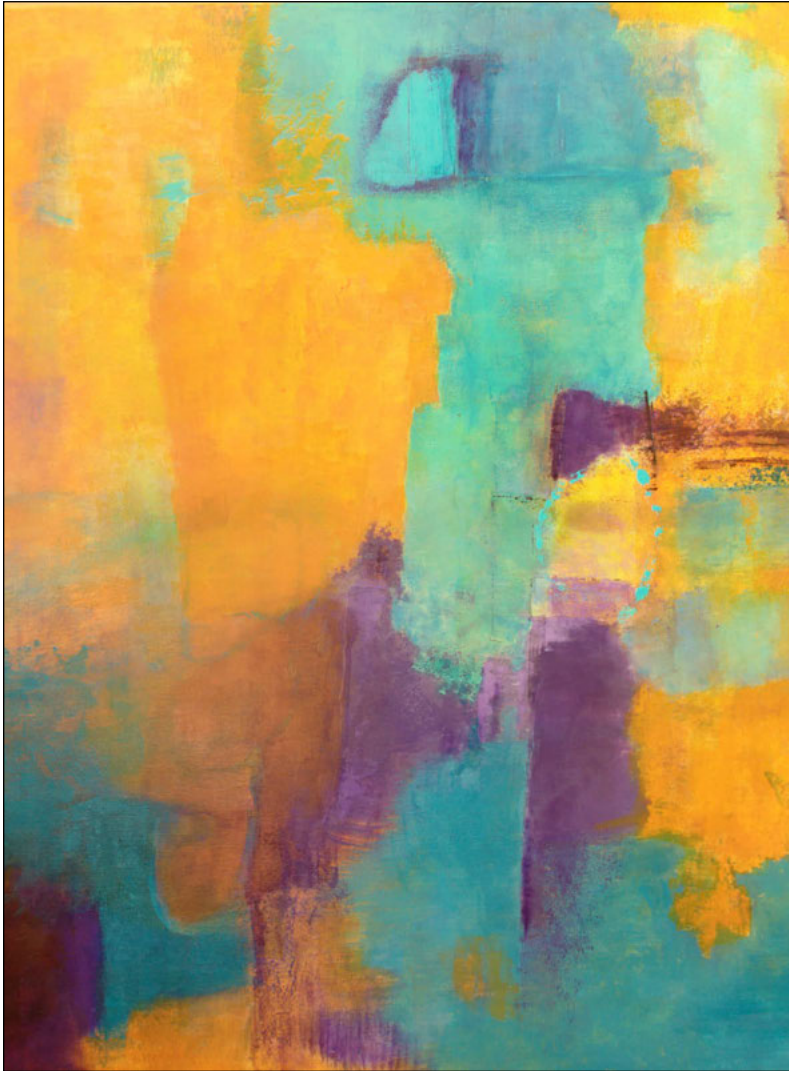


BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

February 17, 2016 • Volume 55, No. 7



Spirit, by Linda Holland

www.lindahollandstudio.com

Inside This Issue

Table of Contents	3
Entrepreneurs in Community Lawyering, A Program by the New Mexico State Bar Foundation	9
Clerk's Certificates	15
From the New Mexico Court of Appelas	
2015-NMCA-108, No. 32,762: Hoyt v. State	18
2015-NMCA-109, No. 32,379: Williams v. BNSF Railway Company	24
2015-NMCA-110, No. 33,297: State v. Wyatt B.	28



You're Invited!

Friday, Feb. 26 • 4 p.m.
See back cover for details.

—SPECIAL INSERT—
CLE Planner

Need An Experienced Trial Partner In Your Foxhole?



Visit: TrialPartnerOnDemand.com

There Are Times When A Reasonable Settlement Cannot Be Achieved. That Is When A Jury Trial Is Your Client's Only Route To A Fair Resolution. It Also Is A Rare Opportunity For A Fun And Rewarding Courtroom Experience. But Only If You Have The Firepower You Need To Compete And Win.

When Your Team Needs To Add A Battle-Tested Trial Lawyer – With A Preeminent Peer-Review Rating For Twenty Consecutive Years – Please Go To TrialPartnerOnDemand.com. Find The Reinforcements You Need Instantaneously, At The Click Of A Mouse. And When The Case Is Over, Your Reduction In Force Back To Its Original Size Is Equally As Fast And Trouble-Free.

TrialPartnerOnDemand.com

Lightning-Fast Consultations. Strictly Confidential. No Obligation.



Officers, Board of Bar Commissioners

J. Brent Moore, President
 Scotty A. Holloman, President-elect
 Dustin K. Hunter, Vice President
 Gerald G. Dixon, Secretary Treasurer
 Mary Martha Chicoski, Immediate Past President

Board of Editors

Bruce Herr, Chair	Michael Sievers
Jamshid Askar	Andrew Sefzik
Nicole L. Banks	Mark Standridge
Alex Cotoia	Carolyn Wolf
Curtis Hayes	Nancy Vincent

State Bar Staff

Executive Director Joe Conte
 Communications Coordinator/Editor
 Evann Kleinschmidt
 505-797-6087 • notices@nmbar.org
 Graphic Designer Julie Schwartz
 jschwartz@nmbar.org
 Account Executive Marcia C. Ulibarri
 505-797-6058 • mulibarri@nmbar.org
 Digital Print Center
 Manager Brian Sanchez
 Assistant Michael Rizzo

©2016, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmbar.org.

The *Bar Bulletin* (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
 Email: address@nmbar.org • www.nmbar.org

February 17, 2016, Vol. 55, No. 7

Table of Contents

Notices	4
Legal Education Calendar	6
Court of Appeals Opinions List.....	8
Entrepreneurs in Community Lawyering, A Program by the New Mexico State Bar Foundation.....	9
Writs of Certiorari	12
Clerk's Certificates	15
Recent Rule-Making Activity	17
Opinions	
From the New Mexico Court of Appelas	
2015-NMCA-108, No. 32,762: Hoyt v. State	18
2015-NMCA-109, No. 32,379: Williams v. BNSF Railway Company	24
2015-NMCA-110, No. 33,297: State v. Wyatt B.....	28
Advertising	35

Meetings

February

- 19**
Family Law Section BOD,
 9 a.m., teleconference
- 19**
Trial Practice Section BOD,
 Noon, State Bar Center
- 23**
Intellectual Property Law Section BOD,
 Noon, teleconference
- 25**
**Natural Resources, Energy and
 Environmental Law Section BOD,**
 Noon, teleconference
- 26**
Immigration Law Section BOD,
 Noon, teleconference

March

- 1**
Health Law Section BOD,
 9 a.m., teleconference
- 2**
Employment and Labor Law Section BOD,
 Noon, State Bar Center
- 4**
Bankruptcy Law Section BOD,
 Noon, U.S. Bankruptcy Court
- 4**
Criminal Law Section BOD,
 Noon, Kelley & Boone, Albuquerque

State Bar Workshops

February

- 17**
Family Law Clinic:
 10 a.m.–1 p.m., Second Judicial District
 Court, Albuquerque, 1-877-266-9861
- 24**
Consumer Debt/Bankruptcy Workshop:
 6–9 p.m., State Bar Center, Albuquerque,
 505-797-6094

March

- 2**
Divorce Options Workshop:
 6–8 p.m., State Bar Center, Albuquerque,
 505-797-6003
- 2**
Civil Legal Clinic:
 10 a.m.–1 p.m., Second Judicial District
 Court, Albuquerque, 1-877-266-9861
- 8**
Legal Clinic for Veterans:
 8:30–11 a.m., New Mexico Veterans
 Memorial, Albuquerque,
 505-265-1711, ext. 3434
- 16**
Family Law Clinic:
 10 a.m.–1 p.m., Second Judicial District
 Court, Albuquerque, 1-877-266-9861
- 23**
Consumer Debt/Bankruptcy Workshop:
 6–9 p.m., State Bar Center, Albuquerque,
 505-797-6094

Cover Artist: Linda Holland layers and blends color, intuitively responding to shades and textures which evoke patinas of urban and natural realms. Gesture and motion flow from martial arts and musical rhythms. Her abstract sculptures and paintings have been featured in numerous solo and two person shows in New Mexico as well as juried regional group exhibits. In addition to corporate and private collections, several of her works have been selected for state, municipal and university art collections. Other paintings can be viewed at www.lindahollandstudio.com.

Notices

COURT NEWS

Pueblo of Jemez Tribal Court Tribal Judge Opening

There is an opening for a tribal judge with the Pueblo of Jemez. The position will be responsible for direction and administration of justice for the Pueblo of Jemez' Tribal Court and judiciary functions; advises executive leadership on judicial system management and strategic planning, develops, modifies and enforces judicial safeguards. Qualifications include a law degree from an ABA accredited law school, five years of general judicial experience to include court procedures, three years of experience in specified duties and responsibilities and experience and/or practice in the field of Indian law with emphasis on federal Indian law, tribal law, tribal sovereignty, tribal government and jurisdiction. For more information, visit the www.jemeztribe.org or call the Human Resources Department at 575-834-7359.

STATE BAR NEWS

Attorney Support Groups

- March 14, 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#.
- March 21, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
- April 4, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)

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

Animal Law Section Rescue Adoption Contracts Animal Talk

Guy Dicharry will present "Animal Rescue Adoption Contracts and the Uniform Commercial Code" at the next Animal Talk at noon on Feb. 24 at the State Bar Center. Cookies and drinks will be provided. R.S.V.P. to Evann Kleinschmidt, ekleinschmidt@nmba.org.

Professionalism Tip

With respect to my clients:

I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees.

Entrepreneurs in Community Lawyering

Announcement of New Program

The New Mexico State Bar Foundation announces its new legal incubator initiative, Entrepreneurs in Community Lawyering. ECL will help new attorneys to start successful and profitable, solo and small firm practices throughout New Mexico. Each year, ECL will accept three licensed attorneys with 0-3 years of practice who are passionate about starting their own solo or small firm practice. ECL is a 24 month program that will provide extensive training in both the practice of law and how to run a law practice as a successful business. ECL will provide subsidized office space, office equipment, State Bar licensing fees, CLE and mentorship fees. ECL will begin operations in October and the Bar Foundation will begin accepting applications from qualified practitioners on March 1. To view the program description, www.nmba.org/ECL.

Public Law Section Accepting Award Nominations

The Public Law Section is accepting nominations for the Public Lawyer of the Year Award, which will be presented at the state capitol on April 29. Visit www.nmba.org > About Us > Sections > Public Lawyer Award to view previous recipients and award criteria. Nominations are due no later than 5 p.m. on March 10. Send nominations to Sean Cuniff at scuniff@nmba.org. The selection committee will consider all nominated candidates and may nominate candidates on its own.

UNM Law Library Hours Through May 14

Building & Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	Noon–6 p.m.
<i>Reference</i>	
Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed

Women's Law Caucus Justice Mary Walters Award

Each year the Women's Law Caucus at UNM School of Law chooses two outstanding women in the New Mexico legal community to honor in the name of former Justice Mary Walters, who was the first woman appointed to the New Mexico Supreme Court. In 2016 the WLC will honor Judge Cynthia Fry and Bonnie Stepleton. The WLC invites the New Mexico legal community to the awards dinner on Feb. 24 at Hotel Andaluz in Albuquerque. Individual tickets for the dinner can be purchased for \$90. Tables can be purchased for \$600 and seat approximately eight people. Event sponsorship is also available for \$600 and includes a table for eight. To purchase tickets, visit www.lawschool.unm.edu/students/organizations/wlc/. For more information, contact WLC President Dana Beyer at beyerd@law.unm.edu.

OTHER BARS Albuquerque Lawyers Club March Luncheon and Meeting

The Albuquerque Lawyers Club invites members of the legal community to its lunch meeting at noon, March 2, at Season's Rotisserie and Grill in Albuquerque. Jeffrey Lewine, Ph.D., of the Mind Research Network, and Lyn Kiehl, director of MINDSET will present "Neuroscience: From the Laboratory to the Courtroom." The luncheon is free to members and \$30 for non-members. For more information, email Yasmin Denig at ydenig@sandia.gov.

First Judicial District Court Bar Association Ski Day in Santa Fe

Join the First Judicial District Bar Association at Ski Santa Fe on Feb. 27. Families are welcome. Enjoy discounted half- and full-day lift tickets (half-day: \$35, full-day: 45, beginner's chairlift: \$20). To purchase tickets, contact Erin McSherry at erin.mcsherry@state.nm.us. Payment for all guests is due by Feb. 25. Discounted tickets may not be purchased through Ski Santa Fe.

New Mexico Criminal Defense Lawyers Association White Collar Crime CLE

Learn the latest updates and trends in charging health care cases, grand jury practice, and submitting budget requests for adequate funding at the New Mexico Criminal Defense Lawyers Association's upcoming CLE "White Collar Crime & Complex Cases" on March 11 at the Garrett's Desert Inn in Santa Fe. Hear from some of the leading practitioners in the state on these issues and more. Visit www.nmcdla.org for more information and to register.

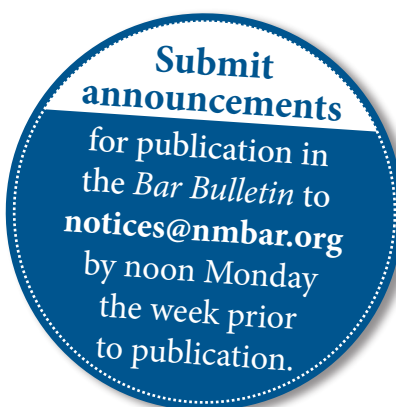
OTHER NEWS

Center for Civic Values Judges Needed for High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition is in need of judges for the regional rounds. The regional competition will be held Feb. 19-20 and will be hosted by the Bernalillo County Metropolitan Court. Every year, hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. To sign up, visit www.civicvalues.org/judge-volunteer-registration by Feb. 12. For more information, contact Kristen at CCV at 505-764-9417 or Kristen@civicvalues.org.

New Mexico Lawyers for the Arts Volunteers Needed for Pro Bono Legal Clinic

New Mexico Lawyers for the Arts and WESST/Albuquerque seek attorneys to volunteer for the New Mexico Lawyers for the Arts Pro Bono Legal Clinic from 10 a.m. to 1 p.m., March 19, at the WESST Enterprise Center, 609 Broadway Blvd. NE, Albuquerque. Continental Breakfast will be provided. Clients will be creative professionals, artists or creative businesses. Attorneys are needed to assist in many areas including contracts, business law, employment matters, tax law, estate planning and intellectual property law. For more information and to participate, contact Talia Kosh at tk@thebennettlawgroup.com.



—Featured— Member Resource

ATTORNEY RESOURCE HELPLINE

Provides State Bar members and non-admitted attorneys information and referrals in the areas of attorney regulation, ethics, registrations (non-admitted, pro hac vice, legal service and emeritus), rules, and general practice.

Contact the Office of General Counsel, rspinello@nmbar.org, 800-876-6227.



New Mexico Lawyers and Judges Assistance Program

Help and support are only a phone call away.

24-Hour Helpline

Attorneys/Law Students

505-228-1948 • 800-860-4914

Judges

888-502-1289

www.nmbar.org > for Members >
Lawyers/Judges Assistance

Legal Education

February

- | | | |
|--|--|---|
| <p>18 Special Issues in Small Trusts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Intellectual Property and Entrepreneurship (Representing Technology Start-ups in New Mexico 2015)
3.5 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Mediation Skills Training
8.5 G
Live Seminar
First Judicial District Court
505-463-1354</p> |
| <p>19 Current Immigration Issues for the Criminal Defense Attorney (2015 Immigration Law Institute)
5.0 G, 2.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 A Practical Guide to Trial Practice Part 2 (2015 Trial Know-How! Courtroom Skills from A to Z)
3.5 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Tenth Circuit Winter Meeting & Social Security Disability Practice Update
5.0 G, 1.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 Estate Planning and Ethical Considerations for Probate Lawyers (2015 Probate Institute)
3.0 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Civil Rights and Diversity: Ethics Issues
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Drafting Promissory Notes to Enhance Enforceability
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

March

- | | | |
|---|--|---|
| <p>2 Strategies to Prosecute Sexual Assault Cases in New Mexico
13.2 G
Live Seminar
New Mexico Coalition of Sexual Assault Programs
www.nmcsap.org</p> | <p>10 Estate and Gift Tax Audits
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 The Future of Cross-commissioning: What Every Tribal, State and County Lawyer Should Consider post Loya v. Gutierrez
2.5 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>4 31st Annual Bankruptcy Year in Review Seminar
6.0 G, 1.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 Navigating New Mexico Public Land Issues (2015)
5.5 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 White Collar Crime & Complex Cases: The Clients, the Charges, the Costs
6.7 G
Live Seminar, Santa Fe
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> |
| <p>4 How Ethics Still Apply When Lawyer's Act as Non-Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 Federal Practice Tips and Advice from U.S. Magistrate Judges (2015)
2.0 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Estate and Trust Planning for Short Life Expectancies
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Foreclosure Litigation Defense
6.0 G
Live Seminar, Albuquerque
Gleason Law Firm LLC
gleasonlawfirm@gmail.com</p> | <p>11 Law Practice Succession-A Little Thought Now, a Lot Less Panic Later (2015) 2.0 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 2015 Tax Symposium (2015)
7.0 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> |

March

- | | | |
|---|--|--|
| <p>18 The Trial Variety: Juries, Experts and Litigation (2015)
6.0 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Ethics and Keeping Your Paralegal and Yourself Out of Trouble
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Tech Tock, Tech Tock: Social Media and the Countdown to Your Ethical Demise
3.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Ethically Managing Your Practice (Ethicspalooza Redux – Winter 2015)
1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Avoiding Family Feuds in Trusts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics—2016 Edition
3.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Civility and Professionalism (Ethicspalooza Redux – Winter 2015)
1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Legal Technology Academy for New Mexico Lawyers
4.0 G, 2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Drafting Demand Letters
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

April

- | | | |
|--|---|---|
| <p>5 Planning Due Diligence in Business Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 Governance for Nonprofits
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Employees, Secrets and Competition: Non-Competes and More
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>7 Treatment of Trusts in Divorce
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Ethics for Estate Planners
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

Opinions

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

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

Effective February 5, 2016

Published Opinions

No. 34108	3rd Jud Dist Dona Ana CV-13-1914, R CASTILLO v J ARRIETA (reverse and remand)	2/2/2016
No. 33564	8th Jud Dist Taos CR-12-108, STATE v R CARDENAS (reverse)	2/2/2016
No. 33837	5th Jud Dist Chaves CR-13-151, STATE v C ORTIZ-CASTILLO (affirm)	2/3/2016

Unpublished Opinions

No. 34562	6th Jud Dist Grant JQ-13-7, CYFD v JASON R (affirm)	2/1/2016
No. 34948	AD AD L -0569171920, IN RE B EASTWOOD (affirm)	2/2/2016
No. 34369	13th Jud Dist Valencia CV-14-232, C DIAZ v O JOE (dismiss)	2/2/2016
No. 34935	2nd Jud Dist Bernalillo CV-10-4182, US BANK v M MARTINEZ (affirm)	2/2/2016
No. 34559	2nd Jud Dist Bernalillo LR-13-118, STATE v T THOMPSON (affirm)	2/2/2016
No. 33810	2nd Jud Dist Bernalillo CR-11-1222, CR-11-1221, STATE v T & S PACHECO (affirm)	2/2/2016
No. 34942	4th Jud Dist San Miguel CV-14-19, DEUTSCHE BANK v E LUCERO (dismiss)	2/2/2016
No. 33837	5th Jud Dist Chaves CR-13-151, STATE v C ORTIZ-CASTILLO (affirm)	2/3/2016
No. 34854	8th Jud Dist Taos CR-11-55, CR-12-24, STATE v E ROYBAL (reverse)	2/3/2016
No. 35016	2nd Jud Dist Bernalillo LR-14-47, STATE v A CLY (affirm)	2/3/2016
No. 32886	2nd Jud Dist Bernalillo CR-10-5911, STATE v B BACA (vacate and remand)	2/4/2016
No. 34342	2nd Jud Dist Bernalillo CV-12-2860, LOS ALAMOS v W JOHNSON (dismiss)	2/4/2016
No. 34856	2nd Jud Dist Dona Ana CR-14-422, STATE v J MENDEZ-MENDEZ (affirm)	2/4/2016

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

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

Entrepreneurs in Community Lawyering

A Program of the New Mexico State Bar Foundation

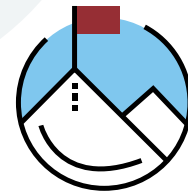
The New Mexico State Bar Foundation is excited to announce its new **Legal Incubator** initiative, **Entrepreneurs in Community Lawyering (ECL)**. ECL will help new attorneys start successful and profitable solo and small firm practices throughout New Mexico. Each year, ECL will accept three licensed attorneys (participants) with up to three years of practice who are passionate about starting their own solo or small firm practice. ECL is a 24 month program that will provide extensive training in both the practice of law and how to run a law practice as a successful business. ECL will provide subsidized office space and use of office equipment. In addition, participants will not be charged for State Bar licensing fees, CLE courses or mentorship fees while in the program.

In particular, ECL will help participants explore areas and methods of practice that focus on meeting the needs of moderate-income people. These New Mexicans can afford to pay for legal services but often end up representing themselves, forgoing the legal help they need, or turning to online services because they cannot afford traditional legal service models. This unmet need for legal services creates an excellent business opportunity for new attorneys who want to open solo and small firm practices.

What is a Legal Incubator?

Legal incubators assist new attorneys in starting their own practices. They provide a work environment in which participating attorneys can gain experience managing a law practice. Generally, incubators encourage lawyer participants to create practices that are centered on providing affordable legal services to moderate-income people. Ideally, upon completion of the program, incubator graduates will launch sustainable and profitable law practices, while continuing to provide affordable legal services.

The legal incubator concept has gained significant popularity in recent years as a way of addressing the need for additional training for new attorneys and meeting the largely, unmet needs of modest-income populations. The first legal incubator was started by Fred Rooney at City University of New York in 2007. Since that time approximately 50 legal incubators have been started by law schools, bar foundations, and other organizations across the country. The ABA Standing Committee on the Delivery



Program Goals

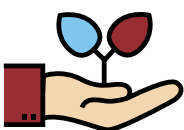
- Train new attorneys to be successful solo practitioners
- Ensure that modest-income New Mexicans have access to affordable legal services
- Expand legal services in rural areas of New Mexico



Who can apply?

- Licensed attorneys with up to three years of practice
- The New Mexico State Bar Foundation will begin accepting applications in March.
- Visit www.nmbar.org/ECL to apply, for the official Program Description and additional resources.

Participants Receive



- Hands-on legal training
- Training in law practice management
- Help establishing alternative billing models
- Subsidized office space/equipment
- Access to client referral programs
- Networking opportunities
- Free CLE, bar dues, mentorship fees
- Free legal research tools, forms bank
- Low-cost malpractice insurance

of Legal Services has a sub-section dedicated to legal incubators that includes a list of incubator programs around the country on its website (www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html).

Why New Mexico Needs a Legal Incubator

New Mexico is a geographically large state with a significant population of modest-income residents. While the state has a number of programs directed at providing legal services to very low-income residents, accessible and affordable legal services for people of modest means are not well established or consistently available. Many moderate-income New Mexicans can afford to pay a modest amount for legal assistance. However, they cannot afford the normal rates or total amount of fees that attorneys reasonably accrue in traditional legal service models. Many times these individuals are forced to represent themselves which often does not achieve the best results for the individuals and causes numerous problems for the courts. ECL will help fill this gap by helping new attorneys start successful and profitable practices that serve people of modest-means throughout New Mexico.

Program Overview

ECL will have two components: an educational component and a participation component.

The educational component is a program of the New Mexico State Bar Foundation (the Bar Foundation), a non-profit, 501(c)(3) corporation. The Bar Foundation will physically house ECL and provide many other resources and services that will benefit ECL. ECL will be run by a director who has significant experience in the practice of law, law office management, and a commitment to teaching, community outreach and access to justice.

The participation component is made up of the new attorneys participating

in ECL. Each participant is responsible for setting up his/her corporate business structure. While in the program, participants will develop their businesses, which will continue with little or no modification when they leave the program.

Each participant will: obtain his/her own professional liability insurance, bank accounts (including a trust account), required state and city business licenses; set up his/her own client files and billing system; have his/her own letterhead, business cards, and website; be responsible for finding his/her own clients and managing cases. The State Bar referral programs, and referrals from civil legal service providers are available to participants to assist them in finding clients.

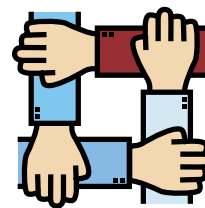
Program Specifics

ECL will offer a flexible, 24-month program with three new participants accepted into the program each year.

Participants will be encouraged to structure their fees to accommodate modest-means clients. To that end, participants will be encouraged to consider alternative billing methods, offer unbundled services and limited scope representation, and consider other innovative business practices to maintain the desired affordability.

Participants will be encouraged to primarily practice in the specific areas of law most needed by the target population. These areas include family law, business law for small businesses and startups, consumer law, SSDI, employment law, workers' compensation, landlord/tenant disputes, unemployment insurance, adult guardianship and simple estate planning.

Each participant will sign a participant agreement/contract with ECL. This agreement defines the rights, responsibilities and obligations of the participants and ECL. By signing the agreement, participants agree to abide by the rules of the program regarding



Steering Committee Members

- **Josh Allison** (Sheehan & Sheehan, PA; Board of Bar Commissioners)
- **Jorge Alvarado** (chief public defender)
- **Sara Berger** (Sara Berger Attorney at Law LLC)
- **Jack Brant** (Law Office of Jack Brant PC)
- **Martha Chicowski** (immediate past president, Board of Bar Commissioners; Glasheen Valles & Inderman LLP)
- **Joe Conte** (executive director, State Bar of New Mexico)
- **Judge Bradford J. Dalley** (11th Judicial District)
- **Jeremy Faulkner** (student representative, UNM School of Law)
- **Judge Cynthia A. Fry** (ret.) (New Mexico Court of Appeals)
- **Heather Harrigan** (assistant dean for student & career services, UNM School of Law)
- **Ed Marks** (executive director, New Mexico Legal Aid)
- **Serge Martinez** (assistant professor, UNM School of Law)
- **Judge Nan G. Nash** (ATJ liaison; chief judge, Second Judicial District)
- **Ruth Pregonzer** (Pregonzer Baysinger Wideman and Sale)
- **Stormy Ralstin** (director of legal services, New Mexico State Bar Foundation)
- **Antonia Roybal-Mack** (Roybal-Mack Law PC; State Bar Young Lawyers Division Board of Directors)
- **Maureen A. Sanders** (Sanders & Westbrook PC)
- **William D. Slease** (chief disciplinary counsel, Disciplinary Board of the New Mexico Supreme Court)
- **Judge Linda M. Vanzi** (New Mexico Court of Appeals)
- **Julie Vargas** (Hunt & Davis PC; Board of Bar Commissioners)

practice areas, attending training, pro bono time, rent/lease agreement, mentoring of fellow participants and updating of program resources.

Eligibility and Application

All attorneys licensed to practice in New Mexico with zero to three years of practice experience are eligible for ECL. Applicants must provide a statement of interest, résumé and a business plan. Prospective participants must be licensed to practice in New Mexico (or have passed the bar exam) at the time they begin the program.

Recent law school graduates are eligible, regardless of where they attended law school. Strong preference will be given to attorneys who express a desire to practice in New Mexico, with

additional preference given to attorneys who want to work in rural areas of the state. Preference will also be given to attorneys who express a desire to focus their subsequent practice on modest-income clients.

Participant Training

The ECL curriculum will be designed to address the practical needs of a lawyer who is just beginning his or her practice with a strong training emphasis on helping participants create sustainable business models to provide quality legal services to people of modest means throughout New Mexico. ECL will provide participants training in substantive areas of law and business/law practice management, the use of technology in a firm, trust accounting, the demands of a civil

practice, client and case selection, case preparation, file management, client communication, civil litigation techniques, ethics, and professionalism.

When first entering ECL, each participant will take part in a three day boot camp, covering initial startup and business management. Participants will receive ongoing training through an established curriculum for the duration of their time with ECL.

ECL participants will also be able to attend courses through the Bar Foundation's Center for Legal Education free of charge. They will be encouraged to attend a broad range of courses for exposure to as many areas of law as possible. ■

.....

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 January 29, 2016

Petitions for Writ of Certiorari Filed and Pending:				No. 35,671	Riley v. Wrigley	12-501	12/21/15
Date Petition Filed				No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,371	Citimortgage v. Tweed	COA 34,870	01/29/16	No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15
No. 35,730	State v. Humphrey	COA 34,601	01/29/16	No. 35,661	Benjamin v. State	12-501	12/16/15
No. 35,727	State v. Calloway	COA 34,625	01/28/16	No. 35,654	Dimas v. Wrigley	COA 35,654	12/11/15
No. 35,728	Brannock v. Lotus Fund	COA 33,950	01/27/16	No. 35,635	Robles v. State	12-501	12/10/15
No. 35,725	State v. Ancira	COA 34,556	01/27/16	No. 35,674	Bledsoe v. Martinez	12-501	12/09/15
No. 35,724	State v. Donovan W.	COA 34,595	01/27/16	No. 35,653	Pallares v. Martinez	12-501	12/09/15
No. 35,723	State v. Lopez	COA 34,602	01/26/16	No. 35,637	Lopez v. Frawner	12-501	12/07/15
No. 35,722	James v. Smith	12-501	01/25/16	No. 35,268	Saiz v. State	12-501	12/01/15
No. 35,711	Foster v. Lea County	12-501	01/25/16	No. 35,617	State v. Alanazi	COA 34,540	11/30/15
No. 35,714	State v. Vega	COA 32,835	01/22/16	No. 35,612	Torrez v. Mulheron	12-501	11/23/15
No. 35,713	Hernandez v. CYFD	COA 33,549	01/22/16	No. 35,599	Tafoya v. Stewart	12-501	11/19/15
No. 35,710	Levan v. Hayes Trucking	COA 33,858	01/22/16	No. 35,593	Quintana v. Hatch	12-501	11/06/15
No. 35,709	Dills v. N.M. Heart Institute	COA 33,725	01/22/16	No. 35,588	Torrez v. State	12-501	11/04/15
No. 35,708	State v. Hobbs	COA 33,715	01/21/15	No. 35,581	Salgado v. Morris	12-501	11/02/15
No. 35,718	Garcia v. Franwer	12-501	01/19/16	No. 35,586	Saldana v. Mercantel	12-501	10/30/15
No. 35,717	Castillo v. Franco	12-501	01/19/16	No. 35,576	Oakleaf v. Frawner	12-501	10/23/15
No. 35,707	Marchand v. Marchand	COA 33,255	01/19/16	No. 35,575	Thompson v. Frawner	12-501	10/23/15
No. 35,706	State v. Jeremy C.	COA 34,482	01/19/16	No. 35,555	Flores-Soto v. Wrigley	12-501	10/09/15
No. 35,705	State v. Farley	COA 34,010	01/19/16	No. 35,554	Rivers v. Heredia	12-501	10/09/15
No. 35,704	State v. Taylor	COA 33,951	01/15/16	No. 35,540	Fausnaught v. State	12-501	10/02/15
No. 35,701	State v. Asarisi	COA 33,531	01/14/16	No. 35,523	McCoy v. Horton	12-501	09/23/15
No. 35,700	State v. Delgarito	COA 34,237	01/14/16	No. 35,522	Denham v. State	12-501	09/21/15
No. 35,699	State v. Lundvall	COA 34,715	01/14/16	No. 35,515	Saenz v. Ranack Constructors	COA 32,373	09/17/15
No. 35,698	State v. Carmona	COA 34,696	01/14/16	No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,703	Roblez v. N.M. Correctional Facility	COA 33,786	01/13/16	No. 35,480	Ramirez v. Hatch	12-501	08/20/15
No. 35,692	State v. Wiggins	COA 33,915	01/13/16	No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,702	Steiner v. State	12-501	01/12/16	No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,694	State v. Baca	COA 34,133	01/12/16	No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,693	State v. Navarette	COA 34,687	01/12/16	No. 35,440	Gonzales v. Franco	12-501	07/22/15
No. 35,689	State v. Griego	COA 34,394	01/11/16	No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,686	State v. Romero	COA 34,264	01/07/16	No. 35,416	State v. Heredia	COA 32,937	07/15/15
No. 35,685	State v. Gipson	COA 34,552	01/07/16	No. 35,415	State v. McClain	12-501	07/15/15
No. 35,680	State v. Reed	COA 33,426	01/06/16	No. 35,374	Loughborough v. Garcia	12-501	06/23/15
No. 35,682	Peterson v. LeMaster	12-501	01/05/16	No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,678	TPC, Inc. v. Hegarty	COA 32,165/32,492	01/05/16	No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,677	Sanchez v. Mares	12-501	01/05/16	No. 35,353	Collins v. Garrett	COA 34,368	06/12/15
No. 35,676	State v. Sears	COA 34,522	01/04/16	No. 35,335	Chavez v. Hatch	12-501	06/03/15
No. 35,675	National Roofing v. Alstate Steel	COA 34,006	01/04/16	No. 35,371	Pierce v. Nance	12-501	05/22/15
No. 35,669	Martin v. State	12-501	12/30/15	No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15
No. 35,665	Kading v. Lopez	12-501	12/29/15	No. 35,261	Trujillo v. Hickson	12-501	04/23/15
No. 35,664	Martinez v. Franco	12-501	12/29/15	No. 35,159	Jacobs v. Nance	12-501	03/12/15
No. 35,657	Ira Janecka	12-501	12/28/15	No. 35,097	Marrah v. Swisstack	12-501	01/26/15
No. 35,656	Villalobos v. Villalobos	COA 32,973	12/23/15	No. 35,099	Keller v. Horton	12-501	12/11/14
				No. 35,068	Jessen v. Franco	12-501	11/25/14

No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14	No. 35,249	Kipnis v. Jusbasche	COA 33,821	06/19/15
No. 34,932	Gonzales v. Sanchez	12-501	10/16/14	No. 35,214	Montano v. Frezza	COA 32,403	06/19/15
No. 34,907	Cantone v. Franco	12-501	09/11/14	No. 35,213	Hilgendorf v. Chen	COA 33056	06/19/15
No. 34,680	Wing v. Janecka	12-501	07/14/14	No. 35,279	Gila Resource v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 34,777	State v. Dorais	COA 32,235	07/02/14	No. 35,289	NMAG v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 34,790	Venie v. Velasquez	COA 33,427	06/27/14	No. 35,290	Olson v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 34,775	State v. Merhege	COA 32,461	06/19/14	No. 35,349	Phillips v. N.M. Tax. & Rev. Dept.	COA 33,586	07/17/15
No. 34,706	Camacho v. Sanchez	12-501	05/13/14	No. 35,302	Cahn v. Berryman	COA 33,087	07/17/15
No. 34,563	Benavidez v. State	12-501	02/25/14	No. 35,318	State v. Dunn	COA 34,273	08/07/15
No. 34,303	Gutierrez v. State	12-501	07/30/13	No. 35,386	State v. Cordova	COA 32,820	08/07/15
No. 34,067	Gutierrez v. Williams	12-501	03/14/13	No. 35,278	Smith v. Frawner	12-501	08/26/15
No. 33,868	Burdex v. Bravo	12-501	11/28/12	No. 35,398	Armenta v. A.S. Homer, Inc.	COA 33,813	08/26/15
No. 33,819	Chavez v. State	12-501	10/29/12	No. 35,427	State v. Mercer-Smith	COA 31,941/28,294	08/26/15
No. 33,867	Roche v. Janecka	12-501	09/28/12	No. 35,446	State Engineer v. Diamond K Bar Ranch	COA 34,103	08/26/15
No. 33,539	Contreras v. State	12-501	07/12/12	No. 35,451	State v. Garcia	COA 33,249	08/26/15
No. 33,630	Utley v. State	12-501	06/07/12	No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	08/31/15

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. 34,812 Ruiz v. Stewart	12-501 10/10/14
No. 34,830 State v. Mier	COA 33,493 10/24/14
No. 34,929 Freeman v. Love	COA 32,542 12/19/14
No. 35,063 State v. Carroll	COA 32,909 01/26/15
No. 35,016 State v. Baca	COA 33,626 01/26/15
No. 35,130 Progressive Ins. v. Vigil	COA 32,171 03/23/15
No. 35,101 Dalton v. Santander	COA 33,136 03/23/15
No. 35,148 El Castillo Retirement Residences v. Martinez	COA 31,701 04/03/15
No. 35,198 Noice v. BNSF	COA 31,935 05/11/15
No. 35,183 State v. Tapia	COA 32,934 05/11/15
No. 35,145 State v. Benally	COA 31,972 05/11/15
No. 35,121 State v. Chakerian	COA 32,872 05/11/15
No. 35,116 State v. Martinez	COA 32,516 05/11/15
No. 34,949 State v. Chacon	COA 33,748 05/11/15
No. 35,298 State v. Holt	COA 33,090 06/19/15
No. 35,297 Montano v. Frezza	COA 32,403 06/19/15
No. 35,296 State v. Tsosie	COA 34,351 06/19/15
No. 35,286 Flores v. Herrera	COA 32,693/33,413 06/19/15
No. 35,255 State v. Tufts	COA 33,419 06/19/15

No. 35,249	Kipnis v. Jusbasche	COA 33,821	06/19/15
No. 35,214	Montano v. Frezza	COA 32,403	06/19/15
No. 35,213	Hilgendorf v. Chen	COA 33056	06/19/15
No. 35,279	Gila Resource v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,289	NMAG v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,290	Olson v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,349	Phillips v. N.M. Tax. & Rev. Dept.	COA 33,586	07/17/15
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. 34,093 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

Writs of Certiorari

<http://nmsupremecourt.nmcourts.gov>

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. 35,248	AFSCME Council 18 v. Bernalillo County Comm.	COA 33,706	01/11/16

Writ of Certiorari Quashed:

		Date Order Filed	
No. 34,728	Martinez v. Bravo	12-501	01/15/16

Petition for Writ of Certiorari Denied:

		Date Order Filed	
No. 35,672	State v. Berres	COA 34,729	01/29/16
No. 35,668	State v. Marquez	COA 33,527	01/29/16

No. 35,642	Rabo Agrifinance Inc. v. Terra XXI	COA 34,757	01/29/16
No. 35,530	Hobson v. Benavidez	12-501	01/29/16
No. 35,454	Alley v. State	12-501	01/29/16
No. 35,369	Serna v. State	12-501	01/29/16
No. 35,106	Salomon v. Franco	12-501	01/29/16
No. 35,658	Bustos v. City of Clovis	COA 33,405	01/25/16
No. 35,503	Saltwater v. Frawner	12-501	01/25/16
No. 35,490	Lopez v. Wrigley	12-501	01/25/16
No. 35,644	State v. Burge	COA 34,769	01/20/16
No. 35,422	State v. Johnson	12-501	01/20/16
No. 35,655	State v. Solis	COA 34,266	01/14/16
No. 35,650	State v. Abeyta	COA 34,705	01/14/16
No. 35,645	State v. Hart-Omer	COA 33,829	01/14/16
No. 35,652	Tennyson v. Santa Fe Dealership	COA 33,657	01/12/16

Clerk's Certificates

From 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

Dated Feb. 2, 2016

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

Timothy J. Atler

Atler Law Firm, PC
4801 Lang Avenue NE,
Suite 110
Albuquerque, NM 87109
505-433-7670
505-212-3880 (fax)
tja@atlerfirm.com

Richard Andre Bachand

2120 Hoffman Drive NE
Albuquerque, NM 87110
505-917-2138
bachand@bachandlaw.
onmicrosoft.com

Hon. J. Richard Brown (ret.)

919 Girard Blvd. NE
Albuquerque, NM 87106
505-485-5262
rbrownprop@yahoo.com

Melissa A. Brown

Madison & Mroz, PA
201 Third Street NW, Suite 1600
Albuquerque, NM 87102
505-242-2177
mab@madisonlaw.com

Luis Gabriel Carrasco

Rodey, Dickason, Sloan, Akin
& Robb, PA
PO Box 1888
201 Third Street NW,
Suite 2200 (87102)
Albuquerque, NM 87103
505-768-7229
505-768-7395 (fax)
lcarrasco@rodey.com

Keith Drennan

Blue Cross Blue Shield of
New Mexico
PO Box 27630
5701 Balloon Fiesta Pkwy. NE
(87113)
Albuquerque, NM 87125
505-816-4103
505-816-5586 (fax)
keith_drennan@bcbnsnm.com

Gwen R. Gist

Gist Law, PLLC
114 E. Alamo Street, Suite 27
Brenham, TX 77833
575-302-7194
gistlaw@yahoo.com

Albert Victor Gonzales

2375 Botolph Road
Santa Fe, NM 87505
505-983-5846

Dana Kanter Grubestic

Machol & Johannes, LLP
4209 Montgomery Blvd. NE
Albuquerque, NM 87109
505-217-2850 Ext. 511
866-857-7527 (fax)
dana.grubestic@mjfirm.com

John T. Grubestic

Machol & Johannes, LLP
4209 Montgomery Blvd. NE
Albuquerque, NM 87109
505-217-2850 Ext. 512
866-857-7527 (fax)
john.grubestic@mjfirm.com

John Benjamin Hiatt

Graeser & McQueen, LLC
PO Box 220
316 E. Marcy Street (87501)
Santa Fe, NM 87504
505-982-9074
jack@tierrallaw.com

Ryan Kluthe

1516 San Pedro Drive NE
Albuquerque, NM 87110
505-880-8737
ryank@justicelegalgroup.com

Amy Landau

Office of Superintendent of
Insurance
PO Box 1689
1120 Paseo de Peralta,
Room 432 (87501)
Santa Fe, NM 87504
505-476-0566
505-827-4734 (fax)
amy.landau2@state.nm.us

Michael Edward Lash

Christopher L. Trammell PA
3900 Juan Tabo Blvd. NE
Albuquerque, NM 87111
505-294-0131
mikelashlaw@yahoo.com

Harold W. Lavender Jr.

Harold W. Lavender Jr. PC
PO Box 67079
6147 Deergrass Circle NW
(87120)
Albuquerque, NM 87193
505-331-3639
505-897-6301 (fax)
harold@haroldlavender.com

Mary E. Lebeck

415 11th Street NW
Albuquerque, NM 87102
505-250-5639
marylebeck2006@msn.com

Anthony F. Little

A.F. Little and Associates
395 W. Longhorn Drive
Chandler, AZ 85286
602-621-1303
480-636-1270 (fax)
aflittle395@gmail.com

Tania Maestas

PO Box 1508
408 Galisteo Street (87501)
Santa Fe, NM 87504
505-827-6070
505-827-6748
tmaestas@nmag.gov

Brian E. McMath

Sheehan & Sheehan, PA
6001 Indian School Road NE,
Suite 400
Albuquerque, NM 87110
505-247-0411
bem@sheehansheehan.com

Barbara Ann Michael

PO Box 1832
Santa Fe, NM 87504
505-470-0434
bmichaellaw@gmail.com

Clara Moran

Office of the Attorney General
111 Lomas Blvd. NW, Suite 300
Albuquerque, NM 87102
505-222-9027
505-222-9005 (fax)
cmoran@nmag.gov

Angela Rosalina Pacheco

4216 Arapaho Road
Santa Fe, NM 87507
505-501-4178

Elizabeth Marie Piazza

Guebert Bruckner PC
PO Box 93880
6801 Jefferson Street NE
(87109)
Albuquerque, NM 87199
505-823-2300
505-823-9600 (fax)
epiazza@guebertlaw.com

Aryn Seiler

Albuquerque Business Law, PC
1803 Rio Grande Blvd. NW,
Suite B
Albuquerque, NM 87104
505-246-2878
888-235-8229 (fax)
aseiler@abqbizlaw.com

Maria H. Weddige-Gurney

Elevate Services, Inc.
8512 Northridge Avenue NE
Albuquerque, NM 87111
505-415-3686
mweddige@gmail.com

L. Bernice Galloway

Galloway Legal Group, PA
1516 San Pedro Drive NE
Albuquerque, NM 87109
505-506-6265
505-214-5606 (fax)
berniceg@gallowaylegalgroup.
com

Thomas E. Hare

PO Box 15172
Rio Rancho, NM 87174
thomase.hare@yahoo.com

James Bryce Kennedy Jr.

6216 Gateway Blvd. East
El Paso, TX 79905
915-544-5200
office@kennedyworksforyou.
com

Peter Aeneas Keys

401 East 21st Street
Silver City, NM 88061
575-388-2521
575-388-5747 (fax)
pakeys@newmexico.com

James E. Nelson

8921 Honeysuckle Drive
Lantana, TX 76226
jnelson@thompsonhorton.com

Carolina Martin Ramos
Casa Cornelia Law Center
2760 Fifth Avenue, Suite 200
San Diego, CA 92103
lajusticia.digna@gmail.com

Leslie Gayle Schaar
N.M. Aging & Long-Term
Services Department
2550 Cerrillos Road
Santa Fe, NM 87505
leslie.schaar@gmail.com

Darrell Allen
6565 Americas Parkway NE,
Suite 200
Albuquerque, NM 87110
505-306-1685
darrell.allen@voxoptima.com

CaraLynn Banks
Kemp Smith LLP
880 S. Telshor Blvd., Suite 220
Las Cruces, NM 88011
575-527-0023
915-546-5360 (fax)
caralyn.banks@kempsmith.com

Steven M. Chavez
Chavez Law Firm, PC
10 Peralta Farms Court
Peralta, NM 87042
505-916-0336
steven@stevenchavezlawfirm.
com

Francisco M. Ortiz
1300 El Paseo Road, Suite G310
Las Cruces, NM 88001
575-526-8247
575-524-7891 (fax)
ortizlaw1@gmail.com

James B. Payne
1553 W. Gumwood Avenue
Taylorsville, UT 84123
pbanksj@gmail.com

Recent Rule-Making Activity

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 February 10, 2016

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

Comment Deadline

None to report at this time.

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2015 NMRA:

SECOND JUDICIAL DISTRICT COURT LOCAL RULES

LR2-400 Case management pilot program
for criminal cases.

02/02/16

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 Court of Appeals

Opinion Number: 2015-NMCA-108

No. 32,762, (filed June 30, 2015)

SHARON HOYT,
Plaintiff-Appellee,

v.

STATE OF NEW MEXICO,
NEW MEXICO OFFICE OF THE MEDICAL INVESTIGATOR,
ROSS E. ZUMWALT, M.D., CHIEF MEDICAL INVESTIGATOR,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF TORRANCE COUNTY

GEORGE P. EICHWALD, District Judge

BRANDON HUSS
DENNIS K. WALLIN
WALLIN, HUSS & MENDEZ, LLC
Moriarty, New Mexico
for Appellee

KIMBERLY N. BELL
OFFICE OF UNIVERSITY COUNSEL
Albuquerque, New Mexico
for Appellants

Opinion

Roderick T. Kennedy, Judge

{1} This is a mandamus case which scarcely resembles the statutory process imagined by the legislative and common law foundations of the writ. The Office of the Medical Investigator and Medical Investigator, Ross Zumwalt, (collectively, OMI) filed an answer to a petition for an alternative writ, and participated in a hearing on the merits. This renders the resulting writ a final peremptory writ from which an appeal must have been taken. It is undisputed that OMI did not file an appeal within thirty days of the writ being filed and issued. OMI's attempt to circumvent finality of the writ by filing a second answer to the peremptory writ instead of its notice of appeal fails.

{2} The case was final when the time for appeal had run from the date of the writ's issuance and filing, and the district court's attempt to make its later order the final order for purposes of appeal is ineffective. See NMSA 1987 § 44-2-14 (1887) ("[I]n all cases of proceedings by mandamus in any district court of this state, the final judgment of the court thereon shall be reviewable by appeal or writ of error in the same manner as now provided by law in other civil cases.") NMSA 1978, § 39-3-2 (1966) (requiring appeals to be filed within thirty days after the judgment or order appealed

from is filed in the district court); NMSA 1978, § 39-1-1 (1917) (stating that absent motions directed against the final judgment, judgments remain under the control of district courts for thirty days); Rule 12-201(D)(1) NMRA (stating that Section 39-1-1 may be tolled if motion directed at the judgment under Rule 1-050(B) NMRA or Rule 1-060(B) NMRA is pending).

{3} We take no position on the merits of the writ the district court issued. OMI's failure to file a timely notice of appeal deprives us of jurisdiction to entertain this case, and we dismiss the appeal.

I. BACKGROUND AND PROCEDURAL HISTORY

{4} Sharon Hoyt's husband died in 2000. Hoyt was dissatisfied with various aspects of what was listed on her husband's death certificate, such as the time and cause of death, and its statement that no autopsy had been performed. She sought to have the death certificate amended by the hospital where he died and which had performed an autopsy. Hoyt was unsuccessful in securing the change she sought through the hospital and made a request to OMI to amend the certificate; OMI declined. Approximately eight years after her husband's death, Hoyt filed a petition for writ of mandamus in the Seventh Judicial District Court against OMI and the Chief Medical Investigator, Ross Zumwalt. The petition requested that the district court compel OMI to file a corrected death certificate

containing more accurate information based on a theory that OMI's interest in accuracy in the recording of death certificates created a mandatory duty to amend faulty certificates even if it did not attend the death or perform the autopsy.

{5} The petition stated a factual basis for the writ and asserted reasons the district court should compel OMI to act. Hoyt concluded her petition by asking for a writ of mandamus to issue, ordering OMI to amend the death certificate to include language she desired, "or in the alternative file a response hereto with this court stating why [OMI] should not be compelled to do so." Hoyt did not submit a form of writ, and none was filed. Instead, a summons issued, directing OMI to file a responsive pleading within thirty days of service. OMI filed its response to the petition on October 23, 2008, alleging various reasons for the district court to decline to issue the writ, including that because the hospital, and not OMI, had attended her husband's death and performed the autopsy, OMI had no jurisdiction over Hoyt's husband's death, and Hoyt had not exhausted all of her remedies with the hospital. OMI further alleged that it had no legal authority or duty to amend the death certificate, that it was an improper party for a writ of mandamus, and the petition failed to state a claim for mandamus for which the petition should be denied. OMI filed no further pleadings.

{6} After a host of procedural delays and recusals, Judge George Eichwald of the Thirteenth Judicial District Court was designated by the Supreme Court to preside over this case on April 30, 2010. At a telephonic pretrial conference on August 19, 2010, the parties proposed a half-day trial, which the district court indicated would occur toward the end of the year.

{7} The court held a hearing on the merits of the petition on November 16, 2010, during which the district court heard testimony from Hoyt, took exhibits, and heard legal arguments from both parties. The death certificate in question and the autopsy report were both admitted without objection. OMI offered no evidence, but argued that it had no legal obligation to amend the death certificate and that Hoyt had an adequate remedy at law against the hospital.

{8} The district court granted the writ at the conclusion of the hearing and ordered that OMI make various amendments to the death certificate. The district court instructed Hoyt's attorney to

“prepare the appropriate order, and get it to [OMI’s counsel] signature, and then obviously . . . OMI has an absolute right to appeal.” At the end of the hearing, counsel for OMI clarified with the court that the result of the hearing was “not an order, it would be a writ.” The district court stated that OMI had “every right to appeal my decision” and asked Hoyt to submit the writ quickly, so OMI “can make [a] decision[] as to whether or not [OMI] want[s] to appeal this matter.”

{9} The writ of mandamus was not filed until March 15, 2011. Although OMI was notified of the presentment of the writ before the court on that date, it informed Hoyt’s counsel that it would not attend, nor would it take any action to approve the writ as to form, as it believed that it had no legal ability to affect the writ or its language. As filed, the writ is entitled “Writ of Mandamus” and does not include the word “peremptory.” The writ directs OMI to issue “an amended, corrected death certificate” within “30 days from the date this Writ is entered by the Court” and further required that in “the event that [OMI is,] for any reason[,] unable to effectuate the ordered changes, [OMI] shall take all available measures to cooperate with [Hoyt] to make such changes.”

{10} Thirty days later on April 16, 2012, OMI filed what it styled as an answer to an alternative writ of mandamus, operating under an assumption that the writ issued by the district court was an alternative writ. This pleading laid out OMI’s belief that the writ was alternative for allegedly failing to include language required by the statutes governing peremptory writs and, therefore, permitted a response under NMSA 1978, § 44-2-8 (1884). In this “answer,” OMI asserted essentially the same grounds that it argued in its first response to the petition and during the hearing on the writ. Hoyt moved to strike OMI’s answer. In a hearing on January 22, 2013, the district court granted the motion to strike and elaborated in its order granting the motion that, although “[t]he [w]rit issued by the [c]ourt was the final resolution of all matters pertaining to [the] case[,]” the order was the “final action . . . from which appellate review [could] be taken.” OMI filed a notice of appeal from this order on February 19, 2013.

II. DISCUSSION

{11} The parties’ briefs focus on whether mandamus was proper in this case. We will not address the merits in this case, however, because of the conclusive effect

of OMI filing a second answer in the case rather than a notice of appeal.

{12} Owing to OMI’s filing an answer to what it deemed an “alternative writ,” we must turn to whether OMI’s eventual notice of appeal was timely. Hoyt asserts that the writ’s language indicated it was peremptory as, indeed, the district court stated in its order of January 2013. OMI insists the writ was alternative, justifying its belief that it could properly file a response to the writ and that no appeal was proper at that time. *See* NMSA 1978, § 44-2-9 (1884) (providing that a defendant may show cause by answer to an alternative writ). If we hold that the writ is an alternative writ, the result would compel the district court’s consideration of OMI’s response, a new date of finality, and OMI’s timely appeal from that order.

{13} For reasons stated below, we conclude that the writ issued by the district court was a final peremptory writ of mandamus at the time it was entered. We operate under Section 44-2-14, *Id.*, (providing that writs be reviewed by appeal or writ of error as other civil cases) and Rule 12-201(A)(2) (requiring appeals to be filed “within thirty . . . days after the judgment or order appealed from is filed in the district court clerk’s office”), and hold that the writ of mandamus that the district court issued triggered the need to file a notice of appeal within thirty days of its filing. No notice of appeal or motion directed against the judgment was filed within that time. Upon the expiration of thirty days, OMI’s appeal was no longer timely.

B. Writs of Mandamus—

Statutory Requirements

{14} Mandamus is a creature of statute, and its regulating statutes can be found at NMSA 1978, Sections 44-2-1 to -14 (1953). Section 44-2-1 (stating that a writ of mandamus is regulated only by Chapter 44, Article 2). We concern ourselves here with only the procedural aspects of the proceedings before us.

{15} Mandamus has been a part of New Mexico’s statutory remedies since 1884. Following the statutes and case law, an action for mandamus commences when a petition for a writ is filed. *Brantley Farms v. Carlsbad Irrigation Dist.*, 1998-NMCA-023, ¶ 12, 124 N.M. 698, 954 P.2d 763. After the filing of an application or petition, the district court may, having read the petition and considered its merits, issue either a peremptory or an alternative writ pursuant to the statutory requirements. Section 44-2-6. All writs must contain a statement of

fact showing the obligation to act, as well as the order to perform it, and are issued with a date by which compliance must be completed. Section 44-2-6. This is known as the “return day.” Section 44-2-8. Both alternative and peremptory writs require responses by the return day, either certifying that the duty to be performed has been completed for a peremptory writ or, in the case of an alternative writ, giving the respondent’s reason for non-performance. Section 44-2-6. At the point the writ is issued, the petition or application disappears and is replaced by the writ itself. *Brantley Farms*, 1998-NMCA-023, ¶ 12; *see State ex rel. Burg v. City of Albuquerque*, 1926-NMSC-031, ¶ 5, 31 N.M. 576, 249 P. 242 (“Upon granting of the alternative writ, the application is functus officio, and the alternative writ becomes the initial pleading in the case.”). Legal sufficiency of the writ is based on the district court’s consideration of the allegations in the writ and the answer alone. *Brantley Farms*, 1998-NMCA-023, ¶¶ 12-13.

{16} The Mandamus Act contemplates that peremptory writs—those issued based on an apparently incontrovertible duty and sufficient factual basis—would be rarely issued: “When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases[,] the alternative writ shall be first issued.” Section 44-2-7. Because peremptory writs may issue without notice to the opposing party or an opportunity to be heard, alternative writs are the norm. Charles T. Dumars & Michael B. Browde, *Mandamus in New Mexico*, 4 N.M. L. Rev. 155, 161 (1974). This portion of the statute was specifically enacted to permit an ex parte writ, in reaction to *Armijo v. Territory of N.M.*, 1874-NMSC-002, 1 N.M. 580, which held a peremptory writ of mandamus void for lack of notice and an opportunity to be heard. Because under the Act, a peremptory writ is entered without notice and an opportunity to be heard, it constitutes a final judgment, against which the remedy for any error is by appeal. *Bd. of Comm’rs of Guadalupe Cnty. v. Dist. Ct. of Fourth Jud. Dist.*, 1924-NMSC-009, ¶ 14, 29 N.M. 244, 223 P. 516. At the same time, *Board of Commissioners* recognizes that a respondent may file a motion directed at the legal propriety of the peremptory writ, which operates as a general appearance, giving the court jurisdiction over the respondents

and placing them in the same position as if it had been served with notice prior to the issuance of the writ and defaulted. *Id.* ¶ 24. Once having joined in the dispute, by filing a motion to be allowed to appear and defend against the writ, OMI is unable to “urge want of notice and opportunity to be heard before the issuance of the writ.” *Id.* {17} The other side of mandamus is the alternative writ, which “is in the nature of an order to show cause[.]” Dumars & Browde, *supra* at 159-60. Section 44-2-6 specifically lists the contents that an alternative writ must have:

The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that . . . he do the act required to be performed, or show cause before the court out of which the writ issued, at a specified time and place, why he has not done so[,] and that he then and there return the writ with his certificate of having done as he is commanded.

{18} While alternative writs permit the defendant to show a “valid excuse . . . for not performing” the required duty by the expiration of the return date, peremptory writs omit the words requiring the defendant to show cause why he has not done as commanded. Section 44-2-7. Alternative, not peremptory, writs allow for the defendant to file an answer. Section 44-2-9 (“On the return day of the alternative writ, . . . the party on whom the writ is served may show cause by answer, made in the same manner as an answer to a complaint in [a] civil action.”). In this way, an alternative writ “serves the same function as a complaint in a civil action and the answer to the writ serves as the answer.” *Salopek*, 2006-NMCA-093, ¶ 14. In an answer to an alternative writ, the public official answers the factual allegations contained in the writ and proffers whatever legal defenses he has to the action. *Id.* Upon the filing of an answer, “the issues thereby joined shall be tried and further proceedings had in the same manner as a civil action.” Section 44-2-11. If the defendant makes no answer follow-

ing the issuance of an alternative writ, “a peremptory mandamus shall be allowed against the defendant[.]” Section 44-2-10. A peremptory writ is the end product of the alternative writ proceeding. See *Chance v. Temple*, 1 Iowa 179, 181 (1855) (“The proper order, on the hearing of the application for a peremptory writ, after an alternative is, let the writ be peremptory, or ‘peremptory writ refused.’”). If judgment for the plaintiff is given, issuance of a peremptory writ is the final step in all mandamus proceedings, Section 44-2-12, and the final order that must be appealed to a higher court.

C. Hoyt’s Petition Was for an Alternative Writ And OMI’s Answer Operates to Join the Issues for Adjudication of the Case

{19} The petition in this case was for an alternative writ for mandamus, despite the word “alternative” being left out of its title. The petition requested that OMI should be required to file an amended death certificate with certain inclusions “or in the alternative file a response hereto with this court stating why [OMI] should not be compelled to do so.” Leaving the word “alternative” out of the title is of no consequence, so long as the purpose is clear. See *Salopek*, 2006-NMCA-093, ¶ 16 (reasoning that the writ issued, although entitled “Peremptory Writ of Mandamus[.]” was not peremptory because, in accordance with the statutory requirements for alternative writs, it directed the defendant to prepare and file a response to the writ within thirty days). No writ was issued in this case. Instead, a summons to OMI was issued, demanding a response within thirty days of service. Following the receipt of the summons in this case, OMI filed a timely response to the petition for writ of mandamus, refuting the allegations of the petition on the merits and asserting separate defenses. Under *Board of Commissioners*, OMI cannot complain that it was not aware of the petition, the issues involved, and its obligation to respond. OMI did not pursue their theory that the relief Hoyt sought was not available as a matter of law by motion to dismiss or otherwise prior to the hearing on the merits.

{20} Once an answer to a petition is filed, Section 44-2-11 directs that the issues

joined through the answer “shall be tried and further proceedings had in the same manner as in a civil action.” We acknowledge that “[t]he procedure for filing a mandamus action is rather convoluted[.]” Dumars & Browde, *supra* at 158, and that this case has been inordinately so. The concept that a petition in proper form gives rise to a court order “directing the court clerk to issue the writ[.]” *supra* at 159, is provably awry here. However, we do not believe that the lack of an initial writ is of great import under these circumstances.

{21} Our courts have chosen function over form when considering writs of mandamus. For example, *Laumbach v. Board of County Commissioners of San Miguel County*, gave effect to a civil complaint for equitable relief by converting it to a petition for mandamus. 1955-NMSC-096, ¶ 15, 60 N.M. 226, 290 P.2d 1067 (“It matters not what the pleading initiating the proceeding may be denominated. If in truth it discloses by its allegations and the relief sought that it is an action in mandamus, it will be so treated.”). Additionally, our Supreme Court has considered a petition as though it were a writ where the respondent answers the allegations made in the petition as it would those made in a writ. *Burg*, 1926-NMSC-031, ¶¶ 11-13. *Burg* held that the defects in the issuance of a writ “can be waived if the parties, by their acts or agreement, treat the application as a writ.” *Id.* ¶ 12. It also held that when a respondent answers factual allegations in the application as a writ, the writ itself can be waived under Section 44-2-11’s predecessor, supporting further proceedings.¹ Our Supreme Court has even gone so far as to consider a motion to dismiss, which is inappropriate in a mandamus case, as an answer to a writ where it raised legal questions, admitted facts stated in the writ, and invoked the court’s application of the law on an issue, just as an answer to a writ would properly do. *State ex rel. Fitzhugh v. City Council of City of Hot Springs*, 1952-NMSC-022, ¶ 8, 56 N.M. 118, 241 P.2d 100. {22} From these cases, we conclude that OMI’s answer waived the issuance of a writ to begin the case and agreed that the case would be presented based on the pleadings before the court. “The only allegations of fact against which this answer

¹We followed *Burg* in subsequent cases determining the validity of writs. See *Salopek*, 2006-NMCA-093, ¶ 15 (stating rule that defects in writ can be waived where respondent answers allegations in the petition as if they were set forth in the writ); *City of Sunland Park v. N.M. Pub. Regulation Comm’n*, 2004-NMCA-024, ¶ 8, 135 N.M. 143, 85 P.3d 267 (“[D]efects in the pleadings can be waived, and the allegations in the application may be considered, where the respondent answers the allegations as if they were set forth in the writ.”).

can be directed are those contained in the application; and they are treated by the respondents as though they were contained in the writ.” *Burg*, 1926-NMSC-031, ¶ 13. As such, the case was to proceed as in any civil action. Section 44-2-11. OMI’s answer to the petition was functionally the same as an answer to an alternative writ, and under our Supreme Court’s precedent set forth in *Burg*, 1926-NMSC-031, ¶¶ 11-13, we will treat the case in that manner. Accordingly, after its hearing on the merits, at which OMI was represented and actively defended its position, the district court gave judgment for Hoyt and issued its final peremptory writ as directed by Section 44-2-12. The writ adjudicated all issues pending before the court and disposed of the case to the fullest extent possible. Last, the district court’s conversation with OMI’s counsel about the issuance of the writ after the hearing indicates that OMI was twice advised that the next step available to it after the writ was filed would be an appeal. Section 42-2-14; *Bd. of Trustees of Vill. of Los Ranchos de Albuquerque v. Sanchez*, 2004-NMCA-128, ¶ 11, 136 NM 528, 101 P.3d 339 (holding that where the case has been disposed of to the fullest extent, the judgment is final and an appeal can be taken). OMI clearly ascertained that it had been ordered to amend the Hoyt death certificate, that it was the district court’s intent to issue a writ and not “an order,” and twice that an appeal was contemplated by the district court as the next step should OMI have so desired.

{23} Despite OMI’s assertion that it could not initially file a motion to dismiss the petition, our Supreme Court in *Fitzhugh*, 1952-NMSC-022, ¶ 8, held that, a motion to dismiss in a mandamus case could be treated as an answer to an alternative writ that admits the facts, but invokes an application of the law to decide the case. OMI’s answer to the petition does not contest the essential facts, and contains a response to each and every paragraph of the petition, alleges specific defenses, and requests dismissal on jurisdictional and other grounds. The answer filed after the writ follows the same format and makes virtually the same arguments as the answer filed after the petition. The difference is that the second answer begins with the assertion that the March 2012 writ is an alternative, not a peremptory, writ due to asserted statutory deficiencies in its language.

{24} OMI maintains that its second answer, filed thirty days after the final writ of mandamus was issued and not its original

answer to the petition, should be viewed as the “answer” to a writ that is contemplated by statute. Counsel does not point to, and we are not aware of, any provision in the statutes or rules that would permit a second answer, which is substantively indistinguishable from the first, to be filed in a case after the district court has held a hearing on the merits, and informed counsel that it could appeal its ruling if it desired and told a party that an appeal would be the next step. The failure to cite to authority in support of a proposition of law allows us to decline to do the research on the party’s behalf. *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“We have long held that to present an issue on appeal for review, an appellant must submit argument and authority as required by rule.”). OMI’s assertions that the writ is defective for failing to include items OMI now asserts to be mandatory components of a peremptory writ, and assertions that the district court’s conclusions of law are wrong with regard to OMI’s ability to affect Hoyt’s husband’s death certificate, would all be issues properly addressed by a timely appeal.

{25} We are satisfied that OMI’s first answer to the petition, prior to the issuance of any writ, was sufficient to waive OMI’s objections to procedural failings—i.e., the district court’s failure to issue an alternative writ immediately upon receiving the petition—and allowed the district court to consider the merits of the allegations made in the petition as though made in an alternative writ. OMI’s answer, having treated the petition as though it were a writ, functionally transformed the petition to an alternative writ. *Burg*, 1926-NMSC-031, ¶¶ 11-13. Thus, the alternative writ procedures having been completed by the petition, an answer, and a hearing on the merits at which OMI appeared and participated, the writ issued in March 2011 was peremptory.

D. The Writ Issued Was Peremptory

{26} OMI asserts that the writ did not contain the necessary language, either as to the necessity of compelling action or establishing a clear legal duty to act to establish it as a peremptory writ under Section 44-2-7 and, thus, its second answer was appropriately filed. OMI misreads the statute. Section 44-2-7 governs the content of writs initially issued after a petition is filed, not as the end product of a proceeding on an alternative writ as we have in this case where, after hearing on the merits, the plaintiff has prevailed. Sec-

tion 44-2-12 is clear that, upon judgment being “given for the plaintiff” as here, “a peremptory mandamus shall be awarded without delay.” (Emphasis added.) The fact that the consequence of judgment for Hoyt in this mandamus action could not be anything but a peremptory writ is inescapable. The district court’s issuance of a writ that complies with the statutory requirements for a peremptory writ reflects its stated conclusion that Hoyt had a clear right to compel OMI to amend the death certificate. Rather than rely on its own determination that there was no clear right to require performance while it calculated its options, OMI should have looked to the entire mandamus statute to determine whether the district court’s writ qualified as alternative or peremptory.

{27} Because the writ issued after a petition and answer were filed, an evidentiary hearing was held, and judgment was announced for Hoyt, all procedures available for an alternative writ had been exhausted. Section 44-2-12 and the function of the writ as the final resolution of the case is conclusive regardless of omission of the word “peremptory.” We therefore reject OMI’s contention that the final writ was an alternative writ and hold that the writ was peremptory. OMI should have appealed by the date it filed its second answer.

E. OMI Demonstrates No Excuse for Its Untimely Appeal

{28} Despite joining and participating in a full determination of the case on its merits, being familiar with the mandamus statutes, and twice acknowledging the district court’s statement that, upon filing the writ, OMI could appeal, OMI now asserts that regarding the writ as a peremptory writ and, therefore, the final appealable order, would be unfairly prejudicial and an error of law. We disagree.

{29} Supporting our view of Section 44-2-12, our cases also hold that once “all issues of law and of fact necessary to be determined have been determined, and the case has been completely disposed of to the extent the court has power to dispose of it[,]” the resulting order is final. *In re Estate of Duran*, 2007-NMCA-068, ¶ 10, 141 N.M. 793, 161 P.3d 290 (internal quotation marks and citation omitted). The writ issued on March 15, 2012, completely disposed of the case on the merits as a result of judgment in Hoyt’s favor. OMI therefore had thirty days to file a notice of appeal with this court. Rule 12-201(A) (2) (requiring appeals to be filed “within thirty . . . days after the judgment or order

appealed from is filed in the district court clerk's office"). OMI did not file a pleading attacking the district court's judgment so as to toll the thirty-day rule for filing a notice of appeal, nor did it file an appeal on the merits. Instead, it chose to file another answer based on its misguided assertion that the final writ was actually an alternative writ that kicked off the process anew. {30} OMI's argument that naming the writ as peremptory at this time would cause it prejudice because it relied on the language in the district court's order in the motion to strike also fails. The writ was peremptory because the Legislature made it so. OMI's view is blind to the facts preceding the writ being filed. During that hearing and prior to the filing of the writ, the district court twice notified OMI's counsel of not only its ability, but also its right to appeal, which OMI's counsel acknowledged. OMI refused to participate in the presentment of the writ, or review it prior to that hearing, believing, apparently, that it was a "writ," not an "order" that could be further clarified or modified if OMI had an objection to any part. In order to file its second answer, it had to invent its forced interpretation that the writ based on the *judgment* of the court after a full progression of the case through a hearing on the merits, was an alternative writ, intended to allow further proceedings. This ignores the course of proceedings in the district court. The proper route was to file an appeal on the merits.

{31} We note that at argument, OMI's counsel spoke to a process by which it decided to assert its position here on appeal. From clarifying at the end of the merits hearing that the court would be issuing a writ, not an order, counsel stated that based on the belief that a "writ" is not an "order," counsel refused to review the writ, attend the presentment hearing, or approve the writ as to form. In doing so, OMI forfeited an opportunity to seek or offer clarity or correction to the muddled proceedings and what it now asserts is defective language in the writ. OMI concedes that the district court issued its writ following consideration of the petition and answer thereto.

{32} It is undisputed that a peremptory writ is a final, appealable judgment. See *Bd. of Comm'rs*, 1924-NMSC-009, ¶ 13 (declaring a peremptory writ is a final judgment). We therefore have two conclusions from which to choose. First, we could plausibly conclude that OMI knew the writ was peremptory based on the procedural posture

of the case and chose to use the procedural confusion to get another chance to address the merits. Second, we could also plausibly conclude that OMI should have known that the writ was peremptory, but did not adequately research the law on the issue. Under neither conclusion may OMI prevail. The fastest and the proper way to prove the writ was erroneous was through a direct appeal. See *id.* (supporting the idea that defects in the writ are to be addressed by an appeal). Instead, OMI's second, procedurally unnecessary, answer improperly attempted to draw out the already unnecessarily lengthy proceedings. {33} Last, district courts, unless a post-judgment motion is pending, lose their power over the judgment within thirty days. Section 39-1-1 (stating that the district court loses control over its final judgments unless motions are pending directed against the judgment). Rule 1-052(D) NMRA similarly puts a thirty-day time limit for requests to amend or change findings or conclusions in a non-jury case. We are unable to find, and OMI does not point us to, any action by them or authority that would toll this deadline owing to OMI filing a second answer to the district court's peremptory writ of mandamus. As such, it would be an unsound practice for this Court to exercise jurisdiction over this appeal; the timeliness of OMI's appeal rests on an improperly filed second answer to a peremptory and final writ issued after a hearing on the merits has been completed. {34} The dissent suggests that OMI should be entitled to an untimely appeal based on an erroneous reading of *Trujillo v. Serrano*, 1994 -NMSC- 024, 871 P.2d 369. In that case, a party did not receive a copy of the judgment in a magistrate court case until more than a month after it was filed. *Id.* ¶ 3. Here, the district court was quite clear at the end of the merits hearing that it was issuing a writ, from which OMI's next step would properly be an appeal, and OMI received the writ in March 2012, with a full thirty days to file its appeal, choosing to file a second answer instead. We do not regard this as either judicial error in the issuance of the writ, or a situation requiring clarification of the district court's position that had to wait until 2013. OMI had all of the information it needed, including facts and applicable law, from which to discern a proper path to appellate review of the merits of their case. They asserted in their first answer all of the arguments the dissent now suggests, and their position was litigated in a hearing on the merits.

Trujillo also points out that allowing a late appeal is a discretionary matter with the reviewing court. *Id.* ¶ 9. Again, the proper way to challenge a final peremptory writ's content is through direct appeal. See *Bd. of Comm'rs*, 1924-NMSC-009.

{35} We recognize that "unusual circumstances beyond the control of the parties" are a ground upon which a court can base its decision to excuse a late notice of appeal. *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, ¶ 23, 148 N.M. 692, 242 P.3d 259 (internal quotation marks and citation omitted). In *Schultz*, we recognized things like error on the part of the court and mail delays as examples of "unusual circumstances beyond the control of the parties[.]" *Id.* (internal quotation marks and citation omitted). We cannot conclude that the untimely filing of the notice of appeal here was beyond OMI's control where OMI's counsel was on notice of its right to appeal, but seems to have made a calculated choice to file an answer rather than a notice of appeal. While we might agree with the district court's decision to strike the answer, that decision was made after the district court had lost its ability to act. OMI intentionally did not file a timely notice of appeal to the district court's peremptory, final writ. A second answer cannot substitute for a timely notice of appeal. Absent a timely notice of appeal, we must dismiss.

III. CONCLUSION

{36} The petition filed in this case was for an alternative writ. Despite no initial writ being issued by the district court, OMI filed a timely answer to that petition, and the case was heard on the merits. The district court issued judgment for Hoyt, compelling the filing of a peremptory writ that would end the case. The district court's statements during the first hearing, and OMI's counsel's acknowledgement, clearly establish that OMI was on notice as to the final nature of the writ that would issue. By law, such a final writ is peremptory. As such, we cannot agree with OMI that its notice of appeal was timely in this case. OMI was required to file a notice of appeal within thirty days of the district court's issuance of a peremptory writ. *Bd. of Comm'rs*, 1924-NMSC-009, ¶ 13 (declaring a peremptory writ is a final judgment); Rule 12-201(A)(2) (requiring appeals to be filed "within thirty . . . days after the judgment or order appealed from is filed in the district court clerk's office"). Instead, it elected to improperly file an answer to the writ. See § 44-2-9 (stating that the

March
2016

CLE Planner

Your Guide to Continuing Legal Education



Finish your 2015 CLE credit requirements
or *get ahead of the game* to complete
2016 requirements.



Reach us at 505-797-6020.



5121 Masthead NE • PO Box 92860, Albuquerque, NM 87199

www.nmbar.org

March

State Bar Center, Albuquerque

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	  4 The 31st Annual Bankruptcy Year in Review Seminar 6.0 G, 1.0 EP  How Ethics Still Apply When Lawyers Act as Non-Lawyers 1.0 EP	5
		8	9	 10 Estate and Gift Tax Audits 1.0 G	 11 Navigating New Mexico Public Land Issues 5.5 G, 1.0 EP Federal Practice Tips 2.0 G, 1.0 EP Law Practice Succession 2.0 EP The Future of Cross-commissioning 2.5 G, 1.0 EP	12
Daylight Savings Time Begins 	14	 15 Estate and Trust Planning for Short Life Expectancies 1.0 G	16	17	 18 2015 Tax Symposium 7.0 G The Trial Variety 6.0 G Ethically Managing Your Practice 1.0 EP Civility and Professionalism 1.0 EP  Ethics and Keeping Your Paralegal and Yourself Out of Trouble 1.0 EP	19
20	21	22	 23 Avoiding Family Feuds in Trusts 1.0 G	24	  25 National Speaker Barron K. Henley Legal Technology Academy for New Mexico Lawyers 4.0 G, 2.0 EP	26
27	  28 National Speaker Stuart Teicher Tech Tock, Tech Tock! Social Media and the Countdown to Your Ethical Demise 3.0 EP What Nascar, Jay-Z and the Jersey Shore Teach About Attorney Ethics 3.0 EP	 29 Drafting Demand Letters 1.0 G	30	31		

Preliminary schedule. Visit our website for more details.



The 31st Annual Bankruptcy Year in Review Seminar

6.0 G

1.0 EP



Friday, March 4, 2016 • 8 a.m.–5 p.m.
State Bar Center, Albuquerque

\$275: Standard Fee

\$245: Bankruptcy Law section members, government and legal services attorneys, and Paralegal Division members

\$309: Webcast Fee

Co-sponsor: Bankruptcy Law Section

The seminar focuses on developments in case law on bankruptcy issues in 2015, both nationally and locally with special emphasis on decisions by the U.S. Supreme Court, 10th Circuit Court of Appeals, 10th Circuit B.A.P. and U.S. Bankruptcy Court for the District of New Mexico. Also included are presentations by the bankruptcy judges for the District of New Mexico, the Assistant U.S. Trustee for the District of New Mexico, the Clerk of the Court and an ethics presentation.

8 a.m. Registration and Continental Breakfast

8:30 a.m. **Chapter 13 Case Review**

Gerald R. Velarde, Law Office of Gerald R. Velarde PC

Kelley Skehen, Chapter 13 Trustee

9:15 a.m. **Discussion from the Bench**

Hon. Robert H. Jacobvitz, Chief Judge,

U.S. Bankruptcy Court, D.N.M.

Hon. David T. Thuma, Bankruptcy Judge, D.N.M.

10 a.m. Break

10:15 a.m. **Presentation by Clerk of the Bankruptcy Court**

Norman H. Meyer Jr., Clerk, U.S. Bankruptcy Court, District of N.M.

10:45 a.m. **Annual National Review**

Jeffrey H. Davidson, Pachulski Stang Ziehl & Jones, Los Angeles, Calif.

12 p.m. Lunch (provided at the State Bar Center)

Bankruptcy Section Annual Meeting

1 p.m. **Annual Bankruptcy Case Review**

James A. Askew, Askew & Mazel, LLC

Michael K. Daniels, Michael K. Daniels Esq.

Paul M. Fish, Modrall Sperling Roehl Harris & Sisk, PA

Thomas D. Walker, Walker & Associates, PC

3:15 p.m. Break

3:30 p.m. **Presentation by the United States Trustee**

Ronald E. Andazola, Assistant U.S. Trustee for the District of New Mexico

4 p.m. **Ethics and Professionalism**

William D. Slease, Chief Disciplinary Counsel,

New Mexico Supreme Court

5 p.m. Adjournment and Reception

2016 CLE Season Pass

Choose and attend any 2016 live, video replays and live webcasts for one low price.

\$695 Standard Fee

\$395 Government, legal services attorneys, Paralegal Division members

Call 505-797-6020 to purchase a season pass.

Valid for a maximum of 15 credits. State Bar Annual Meeting and annual CLE trip excluded.



Legal Technology Academy for New Mexico Lawyers

presented by Barron K. Henley, Esq., partner Affinity Consulting Group

4.0 G

2.0 EP



Friday, March 25, 2016 • 9 a.m.–4:30 p.m.
State Bar Center, Albuquerque

\$249 Standard Fee

\$219 Government and legal services attorneys, and Paralegal Division members

\$279 Webcast Fee

Today's attorney is expected to use technology more than ever in his/her practice. Email, electronic case filing, online research and Microsoft Word can be a constant source of frustration. Along with these sources of frustration, communication may breakdown and decrease productivity as well as create dissatisfied clients. In the Legal Technology Academy for New Mexico Lawyers, presented by renowned presenter Barron Henley, attendees will learn how to recognize, manage and overcome these challenges to maintain a successful practice in the technological age.

8:30 a.m. Registration and Continental Breakfast
9 a.m. **Practicing Law in "The Cloud"—Benefits, Drawbacks and Ethical Issues** (1.0 EP)
10 a.m. Break
10:15 a.m. **Getting it Under Control—Microsoft Word Power Hour**
11:15 a.m. **Communication Breakdown—It's Always the Same (but it's Avoidable)** (1.0 EP)
12:15 p.m. Lunch (provided at the State Bar Center)

1:15 p.m. **It's Time for a Change—Better Methods for Drafting Legal Documents**
2:15 p.m. Break
2:30 p.m. **Essential Law Firm Technology—The Best of What's Out There**
3:30 p.m. **How to Protect Yourself While Exchanging Documents Electronically**
4:30 p.m. Adjournment

2016 Annual Meeting—Bench & Bar Conference



Buffalo Thunder®

Santa Fe • Aug. 18-20, 2016

Keynote Speaker:

Ruth Bader Ginsburg

Associate Justice, U.S. Supreme Court

Save the date!



SM16



Tech Tock, Tech Tock: Social Media and the Countdown to Your Ethical Demise

Presented by Stuart Teicher, Esq., the CLE 'Performer'

3.0 EP



Monday, March 28, 2016 • 8:30-11:45 a.m.
State Bar Center, Albuquerque

\$145 Standard Fee
 \$125 Government and legal services attorneys, and Paralegal Division members
 \$159 Webcast Fee

Social media is part of the legal landscape and technology is charging forward, but the ethics rules are struggling to keep up. Sure, there are obvious concerns that everyone is talking about (like confidentiality), but there are hidden hazards that few people consider (trial publicity concerns). Join Stuart Teicher as he reviews ethics opinions from across the country and explains the rules in a substantive but humorous way.

8 a.m.	Registration and Continental Breakfast	10:15 a.m.	A Variety of Other Ethical Danger Zones:
8:30 a.m.	Social Media: New Medium, New Ethical Problems		Confidentiality, Self-Promotion and Issues in the Cloud
10 a.m.	Break	11:45 a.m.	Adjourn and Lunch (provided at the State Bar Center)

NASCAR16

What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics—2016 Edition

Presented by Stuart Teicher, Esq., the CLE 'Performer'

3.0 EP



Monday, March 28, 2016 • 1-4:15 p.m.
State Bar Center, Albuquerque *(Previously presented on Dec. 17, 2015)*

\$145 Standard Fee
 \$125 Government and legal services attorneys, and Paralegal Division members
 \$159 Webcast Fee

The seemingly unrelated topics of art, sports and modern culture all carry interesting and valuable messages for attorneys. In this one-of-a-kind seminar, Stuart Teicher explains how various elements of popular culture provide poignant lessons that help attorneys understand and appreciate the rules of professional conduct. Whether it's being aware of misconduct or maintaining competence, Teicher delivers an innovative, captivating seminar that teaches valuable lessons about attorney ethics and professionalism.

12:30 p.m.	Registration	2:45 p.m.	Maintaining Competence and Credibility: Using the Rules of Professional Conduct to be a Better Attorney
1 p.m.	Pop Culture and Misconduct: Evolving Rules and Trends in the Practice of Law	4:15 p.m.	Adjourn
2:30 p.m.	Break		

Live Replays

State Bar Center, Albuquerque



Looking for other live credit options to finish 2015 CLE requirements? The Center for Legal Education offers one hour, half-day and full-day live replays at the State Bar Center. Visit www.nmbar.org for more information and to register.

March 11

Navigating New Mexico Public Land Issues (2015)

5.5 G, 1.0 EP
9 a.m.-5 p.m.
\$265

Federal Practice Tips and Advice from U.S. Magistrate Judges (2015)

2.0 G, 1.0 EP
1-4:15 p.m.
\$145

Law Practice Succession-A Little Thought Now, a Lot Less Panic Later (2015)

2.0 G
2-4 p.m.
\$99

The Future of Cross-commissioning: What Every Tribal, State and County Lawyer Should Consider post Loya v. Gutierrez

2.5 G, 1.0 EP
9 a.m.-1 p.m.
\$159

March 18

2015 Tax Symposium (2015)

7.0 G
8 a.m.-4:45 p.m.
\$275

The Trial Variety: Juries, Experts and Litigation (2015)

6.0 G
8:30 a.m.-4:15 p.m.
\$249

Ethically Managing Your Practice (Ethicspalooza Redux –Winter 2015)

1.0 EP
9-10 a.m.
\$55

Civility and Professionalism (Ethicspalooza Redux – Winter 2015)

1.0 EP
10:30-11:30 a.m.
\$55

Teleseminars



Teleseminars start at 11 a.m. MST and count as live credit. See more and register for teleseminars online at www.nmbar.org.

March 4

How Ethics Still Apply When Lawyers Act as Non-Lawyers

1.0 EP
\$79

March 10

Estate and Gift Tax Audits

1.0 G
\$79

March 15

Estate and Trust Planning for Short Life Expectancies

1.0 G
\$79

March 18

Ethics and Keeping Your Paralegal and Yourself Out of Trouble

1.0 EP
\$79

March 23

Avoiding Family Feuds in Trusts

1.0 G
\$79

March 29

Drafting Demand Letters

1.0 G
\$79



Did you miss a live program?
On-demand CLE coming soon!

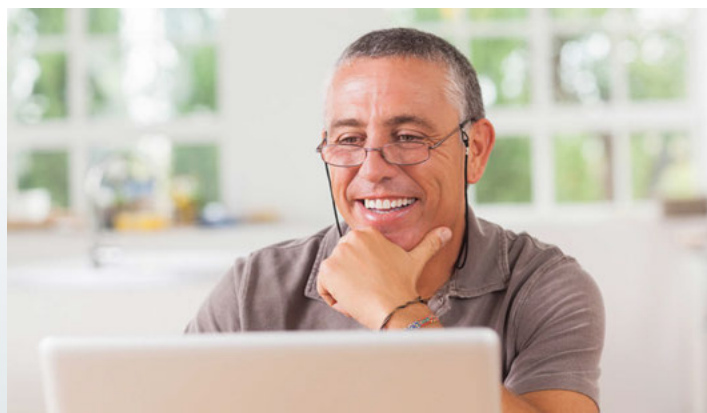
Look for these on-demand options beginning April 1, 2016!

3.0 G **Law Enforcement Interrogation Techniques
and Tactics in Criminal Trials**

2.0 G **1.0 EP** **Legal Writing—From Fiction to Fact (Morning Session)**

2.0 EP **2015 Mock Meeting of the Ethics Advisory Committee**

Purchase self-study
on-demand programs
at **www.nmbar.org** and
complete up to four hours
of CLE in the comfort of
your home or office.



Your purchase includes online access to the previously recorded
program and accompanying course materials.

Credits are filed with New Mexico MCLE within 30 days of completion.

Contact the Center for Legal Education for more information.





CLE REGISTRATION FORM

For more information about our programs visit www.nmbar.org

Four Ways to Register:

Online: www.nmbar.org **Fax:** 505-797-6071, 24-hour access **Phone:** 505-797-6020

Mail: Center for Legal Education, PO Box 92860, Albuquerque, NM 87199

Name _____ NMBAR# _____

Phone _____ Email _____

Program Title _____ Date of Program _____

Program Format ☐ Live ☐ Telecast/Teleseminar ☐ Webcast ☐ Video Replay ☐ Online/On-Demand

Program Cost _____ IMIS Code (For internal use only) _____

Payment

☐ Check or P.O. # _____ (Payable to *Center for Legal Education*)

☐ VISA ☐ MC ☐ American Express ☐ Discover *Payment by credit and debit card will incur a 3% service charge.*

Name on card if different from above: _____

Credit Card # _____

Exp. Date _____ Billing ZIP Code _____ CVV# _____

Authorized Signature _____

REGISTER EARLY! Advance registration is recommended to guarantee admittance and course materials. If space and materials are available, paid registration will be accepted at the door.

CLE Cancellations & Refunds: We understand that plans change. If you find you can no longer attend a program, please contact the CLE Department. We are happy to assist you by transferring your registration to a colleague or applying your payment toward a future CLE event. A full refund will be given to registrants who cancel two or more business days before the program date. A 3% processing fee will be withheld from a refund for credit and debit card payments. Cancellation requests received within one business day of the program will not be eligible for a refund, but the fees may be applied to a future CLE program offered in the same compliance year.

MCLE Credit Information: NMSBF is an accredited CLE provider.

Recording of programs is NOT permitted.

Financial Assistance: A 50% discount on registration fees is available to practicing attorneys who qualify.

Note: Programs subject to change without notice.

defendant to an alternative writ “may show cause by answer”). OMI’s filing of a notice of appeal 341 days after a peremptory writ was filed is untimely and deprives this Court of jurisdiction. We therefore dismiss the appeal.

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

RODERICK T. KENNEDY, Judge

I CONCUR:

MICHAEL E. VIGIL, Chief Judge

TIMOTHY L. GARCIA, (dissenting).

GARCIA, Judge (dissenting).

{38} I respectfully dissent from the majority opinion for two related reasons. First, I view this case as containing “unusual circumstances which would warrant permitting an untimely appeal” because “the delay was the result of judicial error.” *Trujillo v. Serrano*, 1994-NMSC-024, ¶ 16, 117 N.M. 273, 871 P.2d 369. Initially, we must recognize that the rule regarding the time to file an appeal is “a mandatory precondition rather than an absolute jurisdictional requirement.” *See id.* ¶ 15. Until the district court clarified that its March 15, 2012 writ was intended to be peremptory and operate as a final judgment, OMI was

not reasonably required to interpret this March 2012 writ as a peremptory writ. It appears that the district court recognized its previous error when it attempted to remedy the situation by providing that its January 2013 order clarifying the intended effect of the writ would be “[the] final action in this case from which appellate review may be taken[,] if elected.” Although the district court may have acted outside of its jurisdiction in extending the time for filing a notice of appeal, we would not be acting outside our jurisdiction by accepting an untimely notice of appeal. *See id.* ¶¶ 15-16. This is especially true in this case where the mandamus writ at issue appears to require OMI to act outside of its statutory and regulatory authority. *See Mimbres Valley Irrigation Co. v. Salopek*, 2006-NMCA-093, ¶ 19, 140 N.M. 168, 140 P.3d 1117 (“[M]andamus is only appropriate to compel an official to perform a duty if the duty is clear and indisputable.”); *see also* 55 C.J.S. *Mandamus* § 17 at 34 (2009) (“A writ of mandamus by its nature confers no new authority upon the party against whom it may be issued.”).

{39} The second reason for this dissent involves Hoyt’s failure to follow the ap-

propriate statutory procedures for obtaining an alternative peremptory writ of mandamus. *See* §§ 44-2-6 to -11. The fact that OMI responded to Hoyt’s defective and inappropriate petition that initiated this procedural mess in 2008, should not be determinative or controlling. I cannot conclude that OMI was required to do nothing in 2008 and simply wait for the outcome of the district court’s review of Hoyt’s inappropriate 2008 petition. OMI alerted the district court and Hoyt to this dilemma throughout the early proceedings in 2008 and again in 2011. OMI’s first opportunity to properly answer the actual written form of the writ proposed by Hoyt only occurred after the writ was filed on March 15, 2012. As noted above, even the district court was confused about the final nature of the writ that was presented after the November 2011 hearing. This confusion was not cleared up until the January 2013 order. Any procedural or finality defects that may have occurred in this case prior to January 2013, were entirely Hoyt’s creation and should not now be used to deny OMI the right to appeal the merits of this peremptory writ.

TIMOTHY L. GARCIA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2015-NMCA-109

No. 32,379, (filed July 29, 2015)

JACOB M. WILLIAMS,
Plaintiff-Appellee,
v.

BNSF RAILWAY COMPANY,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

RAYMOND Z. ORTIZ, District Judge

CAREN I. FRIEDMAN
Santa Fe, New Mexico

BILL ROBINS III
JUSTIN R. KAUFMAN
HEARD ROBINS CLOUD LLP
Santa Fe, New Mexico

ROBERT M. TRAMUTO
JONES, GRANGER, TRAMUTO &
HALSTEAD
Houston, Texas
for Appellee

TIM L. FIELDS
JEREMY K. HARRISON
MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.
Albuquerque, New Mexico

WAYNE L. ROBBINS, JR.
BNSF RAILWAY COMPANY
Fort Worth, Texas
for Appellant

Opinion

M. Monica Zamora, Judge

{1} BNSF Railway Company (BNSF) appeals from a district court judgment in favor of Jacob Williams (Plaintiff) on Plaintiff's claims brought under the Federal Employers' Liability Act (the Act), 45 U.S.C. §§ 51-60 (2013). BNSF claims that the district court committed reversible error in admitting evidence of subsequent remedial measures and in admitting evidence concerning injuries to other railway employees. We conclude that the district court did not err in its evidentiary rulings. We affirm.

BACKGROUND

{2} Plaintiff worked for BNSF as a locomotive engineer. On July 30, 2009, Plaintiff was working at a mechanical facility for locomotive railcars in Belen. One of Plaintiff's duties was to secure the locomotives by tying or setting handbrakes on each locomotive. A handbrake is a component of a locomotive railcar that is operated manually and that helps to secure a stopped train. Setting the handbrakes

involves cranking a wheel on the catwalk of each locomotive. The wheel pulls a chain, which is attached to the brake. When the wheel is turned, the brake is pulled up against the wheels of the locomotive.

{3} As Plaintiff tied a handbrake on July 30, 2009, he felt a "pop and a stretch" in his left shoulder. Plaintiff finished his shift. Over the next two days Plaintiff experienced increased pain and decreased range of motion in his shoulder. Plaintiff reported the injury on August 1, 2009. The injury was designated as an overexertion injury. Plaintiff underwent physical therapy and eventually needed surgery on his shoulder.

{4} Plaintiff filed a personal injury complaint against BNSF alleging that he injured his shoulder as a result of BNSF's negligent training and unsafe equipment relating to handbrake use. Plaintiff claimed to have suffered a permanent disability and sought recovery for medical expenses, lost wages, and pain and suffering. A jury returned a special verdict, finding damages in the amount of \$80,000, and apportioning fault at seventy-five percent to BNSF and twenty-five percent to Plaintiff. This appeal followed.

DISCUSSION

{5} On appeal BNSF argues that the district court erred in admitting evidence concerning a specialized "handbrake trailer" used in safety training after Plaintiff's injury. BNSF also challenges the admissibility of injury reports made by other BNSF employees after unrelated events.

Standard of Review

{6} "We review the admission or exclusion of evidence for abuse of discretion." *Progressive Cas. Ins. Co. v. Vigil*, 2015-NMCA-031, ¶ 13, 345 P.3d 1096 (internal quotation marks and citation omitted), *cert. granted*, *Progressive v. Vigil*, 2015-NMCERT-003, 346 P.3d 1163. "To the extent our analysis requires interpretation of applicable rules of evidence, our review is de novo." *State v. Garcia*, 2013-NMCA-064, ¶ 11, 302 P.3d 111; *Kysar v. BP Am. Prod. Co.*, 2012-NMCA-036, ¶ 20, 273 P.3d 867 ("Ordinarily, we review an evidentiary ruling of the district court admitting or excluding evidence for an abuse of discretion, while reviewing any interpretation of law underlying the ruling de novo.").

Evidence of the Handbrake Trailer

{7} Prior to trial, BNSF filed a motion in limine seeking to exclude evidence that after Plaintiff's injury, BNSF began using a handbrake trailer in safety training programs in its Southwest Division, including the Belen yard, where Plaintiff was injured. The handbrake trailer is a small portable trailer, with simulations of different types of handbrakes. Each handbrake on the trailer is equipped with a pressure gauge. As employees tighten the simulated handbrakes on the trailer, the gauges show the pressure being applied to the brake in pounds per square inch. A red line on the gauge indicates the pressure at which sufficient tension has been placed on the brake. This helps employees to get a sense for the amount of force needed to properly set each handbrake.

{8} BNSF sought to exclude evidence related to the trailer, claiming that its use in the Southwest Division was a subsequent remedial measure. However, the district court denied the motion, finding that the handbrake trailer evidence was admissible to show the feasibility of precautionary measures. BNSF contends that the district court erred in admitting the evidence under Rule 11-407 NMRA's feasibility exception. We conclude that the evidence was admissible because it did not involve a subsequent remedial measure.

{9} Rule 11-407 provides in pertinent part: “When measures are taken by a defendant that would have made an *earlier* injury or harm less likely to occur, evidence of the *subsequent* measures is not admissible to prove . . . negligence[.] But the court may admit this evidence for another purpose, such as . . . the feasibility of precautionary measures.” *Id.* (emphasis added). By its language, the rule applies to actions taken after the injury or harm has occurred. We also note that the rule concerns *remedial* measures, meaning measures taken to address the occurrence of an accident or injury to make it less likely to occur in the future. See *Black’s Law Dictionary* 1484 (10th ed. 2014) (defining “remedial” as “[a]ffording or providing a remedy; providing the means of obtaining redress” or “[i]ntended to correct, remove, or lessen a wrong, fault, or defect”).

{10} One basic purpose of Rule 11-407 is to encourage a party to make repairs or modifications after an accident by removing the threat of legal liability for doing so. See *Yardman v. San Juan Downs, Inc.*, 1995-NMCA-106, ¶ 22, 120 N.M. 751, 906 P.2d 742. The rule protects a defendant that is first alerted to the possibility of danger after an accident and is induced by the accident to take steps to prevent further injury. See *Boggs ex rel. Boggs v. Lay*, 164 S.W.3d 4, 21 (Mo. Ct. App. 2005). “A defendant who is aware of the problem and has proposed measures for remediation prior to the accident is not entitled to the same protection.” *Id.* (internal quotation marks and citation omitted).

{11} A review of the record in this case reveals that BNSF developed the handbrake trailer prior to Plaintiff’s injury in July 2009. Julia Stoll, who became BNSF’s safety manager for the Southwest Division between 2009 and 2011 testified that the trailer was developed and first used by BNSF’s Montana Division. Stoll further testified that she was aware of the trailer’s existence and use in handbrake safety training before she was transferred to the Southwest Division in April 2009. Because the handbrake trailer was developed and used for safety training prior to Plaintiff’s injury, we conclude that it was not a subsequent remedial measure as contemplated by Rule 11-407.

{12} BNSF also argues that the district court abused its discretion by concluding that the trailer evidence was admissible under Rule 11-401 NMRA, which provides that relevant evidence is generally admissible. This argument is unavailing.

During the hearing on BNSF’s motion in limine to exclude the trailer evidence, the district court found that the evidence was relevant because Plaintiff had directly put his training in issue. Relevant evidence is evidence having “any tendency to make a fact more or less probable than it would be without the evidence.” Rule 11-401. “Whatever naturally and logically tends to establish a fact in issue is relevant.” *McNeill v. Burlington Res. Oil & Gas Co.*, 2008-NMSC-022, ¶ 14, 143 N.M. 740, 182 P.3d 121 (alteration, internal quotation marks, and citation omitted). Here, Plaintiff’s claim was based in part on his allegation that BNSF was negligent in training him. Evidence related to BNSF’s training and safety tools would have a tendency to make more or less probable Plaintiff’s claim that his handbrake injury resulted from negligent training.

{13} BNSF further argues that the district court abused its discretion when it concluded that the trailer evidence was admissible under the Rule 11-403 NMRA balancing test because the probative value was not substantially outweighed by any prejudice to Defendant. However, BNSF does not develop this argument by discussing how the trailer evidence was prejudicial and how any prejudice would have outweighed its probative value. Accordingly, we decline to address this argument. See *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (stating that we will not review undeveloped or unclear arguments that require us to guess at what a party’s arguments might be).

{14} Because evidence concerning the handbrake trailer is relevant to Plaintiff’s claim, and because use of the trailer was not a subsequent remedial measure, we affirm the district court’s admission of the evidence without considering Rule 11-407’s feasibility exception on which the district court based its decision. *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 2015-NMCA-063, ¶ 12, ___ P.3d ___ (“Under the ‘right for any reason’ doctrine, we may affirm the district court’s order on grounds not relied upon by the district court if those grounds do not require us to look beyond the factual allegations that were raised and considered below.” (internal quotation marks and citation omitted)). We also conclude that BNSF’s argument regarding the jury instruction limiting consideration of the trailer evidence to the issue of feasibility is moot. See *Crutchfield v. N.M. Dep’t of Taxation*

& Revenue, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 (“A reviewing court generally does not decide . . . moot questions.”).

Evidence of Other Injuries

{15} BNSF makes a number of arguments challenging the admissibility of injury reports filed by other BNSF employees. BNSF’s primary argument is that Plaintiff failed to show, and the district court failed to consider, whether the incidents reported were substantially similar to the incident from which Plaintiff’s injury arose. BNSF’s arguments are unavailing.

{16} In *Ohlson v. Kent Nowlin Construction Co.*, 1983-NMCA-008, ¶ 34, 99 N.M. 539, 660 P.2d 1021, we relied on *McCormick’s Handbook of the Law of Evidence*, § 200, at 475 (Edward W. Cleary ed., 2d ed. 1972), for the general rule regarding the admissibility of prior accidents or injuries in negligence cases. *Ohlson*, 1983-NMCA-008, ¶ 34 (citing *McCormick’s, supra*, § 200, at 475). Then, as now, the rule is that evidence of prior accidents or injuries is not relevant to prove a specific act of negligence, but may be relevant to show either the existence of a danger or hazard or a defendant’s knowledge of the danger. 1 George E. Dix, *McCormick on Evidence*, § 200, at 1106-07, 1112-13 (Kenneth S. Broun ed., 7th ed. 2013). Evidence of prior accidents or injuries is relevant where the circumstances surrounding the prior incidents are substantially similar to the circumstances surrounding the incident at issue. *Id.* at 1107. The burden of demonstrating substantial similarity lies with the proponent of the evidence. *Id.* at 1107-08. The degree of similarity required will depend on the nature of the allegedly dangerous condition in each case. *Id.* at 1111-14. When evidence of previous accidents or injuries is offered to show a defendant’s knowledge or notice of a danger, a lesser degree of similarity may establish relevance because all that is required “is that the previous injury or injuries be such as to call [the] defendant’s attention to the dangerous situation that resulted in the litigated accident.” *Id.* at 1114.

{17} This is consistent with the general rule in the Tenth Circuit. In *Ponder v. Warren Tool Corp.*, 834 F.2d 1553, 1560 (10th Cir. 1987) the court noted:

Generally, . . . admission of evidence regarding prior accidents or complaints is predicated upon a showing that the circumstances surrounding them were

substantially similar to those involved in the present case[.] . . . how substantial the similarity must be is in part a function of the proponent's theory of proof. . . . If the accident is offered to prove notice, a lack of exact similarity of conditions will not cause exclusion provided the accident was of a kind which should have served to warn the defendant. When evidence of other accidents is used to prove notice or awareness of a dangerous condition, the rule requiring substantial similarity of those accidents to the one at issue should be relaxed. Once a court has determined that accidents are substantially similar, any differences in the circumstances surrounding those occurrences go merely to the weight to be given the evidence.

(alterations, internal quotation marks, and citations omitted).

{18} This is consistent with the general rule in other jurisdictions as well. *See, e.g., Surles ex rel. Johnson v. Greyhound Lines, Inc.*, 474 F.3d 288, 297-98 (6th Cir. 2007) ("Only prior incidents that are substantially similar to the one at issue will be admissible in evidence. This is so in large part because all evidence deemed admissible by the district court must meet the minimal standards of relevancy articulated in Federal Rules of Evidence 401 and 403 . . . if a prior occurrence is offered to prove notice, . . . a lesser degree of similarity is required provided the accident would have tended to warn the defendant." (footnote, internal quotation marks, and citations omitted)); *Borden, Inc. v. Fla. E. Coast Ry. Co.*, 772 F.2d 750, 754-55 (11th Cir. 1985) (stating that "[e]vidence of similar occurrences may be offered to show a defendant's notice of a particular defect or danger [or] the magnitude of the defect or danger involved," and recognizing that the relevance of similar occurrences "depends upon whether the conditions operating to produce the [similar occurrences] were substantially similar to the occurrence in question" (internal quotation marks and citation omitted)); *Gardner v. S. Ry. Sys.*, 675 F.2d 949, 952 (7th Cir. 1982) ("Evidence of prior accidents which occurred at that crossing under similar conditions may be admitted to show that the railroad had prior knowledge that a dangerous and hazardous condition existed. Moreover,

as the Third Circuit and other circuits suggest, it is appropriate to relax the requirement of similar conditions when the offer of proof is to show notice . . . rather than [the] defendant's negligence. (footnote and citations omitted)); *Lohmann ex rel. Lohmann v. Norfolk & W. Ry. Co.*, 948 S.W.2d 659, 668 (Mo. Ct. App. 1997) (holding that "[w]hen evidence of prior accidents is presented to show notice of danger, the similarity of the circumstances surrounding the accidents does not have to be completely symmetrical"); *see Hyatt v. Metro-N. Commuter R.R.*, 792 N.Y.S.2d 391, 393 (App. Div. 2005) (holding that reports and testimony relating to prior accidents should not have been admitted where a railroad employee failed to show that the conditions of prior accidents were substantially the same as the conditions present when his accident occurred).

{19} In the present case, BNSF filed a motion in limine seeking to exclude evidence concerning other BNSF employees on the basis that such evidence was irrelevant to BNSF's negligence, and that its probative value was substantially outweighed by the danger of unfair prejudice to BNSF and confusion of the issues. Plaintiff argued that the injury reports would show that BNSF was on notice that its employees were sustaining injuries while handling handbrakes, which was relevant to the issue of adequate training. At a hearing on BNSF's motion, the parties explained that they were still conducting discovery on the issue. The district court deferred ruling on the motion until discovery was complete. {20} After hearing arguments on the motion, the district court entered an order limiting the admissibility of the injury reports. The district court ruled that evidence of accident reports or injury information produced by BNSF would be admissible to the extent that it related to injuries sustained while applying handbrakes, the setting and releasing of handbrakes, and exertion or pressure during the use of handbrakes, within the ten years prior to Plaintiff's injury. It is unclear from the record whether the court reviewed the individual injury reports prior to issuing the order.

{21} However, the district court did review the injury reports prior to trial. Addressing preliminary matters prior to jury selection, the district court heard from the parties regarding their objections to the trial exhibits. Plaintiff's exhibits included injury reports of other BNSF employees. The reports contained the

date of each incident, the physical act and event which led to the injury, a description of the injury, and a short narrative explaining how the injury occurred. BNSF acknowledged that the injury reports were being offered only to demonstrate BNSF's notice of handbrake injuries, and did not object to the reports on the basis that they were irrelevant to its negligence. Instead, BNSF objected to one report because it was a duplicate, one report based on the relevant time period, and five reports based on an alleged lack of similarity between the reported incidents and Plaintiff's. The district court individually considered each of the reports to which BNSF objected. The duplicate reports and the report outside the relevant time frame were excluded. As to BNSF's objection to the other five reports, the district court concluded that because the injuries or incidents involved overexertion or repetitive motion in the handling of handbrakes, they were substantially similar to Plaintiff's injury and the reports were admitted.

{22} BNSF argues that (1) the injury reports are irrelevant to Plaintiff's negligence claim; (2) the district court erred in admitting the reports without considering evidence of substantial similarity; (3) the reports lacked sufficient detail to establish substantial similarity; and (4) the reports were unfairly prejudicial to BNSF's defense. We disagree.

{23} BNSF's first three assertions are simply not supported by the record. First, Plaintiff offered the injury reports to show that BNSF had notice of a pattern of exertion injuries related to the operation of handbrakes, not to prove negligence, a fact that BNSF acknowledged prior to trial. Thus, whether the reports were relevant to prove negligence has never been an issue in this case. Second, the district court reviewed each injury report with the parties before jury selection and made specific rulings as to each report. And third, the reports detailed when each injury occurred, what task the employee was performing when each injury occurred, what equipment was involved in the injury, descriptions of each injury, and narratives explaining how each injury occurred. The district court correctly determined that the reports contained sufficient detail to establish substantial similarity.

{24} BNSF argues that admitting the injury reports was unfairly prejudicial because it permitted the jury to infer that BNSF knew its employees were being injured operating handbrakes. According

to BNSF, the prejudice was compounded by the fact that BNSF was not permitted to question Julia Stoll, its safety manager for the Southwest Division between 2009 and 2011 about the specific nature of the injuries listed in the reports. This allowed the jury to infer that the injuries in the reports were actually caused by handbrakes. {25} Under Rule 11-403, the district court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice. "Our courts have repeatedly recognized that the trial court is in the best position to evaluate the effect of trial proceedings on the jury." *Norwest Bank N.M., N.A. v. Chrysler Corp.*, 1999-NMCA-070, ¶ 39, 127 N.M. 397, 981 P.2d 1215. Accordingly, "the trial court is vested with broad discretion to determine under Rule 11-403 whether the probative value of evidence is

substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *Norwest Bank N.M., N.A.*, 1999-NMCA-070, ¶ 39.

{26} "The purpose of Rule 11-403 is not to guard against any prejudice whatsoever, but only against the danger of *unfair* prejudice." *State v. Otto*, 2007-NMSC-012, ¶ 16, 141 N.M. 443, 157 P.3d 8 (alteration, internal quotation marks, and citation omitted). In the present case, evidence that other BNSF employees were injured operating handbrakes is relevant to whether BNSF had notice of a pattern of handbrake injuries, and the district court properly admitted the injury reports because they were substantially similar to the Plaintiff's claim. *See Surles*, 474 F.3d 288, 297 (noting that "[a] showing of substantial similarity insures that the evidence meets the . . . requirements of Rule [403]"). BNSF does

not explain how Ms. Stoll's testimony would have reduced any prejudicial effect the injury reports had at trial. Nor does BNSF present any argument as to how this probative value of the injury reports was substantially outweighed by any prejudicial effect the evidence may have had. We conclude that the injury reports were not unfairly prejudicial to BNSF to the extent that they outweighed their probative value and that the district court did not abuse its discretion in admitting the reports as evidence.

CONCLUSION

{27} For the foregoing reasons, we affirm.

{28} **IT IS SO ORDERED**

M. MONICA ZAMORA, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

RODERICK T. KENNEDY, Judge

Certiorari Denied, October 13, 2015, No. 35,513

From the New Mexico Court of Appeals

Opinion Number: 2015-NMCA-110

No. 33,297, (filed August 13, 2015)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
WYATT B.,
Child-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

SANDRA A. PRICE, District Judge

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
M. VICTORIA WILSON
Assistant Attorney General
Albuquerque, New Mexico
for Appellee

JORGE A. ALVARADO
Chief Public Defender
TANIA SHAHANI
Assistant Appellate Defender
Santa Fe, New Mexico
for Child-Appellant

Opinion**James J. Wechsler, Judge**

{1} Child, Wyatt B., appeals his adjudication for driving while under the influence of intoxicating liquor or drugs (DWI), contrary to NMSA 1978, Section 66-8-102(A), (B) (2010). DWI is a delinquent act under NMSA 1978, Section 32A-2-3(A)(1)(a) (2009). Child primarily raises violations of the Children's Code, NMSA 1978, §§ 32A-1-1 to -21 (1993, as amended through 2009), and issues of evidentiary error in connection with the district court's admission of incriminating statements Child made to police officers while subject to an investigatory detention and arrest for DWI. Under the Children's Code, police cannot question or interrogate a child suspected of having committed a delinquent act without first advising the child of his or her right to remain silent and securing the child's knowing, intelligent, and voluntary waiver of that right. Section 32A-2-14(C); *State v. Javier M.*, 2001-NMSC-030, ¶ 48, 131 N.M. 1, 33 P.3d 1. If a child's statements are elicited in violation of this requirement, Section 32A-2-14(D) prohibits the admission of the child's statements at a subsequent court proceeding.

{2} Child first argues that the district court erred in admitting his statements because

the State failed to prove that Child knowingly, intelligently, and voluntarily waived his statutory right to remain silent, in violation of Section 32A-2-14(D). Child further argues that the State intentionally elicited inadmissible testimony regarding incriminating statements Child made before he was advised of his statutory right. Child contends that the inadmissible testimony similarly violated Section 32A-2-14(D), unfairly prejudiced Child, and could not be remedied by the district court's subsequent curative instruction to disregard Child's statements. Finally, Child argues that the district court erred in refusing to provide the jury with his requested instruction on duress.

{3} We hold that Child's waiver of his statutory right to remain silent was made knowingly, intelligently, and voluntarily. We also hold that the testimony pertaining to the statements Child made before he was advised of his statutory right to remain silent was inadmissible, but that the improper admission of this evidence was harmless error. We further uphold the district court's denial of Child's request for a jury instruction on duress. Accordingly, we affirm Child's conviction.

BACKGROUND

{4} Late in the evening of September 23, 2012, San Juan County Sheriff's Deputies

Michael Carey and Ricky Stevens responded to a dispatch report of a suspicious vehicle parked outside a convenience store located near the western border of San Juan County, New Mexico. After arriving at the store and identifying the vehicle, Deputy Carey made contact with Child, who was in the driver's seat. Deputy Stevens approached the opposite side of the vehicle and made contact with Hensley George, who was in the passenger's seat. Deputy Carey observed signs of Child's intoxication and initiated a DWI investigation, which was video-recorded by the dashboard camera in Deputy Carey's patrol car. Before advising Child of his right to remain silent, Deputy Carey asked Child a series of questions pertaining to Child's age and identity and whether Child had been drinking. Child, who was sixteen years old at that time, made incriminating statements in response to Deputy Carey's questions. Deputy Carey then turned over the DWI investigation to Deputy Stevens, who administered field sobriety tests and ultimately arrested Child for DWI. Child made additional incriminating statements to Deputy Stevens and was later found to have a breath alcohol concentration of 0.14 percent and 0.15 percent.

{5} Child was tried pursuant to a criminal complaint charging him with DWI and possession of drug paraphernalia. Because the jury acquitted him of possession of drug paraphernalia, only the DWI conviction is at issue in this appeal. With regard to that charge, the State's evidence at trial consisted of the testimony of Deputies Carey and Stevens, the video recording that captured Deputy Carey's investigatory detention of Child, and the results of the breath alcohol tests.

{6} On the morning of Child's trial, after selection of the jury but before opening statements, Child made an oral motion to exclude his statements to police officers. Child's counsel specifically cited Section 32A-2-14(D), which provides that before the State may introduce at trial any statements made by a child who is alleged to be delinquent, "the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent, and voluntary waiver of the child's constitutional rights was obtained." Child's counsel further argued that Child had not received any notice from the State that it intended to use Child's statements or offer them as evidence at Child's trial. The State argued that, as part of the discovery process, it had provided Child's counsel

with a copy of Deputy Carey's dashboard camera video and had viewed the video together with Child's counsel. The district court addressed Child's motion as a suppression motion, and the court expressed its concern that attempts to suppress statements are the types of issues that are usually raised "well in advance" of trial and that Child's motion "should never have been made during trial." The district court nonetheless decided to proceed in addressing Child's motion by questioning Deputy Carey outside the presence of the jury on matters pertaining to the factors the district court must consider to determine whether Child's waiver was valid.

{7} In response to the district court's questions, Deputy Carey testified that he advised Child of his rights under *Miranda v. Arizona*, 384 U.S. 436, 467-68 (1966), (*Miranda*) after he discovered Child was a juvenile. He also testified that Child seemed to understand his questions and was not reluctant to answer them. However, in response to Child's counsel's questions, Deputy Carey testified that he could not remember what preliminary investigative questions he asked Child before advising Child of his *Miranda* rights. He further testified that it was possible that prior to his advisement to Child, he had asked Child whether he had been drinking. Following Deputy Carey's testimony, the district court denied a request by Child's counsel to call Deputy Stevens to the witness stand. Instead, the district court announced its ruling that, based on the testimony of Deputy Carey and after consideration of the factors outlined in Section 32A-2-14(E), Child's waiver was knowing, intelligent, and voluntary.

{8} After a brief recess, Child renewed his motion to exclude his statements, arguing that the district court should excise from Deputy Carey's dashboard camera video any statements made by Child that were elicited prior to Deputy Carey's advisement. Child's counsel again cited Section 32A-2-14(D) as support for his motion. Noting first that it had not seen Deputy Carey's video and that Child had not filed a motion to exclude or excise it, the district court asked Child's counsel if he had reviewed the video to determine the portions that he believed should be excised. Child's counsel responded that defense counsel "has had difficulty getting the video to operate properly." The court again voiced its concern over the timing of Child's request, remarking that "the attorneys should have done this prior to sitting in

trial with a jury in the hallway." The court then inquired whether the prosecutor knew the content of the video recording regarding statements Child made before Child was advised of his *Miranda* rights. The prosecutor informed the court that the questions were "introductory questions" that any police officer would make during a DWI investigation, including "what are you doing" and "have you been drinking." Child's counsel argued that if police asked Child if he had been drinking, that type of question would lead to an incriminating response under the Children's Code. The court noted that it may have to strike Child's statements if their introduction at trial was improper but decided to proceed with Child's trial without watching the video. The State informed the court that it planned to play only approximately seven minutes of the video.

{9} Prior to playing Deputy Carey's video for the jury, the State asked Deputy Carey on direct examination whether he had asked Child any questions prior to turning the DWI investigation over to Deputy Stevens. Deputy Carey answered that he asked Child if he had been drinking but that he could not recall what other questions he asked Child. The State followed up with the questions, "Did [Child] give you any indication to what he'd been drinking?" and "Did [Child] give you any indication as to when the last time he had a drink was?" Deputy Carey responded to both questions that he could not recall Child's answers, and the State asked if Deputy Carey's report would refresh his recollection. Deputy Carey testified that he did not write a report but that "everything should be on [the] video."

{10} When the State moved to introduce Deputy Carey's dashboard camera video, Child objected to the admission of any statements Child made prior to being advised of his *Miranda* rights. The court stated that it would continue its ruling as previously given and permitted the State to play the video. The video revealed that after Deputy Carey learned Child's age, but before he advised Child of his right to remain silent, Deputy Carey asked Child two questions regarding how much alcohol he had to drink and when he drank it. Child gave two statements in response to Deputy Carey's questions, specifically answering that he had consumed "three cans" approximately "fifteen [to] thirty minutes ago." Deputy Carey then advised Child of his *Miranda* rights, which Child stated he understood. This portion of the video drew

an objection from Child. After the video was played, the district court noted that Deputy Carey had asked Child two questions after learning Child's age but before Deputy Carey's advisement. The district court immediately instructed the jury to disregard Child's statements in response to those questions, explaining that they must not consider those statements as evidence in the case.

{11} The prosecutor then continued her direct examination of Deputy Carey, during which the following exchange occurred:

State: After reviewing that video, did you ask [Child] how much he had to drink that night?
Carey: Yes.

State: Okay. After he was *Mirandized*?

Carey: I think it was before I *Mirandized* him.

State: Okay. Did you ask him after he was *Mirandized* how much he had been drinking?

Child's objection to that question was overruled, and the court allowed the State's questioning to continue:

State: So, after you *Mirandized* [Child], did he ever make any statements as to how much he had been drinking?

Carey: I believe so, yes.

State: Okay. And do you recall after watching the video, what did he tell you?

Carey: Just the three beers.

State: Okay. And do you recall after watching the video how long ago he stated he had been drinking?

Carey: Thirty minutes prior to us contacting him.

{12} After Deputy Carey's testimony and outside the presence of the jury, Child moved for a mistrial on the grounds that (1) Deputy Carey asked Child questions that elicited incriminating statements "without first advising [Child] of [his] constitutional rights and securing a knowing, intelligent, and voluntary waiver" as required by Section 32A-2-14(C); and (2) the State introduced the evidence of Child's statements at trial in violation of Section 32A-2-14(D). The district court denied Child's motion and stated it would issue a curative instruction to the jury if Child requested it.

{13} Before reconvening the jury and proceeding with the trial, the court offered to hear testimony from Deputy Stevens

for the purpose of revisiting the issue of whether Child's waiver was knowing, intelligent, and voluntary. After hearing Deputy Stevens' testimony, the district court stood by its previous ruling that Child's waiver was valid.

{14} Prior to closing statements, the district court reminded the jury that it had instructed the jury to disregard a statement by Child on Deputy Carey's video recording. The court then read a curative instruction regarding that issue, stating that the jury must "disregard any and all statements made by [Child] to the police after the officers learned his age, but prior . . . to them *Mirandizing* him or reading him the juvenile constitutional rights. These statements are not to be considered by you for any purpose." The jury convicted Child of DWI, but it acquitted him of possession of drug paraphernalia. Child raises three issues on appeal that we address in turn.

CHILD'S WAIVER OF HIS STATUTORY RIGHT TO REMAIN SILENT

{15} Child first challenges the admissibility of inculpatory statements that he made after he was advised of his right to remain silent. Child argues that the district court's admission of this evidence violated Section 32A-2-14(D) because the State failed to demonstrate that Child knowingly, intelligently, and voluntarily waived his right. Child primarily claims that his impaired physical and mental condition, caused by his intoxication, inhibited his ability to validly waive his right. He also advances several other grounds in support of his argument, namely that (1) he was detained by police officers and not free to leave; (2) Deputy Carey hurried through his advisement to Child and did not slow down to confirm that Child understood his right; (3) Deputy Carey asked Child questions that he knew were likely to elicit incriminating responses; (4) Deputy Carey refused Child's request to call his parents; and (5) the district court's determination that Child validly waived his right was based, in part, on the court's mistaken belief that Child lied about his age to Deputy Carey.

Standard of Review

{16} Illegally obtained evidence is subject to a suppression motion to exclude the evidence from trial. *Cf. City of Santa Fe v. Marquez*, 2012-NMSC-031, ¶ 27, 285 P.3d 637 ("A motion to suppress presupposes that the evidence was illegally obtained." (emphasis, alteration, quotation marks, and citation omitted)); *see, e.g., State v.*

Antonio T., 2015-NMSC-019, ¶ 31, ___ P.3d ___ (holding that the child's motion to suppress his incriminating statements should have been granted because the statements were obtained in violation of Section 32A-2-14(C) and the state failed to prove the child's waiver was valid pursuant to Section 32A-2-14(D)). An appeal of a district court's denial of a motion to suppress inculpatory statements involves mixed questions of fact and law. *State v. Gerald B.*, 2006-NMCA-022, ¶ 13, 139 N.M. 113, 129 P.3d 149. As an appellate court, we do not intrude on the district court's role as the trier of fact. *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. "We view the facts in the manner most favorable to the prevailing party and defer to the district court's findings of fact if substantial evidence exists to support those findings." *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Jean-Paul*, 2013-NMCA-032, ¶ 4, 295 P.3d 1072 (internal quotation marks and citation omitted). The district court's application of the law to the facts is a question of law that we review de novo. *State v. Randy J.*, 2011-NMCA-105, ¶ 10, 150 N.M. 683, 265 P.3d 734.

Protections Under the Children's Code

{17} The Fifth Amendment to the United States Constitution "serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." *Miranda*, 384 U.S. at 467. In New Mexico, children who are subject to police questioning are statutorily entitled to greater rights under Section 32A-2-14 than those guaranteed by *Miranda*. *See Javier M.*, 2001-NMSC-030, ¶ 1 (concluding that Section 32A-2-14 demonstrates the Legislature's intent to afford broader rights to children than those provided in *Miranda* jurisprudence). Section 32A-2-14(C) prohibits police questioning of a child suspected of a delinquent act "without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver." More significantly, before the State may introduce any statements made by a child at trial, the State "shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained." Section 32A-2-14(D).

{18} Our Supreme Court held in *Javier M.* that "a child need not be under

custodial interrogation" by police for the statute's protections to apply. 2001-NMSC-030, ¶ 1. "Custodial interrogation occurs when an individual is swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion so that the individual feels under compulsion to speak." *Id.* ¶ 15 (alterations, internal quotation marks, and citation omitted). Rather, our Supreme Court concluded that the protections of Section 32A-2-14 also extend to a child who is "seized pursuant to an investigatory detention and not free to leave." *Javier M.*, 2001-NMSC-030, ¶ 38. "[W]hen an officer approaches a child to ask the child questions because the officer 'suspects' the child of delinquent behavior, the officer is performing an investigatory detention." *Id.* ¶ 37. The Court held that the statute's use of the term "constitutional rights" is not a reference to the "required warnings enumerated in *Miranda*." *Id.* ¶ 41. Instead, the Court held that Section 32A-2-14 requires that the child who is subject to an investigatory detention "be advised of his or her right to remain silent and that if the child waives that right, anything said can be used against [the child]." *Javier M.*, 2001-NMSC-030, ¶ 48.

{19} Although Section 32A-2-14 institutes these heightened statutory protections for children, the applicable test for reviewing whether a child waived his or her statutory right is the same as that of an adult. *State v. Lasner*, 2000-NMSC-038, ¶ 6, 129 N.M. 806, 14 P.3d 1282. We examine the totality of the circumstances to determine whether the State has carried its "burden of demonstrating by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived the constitutional right against self-incrimination." *State v. Martinez*, 1999-NMSC-018, ¶ 14, 127 N.M. 207, 979 P.2d 718. With respect to children over the age of fourteen, Section 32A-2-14(E) codifies the totality of the circumstances test and requires that courts consider "some of the circumstances that may be particularly relevant for a juvenile" when determining whether a child's statements are admissible. *Martinez*, 1999-NMSC-018, ¶ 18. That section provides: In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

- (1) the age and education of the respondent;
- (2) whether the respondent is in custody;

- (3) the manner in which the respondent was advised of the respondent's rights;
- (4) the length of questioning and circumstances under which the respondent was questioned;
- (5) the condition of the quarters where the respondent was being kept at the time of being questioned;
- (6) the time of day and the treatment of the respondent at the time of being questioned;
- (7) the mental and physical condition of the respondent at the time of being questioned; and
- (8) whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

Section 32A-2-14(E).

{20} Child was approached and questioned by Deputy Carey because he suspected Child of DWI, a delinquent act under the Children's Code. Accordingly, Child was subject to an investigatory detention that triggered the statutory protections of Section 32A-2-14. We therefore analyze the totality of the circumstances surrounding Child's questioning to evaluate whether Child knowingly, intelligently, and voluntarily waived his statutory right to remain silent. "In determining a knowing and intelligent waiver of rights, we ascertain whether [Child] was fully aware of the nature of the right he was waiving and the consequences of abandoning the right." *Martinez*, 1999-NMSC-018, ¶ 21.

Validity of Child's Waiver

{21} Applying the factors enumerated in Section 32A-2-14(E) as part of the totality of circumstances analysis, we conclude that Child knowingly, intelligently, and voluntarily waived his statutory right to remain silent. Child was sixteen years old at the time of questioning. Although the trial record does not indicate Child's educational level, our Supreme Court has held that "a child over age fifteen is unlikely to make an involuntary statement . . . after receiving *Miranda* warnings." *State v. Jonathan M.*, 1990-NMSC-046, ¶ 8, 109 N.M. 789, 791 P.2d 64. Child does not dispute that he was subject to an investigatory detention, but Child suggests that his waiver was invalid because Deputy Carey testified Child was not free to leave during questioning. We do not believe this restriction indicates Child's waiver was invalid but only indicates that the statutory protections of Section 32A-2-14 apply to Child's

situation. See *Javier M.*, 2001-NMSC-030, ¶ 38 ("[T]he protections of [Section 32A-2-14] are triggered . . . when a child is seized pursuant to an investigatory detention and not free to leave."). Officers conducted the DWI investigation in the public parking lot of a convenience store in plain view of store employees, traffic, and other members of the public entering and exiting the store. Further, the length of time between Child's initial contact with police and his arrest for DWI lasted only approximately twelve minutes. Even though the time of day was approximately 11:00 p.m., Deputy Stevens testified that the parking lot was well-lit by the store's lights and the lights of the police patrol cars. In addition, Deputy Carey testified that his demeanor toward Child was professional and courteous and that there was no indication that Child felt in fear of the interaction. Deputy Carey informed Child of his right to remain silent, that anything Child said could be used against him, and that Child could exercise his right to not make any statements or answer any questions. Deputy Carey asked Child if he understood the advisement, and Child answered that he did. Child argues that Deputy Carey "ran through" the advisement, failed to slow down to confirm whether Child understood his rights, and asked Child questions that he knew were likely to elicit incriminating responses. Child does not fully develop these arguments or cite any authority on these points. See *State v. Flores*, 2015-NMCA-002, ¶ 17, 340 P.3d 622 ("[This] Court has been clear that it is the responsibility of the parties to set forth their developed arguments, it is not the court's responsibility to presume what they may have intended."), *cert. granted*, 2014-NMCERT-012, 344 P.3d 988. However, to the extent Child suggests that he was "tricked[] or cajoled into a waiver[]," evidence in the trial record fails to support such a claim. *Miranda*, 384 U.S. at 476.

{22} We are also not persuaded by Child's argument that his intoxication level during the time of questioning impaired his ability to validly waive his statutory right. Child points to this Court's prior holding that evidence of extreme intoxication is inconsistent with a knowing, intelligent, and voluntary waiver of rights. See *State v. Bramlett*, 1980-NMCA-042, ¶¶ 22-23, 94 N.M. 263, 609 P.2d 345 (holding that the defendant's statements were inadmissible because evidence of the defendant's extreme intoxication was not consistent with a valid waiver of *Miranda* rights), *overruled on other grounds by Armijo v.*

State ex rel. Transp. Dep't, 1987-NMCA-052, ¶ 8, 105 N.M. 771, 737 P.2d 552; see also *State v. Young*, 1994-NMCA-061, ¶ 14, 117 N.M. 688, 875 P.2d 1119 (holding that the trial court must consider evidence of intoxication when the defendant's extreme intoxication was not consistent with a valid waiver of *Miranda* rights). In support of his argument, Child first cites testimony from Deputy Carey that Child had difficulty opening the door of his vehicle. Child also relies on testimony from Deputy Stevens that Child spoke in incomplete sentences due to his intoxication, stated that he was "pretty buzzed," and performed poorly on the field sobriety tests. In addition, Child claims that the results of his breath alcohol concentrations of 0.14 and 0.15 exhibited an intoxication level that detrimentally impacted his ability to validly waive his right to remain silent.

{23} We agree that the evidence of Child's intoxication demonstrates he could not drive safely, and we are mindful that "voluntary intoxication is relevant to determining whether a waiver was knowing and intelligent." *Young*, 1994-NMCA-061, ¶ 14. However, we disagree that the evidence in this case compels a determination that Child was extremely intoxicated and lacked the capability to understand and waive his statutory right. In *Bramlett*, the defendant's breath alcohol concentration level was 0.23, he had difficulty walking, and police officers prolonged their detention of the defendant "for his own protection" because he was "too intoxicated to be released[.]" 1980-NMCA-042, ¶¶ 20-21 (internal quotation marks omitted). Similarly, in *Young*, the defendant's blood alcohol level was nearly four times the level necessary to establish impairment for purposes of DWI. 1994-NMCA-061, ¶ 14. Evidence of Child's intoxication stands in stark contrast to the evidence of extreme intoxication present in *Bramlett* and *Young*. When asked about Child's level of intoxication, Deputy Carey described Child as having "a little bit of slurred speech" and blood shot and watery eyes, but he testified that Child seemed to understand his questions and was not disheveled, out of control, or mentally unbalanced. Child was unable to successfully complete the field sobriety tests, but no evidence in the trial record supports a conclusion that Child was unable to walk or could not care for his own safety. Moreover, Child's breath alcohol concentration level was markedly below the levels of the defendants in *Bramlett*

and *Young*. We believe that this evidence is consistent with a determination that Child knowingly, intelligently, and voluntarily waived his right to remain silent.

{24} Deputy Carey denied Child's request to allow him to call his parents while he was being questioned, and Child further argues that Deputy Carey's denial runs contrary to Section 32A-2-14(E)(8) and weighs against the district court's finding of a valid waiver. Specifically, Child claims that the Legislature included Section 32A-2-14(E)(8) for the specific purpose of protecting children from pressures intrinsic to the interrogation atmosphere. Even though we consider this factor in reviewing the totality of the circumstances, Child misconstrues our well-established application of the test. The statutory factors set forth in Section 32A-2-14(E) "emphasiz[e] some of the circumstances that may be particularly relevant for a juvenile," but "presence or absence of an attorney, friend, or relative at the questioning . . . is merely one of the factors relevant in determining the validity of a waiver of rights[.]" *Martinez*, 1999-NMSC-018, ¶¶ 18, 20. We are not convinced that the inability of Child to have his parents present during his investigatory detention overcomes other factors that suggest Child's waiver was knowing, intelligent, and voluntary.

{25} Finally, Child argues that the district court based its ruling of a valid waiver on the court's incorrect belief that Child lied about his age at the time of questioning. After viewing Deputy Carey's video, the district court, in its second ruling on the validity of Child's waiver, stated that Child "fabricated his age" by initially telling Deputy Carey he was fifteen rather than sixteen during questioning. Child contends that the trial record fails to support the district court's finding because the court mistakenly equated Child's ability to lie with his ability to waive his right to remain silent. However, the court did not ground its determination on the validity of Child's waiver solely in its conclusion that Child was deceptive about his age. Regardless of the district court's finding regarding Child's deception, the trial record nonetheless adequately establishes that Child understood his statutory right and the consequences of waiving that right. We are therefore convinced by the totality of the circumstances that Child's waiver was knowing, intelligent, and voluntary and that the district court properly denied Child's suppression motion.

ADMISSION OF DEPUTY CAREY'S TESTIMONY

{26} Child next argues that Deputy Carey's testimony that Child stated he drank "three beers . . . thirty minutes prior to [police] contacting him" was inadmissible under Section 32A-2-14(D) and prejudiced Child. Child contends that the State intentionally elicited the improper testimony only moments after the district court viewed Deputy Carey's video and admonished the jury to disregard the statements Child made after Deputy Carey learned Child's age but before Child was advised of his right to remain silent. Child argues that the error could not be remedied by the district court's subsequent curative instruction given at the end of Child's trial to disregard Child's statements.

{27} According to Child, the State's improper motive in eliciting Deputy Carey's inadmissible testimony requires our departure from the general rule that "a prompt admonition from the court to the jury to disregard and not consider inadmissible evidence sufficiently cures any prejudicial effect which might otherwise result." *State v. Newman*, 1989-NMCA-086, ¶ 19, 109 N.M. 263, 784 P.2d 1006. It is true that our courts apply a different analysis to cases in which the prosecution intentionally elicits inadmissible evidence. *State v. Armijo*, 2014-NMCA-013, ¶ 9, 316 P.3d 902. In those types of cases, "regardless of whether a [district] court admonishes the jury not to consider the testimony, [we] must determine whether there is a reasonable probability that the improperly admitted evidence could have induced the jury's verdict." *Id.* (internal quotation marks and citation omitted). The trial record in this case, however, fails to support Child's assertion that the district court issued a curative instruction related to Deputy Carey's testimony regarding Child's statements. The district court, at the close of Child's trial, instead issued a curative instruction related to Child's statements as recorded by Deputy Carey's video. On appeal, Child does not raise an issue of evidentiary error with regard to the district court's admission of the video. Therefore, in the absence of a curative instruction or prompt admonition from the district court to cure any error caused by Deputy Carey's testimony, the question of whether the State intentionally elicited the testimony is not relevant for purposes of our analysis. Rather, we must determine whether Deputy Carey's testimony was inadmissible and, if so,

whether the inadmissible testimony was prejudicial or harmless to Child. *See State v. Tollardo*, 2012-NMSC-008, ¶ 25, 275 P.3d 110 ("Improperly admitted evidence is not grounds for a new trial unless the error is determined to be harmful.").

{28} Child is correct that Deputy Carey's testimony that highlighted statements Child made prior to being advised of his statutory right to remain silent was inadmissible. After the jury viewed Deputy Carey's video, the district court promptly excluded Child's statements that he drank three beers approximately fifteen to thirty minutes prior to his encounter with police officers. Over Child's objection, the district court then allowed the prosecutor to elicit testimony from Deputy Carey regarding those same statements, specifically that Child stated he had consumed "three beers . . . thirty minutes prior to [police] contacting him." Child's statements were elicited before he was advised of his statutory right to remain silent, and the improper admission of this testimony violated Section 32A-2-14(D). Therefore, we turn to whether Deputy Carey's inadmissible testimony was prejudicial or harmless to Child.

{29} For purposes of harmless error review, we apply a non-constitutional harmless error analysis when the error implicates a violation of statutory law. "[A] non-constitutional error is harmless when there is no reasonable probability the error affected the verdict." *Tollardo*, 2012-NMSC-008, ¶ 36 (emphasis, internal quotation marks, and citation omitted). We conduct our harmless error analysis on a case-by-case basis and "evaluate all of the circumstances surrounding the error." *Id.* ¶¶ 43-44. These circumstances necessarily encompass "an examination of the error itself, which depending upon the facts of the particular case could include an examination of the source of the error and the emphasis placed upon the error." *Id.* ¶ 43. We may also consider properly admitted evidence of a defendant's guilt "since it will provide context for understanding how the error arose and what role it may have played in the trial proceedings[.]" *Id.* The circumstances of a particular case will also dictate our examination of the error in the context of "the importance of the erroneously admitted evidence in the prosecution's case, as well as whether the error was cumulative or instead introduced new facts." *Id.* (alterations, internal quotation marks, and citation omitted).

{30} Child concedes on appeal that the evidence at his trial was generally sufficient to support his conviction for DWI. However, our inquiry for purposes of harmless error review “is not to determine whether the evidence was sufficient to support a conviction.” *Armijo*, 2014-NMCA-013, ¶ 16. We instead determine whether there is a reasonable probability that Deputy Carey’s inadmissible testimony affected the jury’s verdict. *See Tollardo*, 2012-NMSC-008, ¶ 57 (“In the final analysis, determining whether an error was harmless requires reviewing the error itself and its role in the trial proceedings, and in light of those facts, making an educated inference about how that error was received by the jury.”). The jury was instructed at trial that to return a guilty verdict it must find that Child “operated a motor vehicle” and “[w]ithin three (3) hours of driving, [Child] had an alcohol concentration of eight one-hundredths (.08) grams or more[.]” UJI 14-4503 NMRA. The State’s properly admitted evidence pertaining to these findings consisted of Child’s breath alcohol test results and the deputies’ testimony regarding signs of Child’s intoxication, his performance on the field sobriety tests, and incriminating statements Child made after he waived his right to remain silent.

{31} Deputy Carey testified that, upon approaching Child’s vehicle, he detected the odor of alcohol and Child appeared to be intoxicated. Deputy Stevens also testified that he smelled alcohol on Child’s breath as he spoke, that Child’s eyes were bloodshot and watery, and that Child slurred his speech. Child also performed poorly on the field sobriety tests, particularly with regard to the tests that gauge physical balance, and Deputy Stevens testified that Child’s performance was the result of his intoxication. Further, Child told Deputy Stevens that he was “pretty buzzed,” that George had given him alcohol and forced Child to drive, and that Child and George drove to the convenience store “to do a beer run.” Finally, the results of Child’s breath alcohol tests established Child’s alcohol concentration level of 0.14 and 0.15, which exceeds the limit of .08 specified in Section 66-8-102 and the jury instruction. In light of this evidence, there is no reasonable probability that the admission of Deputy Carey’s

testimony regarding the statements Child made prior to being advised of his right to remain silent affected the verdict. Accordingly, the district court’s error in admitting Deputy Carey’s inadmissible testimony regarding statements Child made before he was advised of his statutory right to remain silent was harmless.

{32} We make one final observation in connection with the course of the proceedings below. In evaluating all the circumstances surrounding the error, we note that the genesis of the error was the district court’s admission of Deputy Carey’s dashboard camera video without previously determining whether Child made inadmissible statements. With regard to the video, the trial record reflects the district court’s frustration with the timing of Child’s suppression motion as well as the inability of both Child and the State to pinpoint any statements that should be suppressed. Although the error before us in this appeal was ultimately harmless, the situation underscores the importance of both (1) the requirement that defense counsel make timely pretrial suppression motions; and (2) the State’s duty to ensure compliance with Section 32A-2-14(D) before introducing evidence at trial that is inadmissible under the Children’s Code.

REQUEST FOR JURY INSTRUCTION ON DURESS

{33} Lastly, Child argues that the district court erred in refusing to provide the jury with his requested instruction on duress, UJI 14-5130 NMRA. Child’s proffered instruction was based on the theory that Child drove to the store under threat of harm from George, who testified that he “forced” Child to drive him. Child reiterates this same line of reasoning on appeal, contending that George’s testimony constituted sufficient evidence that warranted the instruction. “The propriety of jury instructions given or denied is a mixed question of law and fact” that we review *de novo*. *State v. Lucero*, 2010-NMSC-011, ¶ 11, 147 N.M. 747, 228 P.3d 1167 (internal quotation marks and citation omitted). “When considering a defendant’s requested instructions, we view the evidence in the light most favorable to the giving of the requested instruction.” *State v. Romero*, 2005-NMCA-060, ¶ 8, 137 N.M. 456, 112 P.3d 1113. The district court’s refusal of a defendant’s requested jury instruction

that is supported by the evidence at trial is reversible error. *State v. Brown*, 1996-NMSC-073, ¶ 34, 122 N.M. 724, 931 P.2d 69.

{34} Duress is a valid defense that is available to defendants in DWI cases. *State v. Rios*, 1999-NMCA-069, ¶¶ 1, 28, 127 N.M. 334, 980 P.2d 1068. Defendants who raise the defense of duress are “not attempting to disprove a requisite mental state” but “are instead attempting to show that they ought to be excused from criminal liability because of the circumstances surrounding their intentional act.” *Id.* ¶ 12. The duress defense excuses or justifies a defendant’s conduct based on the principle that the defendant committed the crime “in order to avoid a harm of greater magnitude.” *State v. Gurule*, 2011-NMCA-042, ¶ 19, 149 N.M. 599, 252 P.3d 823 (alteration, internal quotation marks, and citation omitted). When applying the duress defense to the strict liability crime of DWI, our courts have adopted a “narrowed articulation” of the defense “so as not to vitiate the protectionary purpose of the strict liability statute.” *Rios*, 1999-NMCA-069, ¶¶ 16-17 (alteration, internal quotation marks, and citation omitted). Consequently, to be entitled to a jury instruction on the defense of duress, a defendant must present sufficient evidence that “(1) [he or she] acted under unlawful and imminent threat of death or serious bodily injury, (2) he [or she] did not find himself [or herself] in a position that compelled him [or her] to violate the law due to his [or her] own recklessness, (3) he [or she] had no reasonable legal alternative, and (4) his [or her] illegal conduct was directly caused by the threat of harm.” *Id.* ¶ 25 “The keystone of the analysis is that the defendant must have no alternative—either before or during the event—to avoid violating the law.” *Rios*, 1999-NMCA-069, ¶ 17 (alteration, internal quotation marks, and citation omitted).

{35} In this case, the district court denied Defendant’s request for the instruction on the ground that Child did not present evidence that would support that he “feared immediate great bodily harm.”¹ Although the district court used the terms of the uniform jury instruction rather than the four-factor test articulated in *Rios*, its determination clearly correlates with the first factor, and it ultimately reached the correct result. George testified

¹The uniform jury instruction for the defense of duress provides that “[i]f the defendant feared immediate great bodily harm to himself or another person if he did not commit the crime and if a reasonable person would have acted in the same way under the circumstances, [the jury] must find the defendant not guilty.” UJI 14-5130.

that he “forced” Child to drive him to the store that night to buy more alcohol. He further testified that he raised his voice and told Child to “hurry” before Child’s parents returned home. George admitted that he “pressured” Child, but he also testified that he never made physical contact with Child or threatened Child with physical force or a weapon. We are not persuaded that this testimony supports Child’s argument that Child acted under unlawful and imminent threat of death or serious bodily injury.

{36} Child does not provide any other arguments, record citations, or legal authority in his brief in chief that address the remaining factors necessary to make a prima facie showing that he was entitled to a jury instruction on the defense of duress. *See Rios*, 1999-NMCA-069, ¶ 22 (“Defendant [is] required to present evidence regarding each element of the prima facie case [for a duress instruction].”); *see also Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to review undeveloped

arguments with no citations to the record or legal authority). Accordingly, we hold the district court properly denied Child’s request for a jury instruction on duress.

CONCLUSION

{37} For the foregoing reasons, we affirm Child’s conviction for DWI.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

LINDA M. VANZI, Judge



Montgomery & Andrews, P.A. is pleased to announce
that Louis W. Rose has been awarded the 2016
New Mexico Mining Association's
Doc Weiler/Marvin Watts Award for Professionalism.

H.J. "Doc" Weiler/Marvin Watts were two of the most popular and respected lobbyists ever to walk the halls of the State Capitol. They used their exemplary knowledge of the governmental process to become two of the strongest advocates for New Mexico's mining industry. Their dedication to mining extended beyond the interests of their clients and benefited the New Mexico Mining Association and industry as a whole. The one thing that Doc and Marvin were best known for was professionalism.

In honor of these two fine gentlemen, the New Mexico Mining Association in 2005 established the Doc Weiler/Marvin Watts Award for Professionalism. The award is given each year at the Association's Annual Legislative Reception and Dinner to any individual member of the NMMA, governmental employee, or lobbyist who has developed a strong and widely respected reputation as an advocate for New Mexico's mining industry. The recipient must have demonstrated a commitment to issues important to New Mexico's mining industry over an extended period of time.

325 Paseo de Peralta
Santa Fe, N.M. 87501
505-982-3873

100 Sun Avenue NE, Suite 410
Albuquerque, N.M. 87109
505-884-4200

www.montand.com



CONGRATULATIONS RUTH PREGENZER

Pregenzer, Baysinger, Wideman & Sale, PC is pleased to announce that Ruth Pregenzer has accepted the position of Director for the New Mexico State Bar Foundation's new legal incubator initiative, Entrepreneurs in Community Lawyering (ECL).

Ruth looks forward to working with the New Mexico State Bar Foundation to develop the ECL program and to mentoring new attorneys passionate about starting their own solo or small firm practices. When ECL opens its doors in October of 2016, Ruth will continue her commitment to Pregenzer, Baysinger, Wideman & Sale, PC, in an Of Counsel role.



Entrepreneurs in Community Lawyering
New Mexico's Solo and Small Practice Incubator



PREGENZER
BAYSINGER
& WIDEMAN
SALE, PC

Wills • Trusts • Probate • Guardianships • Special Needs

www.pbwslaw.com | 505.872.0505

Effective February 1, 2016

DIXON, SCHOLL & BAILEY, P.A.

has changed its name to

DIXON•SCHOLL•CARRILLO•P.A.

We wish the best to our longtime friend and colleague
A. Brent Bailey on the opening of his new firm.

Jerry Dixon • Steve Scholl • Lisa Carrillo

Dennis Hill • Spring Schofield • James Wilkey • Robert Sanchez • Taylor Lueras

6700 Jefferson NE, Bldg. B Suite 1
Albuquerque, New Mexico 87109

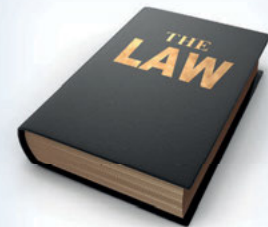
Phone: (505) 244-3890
Fax: (505) 244-3889



The attorneys and staff of
YENSON, ALLEN & WOSICK, P.C.
congratulate Matt Pullen
on the opening of his new law practice
and wish him every success.

4908 Alameda, NE
Albuquerque, NM 87113-1736
(505) 266-3995 • www.ylawfirm.com

You spent years preparing
for the Bar Exam...



Luckily, you could save right now with
GEICO'S SPECIAL DISCOUNT.

Years of preparation come down to
a couple days of testing and anxiety.
Fortunately, there's no studying required
to save with a special discount from
GEICO just for being a **member of State
Bar of New Mexico**. Let your professional
status help you save some money.

Get a free quote.

GEICO
1-800-368-2734
geico.com/bar/SBNM

**MENTION YOUR STATE BAR OF NEW MEXICO
MEMBERSHIP TO SAVE EVEN MORE.**

Some discounts, coverages, payment plans and features are not available in all states or in
all GEICO companies. See geico.com for more details. GEICO and Affiliates, Washington DC
20076. GEICO Gecko image © 1999-2012. © 2012 GEICO.



ADMISSIONS AND FINANCIAL AID MANAGER

Posting #0833349

The University of New Mexico School of Law invites applications for a full-time Admissions and Financial Aid Manager. This position reports to the Law School Dean and provides strategic leadership and management of Law School student recruitment, admissions, and financial support programs. Applicants with previous work experience in a higher education setting, a J.D. degree from an ABA accredited law school, or significant specialized knowledge of a law school community and functions are strongly preferred. Must travel extensively and periodically work evenings and weekends. Salary \$55,036-\$85,300 commensurate with education/experience; full benefits. Best consideration 02/22/16. See job posting #0833349 at <https://unmjobs.unm.edu>.

TO APPLY: For complete information including closing dates, minimum requirements, and instructions on how to apply for this or any UNM position, please visit our website at <http://UNMJobs.unm.edu>, call (505) 277-6947, or visit our HR Service Center at 1700 Lomas Blvd. NE, Suite 1400, Albuquerque, NM 87131.

EEO/Minorities/Females/Vets/Disabled

MADISON & MROZ, P.A.

Attorneys at Law

We are pleased to announce

Melissa A. Brown

has joined the Firm as an associate

Ms. Brown earned her bachelor's degree in Criminology and Political Science from the University of New Mexico in 2003 and her Doctor of Jurisprudence in 2006 from Baylor Law School.

We welcome her to our practice.

201 Third Street N.W., Suite 1600

Albuquerque, NM 87102

505.242.2177 • www.madisonlaw.com

Downtown Office For Sale



Excellent Opportunity

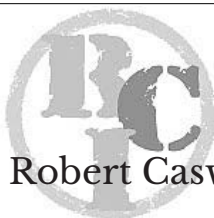
503 Slate Ave NW | Albuquerque, NM 87102

Sale Price \$308,295 (\$85.00/SF)

- Office Space: ±3,627 sf
- Easy Access to 5th Street and Slate
- Great Downtown Location
- Across the street from Metro Court
- Walking distance to District Court and Federal Court
- On Site Parking



Kelly Tero | 505.417.1214



*The state's largest private investigations firm
serving New Mexico lawyers for 25 years!*

Robert Caswell Investigations

505-797-5661
rci@rcipi.com
www.rcipi.com

*When your business clients need help with witness locates,
interviews, accident reconstruction, medical malpractice,
employment claims, theft, embezzlement and more...call the experts.*

Licensed

Bonded

Insured

WILLIAM A. SANCHEZ

Retired District Judge



Mediation, Settlement Facilitation, and Arbitration

Over 21 years experience as a District Judge presiding
over hundreds of civil jury and bench trials.
Special Master Services also available.

Offices in Albuquerque and Los Lunas

SANCHEZ SETTLEMENT & LEGAL SERVICES LLC

(505) 720-1904 • sanchezsettled@gmail.com • www.sanchezsettled.com

**A Civilized Approach to
Civil Mediation**

*We create a safe and
respectful environment
for parties*

Karen S. Mendenhall
The Mendenhall Firm, P.C.
(505) 243-3357
KarenM@Mendenhallfirm.com

JANE YOHALEM
Appeals Specialist

(505) 988-2826 • jbyohalem@gmail.com

No need for another associate
Bespoke lawyering for a new millennium
THE BEZPALKO LAW FIRM
Legal Research and Writing
(505) 341-9353
www.bezpalkolawfirm.com

Visit the State Bar of New Mexico's web site
www.nmbar.org

Classified

Positions

**13th Judicial District Attorney
Assistant Trial Attorney,
Associate Trial Attorney
Sandoval and Valencia Counties**

Assistant Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for entry to mid-level attorney to fill the positions of Assistant Trial Attorney for Sandoval (Bernalillo) or Valencia (Belen) County Offices. These positions require misdemeanor and felony caseload experience. Associate Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for entry level positions for Sandoval (Bernalillo) or Valencia (Belen) County Offices. These positions require misdemeanor, juvenile and possible felony cases. Upon request, be prepared to provide a summary of cases tried. Salary for each position is commensurate with experience. Send resumes to Reyna Aragon, District Office Manager, PO Box 1750, Bernalillo, NM 87004, or via E-Mail to: RAragon@da.state.nm.us. Deadline for submission of resumes: Open until positions are filled.

Associate Attorney

Montgomery & Andrews, PA, with offices in Albuquerque and Santa Fe, is seeking applications from attorneys who have at least two years of experience for full-time associate positions in the firm. The firm serves a wide variety of national, state, and local clients in growing and dynamic practice areas, including construction law, commercial transactions, environmental law, insurance defense, water law, government relations, employment law, medical malpractice, and health law. Applicants should mail cover letters and resumes to: Hiring Attorney, Montgomery & Andrews, P.A., Post Office Box 2307, Santa Fe, New Mexico 87504-2307 or email them to tgarduno@montand.com. Inquiries will be kept confidential upon request.

Deputy City Attorney

The City of Las Cruces has an open position for a Deputy City Attorney. Closing date for applications is February 22, 2016. Salary: \$78,142.05 -- \$117,213.07 annually. This is a fulltime regular, exempt position that plans, coordinates, and manages operations, functions, activities, staff and legal issues in the City Attorney's Office to ensure compliance with all applicable laws, policies, and procedures. Minimum requirements are: Juris Doctor Degree AND seven (7) years of experience in a civil and criminal legal practice; at least one (1) year of experience in municipal finance, land use, and public labor law is preferred. A combination of education, experience, and training may be applied in accordance with City of Las Cruces policy. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Please check our website <http://agency.governmentjobs.com/lascruces/default.cfm> for further information regarding the job posting, requirements and online application process. Resumes will not be accepted in lieu of a completed application.

Attorney

The Third Judicial District Attorney's Office, located in Dona Ana County, is now accepting resumes for an attorney. This position is open to experienced attorneys. Salary will be based upon the New Mexico's District Attorney Personnel and Compensation Plan with a starting salary range of \$42,935.00 to \$74,753.00. Excellent benefits available. Please send a cover letter, resume, and references to Whitney Safranek, Human Resources, 845 N. Motel Blvd. Second Floor, Suite D., Las Cruces, NM 88007 or via e-mail Wsafranek@da.state.nm.us.

Associate

Established Albuquerque plaintiff personal injury and wrongful death litigation firm seeks associate for its growing statewide practice. Ideal candidate should have minimum 2 years of personal injury litigation experience. Taking/defending depositions and arbitration/trial experience required. Bilingual Spanish is a plus. Salary dependent on experience. Submit resumes to 4302 Carlisle NE, Albuquerque, NM 87107. Please include sample of legal writing.

**9th Judicial District Attorney-
Senior Trial Attorney, Assistant Trial
Attorney, Associate Trial Attorney**

The Ninth Judicial District Attorney is accepting resumes and applications for an attorney to fill one of the following positions depending on experience. All positions require admission to the New Mexico State Bar. Senior Trial Attorney- This position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence, as well as the ability to handle a full-time complex felony caseload. A minimum of five years as a practicing attorney are also required. Assistant Trial Attorney - This is an entry to mid-level attorney. This position requires misdemeanor and felony caseload experience. Associate Trial Attorney - an entry level position which requires misdemeanor, juvenile and possible felony cases. Salary for each position is commensurate with experience. Send resumes to Dan Blair, District Office Manager, 417 Gidding, Suite 200, Clovis, NM 88101 or email to: Dblair@da.state.nm.us.

Associate Attorney

Large established Albuquerque law firm has an immediate need for an associate attorney with 3 to 5 years experience in all aspects of business and commercial law, real estate law, and litigation. Please submit a resume and writing sample to POB 92860, Albuquerque, NM 87199 attention Box D. All replies kept confidential.

Associate Attorney

Established Albuquerque law firm seeking an Associate Attorney with 0-5 years' experience possessing strong writing and critical thinking skills for work in Med Mal and Catastrophic Injury Plaintiffs' practice. Email resume and references to vlawofficenm@gmail.com.

Chief of Staff

The New Mexico Public Regulation Commission (NMPRC) seeks a Chief of Staff -an "at will" position serving its Commissioners and staff - to provide administration of operations. Position reports to Commissioners. Position performs management functions and provides administrative oversight of agency mission and goals. Position provides counsel to Commissioners on operations. Other duties include: ensuring successful operation of agency divisions, directing administrative activities for agency divisions, providing oversight of agency budgets. Position analyzes and makes recommendations to Commissioners on legislative initiatives and represents Commissioners in legislative matters related to operation and regulatory authority of the agency. Position is responsible for final decisions in personnel matters, including discipline and hiring. Position attends open meetings and provides reports and recommendations to Commissioners on administrative matters. Position conducts meetings for daily operations of agency, ensures deadlines are met to comply with federal and state laws and rules and regulations related to daily operation of the agency. Position supervises Division Directors and a Management Analyst, and participates in committees, statewide outreach for Commissioners, and agency task forces. Bachelor's degree in Business Management, Public Administration or related area required, and five (5) years of management experience in the public or private sectors. Experience may be substituted for education. The chosen candidate should foster a "teamwork" approach and be able to interpret and enforce policies and procedures consistently. Salary: \$75,418.52-\$130,000 per year plus benefits. Salary based on education and experience. The State of NM is an EOE Employer. Applicants may email or mail their resume to Rene Kepler at Renes.Kepler@state.nm.us, or mail to NMPRC Attn: Human Resources, P.O. Box 1269, Santa Fe, NM 87504. Applicants should submit resumes prior to February 10, 2016. Questions may be directed to Rene Kepler: 505-827-4324.

Immediate Opening for Law Clerks

Guebert Bruckner P.C. looking for law clerks to review documents in Santa Fe. This is a temporary position approximately 3-6 months. Must have own transportation. Hourly + mileage reimbursement. Apply to Kathleen A. Guebert @ kathleen@guebertlaw.com NO PHONE CALLS PLEASE

New Mexico Public Regulation Commission

General Counsel

The New Mexico Public Regulation Commission is accepting applications for the position of General Counsel. The position advises the Commission on regulatory matters, including rulemakings and adjudicatory proceedings involving the regulation of electric and gas utilities, telecommunications providers, and motor carriers; represents the Commission in federal and state trial and appellate courts. Manages and oversees day to day operations of General Counsel Division including case management and assignments. Involves day to day interaction with Elected Officials, Hearing Examiners and other Division Directors. The position requires extensive knowledge of administrative law practice and procedures and of substantive law in the areas regulated by the Commission; ability to draft clear, concise legal documents; ability to prioritize within a heavy workload environment. Minimum qualifications: JD from an accredited law school; ten years of experience in the practice of law, including at least four years of administrative or regulatory law practice and three years of staff supervision; admission to the New Mexico Bar or commitment to taking and passing Bar Exam within six months of hire. Background in public utilities, telecommunications, transportation, engineering, economics, accounting, litigation, or appellate practice preferred. Salary: \$56,000- \$90,000 per year (plus benefits). Salary based on qualifications and experience. This is a GOVEX "at will" position. The State of NM is an EOE Employer. Apply: Submit letter of interest, résumé, writing sample and three references to: Human Resources, Attention: Rene Kepler, Renes.Kepler@state.nm.us or NMPRC P.O. Box 1269, Santa Fe, NM 87504-1269. Applications must be postmarked by February 10, 2016.

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.

Office of the State Engineer/ Interstate Stream Commission (OSE/ISC) State of New Mexico

The Litigation & Adjudication Program seeks to hire a New Mexico licensed attorney: a Lawyer Advanced to work in the Pecos Adjudication Bureau in federal & state court water rights adjudications and litigation and administrative hearings on water rights and natural resource issues. The position is located in Santa Fe. Qualifications: Juris Doctorate from an accredited law school; 5 years experience in the practice of law; member of the New Mexico State Bar. Job ID #: Pecos Attorney Advanced (OSE#6004) #2016-00419 Must apply on line at <http://www.spo.state.nm.us/> from 2/10/16 to 2/17/16. The OSE/ISC is an Equal Opportunity Employer.

Associate Attorney

Chapman and Charlebois, P.C., is seeking an experience and motivated attorney to join our growing litigation team, providing legal advice and analysis and trial representation to local and national clients. Must have 1 to 5 years of experience and be licensed in NM. Civil defense experience is preferred. Please submit resume and salary requirements to: Roxanna@cclawnm.com.

Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is seeking applications for a full-time permanent Associate Staff Attorney in the Court's Preheating Division. The position may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. Regardless of experience, the beginning salary for the position is limited to \$66,000, plus generous fringe benefits. New Mexico Bar admission as well as three years of practice or law clerk experience is required. This position requires management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required; the work atmosphere is congenial yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Application for Employment, along with a letter of interest, resume, law school transcript, and short writing sample of no more than 5 pages, to Paul Fyfe, Chief Staff Attorney, P.O. Box 2008, Santa Fe, New Mexico 87504, no later than 4:00 p.m. on Tuesday, March 1, 2016. To obtain the application please call 827-4875 or visit www.nmcourts.com and click on "Job Opportunities." The New Mexico Judicial Branch is an equal-opportunity employer.

Attorney

Non-profit agency providing civil legal services to children and youth seeks to fill staff attorney position in Albuquerque, NM. Some experience in abuse/neglect, children's law, family law and/or trial experience preferred. English/Spanish speaker preferred. Must have excellent writing skills, be organized and detail-oriented, excellent people skills, and motivated to help children and youth improve their circumstances; excellent references. Salary commensurate with experience. Please send cover letter and resume to Cynthia Gibbons at cgibbons@pegasuslaw.org. No phone calls please.

Assistant District Attorney

The Second Judicial District Attorney's office in Bernalillo County is looking for both entry-level and experienced prosecutors. Qualified applicants will be considered for all divisions in the office. Salary and job assignments will be based upon experience and the District Attorney Personnel and Compensation Plan. If interested please mail/fax/e-mail a resume and letter of interest to Jeff Peters, Human Resources Director, District Attorney's Office, 520 Lomas Blvd., N.W., Albuquerque, NM 87102. Fax: 505-241-1306. E-mail: jpeters@da2nd.state.nm.us, or go to www.2nd.nmdas.com.

Attorney

The civil litigation firm of Atkinson, Thal & Baker, P.C. seeks an attorney with strong academic credentials and 2-10 years experience for a successful, established complex commercial and tort litigation practice. Excellent benefits. Tremendous opportunity for professional development. Salary D.O.E. All inquiries kept confidential. Send resume and writing sample to Atkinson, Thal & Baker, P.C., Attorney Recruiting, 201 Third Street NW, Suite 1850, Albuquerque, NM 87102.

Proposal Request for Public Defender Services

The Mescalero Apache Tribe is seeking proposals to provide Public Defender Services to the Mescalero Tribal Court for criminal cases. SUMMARY: The Mescalero Apache Tribal Court is a court of general jurisdiction addressing crimes under the Mescalero Apache Law and Order Code. All crimes do not exceed one year sentencing. Attorneys licensed and in good standing with the State of New Mexico Bar is required; Proposed fees may be based on an hourly rate or a flat rate; Proposed fees may NOT exceed \$60,000.00 per budget year; Final terms of submitted proposals are negotiable. SUBMIT PROPOSALS TO THE MESCALERO TRIBAL ADMINISTRATOR: DUANE DUFFY, MESCALERO APACHE TRIBE, MESCALERO, NM 88340 575-464-4494 EXT. 211

Assistant General Counsel

The New Mexico State University General Counsel Office (UGC) office in Las Cruces, NM seeks high energy diligent attorney for Assistant General Counsel. The selected candidate will work with two other attorneys in UGC, as well as outside counsel and university administrators in providing legal advice and document review and drafting on a broad range of legal issues, including those related to academic and student affairs, athletics, contracts, litigation support, civil rights, international programs, real estate, employment matters and other legal issues in higher education. The attorney will also assist in coordinating the University's responses to subpoenas and open records requests, and drafting of a variety of transactional documents. All applications must be submitted online. The online posting for this position can be found by searching "attorney" at <http://jobs.nmsu.edu/>. Call 575-646-2446 with questions.

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

All advertising must be submitted via Email by 4 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Wednesday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by the publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.**

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

National Nuclear Security Administration-General Attorney

Would you like to have a job that can help ensure national security? If so, the U.S. Department of Energy, National Nuclear Security Administration (NNSA), Sandia Field Office (SFO) in Albuquerque, NM has an employment opportunity for a General Attorney. The NNSA maintains and enhances the safety, security, and effectiveness of the U.S. nuclear weapons stockpile without nuclear testing; works to reduce the global danger from weapons of mass destruction; provides the U.S. Navy with safe and effective nuclear propulsion; and responds to nuclear and radiological emergencies in the U.S. and abroad by providing support to the nation's nuclear weapons stockpile stewardship activities. SFO provides operations, production, and program oversight, and contract administration for Sandia National Laboratories activities. Sandia National Laboratories is a multidisciplinary national laboratory and federally funded research and development center (FFRDC) sponsored by, and supporting the missions of, the NNSA. As a General Attorney at SFO you will provide legal advice and counsel on complex areas of law arising out of NNSA programs, projects and functions conducted at SFO. Interested attorneys must have their applications fully completed, including all required supporting documentation, by February 29, 2016. For a complete list of application requirements, go to <https://www.usajobs.gov/> and search for announcement 16-0072-NAT.

Paralegal

Paralegal for Plaintiff's Injury Firm. Minimum 3 years' experience in Plaintiff's injury law. Litigation experience necessary. Fast-paced environment with a high case load. We work as a team, and are the best team in Albuquerque. Outstanding pay, perks, and benefits. Come join us. To see the position description and apply, please type into your browser: ParnallLawJobs.com

Legal Assistant

GUEBERT BRUCKNER P.C. busy litigation firm looking for experienced Legal Assistant to support 11 attorneys. Candidate will coordinate with various members of the staff to accomplish the needs of attorneys. Duties include but are not limited to: Filing, finalizing documents for submission to clients, State and Federal courts. Excellent communication skills required in order to meet deadlines and to comply with various client guidelines. Strong writing and proof reading skills, as well as knowledge of court rules required. Hours 8:30 to 5:30. Firm uses Microsoft Word, Excel, and Outlook. Please submit resume and salary requirement to Kathleen A. Guebert, POB 93880, Albuquerque, NM 87109.

Legal Assistant

The Federal Public Defender office for the District of New Mexico is accepting applications for a Legal Assistant position to be stationed in Albuquerque. Federal salary and benefits apply. Minimum qualifications are high school graduate or equivalent and at least three years legal secretary experience, federal criminal experience preferred. Starting salary ranges from a JSP-6 to JSP-8, currently yielding \$36,031 to \$57,641 annually depending on experience. This position provides secretarial and clerical support to the attorneys and staff utilizing advanced knowledge of legal terminology, word and information processing software. Legal Assistants must understand district and circuit court rules and protocols; edit and proof-read legal documents, correspondence, and memoranda; transcribe dictation; perform cite checking and assemble copies with attachments for filing and mailing. Duties also include screening and referring telephone calls and visitors; screening incoming mail; reviewing outgoing mail for accuracy; handling routine matters as authorized; assembling and attaching supplemental material to letters or pleadings as required; maintaining calendars; setting appointments as instructed; organizing and photocopying legal documents and case materials; and case file management. The ideal candidate will have a general understanding of office confidentiality issues, such as attorney/client privilege; the ability to analyze and apply relevant policies and procedures to office operations; exercise good judgment; have a general knowledge of office protocols and secretarial processes; analyze and recommend practical solutions; be proficient in WordPerfect, Microsoft Word and Adobe Acrobat; have the ability to communicate effectively with assigned attorneys, other staff, clients, court agency personnel, and the public; and have an interest in indigent criminal defense. Must possess excellent communication and interpersonal skills, and be self-motivated while also excelling in a fast paced team environment. Spanish fluency a plus. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. Position subject to the availability of funds. Please e-mail your resumé with cover letter and 3 references to: Melissa.Dearing.Administrative.Officer@FDNM-HR@fd.org. Must be received no later than 3/1/2015. Only those selected for an interview will be contacted. No phone calls.

Legal Assistant/Paralegal

Albuquerque law firm focused on civil catastrophic injury litigation seeking a full-time paralegal/legal assistant to join our trial team. Bachelor's degree and legal experience preferred. Candidate should have strong organizational skills and a positive attitude. Send resume to vlawofficenm@gmail.com.

Paralegal

Personal Injury/MedMal/Bad Faith Litigation Law Firm in Albuquerque is looking for an experienced, energetic paralegal to join our team! We offer great benefits, positive and friendly environment. If you have 5 or more years' experience, please submit your cover letter, resume and salary history, in confidence, to kdc@carterlawfirm.com.

Experienced Paralegal

Experienced paralegal for insurance defense downtown law firm, 5+ years experience. Strong organizational skills and attention to detail necessary with experience in litigation and medical records. Windows, including Outlook and Word. Full time/salary DOE. Great benefits. Fax resume to Human Resources at 505-764-6099 or mail to Civerolo, Gralow, Hill & Curtis, P.A., P.O. Box 887, Albuquerque, NM 87103.

Court Administrator

Manage and administer the activities, programs and staff of the Pueblo of Jemez' Tribal Court. Education and experience required: Bachelor's Degree in criminal justice, or a closely related field; AND five (5) years of managerial experience in court operations. To learn more about this position and the Pueblo of Jemez, visit our website at www.jemeztribe.org. Or call the Human Resources Department at (575) 834-7359. Submit a completed tribal application with your resume to: HR@jemeztribe.org

Positions Wanted

Are You Looking for a FT Legal Assistant/Secretary?

7-8 years experience, Want to work in Personal Injury or Insurance Defense area ONLY. Gen./Civil Litigation. Professional. Transcription, Proofreading/Formatting, Organized, Attn. to Detail, E-filing in Odyssey-CM/ECF, Cust. Svc. Exp., Basic Pleadings, Discovery Prep., Calendaring, File Maintenance, MSWord, MS Outlook, Excel. Please contact LegalAssistant0425@yahoo.com for Resume, Salary Expectations and References.

Services

Briefs, Research, Appeals—

Leave the writing to me. Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

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

620 Roma N.W.

620 ROMA N.W., located within two blocks of the three downtown courts. Rent includes utilities (except phones), fax, internet, janitorial service, copy machine, etc. All of this is included in the rent of \$550 per month. Up to three offices are available to choose from and you'll also have access to five conference rooms, a large waiting area, access to full library, receptionist to greet clients and take calls. Call 243-3751 for appointment to inspect.

Santa Fe Professional Office

Located in the St Francis Professional Center, you and your office assistant can share two offices in a building with two other established attorneys. Large reception area, conference room, kitchenette. Ample parking. Call Donna 982-1443.

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 sgaliatti@allegiancesw.com.

Luxury Office Space Available

2014 Central SW- Luxury attorney's office with secretarial space. Rent includes utilities, phone system, internet, parking, and conference room. Near all courthouses. Contact Nathalie at (505) 243-1706.

NEW MEXICO LAWYERS AND JUDGES ASSISTANCE PROGRAM (JLAP)

“

Through JLAP, I've been given the freedom to become the person that I've always wanted to be. This program saved my life and my family.”

—SM

“

Thanks to JLAP, I am happier, healthier and stronger than I have ever been in my entire life!”

—KA

Free, confidential assistance to help identify and address problems with alcohol, drugs, depression, and other mental health issues.



Help and support are only a phone call away.

Confidential assistance – 24 hours every day.



Judges call 888-502-1289

Lawyers and law students call 505-228-1948 or 800-860-4914

www.nmbar.org

Advertising sales now open!

2016-2017

Bench & Bar Directory

Attorney Firm Listings available

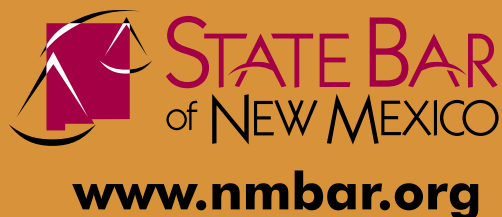
- listed geographically in alpha order
- includes your logo in color, address, email, web address, and up to 10 practice areas



To make your space reservation,
please contact Marcia Ulibarri

505-797-6058 • mulibarri@nmbar.org

Advertising space reservation deadline: March 25, 2016





You're Invited!

The State Bar is proud of the tremendous dedication and service that our membership has given to the legal profession and the public. We hope you will join us for this important celebration.

Supreme Court Justice Judith Nakamura
will address attendees.

State Bar President J. Brent Moore
will honor attorneys celebrating 25 and 50 years of service.

What: State Bar of New Mexico's 130th Birthday

Where: State Bar Center, 5121 Masthead NE, Albuquerque, NM

When: 4 p.m., February 26



For more information or to R.S.V.P., contact Abbey Daniel, adaniel@nmbar.org.