in 1988 would be considered to have met the competitive election requirement and would face only retention elections."). Six years later, Judge Encinias was retained a second time. He retired in advance of the 2002 election, and Judge Garcia was chosen in the partisan election of that same year. Thereafter, Judge Garcia was retained in 2008 simultaneously with all other sitting judges. As discussed above, Judge Raphaelson then filled Judge Garcia's unexpired term which ended in 2014.

{30} Uniformity of judicial terms serves a legitimate public purpose. Admittedly, it is not the only way to devise a judicial system. The constitutional framers, both in the distant past and more recently, could have selected a system not unlike the one for which Judge Raphaelson advocates, but clearly they did not. That choice is not unreasonable. It fosters consistency and uniformity thereby avoiding confusion in the electorate. Both judges and the people who will sit in judgment of their performance know exactly when that opportunity arises—and when to focus on that performance—every six years across the state. *See Swope*, 1954-NMSC-011, ¶ 22 (in retaining concurrent terms, the framers of the Constitution were preserving uniformity). Under a contrary interpretation, district judges would have informally staggered terms based capriciously upon when the individual judge was elected, regardless of whose term the judge was filling. Such an interpretation might lead to confusion by creating an uneven and ad-hoc system with judges being elected at differing times. Some years, many judges might stand for retention; other years only a few. The framers and the people who adopted the 1988 amendments should be supported for selecting reason over disorder. *See* Romero, *supra*, at 224-25 (stating that "the nomination-appointment aspect and the electoral aspect have played significant roles in the selection of New Mexico judges" and "[t]wo in-depth examinations of the compromise system concluded that the current system should not be jettisoned").

CONCLUSION

{31} We appropriately granted the State's petition for a writ of quo warranto. Judge Raphaelson was properly up for retention in the 2014 general election pursuant to Article VI, Sections 33, 35, and 36 of the New Mexico Constitution. Judge Raphaelson's failure to earn 57 percent of the votes in favor of retention in the 2014 general election resulted in her loss of the seat. Any effort to remain in office beyond December 31, 2014 contravened the Constitution, justifying our writ of quo warranto.

{32} IT IS SO ORDERED.

RICHARD C. BOSSON, Justice

WE CONCUR:
BARBARA J. VIGIL, Chief Justice
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
CHARLES W. DANIELS, Justice

[5] *See* Secretary of State Statewide Results for 1990 General Election http://www.sos.state.nm.us/uploads/files/Election%20Results/CanvassGeneral1990.pdf (last viewed on July 22, 2015).

Certiorari Denied, August 25, 2015, No. 35,450

From the New Mexico Court of Appeals

Opinion Number: 2015-NMCA-098

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ZACHARY DOPSLAF,
Defendant-Appellant
No. 33,682 (filed June 24, 2015)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
CHRISTINA P. ARGYRES, District Judge

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Opinion

Cynthia A. Fry, Judge

{1} Defendant appeals the denial of his motion to suppress evidence. Defendant was pulled over by police in downtown Albuquerque, New Mexico, after he performed a U-turn across the middle of the street. Defendant argues that the officer did not have reasonable suspicion to pull him over because the officer incorrectly believed that Defendant violated NMSA 1978, Section 66-7-319 (1978) (driving on divided highways) when he made the U-turn. We conclude that, even assuming the officer was mistaken about the application of Section 66-7-319, the officer's mistake was reasonable, and the officer had reasonable suspicion to pull Defendant over. Accordingly, we affirm.

BACKGROUND

{2} As an initial matter, we clarify that our review of the facts in this case is limited to Officer Daniel Burge's testimony because this was the only evidence presented. Therefore, we do not consider Defendant's statements at sentencing regarding the stop, nor do we consider the diagrams Defendant incorporated in his brief on appeal.

{3} Officer Burge testified that he first observed Defendant's vehicle parked on Central Avenue in downtown Albuquerque. Officer Burge observed Defendant pull out of the parking spot and perform a U-turn across a "painted center median." 10:35:05] After performing the U-turn, Defendant sped off down Central. Officer Burge followed Defendant and pulled him over. Upon approaching the vehicle, Officer Burge testified that he smelled alcohol and that Defendant appeared to be intoxicated. Following Defendant's performance on the field sobriety tests and a subsequent chemical test, he was arrested and charged with DWI. He was also cited for violating Section 66-7-319.

{4} Officer Burge described the "painted center median" that Defendant crossed as consisting of a solid yellow line on the outside with a dotted yellow line on the inside. Given that Officer Burge testified that these markings created a median, we understand his description to include two sets of these markings offsetting an unpainted portion of the road. Officer Burge further testified that at both ends of the median were white turn bays corresponding to the intersections at the ends of the block. Defendant, however, crossed at the center portion of the median, not at either of the intersections. Officer Burge testified that there is no place in which to turn from this median, such as a side street, because the block is lined with businesses. Officer Burge further testified that law enforcement officers often use these medians to park. While Officer Burge also stated that he had never personally witnessed a delivery vehicle parked in the center median, he acknowledged that it was conceivable that one could. Finally, Officer Burge testified that, although there was no sign prohibiting U-turns on the street, he believed that Defendant's actions violated Section 66-7-319 because he crossed the solid yellow lines and the median.

{5} Defendant moved to suppress evidence at trial in metropolitan court on the basis that the stop violated the Fourth Amendment because Officer Burge did not have reasonable suspicion to believe that Defendant committed a traffic violation. The metropolitan court concluded that Officer Burge had reasonable suspicion to believe that Defendant violated Section 66-7-319 because the painted median constituted an "intervening space" or a "clearly indicated dividing section so constructed as to impede vehicular traffic" and denied the motion. Section 66-7-319. The metropolitan court subsequently convicted Defendant of DWI and violation of Section 66-7-319. Defendant then appealed to the district court. The district court affirmed. Defendant now appeals to this Court.

DISCUSSION

{6} Defendant challenged the stop under the Fourth Amendment. Our review is therefore limited to the reasonable suspicion analysis under the Fourth Amendment and not under any potential broader protections afforded by Article II, Section 10 of the New Mexico Constitution. *See State v. Hubble*, 2009-NMSC-014, ¶ 6, 146 N.M. 70, 206 P.3d 579. The basis of Defendant's challenge is that Officer Burge committed a mistake of law in believing that Defendant's U-turn constituted a violation of Section 66-7-319. Because of Officer Burge's alleged mistake, Defendant argues that reasonable suspicion did not exist to justify the stop.

Standard of Review

{7} "A review of the suppression of evidence is a mixed question of law and fact." *State v. Anaya*, 2008-NMCA-020, ¶ 5, 143 N.M. 431, 176 P.3d 1163. While we generally defer to the district court's findings of fact if the findings are supported by substantial evidence, *id*., as a mixed question of law and fact, we determine constitutional reasonableness de novo. *State v. Vanderberg,* 2003-NMSC-030, ¶ 19, 134 N.M. 366, 81 P.3d 19.

Mistakes of Law and Reasonable Suspicion Under the Fourth Amendment

{8} "Since an automobile stop is considered a seizure under the Fourth and

Fourteenth Amendments, it must be conducted in a reasonable manner to satisfy the Fourth Amendment." *Hubble*, 2009-NMSC-014, ¶ 7 (internal quotation marks and citation omitted). Therefore, "[b]efore a police officer makes a traffic stop, he must have a reasonable suspicion of illegal activity." *Id.* (internal quotation marks and citation omitted). "A reasonable suspicion is a particularized suspicion, based on all the circumstances that a particular individual, the one detained, is breaking, or has broken, the law." *State v. Jason L.*, 2000-NMSC-018, ¶ 20, 129 N.M. 119, 2 P.3d 856. The appellate courts "will find reasonable suspicion if the officer is aware of specific articulable facts, together with rational inferences from those facts, that, when judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring." *Hubble*, 2009-NMSC-014, ¶ 8 (internal quotation marks and citation omitted).

{9} The issue presented in this case is whether an officer's mistake of law can form the basis of the officer's reasonable suspicion to initiate the traffic stop. *See id.* ¶ 22 ("A mistake of law is a mistake about the legal effect of a known fact or situation[.]"). (internal quotation marks and citation omitted)). In *Anaya*, this Court, in line with the majority position at the time, held that while "conduct premised totally on a mistake of law cannot create the reasonable suspicion needed to make a traffic stop[,] if the facts articulated by the officer support reasonable suspicion on another basis, the stop can be upheld." 2008-NMCA-020, ¶¶ 7, 15. In *Hubble*, our Supreme Court concluded, in dicta, that the holding in *Anaya* was consistent with New Mexico's reasonable suspicion analysis. *Hubble,* 2009-NMSC-014, ¶ 27 ("In essence, the second part of the *Anaya* proposition [that reasonable suspicion on a basis other than the mistake of law can justify the stop] is our objective test for reasonable suspicion."). The Court stated that "it is not fatal in terms of reasonable suspicion if an officer makes a mistake of law when he conducts a traffic stop; courts will still look objectively to the totality of the circumstances surrounding the officer's decision to conduct the traffic stop in order to determine if he or she had reasonable suspicion." *Id.* ¶ 28.

{10} However, *Anaya*'s holding that a stop cannot be justified by an officer's reasonable mistake of law was recently rejected by the United States Supreme Court in *Heien v. North Carolina*, ___ U.S. ___, ___, 135 S. Ct. 530 (2014). In *Heien*, the Supreme Court held that an officer's reasonable mistake of law could support a finding of reasonable suspicion to conduct a lawful traffic stop under the Fourth Amendment. *Id.* at 534. The Court cautioned that "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable." *Id.* at 539. Thus, the officer's subjective understanding of the law is immaterial, and "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *Id.* at 539-40.

{11} Because *Anaya* holds that a stop cannot be based totally on an officer's reasonable mistake of law, *Anaya*, and our Supreme Court's dicta in *Hubble* affirming that analysis, no longer represent the appropriate inquiry under the Fourth Amendment. While we acknowledge that "[a]ppeals in this Court are governed by the decisions of the New Mexico Supreme Court—including decisions involving federal law, and even when a United States Supreme Court decision seems contra[,]" *Dalton v. Santander Consumer USA, Inc.*, 2015-NMCA-030, ¶ 30, 345 P.3d 1086 (internal quotation marks and citation omitted), we conclude that, *Hubble* notwithstanding, the appropriate test to apply in this case is that found in *Heien*. *Hubble*'s discussion of *Anaya*'s holding is dicta and, as such, is not binding authority. *See Hubble,* 2009-NMSC-014, ¶ 21 (concluding that the defendant was properly stopped for a violation of the traffic code but stating that "in order to clarify the law regarding reasonable suspicion, we take this opportunity to discuss mistakes of law and mistakes of fact and how they interact with reasonable suspicion"); *State v. Johnson*, 2001-NMSC-001, ¶ 16, 130 N.M. 6, 15 P.3d 1233 (stating that although the Court of Appeals should give deference to Supreme Court dicta, it is not binding authority). Accordingly, we now turn to the facts of this case as viewed through the lens of the *Heien* decision.

{12} Perhaps owing to the inquiry under *Anaya*, Defendant's argument seems geared more toward showing that Defendant did not actually violate Section 66-7-319 rather than toward arguing that a mistake of law, assuming one was committed, was unreasonable.[1] Defendant cites numerous sections of the Manual on Uniform Traffic Control Devices (MUTCD) and the New Mexico Sign and Striping Manual in arguing that Defendant could not have violated Section 66-7-319. However, even under the stricter test utilized in *Anaya*, the determination of whether an officer had "reasonable suspicion to make the traffic stop does not hinge on whether [the d]efendant actually violated the underlying . . . statute." *Hubble*, 2009-NMSC-014, ¶ 9. In restating Defendant's arguments in light of the proper standard, we understand his main point to be that, given the "broken line" pavement markings, it was objectively unreasonable for Officer Burge to believe that crossing over the median was a violation of Section 66-7-319.

{13} Section 66-7-319 states:

> Whenever any highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within any such dividing space, barrier[,] or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

The term "highway," as used in the statute, is synonymous with "street" and is defined as "every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel[.]" NMSA 1978, § 66-1-4.8(B) (1991). While the road at issue would clearly fall under the definition of "highway," central to this case is whether the median at issue creates a "divided highway" under Section 66-7-319. The statute delineates three general indicators that a particular street is a divided highway: where there is an "intervening space," a "physical barrier," or a "clearly indicated dividing section so constructed as to impede vehicular traffic[.]" *Id.* Based

[1]Defendant does not separately argue that his conviction under Section 66-7-319 was improper. Therefore, we limit our analysis to whether the trial court erred in denying the motion to suppress, i.e., whether Officer Burge committed a reasonable mistake of law when he stopped Defendant, not whether Defendant actually violated Section 66-7-319.

on Officer Burge's testimony and the fact that Defendant executed a U-turn, it is undisputed that no physical barrier separated the two lanes of traffic. Therefore, the issue is whether it was objectively reasonable for Officer Burge to believe that the median constituted an "intervening space" or "clearly indicated dividing section" so as to be considered a "divided highway" under Section 66-7-319.

{14} We first clarify that the fact that the median in this case was off-set by painted markings is not determinative. The statute itself is not specific on this point. However, the New Mexico Administrative Code indicates that divided highways can be created by "standard pavement markings[.]" NMAC 18.31.6.7(AD). Accordingly, it is, at the least, objectively reasonable to conclude that "standard pavement markings" are a legitimate means of creating a divided highway.

{15} Section 66-7-319 does not provide guidance as to the types of pavement markings required to establish an intervening space or divided section. Defendant therefore argues that, based on national traffic standards, the pavement markings in this case cannot be construed to create an intervening space or divided section under Section 66-7-319. Citing the MUTCD, Defendant argues that broken lines indicate a "permissive condition," whereas a "solid line discourages or prohibits crossing (depending on the specific application)," MUTCD, § 3A.06(01)(B), (C) (2009), and that, in certain contexts, the combination of a solid yellow and broken line indicates a lane that can be used by traffic in either direction. Again construing Defendant's argument in light of the proper standard, his argument is that it was unreasonable for Officer Burge to believe that crossing over these types of pavement markings constituted a violation of Section 66-7-319.

{16} Defendant's references to the MUTCD highlight the ambiguity presented by the facts in this case. The MUTCD does not specifically discuss the median described in Officer Burge's testimony. And included in the MUTCD's examples cited by Defendant are other markings that conceivably distinguish the examples from the present case. These other markings include the presence of left turn arrows within a median similar to the one described by Officer Burge, or the use of yellow lines that denote "[t]he separation of traffic traveling in opposite directions" or "[t]he left-hand edge of the roadways of divided highways." MUTCD, § 3A.05(03)(A), (B) (2009). As Justice Kagan stated in her concurrence in *Heien*, statutes that pose "a really difficult or very hard question of statutory interpretation" lend credence to the conclusion that an officer made a reasonable mistake of law. 135 S. Ct. at 541 (Kagan, J., concurring) (internal quotation marks and citation omitted). If the issue before us was whether Defendant actually violated Section 66-7-319, these ambiguities would require intensive interpretation to resolve. But, as to the question presented in this case, the multitude of MUTCD provisions and diagrams required to determine whether it was permissible to cross the median tend to support the reasonableness of Officer Burge's belief that Defendant committed a traffic violation.

{17} Therefore, even assuming, as Defendant argues, that the broken line permitted entry into the median, we conclude that it was objectively reasonable for Officer Burge to believe that the median was designed to prohibit Defendant's maneuver. That is, it is reasonable to believe that the use of a combination of solid and broken yellow lines to form a median permitted entry into the median for certain purposes—such as for use by police officers, as Officer Burge testified—but prohibited crossing completely over the median from one lane of traffic to the other. The lack of definitive guidance under Section 66-7-319 as to what constitutes an intervening space or a clearly indicated divided section, in combination with Officer Burge's observation of Defendant crossing two solid yellow lines, is sufficient to make the stop, assuming it was a mistake of law, a reasonable one. *See Heien*, 135 S. Ct. at 541 (Kagan, J., concurring) ("If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretative work, then the officer has made a reasonable mistake."). Accordingly, Officer Burge had reasonable suspicion to pull Defendant over. Because Defendant did not argue that the stop was unreasonable or pretextual under Article II, Section 10 of the New Mexico Constitution, our analysis ends with this determination.

CONCLUSION

{18} For the foregoing reasons, we affirm the denial of Defendant's motion to suppress.

{19} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

I CONCUR:
JONATHAN B. SUTIN, Judge
RODERICK T. KENNEDY, Judge, dissenting

KENNEDY, Judge (dissenting)

(20) I respectfully dissent. Albuquerque Municipal Code § 8-2-6-10 (1975) permits any U-turn that can "be made in safety and without interfering with any other traffic, and there is no sign prohibiting a U-turn". I do not believe the officer's mistake of law was objectively reasonable. The Metropolitan Court's stretch of construction involving "clearly driving section so constructed as to impede vehicular travel" is unhelpful.

RODERICK T. KENNEDY, Judge

Certiorari Denied, August 25, 2015, No. 35,453

From the New Mexico Court of Appeals

Opinion Number: 2015-NMCA-099

MYRON G. YEPA,
Petitioner-Appellee,
v.
STATE OF NEW MEXICO TAXATION AND REVENUE DEPARTMENT,
MOTOR VEHICLE DIVISION,
Respondent-Appellant
No. 33,101 (filed June 29, 2015)

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
LOUIS P. MCDONALD, District Judge

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Opinion

James J. Wechsler, Judge

{1} On appeal, we are presented with the question whether the application of the ignition interlock requirement set forth in NMSA 1978, Section 66-5-33.1 (2009), to an individual whose license was revoked prior to the effective date of the amendment, violates the prohibition against ex post facto laws. As a preliminary matter, we hold that the district court properly had jurisdiction of this case involving a constitutional challenge because it raised a purely legal issue not requiring exhaustion of administrative remedies. On the merits, because we conclude that the amendment was not penal for the purposes of ex post facto constitutional analysis, we hold that there was no constitutional violation. We therefore reverse.

BACKGROUND

{2} Petitioner Myron G. Yepa was arrested for aggravated driving under the influence of intoxicating liquor or drugs (DWI) in New Mexico on September 7, 2008. As a consequence, effective September 27, 2008, the Taxation and Revenue Department, Motor Vehicle Division (MVD) revoked his license for a period of six months pursuant to the Implied Consent Act, NMSA 1978, §§ 66-8-105 to -112 (1978, as amended through 2007). The criminal charge against Yepa was dismissed on December 10, 2008, and he became eligible for license reinstatement under the Implied Consent Act on March 28, 2009. At that time, no ignition interlock requirement existed as a prerequisite to license reinstatement. However, effective July 1, 2009, the Legislature amended the statutory license reinstatement requirements to include a minimum of six months of driving with an ignition interlock device before reinstatement of a revoked license. Section 66-5-33.1(B)(4) (the 2009 amendment). Yepa did not request reinstatement of his license until after the amendment came into effect. MVD applied the ignition interlock requirement and denied the request as a result of Yepa's failure to comply.

{3} Yepa subsequently filed the underlying action in district court, seeking a declaration that the ignition interlock requirement was improperly applied to him. The district court ultimately concluded that MVD's application of the 2009 amendment to Yepa constituted a violation of the constitutional prohibition against ex post facto laws. This appeal followed.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

{4} We initially address a jurisdictional question. MVD argues that Yepa should have challenged the denial of his request for reinstatement of his license by pursuing an administrative appeal. In light of his failure to do so, MVD contends that the underlying action should have been dismissed.

{5} According to MVD, NMSA 1978, Section 66-2-17 (1995) provides an exclusive statutory remedy for any party aggrieved by any licensing decision. That statutory section sets forth the administrative appeals process. Under Section 66-2-17(A), "any person may dispute" the denial of a license pursuant to the administrative appeals procedure outlined in subsequent portions of the statute, "[u]nless a more specific provision for review exist[s]." Section 66-2-17(I) specifies as follows:

> No court of this state has jurisdiction to entertain any proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the secretary or hearing officer as provided for in this section.

{6} We agree with MVD in its basic premise. "Under the exhaustion of administrative remedies doctrine, where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed." *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 26, 142 N.M. 786, 171 P.3d 300 (alteration, internal quotation marks, and citation omitted). However, when the matter at issue is purely legal and requires no specialized agency factfinding, and there is no exclusive statutory remedy, "it is a proper matter for a declaratory judgment action and does not require exhaustion of administrative remedies." *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 12, 149 N.M. 42, 243 P.3d 746.

{7} The district court based its ruling on the constitutional prohibition against ex post facto laws. The ruling involved a purely legal issue that did not require specialized agency factfinding. The only

facts found by the district court were uncontested and concerned the relevant dates underlying the constitutional challenge. As a consequence, exhaustion of administrative remedies was not required. *Smith*, 2007-NMSC-055, ¶ 27.

{8} The proposition that a purely legal ruling may be pursued in a declaratory judgment action without administrative review is particularly valid in the circumstances of this case in which the issue involved is a constitutional challenge to the Implied Consent Act. *See Schuster v. State of N.M. Taxation & Revenue Dep't*, 2012-NMSC-025, ¶¶ 19, 22, 283 P.3d 288 (holding that MVD is statutorily required to evaluate the constitutionality of arrests); *Maso v. State of N.M. Taxation & Revenue Dep't*, 2004-NMCA-025, ¶ 12, 135 N.M. 152, 85 P.3d 276 (observing that constitutional questions are generally beyond the subject matter jurisdiction of MVD), *aff'd*, 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286. We are aware of no statutory provision or case law, and MVD has cited none, suggesting that MVD is vested with subject matter jurisdiction to adjudicate constitutional questions such as the ex post facto challenge presented in this case. *See Pickett Ranch, LLC v. Curry,* 2006-NMCA-082, ¶ 45, 140 N.M. 49, 139 P.3d 209 (stating that when no supporting authority for a proposition is cited, this Court may assume that no applicable or analogous authority exists). To the extent that MVD invites us to recognize such sweeping authority in the absence of statutory delegation, we deem it imprudent. *See Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 24, 136 N.M. 440, 99 P.3d 690 ("[A]n administrative agency may not exercise authority beyond the powers that have been granted to it."); *Collyer v. State of N.M. Taxation & Revenue Dep't*, 1996-NMCA-029, ¶ 6, 121 N.M. 477, 913 P.2d 665 ("MVD is vested only with the power to administer and enforce the Motor Vehicle Code as provided by law.").

{9} MVD cites *Alvarez v. State of N.M. Taxation & Revenue Dep't,* 1999-NMCA-006, 126 N.M. 490, 971 P.2d 1280, in support of its position. In that case, the plaintiffs filed a complaint, seeking a declaration that they were entitled to have their driving privileges restored. *Id.* ¶ 3. However, the plaintiffs had not applied for or been denied license reinstatement. *Id.* ¶ 10. Applying Section 66-2-17, we held that the action for declaratory judgment was improper, insofar as the plaintiffs had failed to pursue "the mandated administrative steps necessary to vest jurisdiction in the district court." *Alvarez*, 1999-NMCA-006, ¶ 10.

{10} Two significant considerations render this case distinguishable. First, unlike the *Alvarez* plaintiffs, Yepa applied for license reinstatement, and the request was denied. Accordingly, MVD has rendered a decision, such that ripeness is not a concern. *See generally U.S. West Commc'ns, Inc. v. N.M. State Corp. Comm'n*, 1998-NMSC-032, ¶ 8, 125 N.M. 798, 965 P.2d 917 (observing that the doctrine of ripeness "serves to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties" (internal quotation marks and citation omitted)); *New Energy Econ.*, 2010-NMSC-049, ¶ 17 ("One of the prerequisites of . . . a declaratory judgment action is that . . . the issue involved must be ripe for judicial determination." (second omission in original) (alteration, internal quotation marks, and citation omitted)).

{11} Second, the arguments advanced by the *Alvarez* plaintiffs do not appear to have implicated constitutional principles beyond the scope of MVD's authority. As we have discussed, this distinction is significant in view of MVD's authority to address constitutional issues.

{12} Constitutional challenges that are beyond the scope of MVD's authority are properly brought before the district courts. *See Schuster*, 2012-NMSC-025, ¶ 21 ("[A]ny constitutional challenge beyond MVD's scope of statutory review is brought for the first time in district court under its original jurisdiction."). As a result, exhaustion of administrative remedies was not required for the district court to rule on the purely legal issue of the ex post facto application of the 2009 amendment to a previous incident triggering a license revocation. *See Smith*, 2007-NMSC-055, ¶ 27 (holding that because a pure question of law was presented that would have been futile to pursue through the administrative appeals process, exhaustion was not required); *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, ¶ 29, 85 N.M. 521, 514 P.2d 40 ("The doctrine of exhaustion of remedies does not require the initiation of and participation in proceedings in respect to which an administrative tribunal clearly lacks jurisdiction, or which are vain and futile."). The district court had jurisdiction under the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975).

EX POST FACTO LAWS

{13} The 2009 amendment imposes a number of conditions upon the reinstatement of drivers' licenses that were suspended or revoked for DWI or for violation of the Implied Consent Act. Among these requirements is completion of "a minimum of six months of driving with an ignition interlock license with no attempts to circumvent or tamper with the ignition interlock device." Section 66-5-33.1(B)(4). As briefly described in the introductory portion of this Opinion, Yepa's driver's license was revoked in 2008 after he was arrested for aggravated DWI. The criminal charge against him was dismissed in late 2008. He became eligible for license reinstatement in March 2009, but he did not apply for reinstatement until late July 2009, after the effective date of the 2009 amendment. He successfully argued below that the application of the amendment to him constituted an impermissible ex post facto law.

{14} The constitutional prohibition against ex post facto laws is violated "when a statute involving retroactivity is passed that makes criminal a previously innocent act, increases the punishment, or changes the proof necessary to convict the defendant." *State ex rel. Foy v. Austin Capital Mgmt., Ltd.*, 2013-NMCA-043, ¶ 10, 297 P.3d 357 (alteration, internal quotation marks, and citation omitted), *cert. granted*, 2013-NMCERT-003, 300 P.3d 1181.

{15} The first portion of our inquiry concerns retroactivity. "[C]onfusion often arises as to what retroactivity means in particular contexts." *Gadsden Fed'n of Teachers v. Bd. of Educ.*, 1996-NMCA-069, ¶ 14, 122 N.M. 98, 920 P.2d 1052. MVD contends that there is no retroactivity, in that Section 66-5-33.1(B) is not triggered until a person applies for license reinstatement. Yepa contends that application of the 2009 amendment entails retroactivity because it increases the punishment associated with conduct that preceded the effective date of the enactment.

{16} "A statute or regulation is considered retroactive if it impairs vested rights acquired under prior law or requires new obligations, imposes new duties, or affixes new disabilities to past transactions." *Howell v. Heim*, 1994-NMSC-103, ¶ 17, 118 N.M. 500, 882 P.2d 541. The impairment of vested rights does not appear to be implicated in this case. *Cf. City of Santa*

Fe ex rel. Santa Fe Police Dep't v. One (1) Black 2006 Jeep, 2012-NMCA-027, ¶ 11, 286 P.3d 1223 (observing that Section 66-5-33.1 contains no provision for automatic reinstatement upon the expiration of the penalty period and, accordingly, a driver's license remains revoked and cannot be reinstated until compliance with all of the requisites is accomplished). However, the 2009 amendment does require "new obligations, imposes new duties, or affixes new disabilities" to a past transaction by increasing the burden of reinstatement upon drivers whose licenses were revoked before the 2009 amendment came into effect. *Howell*, 1994-NMSC-103, ¶ 17.

{17} MVD argues to the contrary on grounds that a statutory amendment "does not operate retroactively merely because some of the facts or conditions which are relied upon existed prior to the enactment." *Id.* (internal quotation marks and citation omitted). However, the implicit focus on the timing of the application for reinstatement, without considering the relationship between the license reinstatement process and preceding events and circumstances, is too simplistic. As our Supreme Court has more recently explained, the relevant inquiry is nuanced:

> [T]o determine whether a statutory amendment is retroactive the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. The conclusion that a particular rule operates retroactively comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event.

State v. Morales, 2010-NMSC-026, ¶ 9, 148 N.M. 305, 236 P.3d 24 (internal quotation marks and citation omitted). Under the 2009 amendment, there is a clear and immediate "connection between the operation of the new rule" (*i.e.*, the ignition interlock requirement) and "a relevant past event" (*i.e.*, the conduct which precipitated the prior license revocation). As a consequence, heightened burdens are imposed on drivers whose licenses were revoked as a consequence of conduct that preceded the passage of the 2009 amendment. Therefore, the 2009 amendment "attaches new legal consequences to events completed before its enactment." *Id.* (internal quotation marks and citation omitted). In light of these considerations, retroactivity is sufficiently involved to require further analysis.[1]

{18} When considering an ex post facto challenge to the application of a statutory amendment, it is necessary to evaluate the nature of the amendment. "[T]he constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them." *State v. Nunez*, 2000-NMSC-013, ¶ 112, 129 N.M. 63, 2 P.3d 264 (internal quotation marks and citation omitted). "The prohibition does not apply to penalties that are considered remedial in nature." *Foy*, 2013-NMCA-043, ¶ 11.

{19} Yepa contends that the ignition interlock requirement set forth in the 2009 amendment should be regarded as punitive, as opposed to remedial in nature, because it represents a further step in our Legislature's response to the serious problem of drunk driving, and because it imposes costs and incidental expenses. Although these are material considerations, they are not dispositive. *See State v. Kirby*, 2003-NMCA-074, ¶¶ 31, 38, 133 N.M. 782, 70 P.3d 772 (noting that "simply because the conduct to which the civil penalty applies is already a crime is insufficient, by itself, to render the sanction criminally punitive" and further observing that "monetary assessments are traditionally a form of civil remedy" (internal quotation marks and citation omitted)). Yepa also focuses heavily on the consequential impact upon him, individually. MVD counters that Yepa "cannot have it both ways," by asserting that the 2009 amendment is facially invalid on the one hand while also arguing that his "particular personal circumstances" of poverty render the 2009 amendment invalid as applied to him.

{20} Yepa's various claims pertaining to the amendment's unique individual impacts upon him are not relevant to our analysis of whether the ignition interlock requirement is punitive. "[W]hether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the sting of punishment." *State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, ¶ 32, 120 N.M. 619, 904 P.2d 1044 (internal quotation marks and citation omitted). "In order to ascertain whether these sanctions are punitive[,] we must look at the purposes that the sanctions actually serve. We make this determination by evaluating the government's purpose in enacting the legislation, rather than evaluating the effect of the sanction on the defendant." *Id.* (internal citation omitted). Accordingly, we decline to consider the "actual sanctions at stake" in Yepa's "specific case[.]" *Foy*, 2013-NMCA-043, ¶ 37.

{21} The threshold question is whether the Legislature's intent was to impose punishment. *Id.,* ¶ 15. If "the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil." *Id.* (internal quotation marks and citation omitted).

{22} Yepa asserts that the legislative intent was essentially punitive. He bases this assertion upon isolated comments by individuals, the fact that the requirement may be imposed in the absence of a criminal conviction, and the fact that New Mexico imposes comparatively greater sanctions for drunk driving than other states. However, we do not regard any of these reasons as reliable indicia of legislative intent.

{23} Based on an assessment of the overarching statutory scheme of the Implied Consent Act, including the procedures and penalties imposed, our Supreme Court has previously recognized, in the context of a constitutional double jeopardy analysis, that the Legislature's intent in enacting the provision for revoking and reinstating driver's licenses, including the prior version of Section 66-5-33.1, was civil and remedial. *Kennedy*, 1995-NMSC-069, ¶¶

[1]We note that Yepa's answer brief suggests that the ex post facto clause contained within the New Mexico Constitution affords greater protection than the United States Constitution. However, Yepa neither cites authority to support this position as a general proposition, nor attempts to demonstrate that the federal analysis is flawed, that there are structural differences between state and federal government,or that there are distinctive state characteristics. *See generally State v. Leyva,* 2011-NMSC-009, ¶ 49, 149 N.M. 435, 250 P.3d 861 (describing the interstitial approach by which arguments that the New Mexico Constitution provides greater protection than its federal counterpart may be preserved). We therefore adhere to the established ex post facto jurisprudence and leave for another day the question whether the New Mexico Constitution affords greater protections.

28-35, 42. Our Supreme Court stressed that the "state government regulates the activity of driving on the state's highways in the interest of the public's safety and general welfare." *Id.* ¶ 35. The license revocation provision of the Implied Consent Act, the Supreme Court noted, "serves the legitimate nonpunitive purpose of protecting the public from the dangers presented by drunk drivers and helps enforce regulatory compliance with the laws governing the licensed activity of driving." *Id*. It further observed that the Implied Consent Act also has a deterrent effect on drunk drivers, but noted that "[t]he deterrent effect of administrative license revocation is incidental to the government's purpose of protecting the public from licensees who are incompetent, dishonest, or otherwise dangerous." *Id*. ¶ 38.

{24} The regulatory activity in this case is not distinguishable either because the constitutional protection is different or because the statute at issue pertains to an ignition interlock requirement rather than a license revocation. Indeed, the 2009 amendment required an ignition interlock merely as a condition to reinstatement of a revoked or suspended driver's license. We perceive nothing within the 2009 amendment to suggest a departure from the legislative intent expressed in *Kennedy* that "revocation of a person's driver's license based on the conduct of either failing a blood-alcohol test or refusing to take a chemical test . . . is consistent with the government's goals in implementing the Implied Consent Act and is therefore remedial, not punitive[.]" *Id.* ¶ 42.

{25} We do note, as pointed out by the dissent, although it was not briefed by Yepa, that the statutory provision setting forth the offense of DWI includes a separate provision requiring an offender who is convicted of DWI to obtain an ignition interlock license and device. NMSA 1978, § 66-8-102(N) (2008, amended 2010). In the context of this provision, the dissent relies on dictum in *State v. Valdez*, 2013-NMCA-016, 293 P.3d 909, to assert that the Legislature intended the mandatory installation of ignition interlock devices to be punitive. The defendant in *Valdez*, however, challenged the constitutionality of the mandatory ignition interlock requirement of Section 66-8-102(N) as applied to offenders convicted of DWI "whose impairment is caused not by alcohol but by drugs[.]" *Id*. ¶ 1. In this case, Yepa was not subject to Section 66-8-102(N) because he was not convicted of aggravated DWI. Based on this dissimilar factual scenario, the statutes subject to our analysis here differ from that in *Valdez*. We therefore do not consider the language of Section 66-8-102(N) to alter the Legislature's overarching intent concerning the remedial nature of the Implied Consent Act, the statute underlying this appeal. The general statutory scheme of the Implied Consent Act focuses on the revocation and reinstatement of driver's licenses, not punishment of traffic offenses. Moreover, the bill passed by the Legislature in 2009 only amended the statutory provisions for license revocation and reinstatement under Section 66-5-33.1 and NMSA 1978, § 66-5-503 (2013). *See* 2009 N.M. Laws, ch. 254; *Chatterjee v. King*, 2012-NMSC-019, ¶ 12, 280 P.3d 283 ("In addition to looking at the statute's plain language, we will consider its history and background and how the specific statute fits within the broader statutory scheme."). Accordingly, we view the Section 66-8-102(N) requirement as an independent means by which the Legislature intended to deter drunk drivers from endangering the public safety.

{26} We therefore proceed to the second part of the inquiry, to determine whether the 2009 amendment "is so punitive either in purpose or effect as to negate the [Legislature's] intention." *Foy*, 2013-NMCA-043, ¶ 15 (internal quotation marks and citation omitted). We apply a seven-factor test, which entails evaluating:

> (1) whether the sanction involves an affirmative disability or restraint, (2) whether it has historically been regarded as a punishment, (3) whether it comes into play only on a finding of scienter, (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence, (5) whether the behavior to which it applies is already a crime, (6) whether an alternative purpose to which it may rationally be connected is assignable for it, and (7) whether it appears excessive in relation to the alternative purpose assigned.

Id. ¶ 16 (alterations, internal quotation marks, and citation omitted). We address each factor in turn.

{27} As to the first factor, we do not consider the ignition interlock requirement to be, on balance, an affirmative disability or restraint, as this factor has been interpreted and applied. Although compliance with the requirement may entail expense, and although an ignition interlock device may be inconvenient, these considerations do not approach the "infamous punishment of imprisonment." *Id.* ¶17 (internal quotation marks and citation omitted) (utilizing punishments entailing imprisonment or carrying the stigma of criminal conviction as the benchmarks for purposes of identifying sanctions that involve affirmative disability or restraint). While we do not deny that the installation of an ignition interlock device may "carry the stigma of a criminal conviction" because it is also required of offenders, we do not consider this factor to be a substantial disability or restraint because, as demonstrated by this case, an ignition interlock can be required without a criminal conviction. Moreover, and importantly, the larger ignition interlock scheme has a permissive, as opposed to disabling or constraining effect, because it allows individuals to obtain ignition interlock licenses and thereby to continue driving notwithstanding the revocation of their drivers' licenses. NMSA 1978, § 66-5-503 (2009, amended 2013). As a result, the first factor suggests that the 2009 amendment on balance is remedial rather than punitive in nature.

{28} With respect to the second factor, although in recent years an ignition interlock device has been required of DWI offenders, *see* § 66-8-102(N), we are aware of nothing to indicate that ignition interlock requirements have historically been regarded as punishment. The relative novelty of such requirements suggests no such historical sensibility.

{29} Turning to the third factor, scienter has no bearing on either the application of the ignition interlock requirement or the behavior that led to the preceding license revocation. *See State v. Orquiz*, 2012-NMCA-080, ¶ 15, 284 P.3d 418 (observing that "DWI is a strict liability crime"). This factor lends further support to the remedial nature of the 2009 amendment.

{30} Application of the fourth factor also yields mixed results. We are aware of nothing to suggest that imposition of the ignition interlock requirement is retributional. However, as we have discussed, the requirement may have a deterrent effect. *See Kennedy*, 1995-NMSC-069, ¶¶ 36-37 (recognizing that the sanction of license revocation has a deterrent effect). Nevertheless, "the fact that the regulatory scheme has some incidental deterrent effect does not render the sanction punishment[.]" *Id.* ¶ 37. In light of the larger purpose, which is clearly to enhance public

safety by keeping intoxicated drivers off of the roads, the deterrent effect of the ignition interlock requirement is relatively minor. *See id.* ¶¶ 35, 38 (holding that "[t]he deterrent effect of administrative license revocation is incidental" to the greater purpose "of protecting the public from the dangers presented by drunk drivers" and "enforc[ing] regulatory compliance with the laws governing the licensed activity of driving"). We therefore weigh this factor in favor of determining the 2009 amendment to be remedial.

{31} As to the fifth factor, insofar as ignition interlock devices are designed to prevent the driver from operating a vehicle if he or she is intoxicated or impaired, requiring the installation of such a device operates to prevent conduct that is already prohibited by law. *See* NMSA 1978, § 66-5-502(B) (2007, amended 2013) (defining "ignition interlock device" as a device "that prevents the operation of a motor vehicle by an intoxicated or impaired person"); § 66-8-102(A)-(C) (declaring driving under the influence of intoxicating liquor or drugs unlawful). This purpose suggests a punitive nature. *See Foy*, 2013-NMCA-043, ¶ 31 (observing that "when the behavior being punished is already a crime it points in favor of finding the statute to be punitive in nature"). However, "simply because the conduct to which the [sanction] applies is already a crime is insufficient, by itself, to render the sanction criminally punitive[.]" *Kirby*, 2003-NMCA-074, ¶ 38.

{32} With respect to the sixth factor, concerning alternative purposes, the ignition interlock requirement is "one of several tools of regulatory and administrative enforcement" that constitutes "an integral part of an overall remedial regulatory and administrative scheme to protect the public." *Foy*, 2013-NMCA-043, ¶ 33 (internal quotation marks and citation omitted); *see generally Kennedy*, 1995-NMSC-069, ¶¶ 29-35, 38, 42 (discussing the larger regulatory scheme that arises under the Implied Consent Act and related provisions, including Section 66-5-33.1, and noting that this scheme serves the purpose of protecting the public). This factor suggests that the 2009 amendment is remedial in nature.

{33} Finally, as to the seventh factor, we must consider whether the 2009 amendment "appears excessive in relation to the alternative purpose assigned." *Foy*, 2013-NMCA-043, ¶ 16 (internal quotation marks and citation omitted). "The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective." *Id.* ¶ 36 (internal quotation marks and citation omitted). We answer this question in the affirmative. In so doing, we note the "close and substantial relationship" between the ignition interlock requirement and the remedial purpose of protecting the public by keeping impaired drivers off of the roads. *Id.* ¶ 38; *see, e.g.*, *City of Albuquerque v. One (1) 1984 White Chevy Ut.*, 2002-NMSC-014, ¶ 16, 132 N.M. 187, 46 P.3d 94 (finding a "clear nexus between" the vehicles seized by the state and the crime of DWI); *Kennedy*, 1995-NMSC-069, ¶ 38 (finding the deterrent (*i.e.* punitive) aspects of revoking a driver's license after a conviction of DWI to be "incidental to the government's purpose of protecting the public"). Accordingly, this factor weighs in favor of concluding the ignition interlock requirement to be remedial.

{34} In sum, our analysis reveals that the ignition interlock requirement imposed by the 2009 amendment: (1) on balance does not impose an affirmative disability or restraint; (2) has not been historically viewed as punitive; (3) does not come into play only on a finding of scienter; (4) speaks more to regulating licensed conduct than promoting the traditional aims of punishment; (5) applies to conduct that is already a crime; (6) constitutes an integral part of an overall remedial regulatory and administrative scheme to protect the public; and (7) is not excessive in relation to its remedial purpose. Insofar as six of the seven factors indicate that the 2009 amendment is remedial, on balance, the remedial effects outweigh the punitive effects. *See, e.g.*, *Kirby*, 2003-NMCA-074, ¶¶ 38-39 (arriving at the same conclusion on a similar balance of the relevant factors).

{35} In light of the foregoing, we conclude that the 2009 amendment is not penal for purposes of the constitutional prohibition against ex post facto laws. Accordingly, MVD was improperly enjoined from applying the ignition interlock requirement to Yepa on that basis.

CONCLUSION

{36} For the reasons stated, we reverse.

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

JAMES J. WECHSLER, Judge

I CONCUR:
JONATHAN B. SUTIN, Judge

MICHAEL E. VIGIL, Chief Judge (dissenting).

VIGIL, Chief Judge., dissenting.

{38} It might seem odd to ask whether a mandatory sentence following a criminal conviction constitutes punishment. However, I respectfully submit that is the very question which this case presents. Considered in its proper light, Yepa is being subjected to an unconstitutional ex post facto law, and contrary to the holding of the majority, I would affirm.[2]

{39} The United States Constitution prohibits both the federal and state governments from enacting ex post facto laws. U.S. Const. art. 1, § 10, cl. 3 (prohibiting Congress from passing any ex post facto law); U.S. Const. art 1, § 10, cl. 1 (prohibiting any state from passing any ex post facto law). Such laws are also prohibited by the New Mexico Constitution in its own Bill of Rights. N.M. Const. art. II, § 19. "The Latin phrase 'ex post facto' implicates in its literal meaning any law passed 'after the fact.'" *Collins v. Youngblood*, 497 U.S. 37, 41 (1990); *see Foy*, 2013-NMCA-043, ¶ 10 (citation omitted). In my view, the federal and state constitutional prohibitions were violated in Yepa's case.

{40} Criminal actions and driver's license revocations work together. Breath tests of motorists must be administered pursuant to the Implied Consent Act, NMSA 1978, Sections 66-8-105 to -112 (1978, as amended through 2007). When a breath test gives a blood alcohol concentration of .08 or higher, the arresting officer "shall" charge the driver with a violation of NMSA 1978, Section 66-8-102 (2004), and on behalf of the MVD serves notice that the driver's license will be revoked for a period of six months, unless a hearing is requested. Section 66-8-110(C)(1); 66-8-111.1. Upon receipt of a statement signed under perjury from the police officer that a breath test was administered and the result was a blood alcohol concentration of .08 or higher, MVD revokes the driver's license for six months. Section 66-8-111(C)(1) (2005). These statutory provisions were followed. Yepa was administered a blood alcohol test, and because the results were above .08, he was charged with DWI (aggravated) in violation of Section 66-8-102(D)(1), and MVD revoked Yepa's license for six months on the basis that the result of his breath alcohol test was above the .08 per se limit.

[2]In all other respects, I concur with the majority opinion.

{41} When Yepa became eligible to have his driver's license reinstated in March 2009, there was no ignition interlock requirement for reinstatement. Section 66-5-3.1(B). However, when he did seek reinstatement in July, 2009, a law passed "after the fact" with an effective date of July 1, 2009, had an ignition interlock requirement. This new law now required "a minimum of six months of driving with an ignition interlock license" for license reinstatement. Section 66-5-33.1(B)(4) (2009). The question before us is whether requiring Yepa to comply with the new ignition interlock requirement violates the constitutional prohibition against ex post facto laws.

{42} "The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) (quoted in *State v. Ordunez*, 2012-NMSC-024, ¶ 14, 283 P.3d 282). A statute is "penal" when it makes criminal a previously innocent act, increases the punishment, or changes the proof necessary to convict the defendant. *Ordunez*, 2012-NMSC-024, ¶ 14; *State v. Romero*, 2011-NMSC-013, ¶ 10, 150 N.M. 80, 257 P.3d 900. Moreover, the constitutional prohibition against ex post facto laws applies to all penal statutes, even those that are labeled civil. *Foy*, 2013-NMCA-043, ¶¶ 12-15.

{43} In determining whether a statute is penal, the intent of the Legislature is controlling. *Id.* ¶ 15; *Smith v. Doe*, 538 U.S. 84, 92 (2003). Unlike the majority, I conclude that the intent of our Legislature has very clearly expressed its intention that a mandatory ignition interlock is penal. In 2005, our Legislature enacted significant amendments to the sentencing requirements for DWI convictions. One requirement is that upon a conviction for DWI, the sentencing judge must order installation of an ignition interlock device in the judgment and sentence:

> Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the [traffic safety] bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:
>
> (1) a period of one year, for a first offender;
>
> (2) a period of two years, for a second conviction pursuant to this section;
>
> (3) a period of three years, for a third conviction pursuant to this section; or
>
> (4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

Section 66-8-102(N) (2005). *See* NMSA 1978, Section 66-5-503(B)(1) (2009) (stating that one of the requirements for obtaining an ignition interlock license is installation of an ignition interlock device on any vehicle driven).

{44} "The establishment of criminal penalties is a legislative function." *State v. Pendley*, 1979-NMCA-036, ¶ 23, 92 N.M. 658, 593 P.2d 755. The Legislature could not be any clearer in expressing its intent that mandatory installation of an ignition interlock device constitutes punishment for committing the criminal offense of DWI. This becomes even more evident when one considers that this mandatory sentence was added to other existing penalties for DWI. As such, only the clearest proof should suffice to override the Legislature's intent and transform what it has denominated a criminal penalty into a civil and nonpunitive regulation. *See Hudson v. United States*, 522 U.S. 93, 100 (1997) (stating that "only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty[.]" (internal quotation marks and citation omitted)).

{45} When Yepa was arrested and charged with aggravated DWI in September 2008, the penalty included mandatory installation of an ignition interlock device for a period of one year, Section 66-8-102(N) (2008), and there was no such penalty for reinstatement of a driver's license. After July 1, 2009, however, a new six-month penalty was imposed for reinstatement. *See Collins*, 497 U.S. at 43 ("Legislatures may not retroactively . . . increase the punishment for criminal acts."). It belies reason to conclude that mandatory installation of an ignition interlock device following a criminal conviction is punishment but mandatory installation of an ignition interlock device for reinstatement of a driver's license is not punishment. They are the same.

{46} "If the intention of the legislature was to impose punishment, that ends the inquiry." *Smith*, 538 U.S. at 92. The majority acknowledges that the threshold question is whether the Legislature intended to impose punishment. Majority Opinion ¶ 21. We have already concluded that the Legislature intended mandatory installation of an ignition interlock device to constitute punishment. In *State v. Valdez*, 2013-NMCA-016, ¶ 12, 293 P.3d 909, we noted: "The DWI statute is part of a broad legislative scheme, including the State's separate Ignition Interlock Licensing Act, which applies to those whose "privilege or driver's license has been revoked or denied." Section 66-5-503(A)." We concluded: "The goal of the Legislature was to criminalize DWI and to penalize it with mandatory installation of ignition interlock devices[.]" *Id*. Thus, the majority fails to properly account for the fact that the Legislature imposed mandatory installation of an ignition interlock device as a penalty for DWI, and that this penalty was increased by an additional six months under the new law.

{47} The majority then assumes that the MVD requirement is part of a regulatory scheme that is civil and nonpunitive. Majority Opinion ¶¶23-25. Finally, the majority then proceeds to analyze whether that statutory scheme is so punitive in either purpose or effect so as to negate its civil, nonpunitive purpose. Majority Opinion ¶¶ 26-34. In my opinion, this analysis does not apply because the legislative intent is clearly expressed that mandatory installation of an ignition interlock device is punishment for DWI.

{48} For the foregoing reasons, I dissent from the holding that MVD was improperly enjoined from applying the interlock requirement to Yepa on the basis that the 2009 amendment is not penal under the constitutional prohibition against ex post fact laws. I would affirm.

MICHAEL E. VIGIL, Chief Judge

Classified

Positions

Associate Attorney

Bauman, Dow & Stambaugh, P.C. is seeking a litigation attorney with 1 - 5 years of experience. Candidates must have excellent research and writing skills and must be licensed in New Mexico. (Exceptional candidates who are licensed in another jurisdiction and who are willing to sit for the New Mexico bar exam will be considered) Moot court or journal experience is preferred. Our litigation is often complex, multi-party and plaintiff oriented. We would like to find the right person who will help take on our clients' causes and pursue them vigorously. We offer competitive compensation, employer matched 401(k), and 100% employer paid Presbyterian health insurance, which includes gym membership. Please email resume and writing sample to drs@bdsfirm.com

CYFD Attorney

The Children, Youth and Families Department is seeking to fill a vacant Children's Court Attorney Senior Position. Salary range is $39-$69K annually, depending on experience and qualifications. The attorney will represent the department in abuse/neglect and termination proceedings and related matters. The ideal candidate will have experience in the practice of law totaling at least three years and New Mexico licensure is required. Children's Court Attorney Senior position is located in Santa Fe, New Mexico. Benefits include medical, dental, vision, paid vacation, and a retirement package. Please contact the following for information on how to apply and to ascertain the closing date for the position. Mario Gonsalves (505) 699-9763 or mario.gonsalves@state.nm.us. The state of New Mexico is an EOE. To apply for this position go to www.state.nm.us/spo/ and click on JOBS, then click on Apply for a Job Online.

Assistant District Attorney

The Fifth Judicial District Attorney's office has an immediate opening for a Felony Level Prosecutor position with 1-2 years experience required. The Felony Level Prosecutor position is in the Roswell, NM District Attorney's Office. Starting pay $55,000. Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs , NM 88240-8335 or e-mail to DLuce@da.state.nm.us.

Amazing Bilingual Advocate Needed!

Immigration law firm seeks full time associate attorney with passion and commitment to advocate for immigrants in all areas of relief. Inclusive, supportive office culture that welcomes all to apply. Position available immediately. Must be fluent in Spanish. NM License preferred. No experience necessary. Salary DOE, full benefits offered. E-mail letter of interest, resume, and writing sample to Rebecca Kitson at rk@rkitsonlaw.com. We will not contact you unless you are being considered for the position and incomplete applications will be immediately discarded.

Immigration Attorney

Catholic Charities of Southern New Mexico is seeking an Immigration Attorney. The attorney will supervise the cases of legal staff and will also maintain their own caseload. Candidate must have graduated from an accredited law school and be licensed to practice law. Fluency in written and oral English and Spanish is required. Prior experience in immigration law strongly preferred. Competitive salary including benefits. Cover letter detailing qualifications, CV and three professional references should be sent to: Catholic Charities of Southern New Mexico, Immigration Attorney Search, 2215 South Main Street, Suite B, Las Cruces, New Mexico 88005 or kf@catholiccharitiesdlc.org.

Assistant General Counsel - Lawyer Advanced (NMDOT)

The New Mexico Department of Transportation is recruiting to fill a Lawyer Advanced position. The position provides representation of the Department in construction claims and litigation in state and federal court, in construction and procurement-related administrative hearings, and in other practice areas as assigned by the General Counsel. Experience in construction litigation, governmental entity defense litigation or representation in complex civil litigation matters is highly desirable. Experience in environmental law, public works procurement or financing or transportation planning would be useful. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which three (3) years must be in litigation. The position is a Pay Band 80, annual salary range from $44,782 to $77,917 depending on qualifications and experience. All state benefits will apply. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions: Primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at http://www.spo.state.nm.us/, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Jason Giron, Human Resources Division, New Mexico Department of Transportation, located at 1120 Cerrillos Road, Room 135, P.O. Box 1149, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

Associate Attorney

Hatcher Law Group, P.A. seeks a new associate attorney with two-plus years of legal experience for our downtown Santa Fe office. We are looking for someone not only ready for the challenge of a heavy caseload, but also motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and opportunities for future growth. Send your cover letter, resume and a writing sample via email to juliez@hatchertebo.com.

Las Cruces Attorney

Holt Mynatt Martínez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking an associate attorney with 3-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to bb@hmm-law.com.

Associate Attorney

Stiff, Keith & Garcia, LLC is receiving applications for an associate attorney position to practice in the areas of insurance defense and civil litigation. Strong academic credentials, and research and writing skills are required. Spanish speaking a plus. You should be able to work without supervision, have great people skills, and have a strong work ethic. Excellent benefits and salary. Great working environment with opportunity for advancement. We are a successful and growing law firm representing national clients across the state. Send resume to resume01@swcp.com.

Underdog Lawyer

Looking for a parttime lawyer or third year law clerk for small and welcoming public interest / civil rights Albuquerque law office; self-starter; Spanish speaking preferred. I can provide parttime salary, flexible hours, referrals, great mentoring, and centrally located office space, including staff, parking and office equipment. Send resume, letter of interest including suggested salary, unedited writing sample to nlsstaff@swcp.com.

Litigation Associate Attorney

McCarthy Holthus, LLP, a well-established multi-state law firm successfully representing financial institutions in a variety of banking law matters and specializing in mortgages in default is currently seeking a Litigation Associate Attorney to join our team in its Albuquerque, NM office. The responsibilities of the qualified candidate will include, but are not limited to, providing legal advice and support to clients, serve as primary legal contact with clients concerning litigation, client compliance issues and surveys of the law as requested by the Managing Litigation Attorney; research and analyze legal sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes; prepares legal briefs, pleadings, appeals, contracts, and any other necessary legal documentation during the course of litigation; handle litigation cases from referral to resolution, which may necessitate the use of written and oral advocacy, motion practice, discovery, and trial preparation; and participation in mediation. The qualified candidate must possess 1-4 years' litigation experience preferably in the area of finance or representation of financial institutions in real estate related matters. Licensed to practice law in New Mexico and all New Mexico District Courts. McCarthy Holthus offers a comprehensive benefits package including competitive paid time-Off (PTO) *** All applicants must apply through our website at, https://workforcenow.adp.com/jobs/apply/posting.html?client=mypremier ***

Legal Assistant

LEGAL ASSISTANT for small, busy civil defense firm. Experience in legal field REQUIRED. Applicant needs strong people and organizational skills, and ability to work both independently and as part of a team. Compensation DOE. Inquires to lmcdonald@brucemcdonaldlaw.com. Law Offices of Bruce S. McDonald. No phone calls please.

Services

Full-Charge Bookkeeper

Full-Charge Bookkeeper, profitminder@gmail.com

Contract Paralegal

Paralegal with 25+ years of experience available for work in all aspects of civil litigation on a freelance basis. Excellent references. civilparanm@gmail.com.

Office Space

Corrales, NM Office Space

Share beautiful office space with an experienced trial lawyer. Spectacular mountain views serve as the backdrop for two available offices. Rent includes receptionist, furnishings, space for support staff, access to conference room and ample parking. For more information call Jim Ellis at (505) 266-0800.

Need Office Space?

Plaza500 located in the Albuquerque Plaza Office building at 201 3rd Street NW offers all-inclusive office packages with terms as long or as short as you need the space. Office package includes covered parking, VoIP phone with phone line, high-speed internet, free WiFi, meeting rooms, professional reception service, mail handling, and copy and fax machine. Contact Sandee at 505-999-1726 or sgalietti@allegiancesw.com.

Uptown Square Prime Office Space Available

1474SF and 2324SF professional office space. High quality improvements can be modified or developed to Tenants specification. Great visibility and access. Convenient access to I-40. On site amenities include Bank of America and companion restaurants. Surrounded by nearby shopping, ample parking and Full Service Lease. Call John Whisenant or Ron Nelson (505) 883-9662 for more information.

Santa Fe Professional Office

Located in the St Francis Professional Center, share an office suite with two other established attorneys. Large reception area, conference room, kitchenette. Ample parking. Call Donna 982-1443.

Miscellaneous

Searching For Betty Beilman's Will!

She lived in Angel Fire and Albuquerque. (580) 458-7828