Official Publication of the State Bar of New Mexico

Bar Bulletin

April 20, 2016 • Volume 55, No. 16

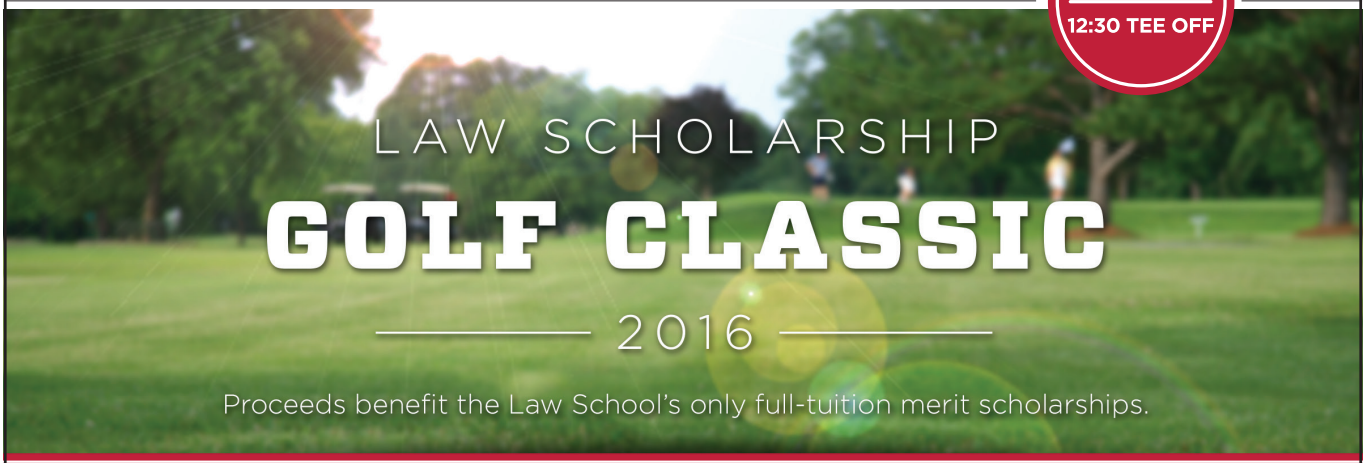
Black and Blue in the White Forest by Ron Schwartz

Inside This Issue

UNM School of Law Alumni/ae Association

11:00 LUNCH

12:30 TEE OFF



LAW SCHOLARSHIP GOLF CLASSIC 2016

Proceeds benefit the Law School's only full-tuition merit scholarships.

HONORING THE PAST | BUILDING THE FUTURE

PRESENTED BY USEagle FEDERAL CREDIT UNION

FRIDAY, JUNE 3, 2016

UNM CHAMPIONSHIP GOLF COURSE

11:00 AM: Lunch • 12:30 PM: Shotgun start (18 holes)

Post Play - Catered 19th Hole Reception

Your registration fees and sponsorships help the Law Alumni Association fund its three full-ride merit scholarships which are awarded to one extraordinary law student in each class for all three years of his or her study.

This premier tournament sells out each year. Don't delay!

Register now at goto.unm.edu/golf

or call 505.277.1457.

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YOUR SUPPORT CHANGES LIVES!

Our commitment is to raise $50,000 each year in direct support of deserving UNM Law students, and we cannot do it without you!

AWESOME PRIZES & LOTS OF FUN!

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28
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28
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3
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4
Employment and Labor Law Section BOD, noon, State Bar Center

State Bar Workshops

April

20
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10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

27
Consumer Debt/Bankruptcy Workshop:
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

May

4
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6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

4
Civil Legal Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

18
Family Law Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

25
Consumer Debt/Bankruptcy Workshop:
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

Cover Artist: Ron Schwartz has been selling photography in New Mexico for more than four years. He shown in several shows and competitions, including the Annual New Mexico Photography Art Show and won the Eleanor Bailey Award for Creativity and Inspiration in art at the First Unitarian Church in Albuquerque. His photography has previously been featured on the cover of the *Bar Bulletin* and *Bench & Bar Directory*. Schwartz' photography covers a range of subjects including landscapes, wildlife and cityscapes and encompasses shoots in New York, including Manhattan, Rhode Island, Louisiana and several locations in New Mexico. For more information, email rschwartz49@gmail.com.

Notices

Court News

New Mexico Board of Legal Specialization

Comments Solicited

The following attorneys are applying for certification as a specialist in the areas of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 19-101 through 19-312 NMRA, which provide that the names of those seeking to qualify shall be released for publication. Further, attorneys and others are encouraged to comment upon any of the applicant's qualifications within 30 days after the publication of this notice. Address comments to New Mexico Board of Legal Specialization, PO Box 93070, Albuquerque, NM 87199.

Natural Resources Law
Konstantin Parkhomenko

Trial Specialist-Criminal Law
Jerry Daniel Herrera

Ninth Judicial District Court

Notice of Exhibit Destruction

The Ninth Judicial District Court, Roosevelt County, will destroy the following exhibits by order of the court if not claimed by the allotted time: 1) All unmarked exhibits, oversized poster boards/maps and diagrams; 2) Exhibits filed with the court, in criminal, civil, children's court, domestic, competency/mental health, adoption and probate cases for the years 1993–2012 may be retrieved through April 30; and 3) All cassette tapes in criminal, civil, children's court, domestic, competency/mental health, adoption and probate cases for years prior to 2007 have been exposed to hazardous toxins and extreme heat in the Roosevelt County Courthouse and are ruined and cannot be played, due to the exposures. These cassette tapes have either been destroyed for environmental health reasons or will be destroyed by April 30. For more information or to claim exhibits, contact the Court at 575-359-6920.

Juvenile Justice Center

Fourth Annual Law Day at Children's Court

Roybal-Mack Law, PC, invites members of the legal community are invited to the Fourth Annual Law Day at Children's Court at 3:30 p.m., on April 29, at the John E. Brown Juvenile Justice Center. This year's theme is "Miranda: More Than Words" where students are free to express their interpretation through various forms of art including poetry, painting, drawing, music and written song. The event will feature award-winning author, television host and inaugural poet laureate, Hakim Bellamy. There will also be special guest appearance from, John "The Magician" Dodson, an Albuquerque native UFC MMA fighter. For more information, contact Antonia Roybal-Mack at 505-288-3500.

Professionalism Tip

With respect to opposing parties and their counsel:
I will refrain from excessive and abusive discovery, and I will comply with reasonable discovery requests.

State Bar News

Attorney Support Groups

- May 2, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)
- May 9, 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#.
- May 16, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)

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

Board of Bar Commissioners

Appointments

The BBC will make the following appointments. Members who want to serve should send a letter of interest and brief résumé to executive director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 505-828-3765; or email to jconte@nmbar.org. The deadline for all appointments is April 25.

ABA House of Delegates

The BBC will make one appointment to the American Bar Association House of Delegates for a two-year term, which will expire at the conclusion of the 2018 ABA Annual Meeting. The delegate must be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings.

Civil Legal Services Commission

The BBC will make one appointment to the Civil Legal Services Commission for a three-year term.

Judicial Standards Commission

The Board of Bar Commissioners will make one appointment to the Judicial Standards Commission for a four-year term. The responsibilities of the Judicial Standards Commission are to receive, review and act upon complaints against State judges, including supporting documentation on each case as well as other issues that may surface. Experience with receiving, viewing and preparing for meetings and trials with substantial quantities of electronic documents is necessary. The commission meets once every eight weeks in Albuquerque and additional hearings may be held as many as four to six times a year. The time commitment to serve on this board is significant and the workload is voluminous. Applicants should consider all potential conflicts caused by service on this board.

Risk Management Advisory Board

A vacancy exists on the Risk Management Advisory Board and a replacement needs to be appointed for the remainder of the term expiring June 30, 2018. The appointee is requested to attend the Risk Management Advisory Board meetings. A summary of the duties of the advisory board, pursuant to §15-7-5 NMSA 1978, are to review: specifications for all insurance policies to be purchased by the risk management division; professional service and consulting contracts or agreements to be entered into by the division; insurance companies and agents to submit proposals when insurance is to be purchased by negotiation; rules and regulations to be promulgated by the division; certificates of coverage to be issued by the division; and investments made by the division.

Committee on Women and the Legal Profession

Golf Swing Clinic

The Committee on Women and the Legal Profession invites women to a Golf

Swing Clinic on from 10 a.m.–noon, Saturday, April 23, at Sandia Resort & Casino. The instruction will be followed by lunch. The price is $65 per person which includes instruction, rental clubs (if needed) and lunch. Registration is not limited to attorneys. All lady golfers of all skill levels are welcome. Register online at https://www.cgmarketingsystems.com/onlineshop/index.asp?id=9495&courseid=1083. For more information, contact Jocelyn Castillo at jcastillosd@yahoo.com or 505-844-7346.

Criminal Law Section

District Attorney Candidate Forum

The Criminal Law Section invites members of the legal community, public and the media to its Second Judicial District Attorney Candidate Forum at 5:30-7:30 p.m., May 12, at the State Bar Center. Democratic primary opponents, Raul Torrez and Ed Perea, have agreed to participate. The event will be moderated by Elaine Baumgartel, news director at KUNM and local host of NPR's Morning Edition. Seating is first-come, first-served. Proposed candidate questions will be accepted until April 29. Questions will be chosen by the Criminal Law Section Board of Directors and will be provided to the candidates prior to the event. Candidates will have 3 minutes for opening statements, 15 minutes to answer each question, 1 minute for rebuttal responses when appropriate, and 2 minutes for closing statements. To submit candidate questions (anonymously or not) or for additional information, contact Criminal Law Section Chair Julpa Davé or Joshua Boone, at NMCrimLawSection@gmail.com.

Paralegal Division

Law Day CLE

The State Bar Paralegal Division invites members of the legal community to attend the Division's Law Day CLE program (3.0 G) from 9 a.m. to 12:15 p.m., April 30, at the State Bar Center. Topics include working with medicare, presented by Daniel Ulibarri, current issues in immigration presented by Christina Rosado; and recent changes to the federal rules of Civil Procedure. Remote connections for audio or video will not be available. Registration is $35 for Division members, $50 for non-member paralegals and $55 for attorneys. Send checks for registration (no credit cards or cash) to Paralegal Division, PO Box 92860, Albuquerque, NM 87199-2860. Include printed name, State Bar member number and phone number in order to receive CLE credit. Pre-registrations must be received by April 22. Registrations will be accepted at 8:30 a.m. the day of the program, but availability of materials will be limited. For more information, contact Carolyn Winton, 505-858-4433 or visit www.nmbar.org/About us/Divisions/Paralegal Division/CLE Programs.

Young Lawyers Division

Apply for a Summer Fellowship

YLD is currently accepting applications for its 2016 Summer Fellowships. YLD is offering two fellowships for the summer of 2016 to law students who are interested in working in public interest law or the government sector. The fellowship awards are intended to provide the opportunity for law students to work for public interest entities or in the government sector in an unpaid position. The fellowship awards, depending on the circumstances of the position, could be up to $3,000 for the summer. Applications must be received or postmarked by April 29. For details and eligibility or to apply, contact YLD Board Member Robert Lara, robunm@gmail.com or visit http://www.nmbar.org/NmbarDocs/AboutUs/YoungLawyersDivision/2016SummerFellowships.pdf.

Volunteers Needed for Wills for Heroes Event in Santa Fe

YLD is seeking volunteer attorneys for its Wills for Heroes event at 9 a.m. to noon, on Saturday, April 23, at the Santa Fe County Station 60-Rancho Viejo, 37 Rancho Viejo Boulevard, Santa Fe. Attorneys will provide free wills, healthcare and financial powers of attorney and advanced medical directives for first responders Volunteers need no prior experience with wills. Contact Jordan Kessler at jlkessler@hollandhart.com.

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	10a.m.–6p.m.
Sunday	Noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed

Featured

Member Benefit

#DEFINED FITNESS

Members, their employees, and immediate family members can enjoy a discounted rate of approximately $42/month (plus tax) with access to all five club locations, group fitness classes and free supervised child care. Bring proof of SBNM membership. Contact Shawn Gale, sgale@defined.com or 505-814-2355. Visit www.defined.com.

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

Address Changes

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court
Email: attorneyinfochange@nmcourts.gov
Fax: 505-827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar
Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org

Other Bars

Albuquerque Lawyers Club

May Lunch Meeting with Judge Miles Hanisee

The Albuquerque Lawyers Club invites members of the legal community to its lunch meeting at noon, May 4, at Seasons Rotisserie & Grille. Judge J. Miles Hanisee will present. The luncheon is free to members and $30 for non-members. For more information, email ydennig@Sandia.gov.

American Bar Association Criminal Justice Section

Spring Meeting in Albuquerque

The American Bar Association Criminal Justice Section's Spring Meeting, co-sponsored by the State Bar of New Mexico, will be "Neuroscience: Paving the Way for Criminal Justice Reform." The meeting will be held April 28-30 at Hotel Albuquerque at Old Town in Albuquerque. Topics include how neuroscience is paving the way to criminal justice reform, neuroscience and environmental factors, neuroscience and solitary confinement and the neuroscience of hate: the making of extremist groups. New Mexico Supreme Court Justice Charles W. Daniels will be the luncheon keynote speaker. Roberta Cooper Ramo, the first woman to become president of the American Bar Association, will provide opening remarks. State Bar of New Mexico members can register for the discounted rate of $75. For more information and to register, visit: http://ambar.org/cjs2016spring.

American Constitution Society: New Mexico Lawyer Chapter

Inaugural Event with Speaker Juan Melendez

The American Constitution Society New Mexico Lawyer Chapter is hosting Juan Melendez as its inaugural speaker at 5:30 p.m., April 20, at the UNM School of Law, Room 2402. Melendez spent nearly 18 years on Florida's death row for a crime he did not commit. In January 2002, he became the 99th death-row inmate to be exonerated and released since 1973. Don't miss this opportunity to learn about Melendez' struggle for freedom and his inspirational story of human resilience, courage, faith and forgiveness. The talk is followed by a discussion on wrongful convictions by Prof. Rahn Gordon. This event is free and open to the public and CLE credit will be offered ($5 fee). For more information, contact Hooman Hedayati, hooman.hedayati@alumni.law.unm.edu.

New Mexico Criminal Defense Lawyers Association

'Four Corner Forensics' CLE in Durango

The New Mexico Criminal Defense Lawyers Association will partner with the Colorado and Utah criminal defense bars to host "Four Corner Forensics" (6.2 G), a CLE on May 6 at the Fort Lweis College Student Union Building in Durango, Colo. Plan a relaxing long weekend and learn about forensics and scientific evidence while surrounded by the beautiful landscapes (and restaurants) of Durango. Topics include an update on the NAS report, mobile forensics, fundamentals of DNA and cross of forensic experts. For more information or to register, visit www.nmcdla.org or call 505-992-0050.

New Mexico Defense Lawyers Association

Seminars on Mediation and Medical Negligence Defense

The New Mexico Defense Lawyers Association presents two half-day seminars on April 29. The morning session, "Maximizing a Case's Settlement Posture," is chaired by Robert Sabin. The afternoon session, "Insights into Medical Negligence Defense," is chaired by Mary M. Behm. The two seminars offer up to 4.7 G, 1.0 EP and will be held at State Bar Center in Albuquerque. Registration is available at www.nmdla.org or by calling 505-797-6021.

New Mexico Trial Lawyers Foundation

Tort Law CLE

The New Mexico Trial Lawyers Foundation presents the "35th Annual Update on New Mexico Tort Law" (5.2 G, 1.0 EP) on April 22 in Albuquerque. Visit www.nmtla.org or call 505-243-6003 to register.

Other News

Christian Legal Aid

Training Seminar

New Mexico Christian Legal Aid invites new members to attend a volunteer refresher seminar from noon to 5 p.m., April 29th, at the State Bar Center. Join them for free lunch, free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800, or email christianlegalaid@hotmail.com.

Workers' Compensation Administration

Notice of Destruction of Records

In accordance with NMAC 11.4.4.9 (Q)-Forms, Filing and Hearing Procedures: Return of Records, the New Mexico Workers' Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2010, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE, Albuquerque, NM 87106 and can be picked up until May 15, 2016. For further information, contact the WCA at 505-841-6028 or 1-800-255-7965 and ask for Heather Jordan, clerk of the court. Exhibits and depositions not claimed by the specified date will be destroyed.

STATE BAR of NEW MEXICO

2016 Annual Meeting–Bench & Bar Conference

Call for Nominations

State Bar of New Mexico 2016 Annual Awards

Nominations are being accepted for the 2016 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2015 or 2016. The awards will be presented August 19 during the 2016 Annual Meeting—Bench and Bar Conference at the Buffalo Thunder Resort in Santa Fe. All awards are limited to one recipient per year, whether living or deceased. *Previous recipients for the past five years are listed below.*

Distinguished Bar Service Award-Lawyer

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

Previous recipients: Jeffrey H. Albright, Carol Skiba, Ian Bezpalko, John D. Robb Jr., Mary T. Torres

Distinguished Bar Service Award–Nonlawyer

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

Previous recipients: Kim Posich, Rear Admiral Jon Michael Barr (ret.), Hon. Buddy J. Hall, Sandra Bauman, David Smoak

Justice Pamela B. Minzner* Professionalism Award

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

Previous recipients: S. Thomas Overstreet, Catherine T. Goldberg, Cas F. Tabor, Henry A. Kelly, Hon. Angela J. Jewell

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

Outstanding Legal Organization or Program Award

Recognizes sections, committees, local and voluntary bars and outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: Pegasus Legal Services for Children, Corinne Wolfe Children's Law Center, Divorce Options Workshop, United South Broadway Corp. Fair Lending Center, N.M. Hispanic Bar Association

Outstanding Young Lawyer of the Year Award

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

Previous recipients: Tania S. Silva, Marshall J. Ray, Greg L. Gambill, Robert L. Jucero Jr., Keya Koul

Robert H. LaFollette* Pro Bono Award

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

Previous recipients: Robert M. Bristol, Erin A. Olson, Jared G. Kallunki, Alan Wainwright, Ronald E. Holmes

*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

Seth D. Montgomery* Distinguished Judicial Service Award

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and bar; generally given to judges who have or soon will be retiring.

Previous recipients: Hon. Cynthia A. Fry, Hon. Rozier E. Sanchez, Hon. Bruce D. Black, Justice Patricio M. Serna (ret.), Hon. Jerald A. Valentine

*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. **Please note that we will be preparing a video on the award recipients which will be presented at the awards reception, so please provide names and contact information for three or four individuals who would be willing to participate in the video project in the nomination letter.**

Deadline for Nominations: May 20

Law Day Call-in Program

NEEDED: **Volunteer attorneys who can answer questions about many areas of law including:**

- Family law
- Landlord/tenant disputes
- Consumer law
- Personal injury
- Collections
- General practice

During the Young Lawyers Division Law Day Call-in Program

Saturday, April 30 • 9 a.m. to noon

(volunteers should arrive at 8 a.m. for breakfast and orientation)

Alamogordo, Albuquerque, Farmington, Las Cruces and Roswell

Volunteer attorneys will provide very brief legal advice to callers from around the state in the practice area of their choice. Attorneys who speak Spanish are always needed.

Earn pro bono hours!

For more information or to volunteer, contact the following YLD board member in your area:

Alamogordo: Erin M. Akins, atkinser@gmail.com
Albuquerque: Sonia Russo, srusso@da2nd.state.nm.us
Farmington: Evan R. Cochnar, ecochnar@da.state.nm.us
Las Cruces: Robert Lara, robunm@gmail.com
Roswell: Anna C. Rains, acr@sbcw.com

State Bar of New Mexico
Young Lawyers Division

Entrepreneurs *in* Community Lawyering

New Mexico's Solo and Small Practice Incubator

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

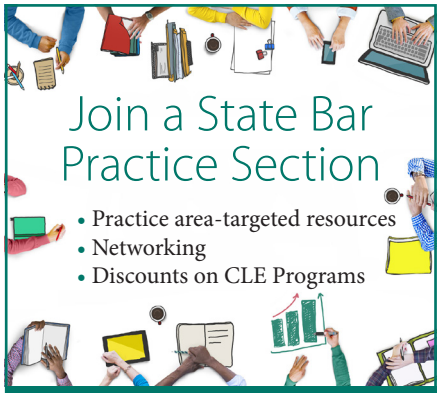
Who can apply?

- Licensed attorneys with up to three years of practice
- Visit **www.nmbar.org/ECL** to apply, for the official Program Description and additional resources.

Currently accepting applications for the first three participating attorneys!

State Bar of New Mexico Foundation

For more information, contact Stormy Ralstin at 505-797-6053.



Submit announcements for publication in the *Bar Bulletin* to **notices@nmbar.org** by noon Monday the week prior to publication.

Legal Education

April

20 **Midyear Meeting**
6.0 G
Live Seminar, Santa Fe
American Judges Association
www.americanjudgesassociation.net

22 **Ethics for Estate Planners**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

22 **35th Annual Update on New Mexico Tort Law**
5.2 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Trial Lawyers Foundation
www.nmtla.org

26 **Spring AODA Conference**
11.2 G, 4.0 EP
Live Seminar, Albuquerque
Administrative Office of the District Attorneys
www.nmdas.com

26 **Employees, Secrets and Competition: Non-Competes and More**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Landlord Tenant Law: Lease Agreements Defaults and Collections**
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services Inc.
www.sterlingeducation.com

28 **Annual Advanced Estate Planning Strategies**
11.2 G
Live Seminar, Santa Fe
Texas State Bar
www.texasbarcle.com

29 **2016 Legislative Preview**
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **2015 Mock Meeting of the Ethics Advisory Committee**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Criminal Procedure Update (2015)**
1.2 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Lawyers' Duties of Fairness and Honesty (Fair or Foul 2016)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Civility and Professionalism (Ethicspalooza Redux – Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Fair or Foul: Lawyers Duties of Fairness and Honest to Clients, Parties, Courts, Counsel and Others**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Conflicts of Interest (Ethicspalooza Redux-Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Law Day CLE**
3.0 G
Live Seminar, Albuquerque
State Bar of New Mexico
Paralegal Division
505-888-4357

May

4 **Ethics and Drafting Effective Conflict of Interest Waivers**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

4 **Annual Estate Planning Update**
6.0 G, 1.0 EP
Live Seminar
Wilcox Law Firm
www.wilcoxlawnm.com

5 **Public Records and Open Meetings**
5.5 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Foundation for Open Government
www.nmfog.org

6 **Best and Worst Practices Including Ethical Dilemmas in Mediation**
3.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **Nonprofit Financing**
1.0 G
Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org

6 **Four Corner Forensics**
6.2 G
Live Seminar, Durango, Colo.
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org

10 **Arbitration: An Overview of Current Issues**
1.0 G
Live Seminar
H. Vearle Payne Inns of Court
505-321-1461

11 **Adding a New Member to an LLC**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

13 **Spring Elder Law Institute**
6.2 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

May

17 **Workout of Defaulted Real Estate Project**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Trusts 101**
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

19 **2016 Retaliation Claims in Employment Law Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

20 **The New Lawyer – Rethinking Legal Services in the 21st Century (2015)**
4.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Legal Writing – From Fiction to Fact: Morning Session (2015)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Social Media and the Countdown to Your Ethical Demise (2016)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
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20 **What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics (2016 Edition)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
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20 **Ethics and Virtual Law Practices**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

June

6 **2016 Estate Planning Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Conflicts of Interests (Ethicspalooza Redux—Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
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7 **Beyond Sticks and Stones (2015 Annual Meeting)**
1.5 EP
Live Replay, Albuquerque
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7 **The 31st Annual Bankruptcy Year in Review (2016 AM Session)**
3.5 G
Live Replay, Albuquerque
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www.nmbar.org

16 **Negotiating and Drafting Issues with Small Commercial Leases**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16–17 **Ninth Annual New Mexico Legal Service Providers Conference: Holistically Addressing Poverty and Advancing Equity for Women and Families in New Mexico**
10.0 G, 2.0 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

17 **Legal Ethics in Contract Drafting**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

July

15 **The Ethics of Creating Attorney-Client Relationships in the Electronic Age**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Essentials of Employment Law**
6.6 G
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com

21 **Drafting Sales Agents' Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Reciprocity—Introduction to the Practice of Law in New Mexico**
4.5 G, 2.5 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Legal Technology Academy (Afternoon Session 2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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 April 1, 2016

Petitions for Writ of Certiorari Filed and Pending:

			Date Petition Filed
No. 35,832	State v. Baxendale	COA 33,934	03/31/16
No. 35,831	State v. Martinez	COA 33,181	03/31/16
No. 35,830	Mesa Steel v. Dennis	COA 34,546	03/31/16
No. 35,828	Patscheck v. Wetzel	12-501	03/29/16
No. 35,825	Bodley v. Goodman	COA 34,343	03/28/16
No. 35,827	Serna v. Webster	COA 34,535/34,755	03/24/16
No. 35,824	Earthworks Oil and Gas v. N.M. Oil & Gas Association	COA 33,451	03/24/16
No. 35,823	State v. Garcia	COA 32,860	03/24/16
No. 35,822	Chavez v. Wrigley	12-501	03/24/16
No. 35,820	Martinez v. Overton	COA 34,740	03/24/16
No. 35,821	Pense v. Heredia	12-501	03/23/16
No. 35,818	State v. Martinez	COA 35,038	03/22/16
No. 35,817	State v. Nathaniel L.	COA 34,864	03/22/16
No. 35,816	State v. McNew	COA 34,937	03/18/16
No. 35,815	State v. Sanchez	COA 34,170	03/18/16
No. 35,813	State v. Salima J.	COA 34,904	03/17/16
No. 35,812	State v. Tenorio	COA 34,994	03/17/16
No. 35,814	Campos v. Garcia	12-501	03/16/16
No. 35,811	State v. Barreras	COA 33,653	03/16/16
No. 35,810	State v. Barela	COA 34,716	03/16/16
No. 35,809	State v. Taylor E.	COA 34,802	03/16/16
No. 35,805	Trujillo v. Los Alamos Labs	COA 34,185	03/16/16
No. 35,804	Jackson v. Wetzel	12-501	03/14/16
No. 35,803	Dunn v. Hatch	12-501	03/14/16
No. 35,802	Santillanes v. Smith	12-501	03/14/16
No. 35,795	Jaramillo v. N.M. Dept. of Corrections	COA 34,528	03/09/16
No. 35,793	State v. Cardenas	COA 33,564	03/09/16
No. 35,777	N.M. State Engineer v. Santa Fe Water Resource	COA 33,704	02/25/16
No. 35,771	State v. Garcia	COA 33,425	02/24/16
No. 35,758	State v. Abeyta	COA 33,461	02/15/16
No. 35,749	State v. Vargas	COA 33,247	02/11/16
No. 35,748	State v. Vargas	COA 33,247	02/11/16
No. 35,747	Sicre v. Perez	12-501	02/04/16
No. 35,746	Bradford v. Hatch	12-501	02/01/16
No. 35,722	James v. Smith	12-501	01/25/16
No. 35,711	Foster v. Lea County	12-501	01/25/16
No. 35,718	Garcia v. Franwer	12-501	01/19/16
No. 35,717	Castillo v. Franco	12-501	01/19/16
No. 35,702	Steiner v. State	12-501	01/12/16
No. 35,682	Peterson v. LeMaster	12-501	01/05/16
No. 35,677	Sanchez v. Mares	12-501	01/05/16
No. 35,669	Martin v. State	12-501	12/30/15
No. 35,665	Kading v. Lopez	12-501	12/29/15
No. 35,664	Martinez v. Franco	12-501	12/29/15
No. 35,657	Ira Janecka	12-501	12/28/15
No. 35,671	Riley v. Wrigley	12-501	12/21/15
No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15
No. 35,661	Benjamin v. State	12-501	12/16/15
No. 35,654	Dimas v. Wrigley	12-501	12/11/15
No. 35,635	Robles v. State	12-501	12/10/15
No. 35,674	Bledsoe v. Martinez	12-501	12/09/15
No. 35,653	Pallares v. Martinez	12-501	12/09/15
No. 35,637	Lopez v. Frawner	12-501	12/07/15
No. 35,268	Saiz v. State	12-501	12/01/15
No. 35,612	Torrez v. Mulheron	12-501	11/23/15
No. 35,599	Tafoya v. Stewart	12-501	11/19/15
No. 35,588	Torrez v. State	12-501	11/04/15
No. 35,522	Denham v. State	12-501	09/21/15
No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,440	Gonzales v. Franco	12-501	07/22/15
No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,374	Loughborough v. Garcia	12-501	06/23/15
No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,353	Collins v. Garrett	COA 34,368	06/12/15
No. 35,335	Chavez v. Hatch	12-501	06/03/15
No. 35,371	Pierce v. Nance	12-501	05/22/15
No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15
No. 35,261	Trujillo v. Hickson	12-501	04/23/15
No. 35,097	Marrah v. Swisstack	12-501	01/26/15
No. 35,099	Keller v. Horton	12-501	12/11/14
No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14
No. 34,932	Gonzales v. Sanchez	12-501	10/16/14
No. 34,907	Cantone v. Franco	12-501	09/11/14
No. 34,680	Wing v. Janecka	12-501	07/14/14
No. 34,777	State v. Dorais	COA 32,235	07/02/14
No. 34,775	State v. Merhege	COA 32,461	06/19/14
No. 34,706	Camacho v. Sanchez	12-501	05/13/14
No. 34,563	Benavidez v. State	12-501	02/25/14
No. 34,303	Gutierrez v. State	12-501	07/30/13
No. 34,067	Gutierrez v. Williams	12-501	03/14/13
No. 33,868	Burdex v. Bravo	12-501	11/28/12
No. 33,819	Chavez v. State	12-501	10/29/12
No. 33,867	Roche v. Janecka	12-501	09/28/12
No. 33,539	Contreras v. State	12-501	07/12/12
No. 33,630	Utley v. State	12-501	06/07/12

Certiorari Granted but Not Yet Submitted to the Court:

(Parties preparing briefs)			Date Writ Issued
No. 33,725	State v. Pasillas	COA 31,513	09/14/12
No. 33,877	State v. Alvarez	COA 31,987	12/06/12
No. 33,930	State v. Rodriguez	COA 30,938	01/18/13
No. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13
No. 34,274	State v. Nolen	12-501	11/20/13
No. 34,443	Aragon v. State	12-501	02/14/14
No. 34,522	Hobson v. Hatch	12-501	03/28/14
No. 34,582	State v. Sanchez	COA 32,862	04/11/14
No. 34,694	State v. Salazar	COA 33,232	06/06/14
No. 34,669	Hart v. Otero County Prison	12-501	06/06/14
No. 34,650	Scott v. Morales	COA 32,475	06/06/14
No. 34,784	Silva v. Lovelace Health Systems, Inc.	COA 31,723	08/01/14
No. 34,812	Ruiz v. Stewart	12-501	10/10/14
No. 35,063	State v. Carroll	COA 32,909	01/26/15
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. 35,296	State v. Tsosie	COA 34,351	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. 35,318	State v. Dunn	COA 34,273	08/07/15
No. 35,278	Smith v. Frawner	12-501	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. 35,499	Romero v. Ladlow Transit Services	COA 33,032	09/25/15
No. 35,437	State v. Tafoya	COA 34,218	09/25/15
No. 35,515	Saenz v. Ranack Constructors	COA 32,373	10/23/16
No. 35,614	State v. Chavez	COA 33,084	01/19/16
No. 35,609	Castro-Montanez v. Milk-N-Atural	COA 34,772	01/19/16
No. 35,512	Phoenix Funding v. Aurora Loan Services	COA 33,211	01/19/16
No. 34,790	Venie v. Velasquez	COA 33,427	01/19/16
No. 35,680	State v. Reed	COA 33,426	02/05/16
No. 35,751	State v. Begay	COA 33,588	03/25/16

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)			Submission Date
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. 34,826	State v. Trammel	COA 31,097	08/26/15
No. 34,866	State v. Yazzie	COA 32,476	08/26/15
No. 35,035	State v. Stephenson	COA 31,273	10/15/15
No. 35,478	Morris v. Brandenburg	COA 33,630	10/26/15
No. 35,248	AFSCME Council 18 v. Bernalillo County Commission	COA 33,706	01/11/16
No. 35,255	State v. Tufts	COA 33,419	01/13/16
No. 35,183	State v. Tapia	COA 32,934	01/25/16
No. 35,101	Dalton v. Santander	COA 33,136	02/17/16
No. 35,198	Noice v. BNSF	COA 31,935	02/17/16
No. 35,249	Kipnis v. Jusbasche	COA 33,821	02/29/16
No. 35,302	Cahn v. Berryman	COA 33,087	02/29/16
No. 35,349	Phillips v. N.M. Taxation & Revenue Dept.	COA 33,586	03/14/16
No. 35,148	El Castillo Retirement Residences v. Martinez	COA 31,701	03/16/16
No. 35,386	State v. Cordova	COA 32,820	03/28/16
No. 35,286	Flores v. Herrera	COA 32,693/33,413	03/30/16
No. 35,395	State v. Bailey	COA 32,521	03/30/16
No. 35,130	Progressive Ins. v. Vigil	COA 32,171	03/30/16
No. 35,456	Haynes v. Presbyterian Healthcare Services	COA 34,489	04/13/16
No. 34,929	Freeman v. Love	COA 32,542	04/13/16
No. 34,830	State v. Le Mier	COA 33,493	04/25/16
No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	04/27/16
No. 35,426	Rodriguez v. Brand West Dairy	COA 33,675/33,104	04/27/16
No. 35,297	Montano v. Frezza	COA 32,403	08/15/16
No. 35,214	Montano v. Frezza	COA 32,403	08/15/16

Petition for Writ of Certiorari Denied:

			Date Order Filed
No. 35,794	State v. Brown	COA 34,905	04/01/16
No. 35,792	State v. Garcia-Ortega	COA 33,320	04/01/16
No. 35,730	State v. Humphrey	COA 34,601	04/01/16
No. 35,593	Quintana v. Hatch	12-501	04/01/16
No. 35,790	Castillo v. Arrieta	COA 34,180	03/30/16
No. 35,789	State v. Cly	COA 35,016	03/30/16
No. 35,788	State v. Thompson	COA 34,559	03/30/16
No. 35,786	State v. Pacheco	COA 33,810	03/30/16
No. 35,785	State v. Aragon	COA 34,817	03/30/16
No. 35,784	State v. Diaz	COA 35,079	03/30/16
No. 35,783	State v. Jason R.	COA 34,562	03/30/16
No. 35,781	State v. Bersame	COA 34,686	03/30/16
No. 35,739	State v. Angulo	COA 34,714	03/30/16
No. 35,690	Healthsouth Rehabilitation v. Brawley	COA 33,593	03/30/16
No. 35,581	Salgado v. Morris	12-501	03/30/16
No. 35,575	Thompson v. Frawner	12-501	03/30/16

Opinions

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

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

Effective April 8, 2016

Unublished Opinions

No. 32906	9th Jud Dist Curry CR-11-173, STATE v J SALAZAR (affirm)	4/5/2016
No. 33617	8th Jud Dist Union DM-10-51, K BALLARD v T BALLARD (affirm)	4/6/2016
No. 34664	1st Jud Dist Santa Fe CV-14-873, GREGORY BAKER v WOOD METAL (affirm)	4/6/2016
No. 35190	5th Jud Dist Eddy JQ-13-39, CYFD v JULIO R (affirm)	4/6/2016
No. 34894	2nd Jud Dist Bernalillo CR-14-5161, STATE v D TORRES (affirm)	4/6/2016
No. 33191	9th Jud Dist Curry CR-12-471, STATE v J MAESTAS (affirm)	4/6/2016

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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Clerk's Certificate of Name Change

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In Memoriam

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Dated April 4, 2016

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective April 6, 2016

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

Please see the special summary of proposed rule amendments published in the March 9 issue of the Bar Bulletin. *The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 6, 2016.*

Recently Approved Rule Changes Since Release of 2015 NMRA:

Rules of Criminal Procedure for the Magistrate Courts

Rule 6-506	Time of commencement of trial	05/24/16

Rules of Criminal Procedure for the Metropolitan Courts

Rule 7-506	Time of commencement of trial	05/24/16

Rules of Procedure for the Municipal Courts

Rule 8-506	Time of commencement of trial	05/24/16

Second Judicial District Court Local Rules

LR2-400	Case management pilot program for criminal cases.	02/02/16

For 2015 year-end rule amendments that became effective December 31, 2015, and that will appear in the 2016 NMRA, please see the November 4, 2015, issue of the Bar Bulletin or visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us/nmrules/NMRules.aspx.

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

Certiorari Denied, December 7, 2015, No. 35,594

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-008

No. 33,156 (filed October 13, 2015)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
OSCAR HERNANDEZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
DARREN M. KUGLER, District Judge

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Opinion

Jonathan B. Sutin, Judge

I. Introduction

{1} Defendant Oscar Hernandez challenges the district court's denial of his motion to suppress contraband seized from him and statements he made during an investigatory stop of an SUV in which he was a passenger. He asserts that law enforcement agents did not have reasonable suspicion when they stopped the SUV. We hold that the stop was supported by reasonable suspicion, and we affirm the district court.

Procedural History

{2} Following his arraignment for possession of a controlled substance, in violation of NMSA 1978, Section 30-31-23(E) (2011), Defendant filed a motion to suppress the controlled substances seized, as well as all statements made by him, following an August 23, 2012, stop of an SUV in which he was a passenger. The district court held an evidentiary hearing on the motion during which the State proffered testimony from the two undercover agents concerning events preceding the stop of the SUV.

{3} The district court denied Defendant's motion to suppress, listing the following factors that were considered in its totality of the circumstances analysis.

> (1) the established drug house through undercover buys, (2) previous identification of the SUV through an undercover buy at [a] separate drug house, (3) observation of activities consistent with previous drug buys which included the dropping off and picking up of the male passengers, and (4) the [three to five] minute time frame that was found to be consistent with drug trafficking.

Following the denial of Defendant's motion to reconsider, Defendant entered a conditional plea, reserving his right to appeal the district court's denial of his motion to suppress. Judgment was entered against Defendant, and Defendant filed a timely notice of appeal.

II. Background

{4} This case involved an ongoing narcotics investigation that culminated in the stop of the SUV and the arrest of Defendant, who was a passenger in the vehicle. Following the stop, Defendant was described by another passenger in response to an agent's query about the location of the narcotics. The stop was based on three previous incidents occurring in the agents' ongoing investigation, incidents that the State maintains supported reasonable suspicion for the stop of the SUV. We describe those incidents.

A. July 3, 2012

{5} Undercover narcotics Agents Gabriel Arenibas and Joseph Misquez arranged an undercover heroin buy on July 3, 2012, through a man named Kyle Mendenhall. The agents referred to Mendenhall as a "suspect" and used him not as a confidential informant, but rather as a source of drugs and a way to track down other heroin dealers in the area.[1] The agents drove with Mendenhall to the Oñate Greens Trailer Park. Mendenhall directed the agents toward a trailer in Space 104 in the trailer park. He requested that the agents drop him off a few spaces away so that he could approach on foot, as the resident of Space 104 did not like new people to go there. The agents parked a few spaces away from Space 104, moved to a vantage point where they could observe Mendenhall, and saw him go into the white trailer. Mendenhall remained in the trailer for two to five minutes, returned to the car, they proceeded to Mendenhall's residence to drop him off, and Mendenhall gave a packet of heroin to the agents. Both agents testified that Mendenhall's presence in the trailer for two to five minutes was consistent with drug trafficking.

B. July 23, 2012

{6} Sometime after the July 3 buy, Mendenhall violated his parole, and the agents were no longer able to make buys through him. The agents accepted an offer from Brandon Hall and Zach Malchete, who were relatives of Mendenhall, "to hook us up meaning to

[1] Our impression that Mendenhall was not a confidential informant and was unaware of the agents' positions with law enforcement is enhanced by the fact that no mention appears in the record of the agents conducting controlled buys, where the informant is first checked to see if they possess drugs prior to making the buy at the request of officers, *see State v. Lujan*, 1998-NMCA-032, ¶ 2, 124 N.M. 494, 953 P.2d 29 (describing a typical controlled buy), and the fact that his role in the investigation ended due to an unrelated parole violation.

sell us heroin" and arranged to buy heroin from them instead of Mendenhall.[2] On July 23, 2012, Hall and Malchete met with Agent Misquez, while Agent Arenibas conducted surveillance from approximately twenty feet away. Agent Misquez gave Malchete $40 to purchase the heroin, and Malchete left, stating that he had to go to the Oñate Greens to his "connect." Agent Misquez testified that Malchete, Hall, Mendenhall, and several other subjects were part of the investigation that the agents were working, and they knew their sources to be at two locations, one of which was Space 104 in the Oñate Greens Trailer Park. Agent Misquez confirmed that Malchete stated that he was "going to that white trailer," and Hall also confirmed the same information to Agent Misquez, that it was the white trailer in Space 104 from which Mendenhall had purchased heroin on July 3. Malchete returned approximately five to ten minutes later; upon his return, Malchete gave Agent Misquez $40 worth of heroin.

C. August 10, 2012

{7} On August 10, 2012, the agents contacted Hall in order to purchase more heroin; Hall did not have the amount that the agents requested, but offered to get it if they agreed to drive him to a location where he could purchase it. The agents agreed, and Hall directed them to 2801 Merriweather Street. This buy played out under the "same circumstances" as the July 3 purchase by Mendenhall at Space 104, in that the agents parked down the street from the house and waited while Hall went into the Merriweather home on foot; again, the reason for this was that the individual at the Merriweather home disliked new people coming to the house. While Hall was in the house, the agents noticed a tan or golden colored SUV parked in the driveway of the Merriweather home and "got the plate" of that vehicle. Hall came out of the residence three to five minutes later, got into the agents' car, and handed Agent Misquez a small amount of heroin. At the time, the agents did not know who resided at 2801 Merriweather. The agents later determined that a family lived at the residence and that the SUV was registered to a person living at that address.

D. August 23, 2012

{8} The agents participated in other buys with Hall and Malchete between July 3 and August 23, but in none of those additional buys did Hall and Malchete go to Space 104; instead, they took the agents to different addresses to buy heroin. The agents began conducting surveillance on Space 104 on their own. At the inception of the August 23rd surveillance, the agents determined that they would stop any vehicle engaged in "suspicious activity" and also had a marked police unit waiting in the area to conduct such stops. The agents observed a gold SUV stop in the trailer park, drop off two passengers down the road from Space 104, and proceed to pull into Space 104's driveway. The vehicle remained there for three to five minutes, and the two remaining individuals in the SUV "made contact with the subject inside Space 104." The vehicle left Space 104, picked up the two passengers down the street, and exited the trailer park. Agent Arenibas testified that the agents noticed that the gold SUV was the same one they had seen parked outside 2801 Merriweather during the buy on August 10. When the SUV passed in front of the agents, they were able to see its license plate number, thereby confirming that the SUV was the same one that they had seen outside of 2801 Merriweather. The SUV having been parked at Space 104 for the short length of time it was parked there, and having dropped off and picked up the passengers down the street from Space 104, was consistent with drug trafficking that the agents had observed during the previous undercover buys during their investigation. Based on the circumstances of this August 23rd buy and the similarities it had with the earlier undercover heroin purchases at Space 104 and at 2801 Merriweather, the agents believed that the occupants of the SUV were involved in picking up or purchasing heroin.

{9} Because of these similarities, as well as the same SUV's involvement, the agents requested that the marked police unit stop the SUV. The stop was conducted approximately one block away from the trailer park, minutes after the SUV pulled away from Space 104. The agents drove to the place where the marked unit had stopped the SUV, approached the vehicle, advised the occupants of the narcotics-related reason for the stop, and separated them. After a female passenger described Defendant as being the person with the heroin, Defendant was confronted by the agents, and eventually, Defendant voluntarily gave Agent Misquez a package of heroin.

III. Discussion

Standard of Review

{10} When we review an appeal from a determination on a motion to suppress in a criminal case, we look at the totality of circumstances. *State v. Leyva*, 2011-NMSC-009, ¶¶ 30, 59, 149 N.M. 435, 250 P.3d 861; *State v. Vandenberg*, 2003-NMSC-030, ¶ 19, 134 N.M. 566, 81 P.3d 19. We view the facts in a light most favorable to the prevailing party. *State v. Sewell*, 2009-NMSC-033, ¶ 12, 146 N.M. 428, 211 P.3d 885. At the same time, if the district court makes findings of fact, and if any finding is attacked for lack of substantial evidence, we will review the finding under a substantial evidence standard of review. *State v. Neal*, 2007-NMSC-043, ¶ 15, 142 N.M. 176, 164 P.3d 57. If the finding is supported by substantial evidence, we will defer to the court's finding. *Id.* Once the operative facts are ascertained, we review the constitutional reasonableness of the actions of law enforcement. *Vandenberg*, 2003-NMSC-030, ¶ 19; *State v. Attaway*, 1994-NMSC-011, ¶¶ 6-10, 117 N.M. 141, 870 P.2d 103. A constitutional reasonableness analysis engages a process of evaluating both fact and law and is appropriately labeled a mixed question of fact and law. *Attaway*, 1994-NMSC-011, ¶¶ 6-7; *see generally* Randall H. Warner, *All Mixed Up About Mixed Questions*, 7 J. App. Prac. & Process 101 (2005). Despite the fact that our review requires determinations of what the operative facts are, because the process involves evaluative judgments in regard to reasonableness, we review the district court's determination de novo. *Vandenberg*, 2003-NMSC-030, ¶¶ 17, 19; *Attaway*, 1994-NMSC-011, ¶ 10.

The Stop Was Supported by Reasonable Suspicion

{11} The Fourth Amendment to the United States Constitution "prohibits unreasonable searches and seizures . . ., and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks and citation omitted).[3] While warrantless seizures are presumed to be unreasonable,

[2]It appears from the record that the agents' interactions with Hall and Malchete were not controlled buys and that Hall and Malchete were also not confidential informants. This position is based on repeated references to "undercover buys" with Hall and Malchete, references to them as "suspects," and the fact that Agent Arenibas remained with Agent Misquez during the July 23 buy for "safety."

[3]We limit our analysis to the federal constitution when the defendant does not argue on appeal how and why the New Mexico Constitution provides greater protection. *See generally State v. Lorenzo P.*, 2011-NMCA-013, ¶ 9, 149 N.M. 373, 249 P.3d 85. Defendant provides no such argument here. We therefore analyze Defendant's case only under the Fourth Amendment.

State v. Rowell, 2008-NMSC-041, ¶ 10, 144 N.M. 371, 188 P.3d 95, brief investigatory stops are permissible if they are supported by reasonable suspicion that criminal activity may be afoot. *Arvizu*, 534 U.S. at 273.

{12} "[T]he concept of reasonable suspicion is somewhat abstract" and has not been reduced to a neat set of legal rules. *Arvizu*, 534 U.S. at 274. In reviewing a reasonable suspicion determination, an appellate court "must look at the totality of the circumstances" to determine "whether the detaining officer [had] a particularized and objective basis for suspecting legal wrongdoing." *Id.* at 273 (internal quotation marks and citation omitted). The appellate court must give due weight to the factual inferences and deductions drawn by a law enforcement officer based upon his experience and specialized training. *Id.* at 273-74. "Although an officer's reliance on a mere hunch is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard[.]" *Id.* at 274 (internal quotation marks and citation omitted). Finally, we are not to engage in a "divide-and-conquer analysis[,]" looking at each act in a series of acts that, taken alone, may be susceptible of an innocent explanation. *Id.* "A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct." *Id.* at 277.

{13} In Defendant's view, the agents' investigations "were fragmented and flawed," were based on their "hunch that [the SUV] was involved in drug-related activity[,]" and were not adequate to support reasonable suspicion and the seizure of the SUV. Defendant relies on *Neal*, 2007-NMSC-043. In *Neal*, a law enforcement officer effected a valid traffic stop of the defendant and then detained the defendant for ten minutes to await a drug dog to perform a perimeter sniff of his vehicle. *Id.* ¶¶ 1, 28, 31. Our Supreme Court held that the factual bases asserted by the officer to justify the ten minute detention did not satisfy the reasonable suspicion standard. *Id.* ¶ 31. The officer's stated grounds for detaining the defendant were that the defendant had parked in front of a house that was under surveillance in an ongoing drug investigation, the defendant had a discussion with the resident who was a felon, the officer's "belief that a drug transaction had taken place[,]" the defendant's demeanor, his desire to leave, and the fact that the defendant had a criminal history. *Id.* ¶¶ 9, 28, 30. The Court determined that the defendant's innocent conduct, presence at a known drug house, and prior involvement in drug-related activity were not sufficient to constitute reasonable suspicion to detain the defendant beyond the valid traffic stop. *Id.* ¶¶ 9, 23, 31. The Court reasoned that "[the d]efendant's mere association with a convicted felon . . ., who was under surveillance in an ongoing drug investigation, was insufficient to create reasonable suspicion[,]" *id.* ¶ 30, explaining that the totality of the facts presented did not "constitute the type of individualized, specific, articulable circumstances necessary to create reasonable suspicion that [the d]efendant himself was involved in criminal activity[.]" *Id.* ¶ 31. Instead, it characterized the circumstances as "the type of conjecture and hunch we have rejected in the past as insufficient to constitute reasonable suspicion." *Id.*

{14} Defendant's reliance on *Neal* derives from his view that the SUV's mere presence at a house that was under investigation for suspected drug activity is inadequate to support reasonable suspicion. *See id.* ¶¶ 4, 28, 30 (stating, among other things, that the defendant's presence at a house that was under investigation for drug activity did not give rise to reasonable suspicion). We are not persuaded by this comparison. Here, the grounds for the agents' reasonable suspicion were based on far more than the SUV's mere presence at a suspected drug house.

{15} Further, Defendant's arguments ignore the teachings of *Arvizu*. *See* 534 U.S. 273-74. Defendant parses the agents' investigation and attacks the reasonableness of the underlying inferences and conclusions as to each stage of the investigation that, combined, ultimately led to the stop.[4]

{16} For example, Defendant argues that the agents "could not be certain" that the Merriweather address or Space 104 were sources of heroin. To that end, Defendant points to the facts that the agents did not see or hear any drug transaction at either address and did not confirm that Mendenhall, Hall, or Malchete were honest in their representations that they purchased heroin from either address by somehow ensuring that they did not have heroin before they went to those addresses or somehow confirming that they did not keep the agents' money themselves. Defendant's argument evokes the sense of certainty that is required in a probable cause determination, but it misses the mark in terms of the reasonable suspicion standard. *See Alabama v. White*, 496 U.S. 325, 330 (1990) (stating that because "[r]easonable suspicion is a less demanding standard than probable cause" it "can arise from information that is less reliable than that required to show probable cause"); *United States v. Cortez*, 449 U.S. 411, 418 (1981) (stating that the process of developing reasonable suspicion sufficient to justify a brief investigatory stop "does not deal with hard certainties, but with probabilities" developed from "common sense conclusions about human behavior . . . as understood by those versed in the field of law enforcement"). The agents' training and experience, their observations during the drug buys, and the involvements of the SUV, objectively support the agents' reasonable suspicion that the addresses were sources of heroin[5]

[4]The special concurrence follows suit and goes further than Defendant by more finely parsing the facts with innocent explanations for the circumstances observed by the agents during their ongoing investigation. Defendant's and the special concurrence's approaches fail to consider the totality of the circumstances, fail to give due deference to law enforcement's training and experience, and engage in an unwarranted divide-and-conquer approach by attempting to find an innocent explanation for each piece and parcel of the ongoing investigation.

[5] Arguably, the agents' observations were sufficient to establish Mendenhall's and Hall's reliability even under the heightened standard of probable cause applicable to a search warrant. *See, e.g.*, *State v. Mejia*, 766 P.2d 454, 457 (Wash. 1989) (en banc) (considering the reliability of information gained from a middleman who purchased drugs for a confidential informant and concluding that law enforcement's observations of his travel to a suspected drug house, then back to the confidential informant to deliver drugs demonstrated probable cause); *State v. Morehouse*, 684 P.2d 1348, 1350 (Wash. Ct. App. 1984) (stating that, in the context of a search warrant for a suspected drug house, any deficiency concerning a middleman's reliability was overcome by law enforcement's "observation of two separate [drug] transactions involving the same residence and the same pattern of activity").

and the SUV was connected. *See Arvizu*, 534 U.S. at 273-74 (discussing the standard used to determine whether law enforcement "[had] a particularized and objective basis for suspecting legal wrongdoing" (internal quotation marks and citation omitted)).

{17} Defendant also attacks reasonable suspicion on the ground that neither the SUV nor its owner was known to have been previously involved in any suspicious, drug-related activity. Defendant states that "[t]he agents had not identified [to whom] at the Merriweather residence the SUV belonged . . . or if that person was, in fact, involved with drug sales." In support of this attack, Defendant relies on *State v. Graves*, 1994-NMCA-151, ¶ 8, 119 N.M. 89, 888 P.2d 971, for the inapplicable proposition that, in Defendant's words, "presence on the premises subject to a search warrant does not justify detaining or searching the defendant[.]" We are not made aware of any authority to support the notion that an investigatory stop requires law enforcement officers to know of prior suspicious or criminal activity or to know that the owner of the subject vehicle was "in fact" involved in criminal activity. Again, reasonable suspicion "does not deal with hard certainties, but with probabilities." *Cortez*, 449 U.S. at 418. Further, focusing on what the agents did know instead of what they did not know about the SUV, that is, its presence at the Merriweather address during a heroin purchase, its later presence at the Oñate Greens Trailer Park, and the fact that, while at the trailer park, it followed the particular pattern known to the agents to be associated with heroin purchases from Space 104, objectively supported the agents' reasonable suspicion of criminal activity. *See, e.g*, *United States v. Askew*, 403 F.3d 496, 508 (7th Cir. 2005) (confirming that the totality of the circumstances firmly established reasonable suspicion and that, although one event could be interpreted as an innocent one, "a pattern of behavior interpreted by the untrained observer as innocent may justify a valid investigatory stop when viewed collectively by experienced drug enforcement agents" (internal quotation marks and citation omitted)); *United States v. Harley*, 682 F.2d 398, 401 (2d Cir. 1982) (holding that reasonable suspicion supported an investigatory stop because the characteristics of the defendant's "brief stop" at a place that agents "were pretty well convinced" was a place that narcotics were being sold was typical of the activities related to narcotics sales that the law enforcement agents had previously observed); *United States v. Gomez*, 633 F.2d 999, 1004-05 (2d Cir. 1980) (holding that reasonable suspicion of criminal activity was supported by experienced police officers' observations in an area of high narcotics activity of a pattern of behavior that they had seen many times before, notwithstanding that "viewed singly by an untrained eye, these events might be susceptible of an innocent interpretation").

{18} In Defendant's next attack on whether the agents' investigation supported their reasonable suspicion, he argues that the agents "had no reason to be suspicious that illegal activity was occurring at Space 104" on the day that the SUV was seized. We disagree. The totality of the circumstances gave the agents sufficient objective reason to be suspicious of illegal drug-related activity. Again, the factors included Mendenhall's and Hall's respective heroin purchases from Space 104, the fact that the SUV was registered to a resident and was in the driveway during the previous Merriweather heroin transaction on August 10, and the occupants' actions that were consistent with the pattern of drug-related behavior occurring during their investigation and the previous heroin purchases from Space 104.

{19} Finally, Defendant argues that "the agents were [not] operating under a specific, predictive tip that criminal activity was presently afoot[] or was about to occur." Consideration of a specific, predictive tip that criminal activity is about to occur may be relevant to a reasonable suspicion determination in a circumstance where a tip from an informant contributes to reasonable suspicion. *See State v. Robbs*, 2006-NMCA-061, ¶ 19, 139 N.M. 569, 136 P.3d 570 (concluding that an informant's tip was reliable and supported by reasonable suspicion because, among other things, it predicted the defendant's future movement as corroborated by law enforcement). Such considerations are not relevant here where the agents' reasonable suspicion stemmed from their own undercover investigation and surveillance and not from a tip from an informant.

{20} In sum, the totality of the circumstances known to the agents as a result of their undercover activities with Mendenhall, Hall, and Malchete, their surveillance of the Merriweather address and Space 104 during Mendenhall's and Hall's respective heroin purchases, the information gathered from Malchete, the presence of the SUV at both at-issue addresses, and the surveillance of Space 104 that ultimately led to the seizure of the SUV, amply supported the agents' reasonable suspicion that criminal activity was afoot when the marked police unit stopped the SUV. Through the course of their investigation, the agents gathered information that allowed them to observe a pattern of behavior associated with heroin transactions at the two specific addresses that were reasonably sufficient, to link the SUV to both addresses and, ultimately, to connect the SUV belonging to a resident of the Merriweather address to the pattern of behavior associated with a suspected purchase of heroin from Space 104 on August 23, 2012. The "mere hunch" label is a stretch too far here. Viewed in total and with the required deference to the inferences and deductions drawn by the agents based on their experience and training, these circumstances were sufficient to give rise to more than a "mere hunch." *See Arvizu*, 534 U.S. at 273-74 (recognizing that a mere hunch will not support reasonable suspicion, but also recognizing that the appellate courts must give due weight to the factual inferences and deductions drawn by law enforcement based upon experience and specialized training). To the contrary, the circumstances here provided an objective basis upon which the agents could reasonably suspect criminal activity and conduct a lawful investigatory stop.

CONCLUSION

{21} We affirm.

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

JONATHAN B. SUTIN, Judge

WE CONCUR:
TIMOTHY L. GARCIA, Judge
RODERICK T. KENNEDY, Judge
(specially concurring).

KENNEDY, Judge,
(specially concurring).

{23} It is impossible to ascertain whether, after a month and a half, the agents tired of their investigative methods and just decided to return to an "established drug house" to arrest someone. In my view, the facts here establish legitimate reasonable suspicion by barely a nose. Only upon a re-reading of this Opinion did a single fact convince me to concur. Self-reference and subjective hunch-confirming seems to abound without much hard evidence. The district court acknowledged that the agents saw no drugs at any point in their investigations on the day of Defendant's ar-

rest leading up to the stop of the SUV and acknowledged that "none of the indicators shown here, on their own, taken individually, would provide reasonable suspicion."

{24} Knowing the deferential standard of review, however, I must reluctantly concur. I write to emphasize the objective standard we must apply and recall the law that "[q]uestions of reasonable suspicion are reviewed de novo by looking at the totality of the circumstances to determine whether the detention was justified." *Robbs*, 2006-NMCA-061, ¶ 9. Hindsight, whether investigative or judicial, creates a terrific bias for confirmation of bad evidence. The agents seem not to have once corroborated these "suspects' " stories with hard evidence, yet paint a barely sufficient picture for this appeal to sustain their actions. I question the quality of the evidence, even while I vote to affirm its sufficiency in this case.

{25} Our courts have routinely rejected adopting rules equating innocent conduct with reasonable suspicion, absent articulable suspicion of criminal activity. *Neal*, 2007-NMSC-043, ¶¶ 28-29; *see also Leyva*, 2011-NMSC-009, ¶ 24 (" 'Whether you stand still or move, drive above, below, or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or arrest you. Such subjective, promiscuous appeals to an ineffable intuition should not be credited.' " (quoting *United States v. Broomfield*, 417 F.3d 654, 655 (7th Cir. 2005))). Law enforcement officers are permitted to "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person. However, this does not mean that unsupported intuition and inarticulate hunches are sufficient to constitute reasonable suspicion justifying a detention." *Neal*, 2007-NMSC-043, ¶ 21 (alteration, omission, internal quotation marks, and citations omitted). The purpose for this objectivity "is to prevent officers from arbitrarily acting on whims or unsupported hunches[.]" *State v. Alderete*, 2011-NMCA-055, ¶ 11, 149 N.M. 799, 255 P.3d 377.

{26} There is no legal standard for where the "suspects" with whom the agents associated during this three-buy investigation fall on the contiuum of sources of information between anonymous tipsters, confidential informants, and identified sources. They certainly have no obligation to be honest; they were all actively committing criminal acts with the agents asking them to do so. None of them ever allowed the agents near one of the "buys," saying in each instance that the individuals at those locations did not like strangers. This is a great opportunity for misdirection and the suspects' control of the circumstances. Mendenhall was arrested for other crimes in the course of the investigation. Hall and Malchete were also not confidential informants, because they, too, were "suspects," who on July 23, necessitated the agents staying together for "safety" when Hall went to make the buy at the "white trailer." Neither the term "suspect," nor the concern for officer safety bespeak any level of trust for these collaborators.

{27} In this case there are the three relevant events preceding the August 23 stop of the SUV: the Mendenhall buy at Space 104 on July 3, the July 23 "buy" that may or may not have occurred where Hall said it did, and seeing the SUV on Merriweather on August 10. In the first, Mendenhall went in, came out, and turned over drugs. Because the agents were acting as co-criminals with Mendenhall, who was not controlled by them or working off charges, they could not ascertain if he had drugs on his person before he went in, or still had their money when he came out.[6] Nothing appears in the record as to who occupied the trailer at Space 104, whether they had criminal records, or were innocent diversions for Mendenhall. *E.g.*, *State v. Barker*, 1992-NMCA-117, ¶ 2, 114 N.M. 589, 844 P.2d 839 (describing an informant's detailed contacts within a drug house). Regarding the SUV, as mentioned later, no facts establish its association with anyone dealing drugs at the Merriweather address on August 10. At the Merriweather buy, the "suspect" already had heroin with him, just "not enough" to satisfy the agents' request—without a controlled buy, it would be beyond the agents' capability to demonstrate how much heroin later turned over to the agents even came from the house. All of these buys rest only on the say-so of the "suspects" themselves, and the tunnel vision of the agents. Our deference may be little more than a gloss; the agents were quite unclear in their testimony about whether they recognized the SUV before or after the August 23 stop. However, the majority is correct that minute deconstruction is not the standard we must apply, and Defendant's doing so is unpersuasive in a "totality of the circmustances" deferential review.

{28} In *Alderete*, an established and reliable confidential informant gave well-corroborated information constituting "specific, predictive information" that was confirmed by police observation that drugs were being delivered to a house. A search warrant for the house had been obtained, and the officers knew it. *Alderete*, 2011-NMCA-055, ¶ 18. One vehicle had left the house; another capable of carrying such boxes as had been delivered left ten minutes thereafter. The combination of facts and corroboration of a reliable informant's information supported reasonable suspicion to pull over the car. *Id.* ¶ 20. A confidential informant is someone who is known to the police, has assisted them with investigations, and whose information led to the seizure of controlled substances and many controlled substances related arrests. *Cf. State v. Whitley*, 1999-NMCA-155, ¶ 2, 128 N.M. 403, 993 P.2d 117. In this case, there are no reliable informants, no corroboration, and only one observed prior contact with Space 104 that was similar to the July 3 stop the agents made.

{29} The "suspects" did not testify here in support of the State to support the conclusions the agents made with actual facts from the buys. All the places from which the "suspects" bought drugs did not like new people, such as the agents, showing up. This trope kept the agents from the possibility of gathering corroborating evidence. The agents, because they were dealing with active criminal suspects and not an informant under their control, did not control the "buys" their compatriots made in their service that might have reduced what I regard as the uncertainty and risk of falsehood about the information provided by an informant. *State v. Steinzig*, 1999-NMCA-017, ¶¶ 23-24, 127 N.M. 752, 987 P.2d 409. I regard the "suspects" as less reliable than anonymous tipsters, whose information we have previously regarded

[6]This would be what's known as a "controlled buy": "[T]he informant entered the residence with some money and no drugs and came out of the residence a few minutes later with drugs and no money. The informant stated that he had purchased the packet of suspected heroin from [the d]efendant . . . . The informant then turned over the packet of suspected heroin to the police. The informant saw or perceived the facts asserted." *Lujan*, 1998-NMCA-032, ¶ 12.

as "generally less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, for example the correct forecast of a subject's not easily predicted movements." *State v. Urioste*, 2002-NMSC-023, ¶ 12, 132 N.M. 592, 52 P.3d 964 (internal quotation marks and citation omitted).

{30} The sole operative question is whether the stop of the SUV was justified at its inception. I am troubled with the agents' testimony that they had determined even before the SUV showed up that they would detain anyone involved in "suspicious activity" at Space 104 and had a patrol car already waiting for that purpose.

{31} This case resembles *Alderete* in that the car in that case was stopped based on reasonable suspicion from the investigation, and not a traffic stop. The SUV showed up for a brief time, disgorged some passengers who had some contact with Space 104, returned to the car, and left. Since it is unclear whether the SUV was recognized at the time of the stop, the facts indicate that this stop occurred solely because of the agents' surveillance of Space 104 and their admitted predilection to stop any car that they thought was acting suspiciously. However, it fit the classic short-time turnaround of a typical drug transaction, and the totality of the circumstances as found by the district court gets the deferential nod.

{32} *Neal* is just a whisker on the other side of the line from this case. In *Neal*, an officer lacked reasonable suspicion to detain an individual in order to search for drugs where the officer observed the defendant, who had prior drug-related convictions, stop briefly in front of a house and speak to a known felon who resided at the house and was under investigation for drug trafficking. 2007-NMSC-043, ¶ 28. The officer had no specific information that criminal activity had occurred. *Id.* Our Supreme Court held that the defendant's suspicious behavior, presence at a known drug house, and prior involvement in drug-related activity were not sufficient to constitute reasonable suspicion to detain the defendant beyond the valid traffic stop. *Id.* ¶ 23. The Court reasoned that "[the d]efendant's mere association with a convicted felon . . . who was under surveillance in an ongoing drug investigation[] was insufficient to create reasonable suspicion." *Id.* ¶ 30. The Court explained that the totality of the facts presented did not "constitute the type of individualized, specific, articulable circumstances necessary to create reasonable suspicion that [the d]efendant . . . was involved in criminal activity," *id.* ¶ 31, and instead characterized the circumstances as "the type of conjecture and hunch we have rejected in the past as insufficient to constitute reasonable suspicion." *Id.*

{33} In *State v. Ochoa*, an officer surveilling a house for drug trafficking observed an unknown vehicle at the house, at the officer's request, another officer stopped the vehicle in order to identify and question the driver. 2009-NMCA-002, ¶ 2, 146 N.M. 32, 206 P.3d 143. We held that the officer, based on these facts, "lacked a constitutionally reasonable suspicion that [the d]efendant was involved in drug activity" to justify the stop. *Id.* ¶ 45. We concluded that the stop was pretextual because the officer lacked reasonable suspicion to support the underlying basis for the stop—investigation of drug activity. *Id.* ¶ 46. Here, I recall the agents' intention to stop any suspicious vehicle that stopped at Space 104. Only they were defining "suspicious" at that point.

{34} I regard the reasoning we used in *State v. Prince*, 2004-NMCA-127, 136 N.M. 521, 101 P.3d 332, worthy of repeating, as we held there that the combination of being under investigation for drug involvement and a tip tying the defendant's movements to drug activity were insufficient to constitute reasonable suspicion to detain the vehicle beyond a valid traffic stop.

> Guilt by association and generalized suspicions are insufficient grounds upon which to base an investigatory detention. In the absence of specific and particularized incriminating information about the criminal activity that the defendant is or is about to [be] engage[d] in, *generalized suspicions and mere corroboration of innocent activity*, even if it is not readily available to the general public, *is insufficient to create reasonable suspicion for an investigatory detention*.

Id. ¶ 17 (emphasis added). However, because I believe the totality of the circumstances in this case barely supports our conclusion, I can join the majority in applying the standard of review in this case. I therefore concur.

RODERICK T. KENNEDY, Judge

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-009

No. 33,0656 (filed August 19, 2015)

THE NATIONAL EDUCATION ASSOCIATION OF NEW MEXICO, NATIONAL EDUCATION ASSOCIATION–SANTA FE, and TERENCE MIRABAL,
Petitioners-Appellees,
v.
SANTA FE PUBLIC SCHOOLS, DR. JOEL D. BOYD, Superintendent,
Respondents-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
SARAH M. SINGLETON, District Judge

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for Appellant

Opinion

Roderick T. Kennedy, Judge

{1} This case requires us to interpret certain provisions of the School Personnel Act. We hold that the "harmless error" provision of NMSA 1978 Section 22-10A-28(L) (2003) applies to allow the late filing of a notice requesting a hearing on a discharge notice, under Section 22-10A-27(B). We therefore affirm the permanent writ of mandamus.

I. Background

{2} On February 26, 2013, the superintendent of the Santa Fe Public Schools (SFPS) gave Mirabal a notice of intent to discharge him from his teaching and coaching positions with SFPS. The notice informed Mirabal of his right to request a hearing and that if he did not request a hearing within five working days from the date of the notice, his discharge would become final. Mirabal was subsequently informed that, due to his failure to submit a timely request for hearing, his discharge was final. On March 7, 2013—two days after the deadline for doing so had passed—Mirabal notified the SFPS of his intent to exercise his right to a hearing before SFPS. The termination was effected and no hearing was held. Mirabal, the National Education Association of New Mexico, and National Education Association–Santa Fe (collectively, Petitioners) subsequently obtained an alternative writ of mandamus from the district court, ordering SFPS to "[c]omply with [the] mandatory non-discretionary duty to provide a discharge hearing pursuant to the School Personnel Act[,]" or file a response to the writ. SFPS filed its response to the writ, along with a motion to quash the writ and a motion to dismiss for lack of jurisdiction.

{3} The district court held a show cause hearing to address SFPS's reasons for its noncompliance with the writ. During that hearing, the parties addressed SFPS's response, motion to quash, and motion to dismiss. Petitioners argued that, although Mirabal departed from the five-day time period enumerated in Section 22-10A-27(B), he was entitled to a hearing applying the presumption of harmless error under Section 22-10A-28(L) to his late request. Thus, they asserted, SFPS was therefore required to demonstrate prejudice arising from his departure from Section 22-10A-27(B)'s procedures and had failed to do so. SFPS was therefore required to provide a hearing. Respondents responded by arguing that there was no mandatory duty to provide a hearing when the right to a hearing was not invoked by a request within the time prescribed by the Legislature in Section 22-10A-27(B). In addition, Respondents asserted that the requirement that a party "demonstrate prejudice" indicates there is some discretion in such a decision, and that the writ—intended for non-discretionary, ministerial duties—was therefore improper. SFPS also argued that Mirabal's untimely request resulted in prejudice in three ways: its interest in efficient timely administration was prejudiced; it suffered a monetary loss; and public policy prejudice resulted from creation of an ambiguity in discharge proceedings.

{4} The district court held that "as a matter of statutory construction," the harmless error provision of Section 22-10A-28(L) applies to this case. It reasoned that the harmless error subsection explicitly includes Section 22-10A-27(B) in its applicability, and concluded that "unless the school can demonstrate prejudice, an employee can be late in requesting a hearing and [the] school district can be late in providing a hearing unless prejudice is shown by the other side." Determining that Respondents had not demonstrated prejudice, the district court commented that the arguments Respondents made to show prejudice are "arguments that generally address the evils that befall not strictly enforcing time limits, and they are not the kind of prejudice that was envisioned by the Legislature when writing Section 22-10A-28(L)." The district court noted that the parties agreed that if the request for hearing had been timely, there would have been a mandatory duty to provide a hearing and that the only real issue in the case was whether the late filing somehow turned the duty to provide a hearing into a discretionary duty. Concluding that the statute indicated that prejudice would be determined by a "reviewing authority" and that the school is not vested with the discretion not to grant a hearing, "particularly where [it has] made no showing of prejudice," the district court issued a permanent writ and denied the motions to quash.

II. Discussion

A. Statutory Interpretation

{5} We apply a de novo standard of review when interpreting the School Personnel Act. *Aguilera v. Bd. of Educ.*, 2006-NMSC-015, ¶ 6, 139 N.M. 330, 132 P.3d 587; *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105 (stating "statutory interpretation is an issue of law, which we review de novo"). Our first step in this case is an analysis of whether Section 22-10A-28(L), the harmless error provision, applies to the procedures enumerated in Section 22-10A-27(B).

{6} When interpreting a statute, we attempt to discern the intent of the Legislature. *Starko, Inc. v. N.M. Human Servs. Dep't*, 2014-NMSC-033, ¶ 18, 333 P.3d 947, *Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 29, 147 N.M. 583, 227 P.3d 73 ("It is the high duty and responsibility of the judicial branch of government to facilitate and promote the [L]egislature's accomplishment of its purpose.") (first alteration, internal quotation marks, and citation omitted). In order to ascertain the intent of the Legislature, we employ the plain meaning rule. *Truong*, 2010-NMSC-009, ¶ 37. "[W]hen a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Truong*, 2010-NMSC-009, ¶ 37 (internal quotation marks and citation omitted). As such, we "presume[] that the words in a statutory provision have been used according to their plain, natural, and usual signification and import[.]" *DeMichele v. State Taxation and Revenue Dep't*, 2015 NMCA___, ¶ 14, ___ P.3d ___ (No. 33,778, June 3, 2015) (internal quotation marks omitted). We "[give] words their ordinary meaning, unless the Legislature indicates a different one was intended." *Starko*, 2014-NMSC-033, ¶ 46 (Vigil, C.J., dissenting) (internal quotation marks omitted), and do not "read into a statute language which is not there, especially when it makes sense as it is written." *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 (internal quotation marks and citation omitted). All parts of a statute must be read together to accurately reflect legislative intent, and courts must "read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole." *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350.

{7} Sections 22-10A-27 and -28 encompass the scope of the right to, and procedures for, discharge hearings and their appeals under the School Personnel Act. Section 22-10A-28 generally governs appeals from discharge hearings provided in Section 22-10A-27. Construing these statutes in pari materia, we have already noted that Sections 22-10A-27 and -28 govern both pre-and post termination procedures for the discharge of school employees. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, ¶ 11, 134 N.M. 498, 79 P.3d 842. They embody the due process rights of school employees who have a protected property right in receiving notice and a hearing prior to their termination. *Id.*; *Bd. of Educ. v. Harrell*, 1994-NMSC-096, ¶ 39, 118 N.M. 470, 882 P.2d 511. The requirement of a pre-discharge hearing contained in Section 22-10A-27 is intended for the protection of the school employee's rights. *Bd. of Educ. v. Singleton,* 1985-NMCA-112, ¶ 17, 103 N.M. 722, 712 P.2d 1384. The hearing is mandatory once requested. *See id.* ¶ 18. SFPS does not disagree. After the school employee exercises his or her right to a pre-discharge hearing under Section 22-10A-27(B), Subsection (C) requires the school board to notify the employee of a hearing to be held between twenty and forty days after the notice of election, with not less than ten days notice provided prior to the hearing. The time specified for conducting a hearing is also mandatory, *Bd. of Educ.*, 1985-NMCA-112, ¶ 20, to the extent that failure to hold a timely hearing constitutes reversible error. *Id.* ¶ 19. As the district court properly found, nothing in Section 27 to 22-10A-27 indicates discretion in granting or scheduling a hearing following the employee's late submission of an election.

{8} Section 22-10A-28(L)—the harmless error provision—provides that "[u]nless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-17 NMSA 1978 . . ., such departure shall be presumed to be harmless[.]" The explicit application of harmless error to Section 22-10A-27's provision for requesting a discharge hearing unambiguously expresses the Legislature's intent that failure to comply with the five-day time limit is deemed harmless error, absent a showing of prejudice. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 32, 117 N.M. 346, 871 P.2d 1352 ("[T]he [L]egislature is presumed not to have used any surplus words in a statute; each word is to be given meaning."). Respondents argue that the harmless error presumption does not apply to this case because the five-day time period enumerated in Section 22-10A-27(B) is mandatory, and the right to a hearing was not triggered in this case. Respondents further claim that the plain text of the statute indicates that the harmless error presumption only applies to *appeals* by a certified school employee. Specifically, SFPS argues that the title of Section 22-10A-28 indicates that the presumption applies only to appeals from and arbitration of hearing decisions.

{9} We disagree because Section 22-10A-28(L) regards any departure from procedure that does not prejudice a party as harmless; Respondents must demonstrate prejudice before Mirabal's two-day delay in electing to request a hearing on his dismissal can be considered as a bar to his entitlement to a hearing. Stated above, we take this to be a legislative directive defining harmless error as any departure from procedures that does not prejudice a party. *Aguilera v. Bd. of Educ.*, 2005-NMCA-069, ¶ 10, 137 N.M. 642, 114 P.3d 322 (requiring courts to accept the Legislature's definitions of terms), *aff'd on other grounds by* 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587). Thus, it applies as much to an employee's tardy election to request a discharge hearing under Section 22-10A-27 as to the procedures for appeal of its result as provided otherwise by Section 22-10A-28.

{10} Respondents' reading of the harmless error provision disregards its specific inclusion of Section 22-10A-27(B). SFPS's suggestion that the title of Section 22-10A-28(L), rather than the language, governs the statute's applicability does not comport with the plain meaning rule, by which we are guided. We do not read the harmless error provision separately from the rest of the statute, as Respondents invite us to do. *Key*, 1996-NMSC-038, ¶ 14. While Section 22-10A-27(B) read alone, does seem to indicate that the five-day time period is mandatory, reading it in conjunction with Section 22-10A-28(L) paints a different picture; noncompliance results in failure only when the other side is prejudiced by the delay. Respondents make an argument on this point which, as we understand it, asserts that allowing Mirabal's untimely hearing request renders Section 22-10A-27(B)'s five-day time period superfluous. *In re Rehabilitation of W. Investors Life Ins. Co.*, 1983-NMSC-082, ¶ 12, 100 N.M. 370, 671 P.2d 31 ("Statutes must be construed so that no part of the statute is rendered surplusage or superfluous."). Our interpretation of the statute—imposing a harmless error presumption on the five-day time limit—does not render that five-day limiting language superfluous. Under our interpretation, Section 22-10A-27(B) does not remove an employee's right to a hearing; instead, it adapts the deadline to permit untimely requests, so long as any delay will not prejudice a party's interests.

{11} The clear language of the statute applies the harmless error presumption to the procedures contained in Section 22-10A-27. We therefore conclude that the harmless error presumption applies

to Mirabal's two-day departure from Section 22-10A-27(B)'s procedures. We now determine whether Respondents made a sufficient demonstration of prejudice to overcome that presumption.

B. Respondents Did Not Demonstrate Prejudice

{12} Section 22-10A-27(B) gives a school employee, upon hearing of the superintendent's intent to recommend discharge, the discretion to elect to request a hearing. The employee's election to exercise the right to a hearing may be given to the school authorities within five working days of the discharge notice. The school board cannot, by statute, convene a hearing less than twenty or more than forty days after the hearing request. Notice of the hearing must be given at least ten days prior to the hearing. In effect, Section 22-10A-27(C) provides for up to ten days of dead time between the employee's notice of election and the board's notice of hearing. Two days' delay in requesting a hearing that can take place within a forty-day window is not inherently prejudicial, and Respondents do not argue that it is.

{13} Respondents assert, however, that Mirabal's failure to timely request a hearing was prejudicial in three ways: "(1) in its interest in efficient administration and reliance upon statutes as written; (2) monetarily, in that under the Act, an employee's right to pay and benefits ends only when termination is effective; and (3) paramount public policy prejudice, in that the trial court's interpretation would create ambiguity for [SFPS] in discharge proceedings." We reject the first assertion of prejudice. Respondents provide us with no examples of how its efficient administration was prejudiced by a two-day delay and gives no specific examples by which the untimely request adversely affected its efficiency. The untimely request itself could not adversely affect Respondents' reliance upon the statute—only the court's decision to allow the untimely request could throw that reliance into question. Thus, we conclude that Respondents have failed to demonstrate prejudice to its efficient administration and reliance upon statutes.

{14} Respondents' assertion that they suffered monetary prejudice as a result of the extra two days of pay given to Mirabal is similarly unpersuasive. Respondents asserted below that "it is not within the province of [the district] court" to allow two days' pay to be given to employees who have no statutory right to it. However, Respondents present no evidence that Mirabal received pay and benefits for the two extra days between the March 5 deadline and the March 7 request. To the contrary, according to the facts in the record, Respondents notified Mirabal of his discharge and presumably, Mirabal would not have received pay and benefits following his effective discharge. Only the enforcement of the writ allowed Mirabal to collect administrative leave starting March 8, 2013. The two-day delay would have no monetary significance to SFPS; they asserted no other pecuniary loss. We conclude that, regarding Respondents' assertion of monetary loss, there has been no demonstration of prejudice.

{15} Finally, we conclude that Respondents have also not proven prejudice through their assertion that "paramount public policy" was prejudiced by the district court's interpretation of the statute. Respondents' assertion of prejudice here is misdirected; instead of showing prejudice arising from Mirabal's untimely request, it asserts prejudice arising from the district court's issuance of the writ. General assertions of prejudice are insufficient to demonstrate prejudice, *see, e.g.*, *In re Castellano*, 1995-NMSC-007, ¶ 15, 119 N.M. 140, 889 P.2d 175 (holding that an assertion of prejudice is not a showing of prejudice), and Respondents have not demonstrated, with any specificity, how public policy was prejudiced by Mirabal's actions.

{16} In total, Respondents' assertions of prejudice deal not with how Mirabal's untimely request was prejudicial, but rather with how the writ is prejudicial. This is not the showing that Respondents are required to make under the statute: "a party can demonstrate prejudice *arising from a departure from the procedures established in . . . Section [22-10A-27]*" to overcome the presumption of harmless error. Section 22-10A-28(L) (emphasis added). We conclude that SFPS failed to demonstrate prejudice from Mirabal's untimely hearing request. We therefore hold that, due to Respondents' failure to overcome the presumption, Mirabal's departure from the five-day time requirement constitutes harmless error. As such, SFPS should have held a hearing.

C. The Writ of Mandamus was Proper

{17} We next address SFPS's assertions that mandamus is improper because the statute does not impose a clear legal duty to perform an act. A writ of mandamus may be issued "only to force a clear legal right against one having a clear legal duty to perform an act and where there is no other plain, speedy and adequate remedy in the ordinary course of law." *Brantley Farms v. Carlsbad Irrigation Dist.*, 1998-NMCA-23, ¶ 16, 124 N.M. 698, 954 P.2d 763; NMSA 1978, § 44-2-5 (1884); NMSA 1978, § 44-2-4 (1884) (stating mandamus "may be issued . . . to compel the performance of an act which the law specially enjoins as a duty."). A writ of mandamus applies to ministerial duties—those arising when the law dictates that "a public official must act when a given state of facts exist"—and is inappropriate "when the matter has been entrusted to the judgment or discretion of the public officer." *Mimbres Valley Irrigation Co. v. Salopek*, 2006-NMCA-093, ¶ 11, 140 N.M. 168, 140 P.3d 1117. Respondents do not disagree that a pre-discharge hearing is generally mandatory when requested. Discretion, in the context of ministerial duties, exists when an act "may be performed in one of two or more ways, either of which would be lawful, and where it is left to the will or judgment of the performer to determine in which way it should be performed[.]" *State ex rel. Four Corners Exploration Co. v. Walker*, 1956-NMSC-010, ¶ 8, 60 N.M. 459, 292 P.2d 329 (noting that "when a positive duty is enjoined and there is but one way in which it can be performed lawfully, then there is no discretion." (Emphasis omitted.)).

{18} There is no dispute that SFPS would have had a mandatory, ministerial duty to hold a hearing had Mirabal initially complied with the five-day time period set forth in Section 22-10A-27(B). Thus, we must determine whether the untimely nature of the request made SFPS's duty to hold a hearing discretionary. The district court concluded that the duty was not discretionary, and we agree.

1. SFPS's Duty to Hold a Hearing Was Not Discretionary

{19} SFPS finds significance in the statute's language requiring a party to *demonstrate* prejudice: "the very nature of that language shows discretion somewhere." While we agree that the language indicates the existence of a reviewing body that is assigned the task of deciding whether prejudice existed, we do not agree that such decision rises to the level of discretion in this case.

a. Discharge Hearings Under Section 22-10A-27(B) Are Mandatory Unless Prejudicial

{20} A discharge hearing, once requested, is mandatory, regardless of when it is requested, "[u]nless *a party* can demonstrate

prejudice[.]" Section 22-10A-28(L) (emphasis added). Mirabal exercised his right to have a hearing by giving written notice of his desire to have a hearing. That triggered SFPS's mandatory duty to hold one. We note that our holding here does not *require* a party to have a hearing; if no request is made, the local school board is under no duty to hold a hearing. We next look to ascertain who in this case is the "party" saddled with the burden of proving prejudice.

{21} In this case, it was the Superintendent's burden to prove prejudice resulted from Mirabal's two-day delay. The Superintendent is listed as a party in the statute. Section 22-10A-27(D), (G). The "local school board or governing authority," Section 22-10A-27(C), which in this case is SFPS, is not listed as a "party" under the statute governing discharge hearings. Instead, SFPS issues subpoenas, permits the parties to call witnesses, and renders a written decision. Sections 22-10A-27(F), (H), (J). Under the clear language of the statute, then, it is the Superintendent, not SFPS, that must demonstrate prejudice arising from the two-day delay to overcome the harmless error presumption.

b. No Prejudice Exists—Obligation to Hold Hearing Was Not Discretionary

{22} By Respondents' interpretation of Section 22-10A-28(L), the decision of whether a party has adequately demonstrated prejudice is a discretionary decision. Under the facts of this case, we need not address whether the Legislature's use of the word "demonstrate" indicates discretion. Any discretion that could have existed was removed by the absence of plausible prejudice arguments. Under a plain reading of the statute, no discretion exists until there is a demonstration of prejudice. As discussed above, the two-day departure from Section 22-10A-27(B)'s procedures was not prejudicial. Thus, SFPS never had discretion, and it continues to have a mandatory duty to hold a hearing.

2. No Other Adequate, Speedy Remedy

{23} By statute, a writ of mandamus "shall not issue in any case where there is a plain, speedy and adequate remedy in the ordinary course of law." Section 44-2-5. The School Personnel Act does allow for a discharged teacher to appeal a local school board's decision, but only *after* a discharge hearing is held. Section 22-10A-28(A). There is no remedy under the School Personnel Act for a discharged employee who has had no hearing. We have previously held, and our Supreme Court has confirmed, that mandamus is properly available where there has been no hearing before the local school board. *See Quintana v. State Bd. of Educ.*, 1970-NMCA-074, ¶¶ 8-9, 81 N.M. 671, 472 P.2d 385; *see also Brown v. Romero*, 1967-NMSC-057, ¶ 8, 77 N.M. 547, 425 P.2d 310 (concluding that a teacher's breach of contract claim, arising out of employment contract and challenging denial of hearing, was premature where she had not brought a mandamus action to "pursue and exhaust" her remedies). Respondents' briefs do not present any suggestions as to what alternative, speedy remedies are available to Petitioner, and instead seek to foreclose the only option available for review; absent this information, we do not review the argument. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] arguments might be."); *see also Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 11, 114 N.M. 103, 835 P.2d 819 (stating that we have no duty to entertain arguments when no authority is presented in support of an argument). We conclude that Petitioners had no other adequate, speedy remedy at law; mandamus was properly granted.

CONCLUSION

{24} We affirm the district court's order issuing a permanent writ of mandamus. For the foregoing reasons, we also affirm the district court's denial of Respondents' motion to dismiss and motion to quash the writ.

{25} IT IS SO ORDERED.
RODERICK T. KENNEDY, Judge

WE CONCUR:
MICHAEL E. VIGIL, Chief Judge
CYNTHIA A. FRY, Judge

Certiorari Granted, January 19, 2016, No. S-1-SC-35512

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-010

No. 33,211 (filed August 24, 2015)

PHOENIX FUNDING, LLC,
Plaintiff-Appellant,
v.
AURORA LOAN SERVICES, LLC, and
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
FRANCIS J. MATHEW, District Judge

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Opinion

M. Monica Zamora, Judge

{1} Appellant Phoenix Funding, LLC (Phoenix) appeals from the district court's order granting summary judgment in favor of Appellees Aurora Loan Services, LLC (Aurora) and Mortgage Electronic Registration Systems, Inc. (MERS) (collectively Aurora). Phoenix filed suit to quiet title, challenging the validity of a default foreclosure judgment entered against its predecessor in interest, Kirsten Hood (Hood). The district court determined that Phoenix's suit constituted an improper collateral attack on the original judgment and that Phoenix's claims were barred by res judicata. We hold that a collateral attack on the original judgment by Phoenix was proper, and thus, res judicata does not operate to bar Phoenix's claims. We reverse and remand for further proceedings.

I. BACKGROUND

{2} In December 2006, Hood signed a promissory note with GreenPoint Mortgage Funding, Inc. (GreenPoint Funding) to purchase her Santa Fe home. To secure the note, Hood signed a mortgage contract with MERS as the nominee for GreenPoint Funding, which pledged her home as collateral for the loan.

{3} In March 2009, Aurora filed a complaint in the First Judicial District Court seeking foreclosure on Hood's home and claiming to be the holder of the note and mortgage with the right of enforcement. In October 2009, default judgment was entered against Hood. In November 2011 for "valuable consideration," Hood executed a quitclaim deed transferring her interest in the property to Gregory Hutchins (Hutchins), the sole member of Phoenix. Hutchins borrowed the money to purchase the property and mortgaged his interest in the property to Phoenix. Hutchins defaulted and Phoenix filed suit to foreclose Hutchins' interest in the property and to quiet title as to certain mortgage holders, including Aurora.

{4} Phoenix claimed that the Hood note and mortgage were never properly assigned to Aurora, and as a result, Aurora lacked standing to bring the original foreclosure action against Hood, therefore, the district court lacked subject matter jurisdiction over that action and its 2009 foreclosure judgment was void. Aurora moved for summary judgment claiming that Phoenix lacked standing to challenge that original foreclosure judgment, and that Phoenix's claims constituted an improper collateral attack that were barred by res judicata. Phoenix also moved for summary judgment reiterating its claim that the original judgment against Hood was void based on lack of standing and subject matter jurisdiction. Phoenix also argued, for the first time, that the judgment was void because Aurora had fraudulently assigned the Hood mortgage to itself.

{5} The district court found that it had jurisdiction over the original foreclosure action, that Phoenix, as a party in privity with and/or a successor-in-interest to Hood, was bound by the original foreclosure judgment under the doctrine of res judicata, and as a result Phoenix was precluded from collaterally attacking the original foreclosure judgment. The district court granted summary judgment in favor of Aurora and concluded that Phoenix's motion for summary judgment was moot.

II. DISCUSSION

{6} On appeal, Phoenix argues that the district court erred in granting summary judgment and in determining that its claims are barred by res judicata. Phoenix renews its argument that because Aurora lacked standing to bring the foreclosure action, that the district court therefore lacked jurisdiction to hear the case, and as a result, the original foreclosure judgment is void. Aurora contends that Phoenix lacks standing to challenge the original foreclosure judgment because it was not a party to the original foreclosure action and took its interest in the subject property after the foreclosure judgment was rendered. Aurora further argues that the grant of summary judgment was proper and that Phoenix's claims are precluded under the doctrine of res judicata.

A. Summary Judgment Standard of Review

{7} "We review the district court's decision to grant summary judgment de novo." *Hydro Res. Corp. v. Gray*, 2007-NMSC-061, ¶ 14, 143 N.M. 142, 173 P.3d 749. Summary judgment is appropriate where the facts are undisputed, "and the movant is entitled to judgment as a matter of law." *Id.* (internal quotation marks and citation omitted). Generally, New Mexico courts view summary judgment with disfavor. *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 8, 148 N.M. 713, 242 P.3d 280. We review the facts and make all reasonable inferences from the record in favor of the nonmoving party. *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp.*, 2015-NMCA-004, ¶ 19, 340 P.3d 1277, *cert. granted*, 2014-NMCERT-012, 344 P.3d 988.

B. Under New Mexico Law Judgments Rendered by a Court Lacking Jurisdiction Are Void

{8} The New Mexico Supreme Court has distinguished between judgments

rendered in error, judgments that can be set aside, and judgments rendered without authority which are null and void. *State v. Patten*, 1937-NMSC-034, ¶ 26, 41 N.M. 395, 69 P.2d 931 ("Where a court has jurisdiction, it has a right to decide every question which occurs in the cause . . . [b]ut if it act[s] without authority, its judgments and orders are regarded as nullities; they are not voidable, but simply void." (internal quotation marks and citation omitted)). Judgments void for lack of jurisdiction have no legal effect. *See In re Field's Estate*, 1936-NMSC-060, ¶ 11, 40 N.M. 423, 60 P.2d 945 ("There are three jurisdictional essentials necessary to the validity of every judgment, to wit, jurisdiction of parties, jurisdiction of the subject matter, and power or authority to decide the particular matters presented and the lack of either is fatal to the judgment[.]" (citations omitted)); *see also Heckathorn v. Heckathorn*, 1967-NMSC-017, ¶ 10, 77 N.M. 369, 423 P.2d 410 (same). Concerning void judgments, our Supreme Court has stated:

> A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right and affording no justification. Nothing can be acquired or lost by it; it neither bestows nor extinguishes any right, and may be successfully assailed whenever it is offered as the foundation for the assertion of any claim or title. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress. No action upon the part of the plaintiff, no inaction upon the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the government, can invest it with any of the elements of power or of vitality. It does not terminate or discontinue the action in which it is entered, nor merge the cause of action; and it therefore cannot prevent the plaintiff from proceeding to obtain a valid judgment upon the same cause, either in the action in which the void judgment was entered or in some other action. The fact that the void judgment has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant.

Walls v. Erupcion Mining Co., 1931-NMSC-052, ¶ 6, 36 N.M. 15, 6 P.2d 1021 (internal quotation marks and citation omitted).

C. A Judgment's Validity Can Be Challenged by a Successor in Interest in a Subsequent Action

{9} New Mexico courts characterize attacks on void judgments as either "direct" or "collateral." *Barela v. Lopez*, 1966-NMSC-163, ¶¶ 4-5, 76 N.M. 632, 417 P.2d 441.

> A direct attack . . . is an attempt to avoid or correct [the judgment] in some manner provided by law and in a proceeding instituted for that very purpose, in the same action and in the same court [. Whereas,] a collateral attack is an attempt to impeach the judgment by matters dehors the record, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it[.]

Id. ¶ 5 (internal quotation marks and citations omitted). "In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack upon the judgment is collateral." *Id.* (internal quotation marks and citation omitted).

{10} Because a void judgment has no effect on the parties, or their respective interests, "[t]here is no time limitation on asserting that [a] judgment is void." *See Heckathorn*, 1967-NMSC-017, ¶ 15. This is true when a judgment is challenged under Rule 1-060(B) NMRA. *See Eaton v. Cooke*, 1964-NMSC-137, ¶ 7, 74 N.M. 301, 393 P.2d 329 ("[W]here the judgment was void, [Rule 1-060(B)] does not purport to place any limitation of time."). It is also true when a judgment is challenged in a subsequent action. *See In re Estate of Baca*, 1980-NMSC-135, ¶ 10, 95 N.M. 294, 621 P.2d 511 (stating that a void judgment is "subject to direct or collateral attack at any time"); *Chavez v. Cnty. of Valencia*, 1974-NMSC-035, ¶ 15, 86 N.M. 205, 521 P.2d 1154 ("An attack on subject matter jurisdiction may be made at any time in the proceedings. It may be made for the first time upon appeal. Or it may be made by a collateral attack in the same or other proceedings long after the judgment has been entered." (citations omitted)).

{11} The general rule is that judgments may be challenged directly or challenged collaterally in a subsequent action, where the challenge is based on an asserted lack of jurisdiction. *See Hanratty v. Middle Rio Grande Conservancy Dist.*, 1970-NMSC-157, ¶¶ 1-4, 82 N.M. 275, 480 P.2d 165 (deciding the merits of a collateral attack on a previously rendered default foreclosure judgment where the challenge was based on an asserted lack of jurisdiction and was presented in the context of a subsequent action to quiet title); *Matlock v. Somerford*, 1958-NMSC-093, ¶ 6, 64 N.M. 347, 328 P.2d 600 (same).

{12} This rule has been applied regardless of whether the challenge is based on an alleged lack of personal or subject matter jurisdiction. *See Hubbard v. Howell*, 1980-NMSC-015, ¶¶ 6-10, 94 N.M. 36, 607 P.2d 123 (reaching the merits of two collateral attacks on a previous judgment, where the attacks were based on the asserted lack of subject-matter and personal jurisdiction); *Matlock*, 1958-NMSC-093, ¶¶ 18-23, (examining the merits of a collateral attack involving an alleged lack of personal jurisdiction). This rule also seems to apply regardless of whether the party making the attack was a party to the original action or a successor in interest. *See In re Estate of Baca*, 1980-NMSC-135, ¶ 6 (stating that successors in interest challenged prior judgment in a quiet title action); *Matlock*, 1958-NMSC-093, ¶¶ 18-23 (successor in interest challenged prior default foreclosure judgment in a quiet title action).

{13} Our Supreme Court has also considered the merits of a collateral attack on a prior foreclosure judgment, made by a successor in interest in a subsequent action to quiet title, where the successor in interest acquired its interest *after* the original foreclosure judgment was entered. *See Hanratty*, 1970-NMSC-157, ¶¶ 1-2, 6;

Matlock, 1958-NMSC-093, ¶¶ 18-23. And the Court has permitted default judgments to be challenged even where jurisdiction was not raised in the original action. *See In Re Estate of Baca*, 1980-NMSC-135, ¶¶ 3, 10; *Hubbard*, 1980-NMSC-015, ¶¶ 6-10; *Matlock*, 1958-NMSC-093, ¶¶ 18-23. We conclude that Phoenix, as a successor in interest, has standing to challenge the validity of the prior default foreclosure judgment.

D. Standing to Foreclose Implicates Subject Matter Jurisdiction

{14} Having established that judgments rendered by a court lacking subject matter jurisdiction are void, and that void judgments can be challenged by a successor in interest in a subsequent action to quiet title, we find the determinative question to be whether the default judgment in this case was rendered without subject matter jurisdiction. We first consider whether Aurora established its standing to foreclose, and if it did not, did Aurora's lack of standing deprive the district court of subject matter jurisdiction.

1. Aurora Lacked Standing to Foreclose

{15} Whether a party has standing to bring a claim is a legal question we review de novo. *Disabled Am. Veterans v. Lakeside Veterans Club, Inc.*, 2011-NMCA-099, ¶ 9, 150 N.M. 569, 263 P.3d 911. In order to establish standing to foreclose, plaintiffs must demonstrate that they had the right to enforce the note and the right to foreclose the mortgage at the time the foreclosure suit was filed. *Bank of N.Y. v. Romero*, 2014-NMSC-007, ¶ 17, 320 P.3d. 1. The right to enforce the mortgage arises from the right to enforce the note, so the determinative inquiry is whether the plaintiff has established that it had the right to enforce the note at the time it filed suit. *Id.* ¶ 35.

{16} Under New Mexico's Uniform Commercial Code (UCC), a promissory note is a negotiable instrument, NMSA 1978, § 55-3-104(a), (b), (e) (1992), which can be enforced by (1) the holder of the instrument; (2) a holder who does not possess the instrument and has the rights of a holder; or (3) a person who does not possess the instrument, but is entitled to enforce it pursuant to certain provisions of the UCC. NMSA 1978, § 55-3-301 (1992); *Romero*, 2014-NMSC-007, ¶ 20 (same). The holder of the instrument is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." NMSA 1978, § 55-1-201(b)(21)(A) (2005); *Romero*, 2014-NMSC-007, ¶ 21 (same). "Accordingly, a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation." *Romero*, 2014-NMSC-007, ¶ 21.

{17} In this case, the Hood note was payable to GreenPoint Funding, not Aurora. As a result, we must determine whether Aurora provided sufficient evidence of how it became a holder of the Hood note, either by indorsement or by a transfer. *Id.* In the Hood foreclosure, Aurora produced an unindorsed copy of the Hood note and a corporate assignment of mortgage assigning the Hood mortgage from MERS to Aurora. Neither the unindorsed note, nor the assignment of mortgage is sufficient to establish Aurora as the holder of the Hood note. *See id.* ¶¶ 23, 34-35 (stating that "[p]ossession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it" and that a plaintiff who has not established the right to enforce the note cannot foreclose the mortgage, even if evidence shows that the mortgage was assigned to the plaintiff, there being no legal authority allowing the assignment of a mortgage to carry with it the transfer of a note).

{18} In the subsequent quiet title action, Aurora introduced another copy of the Hood note that was indorsed in blank and attached to the affidavit of Alan Flanagan (Flanagan), an officer of Nationstar Mortgage, LLC (Nationstar). The affidavit stated that Nationstar was the successor in interest to Aurora, that Nationstar had custody and control of the business records concerning the Hood loan, and that according to those records Aurora maintained custody and possession of the Hood note from January 2009 through June 2012. Although this evidence creates a genuine issue of material fact, the undated indorsement is still insufficient to establish Aurora as the holder of the Hood note at the time its foreclosure against Hood was filed in March 2009.

{19} The affidavit of Flanagan, states that the Hood note was transferred to Nationstar "in or about June 2012," thirty-nine months after the foreclosure complaint was filed in March 2009. The affidavit does not state that Flanagan had personal knowledge that the Hood note was transferred to Aurora prior to the filing of the foreclosure complaint. *See* Rule 11-602 NMRA ("A witness [or affiant] may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony."). Flanagan's only purported basis of knowledge regarding the transfer of the Hood note is his review of the "business records as they relate to the [l]oan." However, no such business record itself was offered or admitted as a business records hearsay exception. *See* Rule 11-803(6) NMRA (naming this category of hearsay exceptions as "[r]ecords of a regularly conducted activity"); *see also Romero*, 2014-NMSC-007, ¶¶ 31-32 (holding that a witness's testimony and a witness's affidavit were insufficient to establish the transfer of the note because the witnesses lacked personal knowledge of the note's transfer, and that a witness's reliance on a review of the business records was also insufficient to establish the note's transfer without a specific business record having been offered and admitted under the business records exception to the hearsay rule).

{20} The copy of the Hood note attached to the affidavit of Flanagan, differed from the note produced in the original foreclosure; it included an extra page with a blank indorsement. A blank indorsement "does not identify a person to whom the instrument is payable but instead makes it payable to anyone who holds it as bearer paper." *Id.* ¶ 24; *see* NMSA 1978, § 55-3-205(b) (1992) ("If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a blank indorsement." (internal quotation marks omitted)). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." Section 55-3-205(b). In other words, the bearer of a note indorsed in blank is ordinarily the holder of that note. *See* § 55-3-104(a)(1), (b), (e) (defining "negotiable instrument" as including a "note" made "payable to bearer or to order" (internal quotation marks omitted)); Section 55-3-301 (defining "[p]erson entitled to enforce" a negotiable instrument); *see also Romero*, 2014-NMSC-007, ¶ 26 ("[The] blank indorsement . . . established the [b]ank as a holder because the [b]ank [was] in possession of bearer paper[.]"). However, where an indorsed note is not produced until after the plaintiff has filed for foreclosure and the indorsement is undated, the indorsement

is insufficient to show that the plaintiff was the holder of that note at the time the foreclosure complaint was filed. *Deutsche Bank Nat'l Trust Co. v. Beneficial N.M. Inc.*, 2014-NMCA-090, ¶ 13, 335 P.3d 217, *cert. granted sub nom. Deutsche Bank v. Johnston*, 2014-NMCERT-008, 334 P.3d 425. We conclude that Aurora did not present the necessary evidence to establish it had standing to enforce the Hood note at the time its complaint was filed in March 2009. To be clear, we are not deciding whether Aurora was the holder of the Hood note when it initiated foreclosure proceedings against Hood. The issue before us is whether Aurora presented evidence sufficient to establish that it was the holder of the note at the time the complaint for foreclosure was filed and we determine that it did not.

2. Lack of Standing to Foreclose Deprived the District Court of Subject- Matter Jurisdiction

{21} Although foreclosure was historically considered an equitable remedy, in *Romero*, our Supreme Court also recognized it as a statutory cause of action under the provisions of the New Mexico UCC, making a lack of standing to foreclose on a note a jurisdictional defect.

> The Bank of New York does not dispute that it was required to demonstrate under New Mexico's Uniform Commercial Code (UCC) that it had standing to bring a foreclosure action at the time it filed suit. *See* . . . § 55-3-301 . . . (defining who is entitled to enforce a negotiable interest such as a note); *see also* . . . § 55-3-104(a), (b), (e) . . . (identifying a promissory note as a negotiable instrument); *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222 (recognizing standing as a jurisdictional prerequisite for a statutory cause of action)[.]

Romero, 2014-NMSC-007, ¶ 17. In *ACLU*, the Court stated "[w]hen a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite to an action." 2008-NMSC-045, ¶ 9 n.1 (internal quotation marks and citation omitted). Reading *Romero* and *ACLU* together, we conclude that Aurora lacked standing to foreclose, thereby, depriving the district court of subject matter jurisdiction in March 2009.

{22} This is consistent with other New Mexico Supreme Court precedent. The Court addressed standing as a jurisdictional requirement in *State ex rel. Overton v. New Mexico State Tax Commission*, 1969-NMSC-140, 81 N.M. 28, 462 P.2d 613. In that case, the county assessor filed a declaratory judgment action against the state tax commission and the commissioners, questioning the constitutionality of the soldiers' real and personal property exemption statute, and two veteran groups intervened. *Id.* ¶¶ 1, 5. In its answer, the tax commission argued that the assessor and the intervenors had no standing to sue and that their complaints presented no justiciable issue or controversy. *Id.* ¶ 6. "The [district] court concluded that it had jurisdiction and that an actual controversy existed." *Id.* On appeal the parties did not raise the issues of standing or jurisdiction. *Id.* ¶ 8. Nonetheless, the Supreme Court raised the issue sua sponte, stating, "we cannot ignore jurisdictional questions." *Id.*

{23} The Court concluded that the county assessor would not be personally injured or jeopardized by the challenged statute, and the intervenors—members of an unincorporated association made up of veteran taxpayers—were not similarly situated so as to allow action by non-legal entity association. *Id.* ¶¶ 10-14, 19-20. The Court also concluded that the assessor and intervenors did not have standing to bring the action and as a result, the district court lacked subject matter jurisdiction to decide the case. *Id.* ¶¶ 19-20. The Court explained that subject matter jurisdiction could not be conferred by consent of the parties and could not be waived. *Id.* ¶ 8. The Court further stated "[the absence of] jurisdiction over the parties or . . . the power or authority to decide the particular matter presented, . . . is . . . fatal to the judgment." *Id.* The case was remanded for dismissal of the action. *Id.* ¶ 20.

{24} In the context of foreclosure, other jurisdictions have held that lack of standing creates a jurisdictional defect with respect to the district court's authority to hear the particular case, not with respect to general subject matter jurisdiction, and that judgments rendered by a court lacking authority to hear the case are voidable, rather than null and void. *See Nationstar Mortg., LLC v. Canale*, 10 N.E.3d 229, ¶ 17 ("[A] plaintiff's standing, though an element of justiciability, is not an element of the district court's subject-matter jurisdiction. Again, the latter requires only a justiciable matter, which a foreclosure clearly is." (internal quotation marks and citation omitted)); *see also Bank of Am., N.A. v. Kuchta*, 21 N.E.3d 1040, ¶ 22 ("Standing is certainly a jurisdictional requirement; a party's lack of standing vitiates the party's ability to invoke the jurisdiction of a court—even a court of competent subject-matter jurisdiction—over the party's attempted action. But an inquiry into a party's ability to *invoke* a court's jurisdiction speaks to jurisdiction over a particular case, not subject-matter jurisdiction." (emphasis added) (citations omitted)); *Southwick v. Planning Bd. of Plymouth*, 891 N.E.2d 239, 268 (Mass. Ct. App. 2008) ("[S]tanding is an issue of subject matter jurisdiction only in the sense that it is a criterion that must be met in order for the court to exercise jurisdiction, when the court otherwise is competent to decide the case. [A] subsequent showing that the plaintiff did not, in fact, have standing does not mean that the judgment is void and must be vacated; the judgment is immune from postjudgment attack unless the court's exercise of jurisdiction constituted a clear usurpation of power." (internal quotation marks and citations omitted)).

{25} This approach may be untenable under New Mexico law. Concerning the distinction between subject matter jurisdiction and a court's power or authority to decide a particular case, our Supreme Court has stated:

> Despite the well-settled character of the statement just quoted from *Heckathorn* and *Field's Estate*, it is not easy to discern the difference between lack of subject-matter jurisdiction and lack of power or authority to decide the particular matter presented. The difference, if any, is not recognized in our Rules of Civil Procedure for the District Courts, which refer only to jurisdiction over the subject matter of the action and we know of no case in which this difference has been explained. Possibly it relates to Article VI, Section 13, of our Constitution, which confers upon the district court original jurisdiction in all matters and causes not excepted in this constitution, and also grants such jurisdiction of special cases and proceedings as may be conferred by law. Jurisdiction over the subject matter is commonly treated as a unitary topic, and at this stage

> in the development of the law one may doubt that the distinction serves any useful purpose.

Sundance Mech. & Util. Corp. v. Atlas, 1990-NMSC-031, ¶ 13, 109 N.M. 683, 789 P.2d 1250 (internal quotation marks and citations omitted).

{26} The present case calls into question whether there is a meaningful distinction between subject-matter jurisdiction and power or authority to decide the particular issue. However, the question has not been resolved. *See Armstrong v. Csurilla*, 1991-NMSC-081, ¶ 12, 112 N.M. 579, 817 P.2d 1221 ("We recently considered the topic of subject-matter jurisdiction in *Sundance Mechanical & Utility Corp.* . . . There we took note of our previous statement in, inter alia, *Heckathorn*, . . . that there are three aspects to jurisdiction: jurisdiction of the parties, jurisdiction of the subject matter, and power or authority to decide the particular matter presented. The plurality opinion questioned whether there is now any utility to the distinction between the second aspect, subject-matter jurisdiction, and the third, power or authority to decide the particular issue. But we did not resolve this question then and do not resolve it now." (internal quotation marks and citations omitted)).

{27} Moreover, our Supreme Court has held that a judgment rendered by a court lacking authority to decide a particular case is void, not voidable. *See Heckathorn*, 1967-NMSC-017, ¶¶ 10-11. In that case, the Court considered a challenge to the validity of a divorce decree. *Id.* ¶ 1. The Court recognized the "three jurisdictional essentials necessary to the validity of every judgment: jurisdiction of parties, jurisdiction of subject matter and power or authority to decide the particular matter presented" and identified the issue in that case as one involving the third jurisdictional element; the district court's "power or authority to grant the divorce." *Id.* ¶ 10. Determining that the district court lacked the authority to grant the divorce because the wife had not been a resident of the state for the statutorily mandated period, the Court concluded that the divorce decree was null and void. *Id.* ¶ 11. Though there may not be a meaningful distinction between subject-matter jurisdiction and the authority to decide a particular case, *Heckathorn* suggests that the distinction may not be material for the purpose of determining a judgment's validity; where a court is lacking either, the resulting judgment is null and void.

{28} We conclude that the original foreclosure judgment was subject to collateral attack by Phoenix, as Hood's successor in interest; that Aurora lacked standing to bring the original foreclosure action against Hood thus, depriving the district court of subject matter jurisdiction; and as a result the judgment is void.

E. Res Judicata Does Not Bar Phoenix's Claims

{29} Phoenix argues that the district court erred in determining that its claims were barred by res judicata. "Res judicata is designed to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, . . . prevent inconsistent decisions, and encourage reliance on adjudication." *Computer One, Inc. v. Grisham & Lawless P.A.*, 2008-NMSC-038, ¶ 31, 144 N.M. 424, 188 P.3d 1175 (alterations, internal quotation marks, and citation omitted). The "party asserting res judicata or claim preclusion must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits." *Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54.

{30} In this case, the judgment in the Hood action on which the district court based its res judicata determination is void. A void judgment has no conclusive effect either as res judicata or as an estoppel, because the proceeding that culminated in the void judgment was itself without integrity. *See Matsu v. Chavez*, 1981-NMSC-113, ¶¶ 8, 9, 96 N.M. 775, 635 P.2d 584 (stating that a void judgment "has no legal effect[,]" and that a void judgment cannot serve as the basis of claim preclusion or collateral estoppel). Accordingly, the district court's grant of summary judgment on the basis of res judicata cannot stand.

F. Unintended Consequences of *Romero*

{31} This case presents a unique scenario: Two years after the default foreclosure judgment was entered and the foreclosure sale was held, a third party—Phoenix—obtained an interest in the foreclosed property from Hutchins, its sole member and the defaulting borrower for "valuable consideration," and sought to invalidate the original foreclosure judgment based on the original plaintiff's lack of standing. Our decision here turns on standing and jurisdiction with respect to foreclosure actions as clarified by our Supreme Court recently in *Romero*. *See* 2014-NMSC-007, ¶¶ 15, 17-38. We are not convinced that the Supreme Court contemplated *Romero* being applied in circumstances such as those before us here. However, our decision here is based on *Romero* and other binding precedent. *See Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 33, 125 N.M. 721, 965 P.2d 305 ("Stare decisis is the judicial obligation to follow precedent, and it lies at the very core of the judicial process of interpreting and announcing law."). Whether or not this result was contemplated in the deciding of *Romero*, it must be expressed by the Supreme Court.

G. Phoenix's Fraud Claims

{32} Phoenix claims that the original foreclosure judgment is void as a result of fraud relating to the assignment of mortgage. Although Phoenix did not challenge the original judgment under Rule 1-060(B)(6), it now characterizes its fraud claims as part of an "independent action" under Rule 1-060, contending that the district court was entitled, in its discretion, to allow Phoenix to argue fraud "under the umbrella of [its] pending independent action for relief."

{33} These arguments raise important questions about the bases and procedures for obtaining relief from judgments. A collateral attack, as defined by our Supreme Court, "is an attempt to impeach the judgment by matters dehors the record, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding *not provided by law* for the express purpose of attacking it[.]" *Barela*, 1966-NMSC-163, ¶ 5 (emphasis added) (internal quotation marks and citation omitted). "In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack upon the judgment is collateral." *Id.* (internal quotation marks and citation omitted).

{34} In *Barela*, the Court held that a motion to vacate a judgment was a direct attack rather than a collateral attack, in part because the motion was authorized by Rule 1-060. This holding suggests that the remedies provided for by Rule 1-060 are considered as being "provided by law" for the purpose of distinguishing between direct and collateral attacks. *Barela*, 1966-NMSC-163, ¶¶ 5-6. In *Apodaca v. Town of Tome Land Grant*, plaintiffs sought equitable relief from a judgment as part of a subsequent action. 1971-NMSC-084, ¶ 2, 83 N.M. 55, 488 P.2d 105. With regard

to characterizing direct and collateral attacks, the Court noted that "[t]he case law on this point as announced by this court does not appear to be entirely consistent in all respects[,]" but concluded that its recent cases, including *Barela*, suggested that "the present suit would fall within the definition of a collateral attack." *Apodaca*, 1971-NMSC-084, ¶ 5.

{35} Then, in *Chavez*, the Court stated that "[a]n attack on subject matter jurisdiction may be made . . . by a collateral attack in the same or other proceedings long after the judgment has been entered[,]" and cited Rule 1-060, *inter alia*, implying that collateral attacks were among the remedies authorized by Rule1-060, not a distinct remedy. *Chavez*, 1974-NMSC-035, ¶ 15. Relying on *Chavez*, this Court characterized a challenge brought as an independent action under Rule 1-060 as a collateral attack, and stated that, a "[c]ollateral attack might be effectuated under Rule [1-060(B)(4)]." *Hort v. Gen. Elec. Co.*, 1978-NMCA-125, ¶ 5, 92 N.M. 359, 588 P.2d 560.

{36} With respect to granting relief from judgments, the Restatement offers some guidance. New Mexico decisions have not adopted every principle set forth in the most recent version of the Restatement, however, our precedent is consistent with the Restatement in many aspects and we continue to look to the Restatement for guidance regarding relief from judgments. *See Alvarez v. Cnty. of Bernalillo*, 1993-NMCA-034, ¶ 6, 115 N.M. 328, 850 P.2d 1031 (stating that "[a]lthough the Restatement[,] in the interest of clarity[,] avoids the terms void and voidable, it is persuasive authority in determining when a judgment is void under Rule [1-060(B)(4)]" (internal quotation marks and citation omitted)).

{37} The Restatement of Judgments recognizes that the traditional distinction between direct and collateral attacks on a judgment, which was used in the older remedial doctrine concerning relief from judgments, is no longer clear or useful in light of the evolution of merged procedure and the Rule 1-060(B) type of motion. Restatement (Second) of Judgments ch. 5, intro. note, at 138-39 (1982).

{38} The distinction between direct and collateral attacks can be based on whether the attack is made by motion or made in a subsequent action. *Id.* The distinction can also be based on whether nullification of the judgment is the primary or secondary object of the action, or is merely incidental. The Restatement also notes that the distinction between direct and collateral attacks is used in various contexts and for various purposes. *Id.* In some cases, the distinction is used to identify the persons who may challenge the judgment, in other cases it is used to identify the proper form for a challenge, and the distinction can even be used to determine whether evidence beyond the record can be received in support of the challenge. According to the Restatement, "[d]istinctions between direct and collateral attacks made in one context for one of these purposes are often carried over into another context in which the problem at hand is a different one." *Id.* at 142 This "compound[s] the ambiguities inherent in the basic distinction and can result in further confusion of the issue[.]" *Id.*

{39} The Restatement notes that the traditional classification of judgments as void or voidable also creates confusion because the terms are used with different connotations. *Id.* at 144. For example, a void judgment is often considered to be a judgment rendered by a court lacking either personal or subject-matter jurisdiction, but can also refer to a judgment procured by fraud of some kind. *Id.* A voidable judgment is often considered to be a judgment based on mistake, but the judgment is also based on fraud. *Id.* And, even though judgments rendered in the absence of jurisdiction are typically considered void and without legal effect, some courts have given such judgments legal effect nonetheless, further muddying the distinction. *Id.*

{40} For these reasons, the current edition of the Restatement suggests that the distinctions between void and voidable judgments, and direct or collateral attacks are untenable under modern decisional law. *Id.* at 142-43, 144. Instead, the Restatement identifies three distinct types of procedures for setting aside judgments. *Id.* at 140. The first is a motion for relief from a judgment under Rule 60(b) of the Federal Rules of Civil Procedure, or the comparable provisions in state procedural systems. Restatement (Second) of Judgments ch. 5, intro. note b, at 140. The motion "is part or a continuation of the original action, [and] it ordinarily must be made in the court in which the judgment was rendered." *Id.* The second procedure is an independent action and is also provided for by Rule 60(b). Restatement (Second) of Judgments ch. 5, intro. note b, at 140. The independent action is a challenge to the judgment through an action against the other party to the original action and is similar to the old suit in equity. *Id.*

{41} The third mode of relief is described as "relief in the course of another action, because the question of the judgment's effect arises as an incident to a subsequent action." *Id.* at 140-41. This mode of relief is defensive and does not stem from Rule 60, but from common law defenses to actions brought upon money judgments. Restatement (Second) of Judgments § 80 cmt. a, at 248. In modern procedural systems this mode of relief is usually employed when the party in whose favor the judgment was entered, relies on the judgment for some sort of additional relief. Restatement (Second) of Judgments ch. 5, intro. note b, at 140-41. For example, where a party defends a quiet title action by relying on a prior judgment in its favor, the opposing party may seek to invalidate the earlier judgment. Restatement (Second) of Judgments § 80 cmt. d, at 246-47.

{42} The Restatement further suggests that in determining whether relief should be granted from any judgment, an analysis of three essential questions is appropriate:

> First, does the person seeking relief have standing to obtain relief from the judgment in question on the ground upon which he relies? Second, is the forum in which relief is sought the appropriate one for considering the particular attack? Third, may evidence be offered in support of the attack when it contradicts the face of the record?

Restatement (Second) of Judgments ch. 5 intro. note b, at 142-43 (internal quotation marks omitted).

{43} With regard to standing, the Restatement provides that "[r]elief from a judgment may be sought by or on behalf of a person only if the judgment is or purports to be binding on him under the rules of res judicata, or if he has an interest affected by the judgment[.]" Restatement (Second) of Judgments § 64, at 145. Where a person has standing to attack a judgment, "the question is whether he may pursue relief in the course of the subsequent action rather than being obliged to seek relief by means of other remedies, including [a motion in the original action or an independent action]." Restatement (Second) of Judgments § 80 cmt. a, at 244-45. The question of whether relief was sought in the proper forum requires consideration of the "adequacy of relief obtainable by other remedies and the relation between

the ground upon which relief is sought and the forum in which it should be pursued." *Id.* at 245. Where "the question concerns the subject[-]matter jurisdiction of the rendering court," relief may be sought in a subsequent action or a different court. *Id.* cmt. d, at 246-47.

{44} Our holding in the present case that the original foreclosure judgment is void for lack of jurisdiction is determinative, and accordingly, we do not address Phoenix's fraud claims, nor do we decide whether a collateral attack on a judgment as defined by our Supreme Court encompasses the remedy of a Rule 1-060 independent action. We leave to our Supreme Court the task of resolving the tension, if any, between *Barela*, *Chavez*, and *Hort*. *See State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 22, 135 N.M. 375, 89 P.3d 47 ("[W]hile the Court of Appeals is bound by Supreme Court precedent, the Court is invited to explain any reservations it might harbor over its application of our precedent so that we will be in a more informed position to decide whether to reassess prior case law[.]").

CONCLUSION

{45} For the foregoing reasons, we reverse and remand to the district court for further proceedings consistent with this Opinion.

{46} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:
RODERICK T. KENNEDY, Judge
TIMOTHY L. GARCIA, Judge

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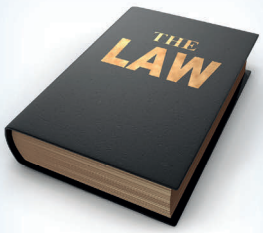

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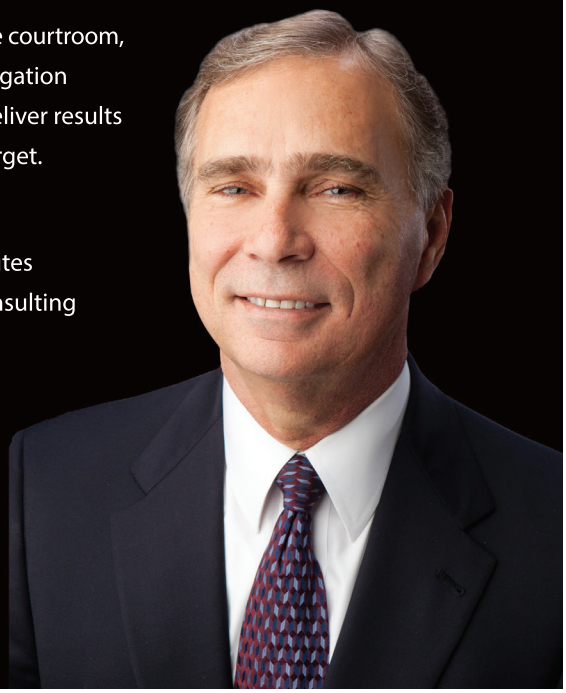

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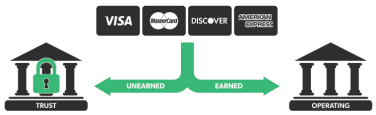

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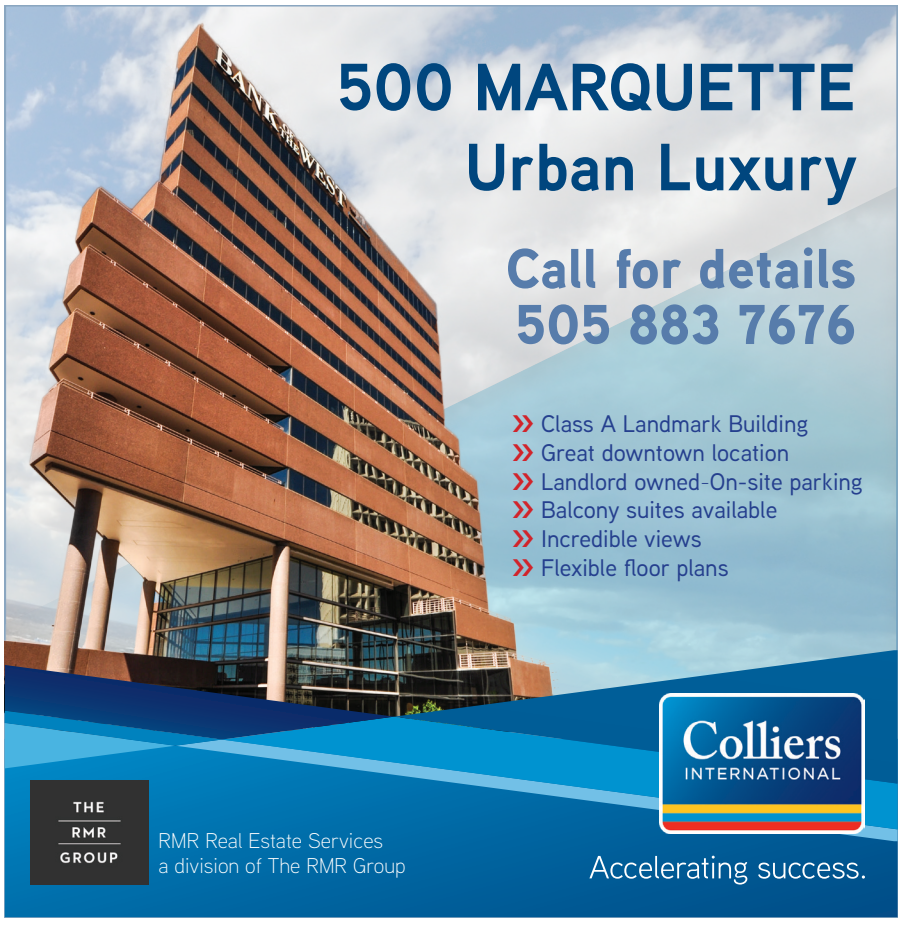

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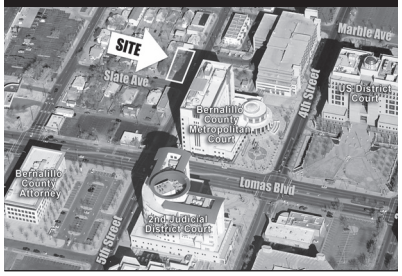

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The State Bar has two lawyer referral programs to help members connect with potential clients: the **General Referral Program** and the **Legal Resources for the Elderly Program (LREP)**.

- **General Referral Program** panel attorneys agree to provide referral clients with a free, 30-minute consultation. Any services rendered after the initial 30 minutes are billed at the attorney's regular hourly rate. The General Referral Program receives more than 10,000 calls per year.
- **LREP** is a free legal helpline and referral service for New Mexico residents age 55 and older. LREP referrals to panel attorneys are only made after a staff attorney has screened the case and determined that it is appropriate for referral. LREP referrals are made on full-fee, reduced fee and pro bono basis. LREP processes approximately 5,000 cases each year.

STATE BAR of NEW MEXICO

Contact Maria Tanner at mtanner@nmbar.org or 505-797-6047 for more information or to sign up with the programs.

Classified

Positions

Associate
Caruso Law offices, an established Albuquerque plaintiff personal injury and wrongful death litigation firm, seeks associate for its growing statewide practice. Ideal candidate should have minimum 1 year of personal injury litigation experience. Salary dependent on experience. Submit resumes to Caruso Law Offices, PC, 4302 Carlisle NE, Albuquerque, NM 87107.

Attorney Wanted
Park & Associates, LLC is seeking a full time attorney, with 3 to 7 years of experience. Excellent research and writing skills required. Experience in medical malpractice preferred. Duties include legal analysis and advice, preparing legal pleadings and documents, performing legal research, preparing for and conducting pre-trial discovery, preparing for and conducting administrative and judicial hearings, civil jury trials and post-trial activities. Please submit resume, writing sample and salary requirements to: jertsgaard@parklawnm.com

Associate Attorney
The Santa Fe law firm of Katz Ahern Herdman & MacGillivray PC is seeking a full-time associate with three to five years of experience to assist in all areas of our practice, including real estate, zoning, business, employment, construction and related litigation. Please send resumes to fth@santafelawgroup.com. Please state "Associate Attorney Position" in email subject line.

Associate Litigation Attorney
Boutique regional law firm based in Denver, Colorado seeks an associate attorney with 3 to 6 years of litigation experience for its expanding Albuquerque office. Candidates must possess strong research and writing skills, have significant experience drafting pleadings, dispositive motions, and discovery, and be well-versed in all local civil rules and practices in New Mexico. The ideal candidate will be self-motivated and possess the ability to work both autonomously and as part of a team. Experience in the following practice areas is preferred but not required: consumer finance and creditor rights litigation, mortgage lending and servicing law, real estate, and bankruptcy. We offer a collegial atmosphere and competitive benefits and salary, including performance-based bonuses. Please submit resume and writing sample to info@msa.legal. All inquiries and submissions will be kept strictly confidential.

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

Position Announcement Assistant Federal Public Defender - Las Cruces 20106-02
The Federal Public Defender for the District of New Mexico is seeking two full time, experienced trial attorneys for the branch office in Las Cruces. Federal salary and benefits apply. More than one position may be hired from this posting. Applicant must have one year minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. 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. Please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, 111 Lomas Blvd. NW, Suite 501, Albuquerque, NM 87102. Writing samples will be required only from those selected for interview. Applications must be post marked by May 4, 2016. Position will remain open until filled and is subject to the availability of funding.

Law Access New Mexico Helpline Attorney Position
Law Access New Mexico provides respectful, efficient, high quality legal advice, brief service and referrals in civil law matters to eligible low-income New Mexicans over the telephone and helps remove barriers to the justice system. See www.lawaccess.org. Please be sure and review the website prior to submitting an application. Located in Albuquerque, New Mexico, the organization seeks a full-time (37.5 hours per week) attorney licensed to practice in New Mexico. The successful applicant will provide legal advice and brief services via telephone to low-income residents of New Mexico. Primary areas of practice will include landlord-tenant, consumer debt, and unemployment benefits issues and other civil law matters as needed by our clients. No experience necessary as we will train on substantive law. Requirements: Licensed to practice in the courts of New Mexico. Additional preferences: Spanish fluency a plus; Must: be comfortable with advanced technology; able to learn propriety software; able to engage in quick transition between multiple software services while entering information in real-time during the phone interviews. We offer a competitive salary and benefits package. Salary D.O.E.; E.O.E. Application process: Apply by email-only to HR@lawaccess.org with resume attached; Subject line should read: "LANM Attorney application"; Absolutely no phone calls.

Associate Attorney
Small medical malpractice defense firm seeks associate attorney with 3-10 years' experience. Must have experience in the area of personal injury defense, with a strong preference for experience in the area of medical malpractice defense. Salary commensurate with experience and demonstrated ability. Benefits package included. Please send resume and cover letter to the Hiring Manager at Remo E. Gay & Associates, P.C., 3810 Osuna Road NE, Suite 1, Albuquerque, NM 87109.

Trial Attorney
Intuition, skill, honesty and a fundamental belief in the need for regular people to have access to justice are required attributes for this attorney position. We are primarily a medical negligence firm that represents patients, with some work in sexual abuse cases for the victim. This position requires a well-rounded attorney. Meaning, the attorney must have some years of experience, be detail oriented, an excellent legal writer, a team member and good on their feet. Resumes with a legal writing sample and a statement about what the attorney sees as his or her future in the law should be sent to Curtis & Lucero, 301 Gold Ave., S.W., Suite 201, Albuquerque, NM 87102. Thank you.

New Mexico Public Regulation Commission Lawyer – Advanced

The New Mexico Public Regulation Commission ("PRC" or "Commission") is seeking applications from enthusiastic NM licensed attorneys for a Lawyer-A position with its Legal Division. The ideal candidate has strong analytical, research and communication skills, and also enjoys working as a team with other attorneys and technical and professional staff in a collaborative environment on diverse issues that directly impact the public interest. This is an ideal opportunity for lawyers with an interest in public and economic policy, including renewable energy and energy efficiency programs. The Legal Division is responsible for providing legal counsel to all PRC divisions in the regulation of utilities (electric, gas, telecommunications, water, and sewer), transportation (including common motor carriers, ambulance standards, and Pipeline Safety), and the State Fire Marshal's Office. The Legal Division represents staff expert witnesses in proceedings before the Commission, and provides counsel to the Commission in matters not involving advice on contested proceedings. Background in regulatory law, a technical discipline or human resource law is preferred. Also preferred is experience with administrative or government law, including Inspection of Public Records Act requests. This is a full-time position with salary between $44,782.40 to $77,916.80 (plus state benefits). Interested persons must apply by the closing date of April 30, 2016 through the State Personnel Office: www.spo.state.nm.us Select "View Job Opportunities and Apply" and apply for Job ID #48051. Additionally, send a copy of your resume, State Bar of New Mexico card, a writing sample, and contact information for three references, including at least one from a current or former supervisor or client, by April 30, 2016 to Ms. Elizabeth Ramirez, Paralegal, Legal Division, NMPRC, P. O. Box 1269, Santa Fe, NM 87504, (505) 827-4898. The PRC is an equal opportunity employer.

Litigation Associate

New Mexico's leading Trusts and Estates law firm seeks hard working and dedicated NM-licensed, full-time associate for its litigation department. Firm handles all aspects of fiduciary and beneficiary representation, contested guardianships and conservatorships, and trust and estate litigation. Required: integrity and strong work ethic, strong research and writing skills, ability to collaborate, subject matter experience and LLM in Estate Planning, Taxation or similar field. Pay commensurate with experience. Qualified candidates should respond to abqlawfirmjob@gmail.com.

Associate Attorney Position

Riley, Shane & Keller, P.A., an Albuquerque AV-rated defense firm, seeks an Associate to help handle our increasing case load. We are seeking a person with one to five years experience. Candidate should have a strong academic background as well as skill and interest in research, writing and discovery support. Competitive salary and benefits. Please fax or e-mail resumes and references to our office at 3880 Osuna Rd., NE, Albuquerque, NM 87109 c/o Office Manager (fax) 505-883-4362 or mvelasquez@rsk-law.com

6-12 Year Attorney (Albuquerque)

Houser & Allison, APC, a Commercial Litigation Law Firm with a focus on mortgage banking litigation is looking to expand its New Mexico office. We are looking for attorneys with 6-12 years' experience in the New Mexico area, including trial experience. The ideal candidate must have strong writing, research and communication skills. The candidate must be a self-starter and able to work independently. Resumes to: rnorman@houser-law.com

Associate Attorney

McCarthy Holthus, LLP, a well-established multi-state law firm successfully representing financial institutions in a variety of banking law matters and specializing in mortgages in default is currently seeking a production Associate Attorney to join our team in its Albuquerque, NM office. The responsibilities of the qualified candidate will include, but are not limited to, providing legal advice and support to clients, serve as primary legal contact with clients concerning litigation, client compliance issues and surveys of the law as requested by the Managing Litigation Attorney; research and analyze legal sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes; prepares legal briefs, pleadings, appeals, contracts, and any other necessary legal documentation during the course of litigation; handle litigation cases from referral to resolution, which may necessitate the use of written and oral advocacy, motion practice, discovery, and trial preparation; and participation in mediation. The qualified candidate must possess 0-3 years' of civil litigation experience preferably in the area of finance or representation of financial institutions in real estate related matters. Licensed to practice law in New Mexico and all New Mexico District Courts. McCarthy Holthus offers a comprehensive benefits package including competitive paid time-Off (PTO).*** All applicants must apply through our website at, https://workforcenow.adp.com/jobs/apply/posting.html?client=mypremier

Executive Director: Office of Institutional Equity

New Mexico State University is seeking an experienced and collaborative leader to serve as the Executive Director of the Office of Institutional Equity. This position provides management and oversight of the unit responsible for compliance with university policy, state statue, and Federal laws regarding equal opportunity, civil rights, Title IX, and ADA. Knowledge of investigative processes, policy development and the ability to train other employees in these issues is desired. A Juris Doctorate is required along with five years of appropriate experience. NMSU is an AA/EEO employer. For complete information and application instructions visit: http://jobs.nmsu.edu/postings/24784

Associate Attorney

Riley, Shane & Keller, P.A., an AV-rated defense firm in Albuquerque, seeks an associate attorney for an appellate/research and writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position will be full-time with flexibility as to schedule and an off-site work option. We offer an excellent benefits package. Salary is negotiable. Please submit a resumes, references and several writing samples to 3880 Osuna Rd., NE, Albuquerque, NM 87109 c/o Office Manager, (fax) 505-883-4362 or mvelasquez@rsk-law.com

Assistant Manager/Bookkeeper

Extremely competitive salary and benefits, including medical, dental, 401k and bonuses / incentives. We are a growing plaintiffs personal injury law firm. Must have an outstanding attitude, and demonstrable experience with Accounts Payable/Receivable, or excellent grades in math courses. Must be able to multi-task in a fast-paced environment and be a great team player. The ideal candidate has: office experience with longevity in prior jobs, enthusiasm, attention to details, and self-motivation. The position is described in more detail at www.hurtcallbert.com/jobs. Email resume to Will@ParnallLaw.com and print "Oranges" in the subject line.

Legal Assistant/Paralegal

Extremely competitive salary and benefits, including medical, dental, 401k, and bonuses / incentives. We are a growing plaintiffs personal injury law firm with a fast-paced environment and a high case load. Outstanding attitude needed. Experience in Plaintiffs injury law helpful. 8-5 M-F with a hard-working and friendly team. Email resume to Sharon@ParnallLaw.com and print "Apples" in the subject line.

Paralegal Position
Wolf & Fox, P.C. is seeking a full-time paralegal to join our team in providing superior legal representation to our clients while enjoying an outstanding quality of life in a collaborative work environment. Case load involves a general civil practice with a primary focus on domestic relations. Knowledge in employment/HR is a plus. 2+ years experience preferred. Competitive salary, excellent benefits, and flexible work schedule. Send resume and salary requirements to bryanf@wolfandfoxpc.com.

Experienced Litigation Legal Secretary/Paralegal
Silva & Associates, P.C. is seeking an experienced litigation legal secretary/paralegal. Requires exceptional organizational skills, ability to work as a team, knowledge of Timeslips, and superior computer skills. Competitive salary and excellent benefit package. E-mail resume to Tamara Silva tcsilva@silvalaw-firm.com

Services

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.

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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.

Offices For Rent
Offices for rent, one block from courthouses, all amenities: copier, fax, telephone system, conference room, internet, phone service, receptionist. Call Ramona at 243-7170.

823 Gold Ave SW
Charming Victorian house, beautifully restored. Ideal location near courthouses. Plenty of free parking. Has served as law offices since 1990's. 2075 sq ft, plus storage basement and detached garage. New hickory hardwood flooring. For sale: $279,000. Liska Maddox, 505-764-0400

Miscellaneous

Law Office Liquidation
Furniture, file cabinets, desks, chairs, copier, artwork, law library, conference tables, antique Photos, all must go. Call thomas jones or onjie simmons at (505) 247-2972, or come by and see @ 503 slate ave nw, albuquerque, Nm 87102.

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.**

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