BAR BULLETIN

Official Publication of the State Bar of New Mexico

June 22, 2016 • Volume 55, No. 25

Down by the Riverside, by John Cogan (see page 3) Marigold Arts Gallery, Santa Fe

Inside This Issue

CLE Planner

July 28

Reciprocity—Introduction to the Practice of Law in New Mexico

4.5 G | 2.5 EP

Thursday, July 28, 2016 • 8:30 a.m.–5 p.m.
University of New Mexico, Continuing Education Auditorium,
1634 University Blvd. NE, Albuquerque, NM

$275: Standard Fee
$245: New Mexico Government and legal services attorneys, and Paralegal Division members
Free: Reciprocity applicants

Introductions by Sophie Martin, executive director, Board of Bar Examiners

8 a.m.	Registration and Continental Breakfast
8:30 a.m.	**Civility and Professionalism (2.0 EP)** *Hon. Edward L. Chávez, New Mexico Supreme Court;* *William Slease, New Mexico Supreme Court Disciplinary Board*
10:30 a.m.	Break
10:45 a.m.	**The Disciplinary Process and Rules of Professional Conduct** *Hon. Edward L. Chávez; William Slease* **Trust Accounting (0.5 EP)** *William Slease*
11:45	Lunch (on your own)
12:45 p.m.	**Introduction to Indian Law** *Kevin K. Washburn, UNM School of Law;* *Paul Spruhan, Navajo Department of Justice*
2:45 p.m.	Break
3 p.m.	**The Basics of Community Property Law** *Sandra Morgan Little, Roberta Batley, Little Gilman-Tepper and Batley, PA*
5 p.m.	Adjournment and Swearing-in Ceremony

STATE BAR of NEW MEXICO
CENTER FOR LEGAL EDUCATION

Full course agendas available online.
Register online at **www.nmbar.org** or call 505-797-6020.

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email: address@nmbar.org • www.nmbar.org

June 22, 2016, Vol. 55, No. 25

Table of Contents

Meetings

June

23
Natural Resources, Energy and Environmental Law Section BOD,
Noon, teleconference

24
Immigration Law Section BOD,
Noon, State Bar Center

28
Intellectual Property Law Section BOD,
Noon, Lewis Roca Rothgerber Christie, Albuquerque

July

1
Criminal Law Section BOD,
Noon, Kelley & Boone, Albuquerque

5
Bankruptcy Law Section BOD,
Noon, U.S. Bankruptcy Court

5
Health Law Section BOD,
9 a.m., teleconference

6
Employment and Labor Law Section BOD,
Noon, State Bar Center

Workshops and Legal Clinics

June

22
Consumer Debt/Bankruptcy Workshop:
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

29
Common Legal Issues for Senior Citizens Workshop:
9:30–10:45 a.m., workshop
12:15–1:15 p.m., POA AHCD clinic,
Socorro County Senior Center, Socorro, 1-800-876-6657

July

6
Divorce Options Workshop:
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

6
Civil Legal Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

7
Common Legal Issues for Senior Citizens Workshop:
10–11:15 a.m., workshop noon–1 p.m., POA AHCD clinic, Las Vegas Senior Center, Las Vegas, 1-800-876-6657

About the Cover Image: *Down by the Riverside,* acrylic on canvas
John Cogan works in an American tradition of landscape painting dating back to the 1830s and the Hudson River School. Using the beauty of the natural world as a subject in its own right, he captures the particular mystique, the feeling of separateness, of the Southwest in images that represent a traditional American character. Cogan paints as if seeing nature for the first time, engaging the viewer intimately in the drama and limitless sweep of vast spaces, the timelessness and elemental experience of the desert and the superb color, light and serenity of mountains, canyons and hills. In 2012, Cogan won the Jack Dudlev Memorial Fund Purchase Award and his painting *Out of Depths* is a part of the permanent collection of the Grand Canyon Museum. For more information about Cogan, visit Marigold Arts in Santa Fe or www.marigoldarts.com.

Notices

State Bar News

Attorney Support Groups

- July 11, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (the group meets on the second Monday of the month). To increase access, teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- July 18, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
- Aug. 1, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)
  Note: the Attorney Support Group will not meet on July 4 due to the Independence Holiday

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

Annual Meeting—Bench and Bar Conference

Resolutions and Motions

Resolutions and motions will be heard at 8 a.m., Aug. 19, at the opening of the State Bar of New Mexico 2016 Annual Meeting at the Buffalo Thunder Resort & Casino, Santa Fe. To be presented for consideration, resolutions or motions must be submitted in writing by July 19 to Executive Director Joe Conte, PO Box 92860, Albuquerque, NM 87199; fax to 505-828-3765; or e-mail jconte@nmbar.org.

Professionalism Tip

With respect to the courts and other tribunals:
I will voluntarily exchange information and work on a plan for discovery as early as possible.

Children's Law Section

Donate to the Annual Art Contest Fund

The Children's Law Section seeks donations for its annual art contest fund. The contest aims to help improve the lives of New Mexico's youth who are involved with the juvenile justice system. The generous donations received each year from the community help defray the cost of supplies, prizes and an award reception. Through the years, the contest has demonstrated that communicating ideas and emotions through art and writing fosters thought and discussion among youth on how to change their lives for the better. To make a tax deductible donation, make a check out to the New Mexico State Bar Foundation and write "Children's Law Section Art Contest Fund" in the memo line. Mail checks to: State Bar of New Mexico, Attn: Breanna Henley, PO Box 92860, Albuquerque, NM 87199. For more information contact Ali Pauk, alison.pauk@lopdnm.us.

Young Lawyers Division

Lunch with the Judges of Chaves County

The "Lunch with the Judge" program is designed to allow Young Lawyers Division members to meet with local judges in an informal setting and ask questions of the judges and receive advice relating to their career paths in the legal profession. The next event will be at noon, June 29, featuring Chaves County judges. R.S.V.P. by June 28 to Anna Rains at acrains@sbcw-law.com or 575-622-5440. Space is limited to the first 10 members. Upon R.S.V.P., the lunch restaurant will be provided. All attendees will be responsible for payment of their own meal.

Albuquerque Wills for Heroes

YLD is seeking volunteer attorneys for its Wills for Heroes event from 8 a.m.-1 p.m., on Saturday, June 25, at the APD Academy at 5412 Second Street NW in Classroom F. Attorneys will provide free simple wills, powers of attorney, and advanced medical directives for first responders. Appointments will be made from 9 a.m.-noon. Breakfast and coffee will be served. Volunteers who have no prior experience in drafting wills are needed to conduct intake or serve as witnesses or notaries. Volunteers are asked to bring a Windows laptop if possible. Contact Sonia Russo at soniarusso09@gmail.com or 505-269-0369 to volunteer.

Notice of Vacancies on Supreme Court Committees

The Supreme Court of New Mexico is seeking applications to fill vacancies on the following Supreme Court committees:

- Board of Bar Examiners - 1 vacancy
- Joint Committee on Rules of Procedure - 1 vacancy
- Metropolitan Courts Rules Committee - 1 vacancy
- Rules of Criminal Procedure - 1 vacancy for a district court judge

Unless otherwise noted above, all licensed New Mexico attorneys are eligible to apply. Anyone interested in volunteering to serve on one or more of these committees may apply by sending a letter of interest and resume by mail to Joey D. Moya, Chief Clerk, P.O. Box 848, Santa Fe, New Mexico 87504-0848, by fax to 505-827-4837, or by email to nmsupremecourtclerk@nmcourts.gov. The letter of interest should describe the applicant's qualifications and should list committees in order of preference if applying to more than one committee. The deadline for applications is July 8.

UNM

Law Library

Hours Through Aug. 21

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
Holiday Closures	
Independence Day: July 4	

Natural Resources Journal

Call for Papers

The *Natural Resources Journal* seeks academic articles for its Winter 2017 issue, Volume 57.1, on water governance. Suggested topics include: institutional

continued to page 7

Legal Education

June

24 **Ethics and Social Media: Current Developments**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **Guardianship in New Mexico: the Kinship Guardianship Act (2016)**
5.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

July

13 **Hydrology and the Law**
6.5 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com

14 **Natural Resource Damages**
10.0 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com

15 **Best and Worst Practices Including Ethical Dilemmas in Mediation (2016)**
3.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

15 **The Trial Variety: Juries, Experts and Litigation (2015)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

15 **Writing and Speaking to Win (2014)**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

15 **The Ethics of Creating Attorney-Client Relationships in the Electronic Age**
1.0 EP
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

29 **Talkin 'Bout My Generation: Professional Responsibility Dilemmas Among Generations (2015)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

29 **Everything Old is New Again - How the Disciplinary Board Works (Ethicspalooza Redux – Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

August

2 **Due Diligence in Real Estate Acquisitions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Charging Orders in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 **Role of Public Benefits in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

Listings in the Bar Bulletin *CLE Calendar are derived from course provider submissions. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location, course provider and registration instructions.*

August

11 **13th Annual Comprehensive Conference on Energy in the Southwest**
13.2 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com

19–20 **2016 Annual Meeting–Bench & Bar Conference**
12.5 CLE credits (including at least 5.0 EP)
Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org

23 **Drafting Employment Separation Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Lawyer Ethics and Disputes with Clients**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

September

9 **2015 Fiduciary Litigation Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Wildlife and Endangered Species on Public and Private Lands**
6.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

15 **Liquidated Damages in Contracts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

20 **2015 Mock Meeting of the Ethics Advisory Committee**
2.0 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 **Legal Writing—From Fiction to Fact (Afternoon Session 2015)**
2.0 G 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Spring Elder Law Institute (2016)**
6.2 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Estate Planning for Firearms**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

22 **EEOC Update, Whistleblowers and Wages (2015 Employment and Labor Law Institute)**
3.2 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **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

22 **Law Practice Succession – A Little Thought Now, a Lot Less Panic Later (2015)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **Guardianship in NM: the Kinship Guardianship Act (2016)**
5.5 G 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **Ethics and Keeping Secrets or Telling Tales in Joint Representations**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Estate Planning for Liquidity**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Legal Technology Academy for New Mexico Lawyers (2016)**
4.0 G 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

continued from page 4

analysis and jurisprudence, collaborative approaches to water governance, drought planning and climate adaptation, water and equity, markets, water and economic development, interplay of human and natural systems and politics and conflict in water governance. To submit an article, email (1) a manuscript of the article with citations and (2) a link to or copy of the author's CV to nrj@law.unm.edu. Submissions should be received by July 1, 2016. Authors who receive a commission will be notified by July 31. Additional information, including an archive of past issues, is available at http://lawschool.unm.edu/nrj/.

Other Bars

New Mexico Defense Lawyers Association

'Women in the Courtroom' CLE

The New Mexico Defense Lawyers Association will present "I'm with her! Women in the Courtroom VI: Uniting for Success" (4.5 G, 1.0 EP) Aug. 5 at the Albuquerque Jewish Community Center. This dynamic day-long CLE seminar will enhance the skills of all female attorneys. It will conclude with a wine tasting reception. Save the date; registration will open in July at www.nmdla.org. For more information call NMDLA at 505-797-6021.

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Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective May 20, 2016

Petitions for Writ of Certiorari Filed and Pending:

			Date Petition Filed
No. 35,903	Las Cruces Medical v. Mikeska	COA 33,836	05/20/16
No. 35,900	Lovato v. Wetsel	12-501	05/18/16
No. 35,898	Rodriguez v. State	12-501	05/18/16
No. 35,897	Schueller v. Schultz	COA 34,598	05/17/16
No. 35,896	Johnston v. Martinez	12-501	05/16/16
No. 35,894	Griego v. Smith	12-501	05/13/16
No. 35,893	State v. Crutcher	COA 34,207	05/12/16
No. 35,891	State v. Flores	COA 35,070	05/11/16
No. 35,895	Caouette v. Martinez	12-501	05/06/16
No. 35,889	Ford v. Lytle	12-501	05/06/16
No. 35,886	State v. Otero	COA 34,893	05/06/16
No. 35,885	Smith v. Johnson	12-501	05/06/16
No. 35,884	State v. Torres	COA 34,894	05/06/16
No. 35,882	State v. Head	COA 34,902	05/05/16
No. 35,880	Fierro v. Smith	12-501	05/04/16
No. 35,873	State v. Justin D.	COA 34,858	05/02/16
No. 35,876	State v. Natalie W.P.	COA 34,684	04/29/16
No. 35,870	State v. Maestas	COA 33,191	04/29/16
No. 35,864	State v. Radosevich	COA 33,282	04/28/16
No. 35,866	State v. Hoffman	COA 34,414	04/27/16
No. 35,861	Morrisette v. State	12-501	04/27/16
No. 35,863	Maestas v. State	12-501	04/22/16
No. 35,857	State v. Foster	COA 34,418/34,553	04/19/16
No. 35,858	Baca v. First Judicial District Court	12-501	04/18/16
No. 35,853	State v. Sena	COA 33,889	04/15/16
No. 35,849	Blackwell v. Horton	12-501	04/08/16
No. 35,835	Pittman v. Smith	12-501	04/01/16
No. 35,828	Patscheck v. Wetzel	12-501	03/29/16
No. 35,825	Bodley v. Goodman	COA 34,343	03/28/16
No. 35,822	Chavez v. Wrigley	12-501	03/24/16
No. 35,821	Pense v. Heredia	12-501	03/23/16
No. 35,814	Campos v. Garcia	12-501	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. 35,771	State v. Garcia	COA 33,425	02/24/16
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. 35,522	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. 35,422	State v. Johnson	12-501	07/17/15
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. 34,775	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. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13
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. 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. 34,798	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 Comm.	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 and 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. 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

Writ of Certiorari Quashed:

			Date Order Filed
No. 33,930	State v. Rodriguez	COA 30,938	05/03/16

Petition for Writ of Certiorari Denied:

			Date Order Filed
No. 35,869	Shah v. Devasthali	COA 34,096	05/19/16
No. 35,868	State v. Hoffman	COA 34,414	05/19/16
No. 35,865	UN.M. Board of Regents v. Garcia	COA 34,167	05/19/16
No. 35,862	Rodarte v. Presbyterian Insurance	COA 33,127	05/19/16
No. 35,860	State v. Alvarado-Natera	COA 34,944	05/16/16
No. 35,859	Faya A. v. CYFD	COA 35,101	05/16/16
No. 35,851	State v. Carmona	COA 35,851	05/11/16
No. 35,855	State v. Salazar	COA 32,906	05/09/16
No. 35,854	State v. James	COA 34,132	05/09/16
No. 35,852	State v. Cunningham	COA 33,401	05/09/16
No. 35,848	State v. Vallejos	COA 34,363	05/09/16
No. 35,634	Montano v. State	12-501	05/09/16
No. 35,612	Torrez v. Mulheron	12-501	05/09/16
No. 35,599	Tafoya v. Stewart	12-501	05/09/16
No. 35,845	Brotherton v. State	COA 35,039	05/03/16
No. 35,839	State v. Linam	COA 34,940	05/03/16
No. 35,838	State v. Nicholas G.	COA 34,838	05/03/16
No. 35,833	Daigle v. Eldorado Community	COA 34,819	05/03/16
No. 35,832	State v. Baxendale	COA 33,934	05/03/16
No. 35,831	State v. Martinez	COA 33,181	05/03/16
No. 35,830	Mesa Steel v. Dennis	COA 34,546	05/03/16
No. 35,818	State v. Martinez	COA 35,038	05/03/16
No. 35,712	State v. Nathan H.	COA 34,320	05/03/16
No. 35,638	State v. Gutierrez	COA 33,019	05/03/16
No. 34,777	State v. Dorais	COA 32,235	05/03/16

Opinions

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

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Effective June 10, 2016

Published Opinions

No. 33666	5th Jud Dist Eddy CR-12-329, STATE v W DAVIS (reverse and remand)	6/6/2016
No. 34150	3rd Jud Dist Dona Ana CR-11-319, STATE v J MOORE (reverse and remand)	6/7/2016
No. 34427	2nd Jud Dist Bernalillo CV-14-3843, B THOMPSON v CITY OF ALB (reverse and remand)	6/9/2016

Unpublished Opinions

No. 34673	3rd Jud Dist Dona Ana JR-11-449, STATE v ADAN H (affirm)	6/6/2016
No. 33965	6th Jud Dist Luna CR-13-179, STATE v D GRADO (affirm)	6/7/2016
No. 35154	8th Jud Dist Taos CV-15-154, R LEIRER v NM DEPT OF PUB (affirm)	6/7/2016
No. 35189	11th Jud Dist San Juan LR-15-65, STATE v B THROWER (reverse and remand)	6/7/2016
No. 33907	12th Jud Dist Otero CR-10-25, CR-09-479, STATE v R LUCERO (affirm)	6/7/2016
No. 35077	2nd Jud Dist Bernalillo JQ-13-89, CYFD v DAILENE L (affirm)	6/7/2016
No. 35187	5th Jud Dist Lea CR-14-15, STATE v D PLUMLEE (affirm)	6/7/2016
No. 35210	11th Jud Dist San Juan CR-13-943, STATE v D SANDOVAL (affirm)	6/7/2016
No. 35365	2nd Jud Dist Bernalillo CV-12-7935, PETROGLYPHS v S MCCORVEY (dismiss)	6/8/2016
No. 35055	2nd Jud Dist Bernalillo LR-14-36, STATE v A PEREZ (affirm)	6/9/2016
No. 35138	5th Jud Dist Eddy DM-08-352, D VICKREY v L VICKREY (affirm)	6/9/2016
No. 35308	2nd Jud Dist Bernalillo CR-02-1140, STATE v G ROMERO (dismiss)	6/9/2016
No. 35139	5th Jud Dist Eddy DM-08-352, D VICKREY v L VICKREY (affirm)	6/9/2016
No. 35155	WCA-13-56024, R SANCHEZ v INTEL CORP (affirm)	6/9/2016
No. 35262	2nd Jud Dist Bernalillo CR-14-5327, STATE v J CORDOVA (affirm)	6/9/2016

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Recent Rule-Making Activity

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Effective June 22, 2016

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Comment Deadline

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Recently Approved Rule Changes Since Release of 2016 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

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

From the New Mexico Supreme Court

Opinion Number: 2016-NMSC-010

No. S-1-SC-35145 (filed February 25, 2016)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
NORMAN BENALLY,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
GRANT L. FOUTZ, District Judge

HECTOR H. BALDERAS
Attorney General
M. ANNE KELLY
Assistant Attorney General
ELIZABETH ASHTON
Assistant Attorney General
Santa Fe, New Mexico
for Petitioner

JORGE A. ALVARADO
Chief Public Defender
WILLIAM O'CONNELL
Assistant Appellate Defender
Santa Fe, New Mexico
for Respondent

Opinion

Judith K. Nakamura, Justice

{1} In this case, we hold that when law enforcement officers seized, impounded, and sealed a vehicle, under NMSA 1978, Section 31-27-5(A) (2002, amended 2015), they "ma[de] a seizure" of the currency that the vehicle contained. On June 23, 2011, Gallup police officers seized a vehicle. On June 29, they executed a warrant to search the vehicle and discovered $1295 in currency. The State filed a forfeiture complaint for the $1295 on July 27, which was within thirty days of the search but not within thirty days of the seizure of the vehicle. A provision of the Forfeiture Act then in effect required the State to file the forfeiture complaint "[w]ithin thirty days of making a seizure" of property. Section 31-27-5(A) (2002). Based on that provision, the district court dismissed the State's forfeiture complaint as untimely, and the Court of Appeals affirmed.

{2} We note that in 2015 the Legislature amended the Forfeiture Act, NMSA 1978, §§ 31-27-1 to -11 (2002, as amended through 2015), to require that the State file a forfeiture complaint either "[w]ithin thirty days of making a seizure of property *or simultaneously upon filing a related criminal indictment* . . . ." Section 31-27-5(A) (emphasis added). The State filed the forfeiture complaint and the criminal indictment at the same time. Under the current statute, the State's forfeiture complaint may have been timely, an issue that we do not address in this case. However, because the 2002 statute controls this case and because the officers "ma[de] a seizure" of the money when they seized the vehicle, we affirm.

I. BACKGROUND

{3} On June 23, 2011, Norman Benally was driving a black Cadillac Escalade with a nonoperating headlight. Officer Houston Largo stopped him alongside eastbound Highway 66 in Gallup. During the stop, Officer Largo smelled marijuana and asked Benally for consent to search the vehicle. Benally declined. Officer Largo then called for the assistance of the K-9 patrol unit. Officer Angelo Cellicion arrived, accompanied by his K-9, Tiko. Tiko alerted the officers to the presence of controlled substances. Shortly thereafter, Danielle Benally, who was the registered owner of the vehicle, arrived at the scene. She also refused consent to the officers' search of the vehicle. The vehicle was then seized and towed to the Gallup Police Department's gated and locked impound lot. There, evidence tape was placed on the hood, the passenger and driver side doors, the rear doors, and the rear lift gate. The vehicle was sealed so that no one but the police officers could enter it.

{4} On June 28, the State sought a warrant to search the vehicle for drugs, drug paraphernalia, and money linked to drug transactions. A warrant was issued, and the following day, June 29, law enforcement agents searched the vehicle. They found 586.7 grams of marijuana; a digital scale; Benally's wallet, which contained currency, his driver's license, and his social security cards; and Danielle Benally's wallet, which contained currency, credit cards, and EBT cards. In total, law enforcement officials discovered $1295 during the search of the vehicle.

{5} On July 27, 2011, the State filed a criminal complaint against Benally, charging him with distribution of marijuana, conspiracy to distribute marijuana, possession of marijuana, and possession of drug paraphernalia. At the same time, the State filed a complaint for the forfeiture of the $1295, alleged to be drug proceeds.

{6} Benally moved to dismiss the forfeiture complaint as untimely. Benally pointed to former Section 31-27-5(A), which provided that "[w]ithin thirty days of making a seizure, the state shall file a complaint of forfeiture or return the property to the person from whom it was seized." Section 31-27-5(A) (2002). Benally argued that the forfeiture complaint should be dismissed because it was filed more than thirty days after the Gallup police officers seized and sealed the vehicle containing the currency. The trial court held a hearing on the motion and later dismissed the forfeiture complaint as untimely under former Section 31-27-5(A).

{7} On appeal, the State argued that the forfeiture complaint had been timely filed because the thirty-day statutory limitations period ran from the date the property subject to forfeiture was discovered or, alternatively, from the time the search warrant was issued.

{8} In an opinion filed January 29, 2015, the Court of Appeals affirmed the trial court's dismissal of the forfeiture complaint. *State v. Benally*, 2015-NMCA-053, ¶ 1, 348 P.3d 1039, *cert. granted*, 2015-NMCERT-005 (No. 35,145, May 11, 2015). The Court of Appeals held that, under the plain language of former Section 31-27-5(A),

the thirty-day limitations period began to run "when the officers impounded [Benally's] car and its contents on June 23, 2011." *Id.* ¶ 12. The appellate court reasoned that the limitations period began at the point of seizure; when the vehicle was seized on June 23, its contents, including the $1295, were also seized. *Id.* ¶ 9 ("[T]he contents of the vehicle were also seized by virtue of being in the impounded car."). The Court of Appeals concluded, "[s]ince the State failed to file a complaint for forfeiture within thirty days of that date, the district court properly dismissed the forfeiture action." *Id.* ¶ 12. We granted the State's petition for a writ of certiorari, exercising our jurisdiction under Article VI, Section 3 of the New Mexico Constitution and NMSA 1978, Section 34-5-14(B) (1972).

{9} Former Section 31-27-5(A) controls this case. *See Grygorwicz v. Trujillo*, 2006-NMCA-089, ¶ 16, 140 N.M. 129, 140 P.3d 550 ("[U]nless a contrary legislative intent is expressed, the statute of limitations in effect at the time an action is filed governs the timeliness of the claim." (internal quotation marks and citation omitted)). Under that statute, the State simply had thirty days from the date of the seizure to file a forfeiture complaint. Neither the original nor the amended version of the Forfeiture Act defines "seizure." Thus, we must interpret the meaning of "seizure" to decide the single issue of statutory interpretation that this case presents: Under former Section 31-27-5(A), did the Gallup police officers "mak[e] a seizure" of the $1295 when they seized, impounded, and sealed the vehicle that contained the currency?

II. DISCUSSION

A. Standard of review

{10} The interpretation of a statute presents an issue of law that this Court reviews de novo. *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 40, 320 P.3d 1. When interpreting a statute, this Court first looks to the text. *See* NMSA 1978, § 12-2A-19 (1997) ("The text of a statute or rule is the primary, essential source of its meaning."); *see also Bank of N.Y.*, 2014-NMSC-007, ¶ 40 ("[W]hen presented with a question of statutory construction, we begin our analysis by examining the language utilized by the Legislature, as the text of the statute is the primary indicator of legislative intent." (alteration in original) (internal quotation marks and citation omitted)). "Under the rules of statutory construction, [w]hen a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Id.* (alteration in original) (internal quotation marks and citation omitted); *see also* NMSA 1978, § 12-2A-2 (1997) ("Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage."). We also construe statutes to give effect to their object and purpose. NMSA 1978, § 12-2A-18(A)(1) (1997). Furthermore, "it is well established in New Mexico that, '[f]orfeitures are not favored at law and statutes are to be construed strictly against forfeiture.'" in *State v. Nunez*, 2000-NMSC-013, ¶ 75, 129 N.M. 63, 2 P.3d 264 (alteration in original) (quoting *State v. Ozarek*, 1978-NMSC-001, ¶ 4, 91 N.M. 275, 573 P.2d 209).

B. The plain meaning of "seizure"

{11} "Seizure" is neither an obscure nor polysemic term in American law. A seizure indicates the dispossession of an owner of his or her property. Both the Supreme Court of the United States and the New Mexico appellate courts have explained that a seizure refers to an interference with a person's possessory interests in his or her property. *See, e.g.*, *Horton v. California*, 496 U.S. 128, 134 (1990) ("A seizure of the article . . . would obviously invade the owner's possessory interest."); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) ("A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." (citations omitted)); *United States v. Place*, 462 U.S. 696, 705-06 (1983) (finding that a seizure amounts to an "intrusion on possessory interests" and can even be a "brief detention[] of personal effects"); *State v. Bomboy*, 2008-NMSC-029, ¶ 9, 144 N.M. 151, 184 P.3d 1045 ("[T]he seizure aspect [of the rights guaranteed by Article II, Section 10 of the New Mexico Constitution and the Fourth Amendment of the United States Constitution] protects notions of possession."); *State v. Sanchez*, 2005-NMCA-081, ¶ 17, 137 N.M. 759, 114 P.3d 1075 ("[T]he seizure aspect protects notions of possession, at least insofar as it applies to objects."). Unsurprisingly, legal dictionaries reflect those statements. *See, e.g.*, *Seizure*, *Black's Law Dictionary* (10th ed. 2014) (defining "seizure" as "[t]he act or an instance of taking possession of a person or property by legal right or process"). This Court presumes that when the Legislature enacted former Section 31-27-5(A), it did so with knowledge of how New Mexico's appellate courts and the Supreme Court of the United States define and use the term "seizure." *See Kmart Corp. v. N.M. Taxation & Revenue Dep't*, 2006-NMSC-006, ¶ 15, 139 N.M. 172, 131 P.3d 22 ("We presume that the Legislature knows the state of the law when it enacts legislation.").

{12} Against the weight of the case law, the State suggests that under former Section 31-27-5(A) state officers "mak[e] a seizure" of property only when they knowingly and intentionally seize the property for the purposes of forfeiture. According to the State, "the Court of Appeals failed to recognize 'seizure' as an active verb." The State asserts that when the Gallup police officers impounded Benally's vehicle, they did not knowingly seize the currency because they were unaware of its existence. The State therefore argues that the police only seized the currency after obtaining a warrant to search the vehicle, discovering the currency pursuant to that warrant, and securing the currency after its discovery for the purpose of forfeiture.

{13} The State's interpretation does not sufficiently attend to the statutory text. Former Section 31-27-5(A) uses "seizure" as an object. *See* § 31-27-5(A) (2002). The statute refers to a state of affairs, not a type of activity that entails a specific mental state. It is clear that the Legislature used the word "seizure" to refer to the dispossession of a person of his or her property, and that meaning is wholly consistent with how the Supreme Court of the United States and the New Mexico appellate courts have explained the concept. *See, e.g.*, *Jacobsen*, 466 U.S. at 113; *Bomboy*, 2008-NMSC-029, ¶ 9.

{14} Contrary to the State's suggestion, whether a law enforcement officer seizes a person's property does not depend on that officer's specific intent to take control of the property. Rather, what matters is that the officer's actions deprive the person of his or her possessory interests in property. *See Soldal v. Cook Cty., Ill.*, 506 U.S. 56, 72 (1992) ("The facts alleged suffice to constitute a 'seizure' within the meaning of the Fourth Amendment, *for they plainly implicate the interests protected by that provision*." (emphasis added)). The mental state of the law enforcement official engaged in the act of dispossessing a person of his or her property is not significant; the effect on the property right is. *See id.* at 69 ("What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure . . . was undertaken to collect

evidence . . . or on a whim, for no reason at all.").

{15} Furthermore, in this case, attention to the mental state of the Gallup police officers when they seized the vehicle actually weakens the State's argument. The officers took control of the vehicle in order to have exclusive access to its contents. In the affidavit for the search warrant, a Gallup police officer stated his belief that the seized vehicle contained money linked to drug transactions. By issuing the search warrant, the district court concluded that this belief was supported by probable cause. In light of these facts, the State is essentially arguing that an intentional taking of a vehicle with probable cause to believe it contains contraband does not rise to a seizure of the contraband where the vehicle is not taken with the certainty that it contains contraband. But whether contraband within a vehicle is seized does not turn on the distinction between an officer's justified belief that the vehicle contains contraband and the officer's certainty that it does. Simply put, the meaning of "seizure" does not depend on the epistemological distinction between a justified belief and certainty, and we refuse to impute such an odd meaning to the Legislature's clear usage.

{16} The meaning of "seizure" in former Section 31-27-5(A) is its common one: When a law enforcement officer deprives a person of the possessory interests in his or her property, the officer has seized the property.

C. The effect of Section 31-27-4

{17} Despite the clear and unambiguous use of "seizure" in former Section 31-27-5(A), the State suggests that other provisions of the 2002 Forfeiture Act indicate "that the Legislature intended the word 'seizure' to have a more narrow meaning than its common meaning." Conceding that its interpretation of "seizure" departs from the common meaning, the State proposes that former Section 31-27-4 supports its interpretation that the Gallup police only seized the $1295 when they discovered it pursuant to a warranted search of the impounded vehicle.

{18} Prior to the 2015 amendments to the Forfeiture Act, Section 31-27-4 stated:

> Property may be seized by a law enforcement officer:
>
> A. pursuant to an order of seizure issued by a district court based on a sworn application of a law enforcement officer from which a determination is made by the court that:
>
> (1) there is a substantial probability that:
>
> (a) the property is subject to forfeiture;
>
> (b) the state will prevail on the issue of forfeiture; and
>
> (c) failure to enter the order will result in the property being destroyed, removed from the state or otherwise made unavailable for forfeiture; and
>
> (2) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming interests in the property; and
>
> B. without a prior court order, if the property alleged to be property subject to forfeiture is not a residence or a business, when:
>
> (1) the seizure is incident to an arrest for a crime, a search conducted pursuant to a search warrant or an inspection conducted pursuant to an administrative inspection warrant and the law enforcement officer making the arrest or executing the search or inspection warrant has probable cause to believe the property to be property subject to forfeiture and that the subject of the arrest, search warrant or inspection warrant is an owner of the property; or
>
> (2) the law enforcement officer making the seizure has probable cause to believe the property is property subject to forfeiture and that the delay occasioned by the need to obtain a court order would frustrate the seizure.

Section 31-27-4 (2002).

{19} In short, the State argues that the limitations period should only run from the time that a search warrant or seizure order is executed in order to effectuate New Mexico's preference for a warrant. Hence, the State argues that "seizure" in former Section 31-27-5(A) refers only to those instances where the State has lawfully taken control of property after executing a warrant or seizure order, as contemplated by former Section 31-27-4. We disagree that former Section 31-27-4 compels us to read "seizure," as the term is employed by former Section 31-27-5(A), as an event that necessarily takes place pursuant to a court order.

{20} First, former Section 31-27-4 cannot mean that a seizure necessarily occurs subsequent to a court order. The Forfeiture Act explicitly provides that, in certain circumstances, property may be seized without a prior seizure order or search warrant. Section 31-27-4(B) (2002). Indeed, both the original and amended provisions of the Forfeiture Act explicitly state that a law enforcement officer is authorized to seize property without a prior order or search warrant when the seizure is made incident to arrest or where "the delay occasioned by the need to obtain a court order would frustrate the seizure." *Compare* § 31-27-4(B) (2002) (authorizing seizures "without a prior court order" such as those made incident to arrest or in exigent circumstances), *with* § 31-27-4(E) (same). The State's argument that we should depart from the common meaning of seizure is undermined by the very statute on which it relies.

{21} Second, the State's argument suffers a logical problem. Former Section 31-27-4 provides the conditions under which state officers are permitted to seize property. *See* § 31-27-4 (2002). The conditions that make seizures permissible, however, do not define what a seizure is. If the conditions that define a seizure were the same as the conditions that make seizures permissible, then it would make no sense to speak of impermissible or unreasonable seizures. Obviously, that is an absurd result; courts do speak of impermissible seizures. *See, e.g.*, *Soldal*, 506 U.S. at 69 ("[T]he right against unreasonable seizures would be no less transgressed if [an unlawful] seizure . . . was undertaken to collect evidence . . . or on a whim, for no reason at all."). And we do not interpret statutes to invite absurdity. *Cortesy v. Territory*, 1892-NMSC-030, ¶ 4, 6 N.M. 682, 30 P. 947).

{22} Third, the State's reading does not attend to the purpose of the limitations period set forth in former Section 31-27-5(A). The original Forfeiture Act provided a right for persons whose property was unlawfully seized to have it returned. *See* § 31-27-6(D)(1) (2002). Indeed, that was and remains one of the overarching purposes of the Forfeiture Act. *Compare* § 31-27-2(A)(2) (2002), *with* § 31-27-2(A)(2), (5). The State must comply with the Forfeiture Act. *Albin v. Bakas*, 2007-NMCA-076, ¶ 1, 141 N.M. 742, 160 P.3d 923. To ensure that

the State complied with the Act's requirements, the Legislature required the State to file a forfeiture complaint within thirty days of a seizure to establish the specific statutory basis for the seizure or return the seized property. *See* § 31-27-5(A)(4) (2002). Thus, the limitations period for filing a forfeiture complaint applies to *all* seizures, whether lawfully made pursuant to former Section 31-27-4 or not. To read "seizure" in former Section 31-27-5(A) to mean that the limitations period only applies to seizures made in compliance with former Section 31-27-4 would undermine the Forfeiture Act's purpose to ensure that, in every instance, the State establish the lawfulness of the seizure or return the seized property. In other words, the Forfeiture Act contemplates that the scope of "seizure[s]" of property, under former Section 31-27-5(A), is more extensive than "property subject to forfeiture," under former Section 31-27-4(B).

{23} Fourth, the State's reading of "seizure" fails to satisfy another purpose of former Section 31-27-5(A). The Legislature created a thirty-day limitations period also to prevent the State from holding a person's property indefinitely. If, as the State suggests, a seizure was not accomplished until state officials acted pursuant to a court order or warrant, then they could retain exclusive control over a person's property without implicating the requirements of former Section 31-27-5(A) simply by refraining from seeking a seizure order or search warrant.

D. Responding to policy concerns

{24} Under the plain meaning of former Section 31-27-5(A), the State must file a forfeiture complaint "[w]ithin thirty days of making a seizure"—that is, within thirty days of when the State first interfered with a person's possessory interests in his or her property. When the State impounded and sealed the vehicle on June 23, 2011, it interfered with Benally's property interests in the contents of the vehicle, including the money subject to the forfeiture complaint. In short, the State seized the vehicle. *See State v. Reynoso*, 702 P.2d 1222, 1224 (Wash. Ct. App. 1985) ("An impoundment, because it involves the governmental taking of a vehicle into exclusive custody, is a 'seizure' in the literal sense of that term."). When it did so, it also "ma[de] a seizure" of the contents of the vehicle because it deprived Benally of his possessory interests in them. Section 31-27-5(A) (2002).

{25} The State suggests that this holding effectively requires law enforcement officers to intuit the presence of forfeitable material to make a timely forfeiture filing. This argument is not well taken. The plain reading of former Section 31-27-5(A) did not require law enforcement officers to intuit what seized vehicles may contain. Rather, former Section 31-27-5(A) placed a clear burden on the officers to obtain a warrant, to search the seized vehicle and its seized contents, and, if forfeitable material was discovered, to file a forfeiture complaint within thirty days of the seizure.

{26} The State responds that such a limitations period was unrealistic, but that contention is inapposite. Whether thirty days from the seizure of a vehicle was sufficient time for law enforcement officials to lawfully search the vehicle and, if proper, file a forfeiture complaint is irrelevant to the interpretation of former Section 31-27-5(A). That is a policy question squarely within the Legislature's ambit. *See Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176 (recognizing "the unique position of the Legislature in creating and developing public policy" (internal quotation marks and citation omitted)). This Court will not effectively amend the requirements for filing a forfeiture complaint by tinkering with the plain meaning of "seizure" in Section 31-27-5(A).

III. CONCLUSION

{27} For the foregoing reasons, the Court of Appeals correctly interpreted Section 31-27-5(A) (2002), and its judgment is affirmed.

{28} IT IS SO ORDERED.

JUDITH K. NAKAMURA, Justice

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

From the New Mexico Supreme Court

Opinion Number: 2016-NMSC-011

No. S-1-SC-35298 (filed February 25, 2016)

STATE OF NEW MEXICO,
Plaintiff-Respondent,
v.
ANTHONY HOLT,
Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI
FERNANDO R. MACIAS, District Judge

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Opinion

Judith K. Nakamura, Justice

{1} Anthony Holt had partially removed a window screen from a residential dwelling when he was detected by the homeowner and fled. In the process of removing the screen, he placed his fingers behind the screen and inside the outer boundary of the home. Holt was subsequently arrested and charged with breaking and entering, in violation of NMSA 1978, Section 30-14-8 (1981). An "unauthorized entry" is an essential element of this offense. Section 30-14-8(A). We must decide whether Holt's conduct constitutes an "entry." It does. Accordingly, we affirm Holt's conviction. While we affirm the judgment of the Court of Appeals, we issue this opinion to clarify the appropriate analysis for resolution of the issue presented.

I. BACKGROUND

{2} We view the evidence presented in the light most favorable to the verdict. *State v. Treadway*, 2006-NMSC-008, ¶ 7, 139 N.M. 167, 130 P.3d 746. So viewed, on the afternoon of December 19, 2010, Carolyn Stamper was home alone when she heard the doorbell ring. She was not expecting company. Shortly after the unanticipated ring, she heard some "wrestling at the front door." She moved slowly towards the door and peeped through the peephole in the front door. She saw no one.

{3} Stamper then heard a noise emanating from the living-room window which was about seven feet away from her position. The sound was like "metal on metal" or a cat "clawing at the screen." She walked towards the window. The curtain was closed, but not completely; there was a gap about four inches wide. The window was open, raised from the bottom, also about four inches. Between the curtains, Stamper observed a man, later identified as Holt, removing the screen from her window. Stamper testified that Holt

> had the screen halfway off the window, and he had his hand on each side of the screen, and he was twisting it and turning it and looking down. He was looking down at the bottom part of the screen. He was trying to get the screen off. It wasn't completely off, but it was bent out away from the house and he was working the screen like this.

Upon further questioning, Stamper clarified that Holt's fingers were over the screen and the palms of his hands were at its edges. He had pulled the screen out of its track "and bent it about maybe half way down." It was crooked at the top where Holt had "worked" it, but it was still in the groove at the bottom. As a result of Holt's conduct, the screen was "pretty well destroyed."

{4} Because Holt's attention was focused downward, he did not initially see Stamper. At some point, however, he looked up and saw her. Their faces were only about two and a half feet apart. When Holt saw Stamper watching him, his "eyes bugged out." He said "Oh, I'm sorry," and then promptly fled.

{5} Holt was arrested and charged by an amended indictment with breaking and entering. At trial, after the State rested, Holt moved for a directed verdict. He argued that no entry had occurred because he was interrupted by Stamper and "never did get inside." The district court denied the motion, finding that the State had presented sufficient evidence to proceed. Holt presented no evidence.

{6} The jury found Holt guilty of breaking and entering. He was sentenced to five years and six months—eighteen months for the breaking-and-entering violation and a four-year habitual-offender enhancement—followed by one year of parole.

{7} Holt appealed to this Court. He argued that the district court incorrectly construed the term "entry" in Section 30-14-8(A) and claimed that the evidence was insufficient to sustain his conviction because he had attempted only to remove the window screen and had not entered Stamper's residence. The Court of Appeals affirmed Holt's conviction in a divided opinion. *State v. Holt*, 2015-NMCA-073, 352 P.3d 702, *cert. granted*, 2015-NM-CERT-____ (No. 35,298, June 19, 2015). We granted Holt's petition for a writ of certiorari—exercising our jurisdiction under Article VI, Section 3 of the New Mexico Constitution and NMSA 1978, Section 34–5–14(B) (1972)—to decide whether Holt entered Stamper's residence, for purposes of New Mexico's breaking and entering statute, by placing his fingers behind a window screen and beyond the outer boundary of Stamper's home.

II. DISCUSSION

{8} Holt contends that only penetration of an interior protected space, not the outermost plane of a structure, constitutes an "entry" for purposes of the breaking-and-entering statute. The space between a screen and window, he argues, is not interior space. Thus, he claims that his conduct did not constitute an "entry" for purposes of Section 30-14-8(A). Based on his interpretation of the statute, Holt argues that there was insufficient evidence presented to support the conviction. The State responds that the Legislature did indeed intend penetration of a window screen to constitute an "entry" under Section 30-14-8(A) because

a window screen forms the outer barrier of a structure and people reasonably rely on window screens to protect their possessory rights. Accordingly, the State contends that the evidence was sufficient to support the conviction.

A. Standard of Review

{9} Whether Holt's conduct constituted an "entry" for purposes of Section 30-14-8(A) is a question of statutory construction this Court reviews de novo. *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182, 218 P.3d 868 (citation omitted).

B. Definition of "entry" in Section 30-14-8(A)

{10} The primary goal in construing a statute is to "ascertain and give effect to the intent of the Legislature." *State v. Tafoya*, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693 (internal quotation marks and citation omitted).

{11} Section 30-14-8(A) provides as follows:

> Breaking and entering consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where entry is obtained by fraud or deception, or by the breaking or dismantling of any part of the vehicle, watercraft, aircraft, dwelling or other structure, or by the breaking or dismantling of any device used to secure the vehicle, watercraft, aircraft, dwelling or other structure.

{12} It is well-settled that words in a statute take their ordinary meaning absent legislative intent to the contrary. *State ex rel. Maloney v. Sierra*, 1970-NMSC-144, ¶ 42, 82 N.M. 125, 477 P.2d 301. The term "entry" is not defined in Section 30-14-8. The first question we must decide, then, is whether the ordinary meaning of "entry" resolves the statutory interpretation question before us. As described below, ascribing the term "entry" its ordinary meaning does not dispose of this case.

{13} According to one commonly used dictionary, "entry" is "[t]he action of coming or going in." V *The Oxford English Dictionary* 308 (2d ed. 1991). Another dictionary defines "entry" as "[t]he act or an instance of entering." *The American Heritage Dictionary of the English Language* 596 (5th ed. 2011). A leading legal dictionary defines "entry" as "[t]he act, right, or privilege of entering real property." Entry, *Black's Law Dictionary* (10th ed. 2014). All of these definitions give rise to additional and redundant definitional questions: if "entry" is going "in," what is "in"? To state that "entry" is "entering" is no help at all. Additionally, how does one define the boundaries of the space entered? Assuming we can discern what entering is, and "entry" is entering real property, where does the real property begin or end?

{14} We cannot rely on the ordinary usage of the term "entry" to resolve the instant issue of statutory interpretation. The majority opinion of the Court of Appeals appears to have understood this and appropriately concluded that it was necessary to look to the purpose of the breaking-and-entering statute to fashion a functional definition of the term "entry." *Holt*, 2015-NMCA-073, ¶ 9. The majority opinion framed the issue as "whether the space between a window screen and an open window is protected space under the statute." *Id.* This framing of the issue is problematic. It suggests that the space between the screen and the window is a separate and independent dimension of space apart from the further interior space that comprises Stamper's residence. The issue is more straightforward: did Holt's conduct constitute entry into Stamper's residence? To resolve this question we must determine where the boundaries of the home begin and end, and the purposes underlying the breaking-and-entering statute are our guide. *See State v. Rivera*, 2004-NMSC-001, ¶ 12, 134 N.M. 768, 82 P.3d 939 ("Application of the plain meaning rule often does not end the analysis when construing a statute. Rather, the rule is a tool used by courts during the course of seeking and effectuating the legislative intent underlying the statute." (citation omitted)); *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352 ("[Where] one or more provisions giv[e] rise to genuine uncertainty as to what the legislature was trying to accomplish . . . it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute.").

{15} "New Mexico's breaking-and-entering statute is itself grounded in common law burglary." *State v. Rubio*, 1999-NMCA-018, ¶ 13, 126 N.M. 579, 973 P.2d 256 ("'New Mexico's breaking and entering statute is a type of statutory burglary.'" (quoting UJI 14-1410 NMRA committee commentary)). As such, we look to our treatment of the burglary statute to discern the purposes behind the enactment of the breaking-and-entering statute.

{16} Our burglary statute protects the "right to exclude," a right that "has been described as perhaps the most fundamental of all property interests." *State v. Office of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶ 41, 285 P.3d 622 (internal quotation marks and citation omitted). The right to exclude "implies some notion of a privacy interest." *Id.* ¶ 42 (citation omitted). "It is the invasion of privacy and the victim's feeling of being personally violated that is the harm caused by the modern burglar, and the evil that our society is attempting to deter through modern burglary statutes." *Id.* (citation omitted). "The privacy interest that our modern burglary statute protects is related to, though broader than, the security of habitation." *Id.* ¶ 43. That privacy interest extends to all enclosed, private, prohibited spaces. *See id.* ¶¶ 44-45. Thus, an "entry," for purposes of the breaking-and-entering statute, occurs whenever there is an invasion into an enclosed, private, prohibited space. *See* Section 30-14-8(A). But still we must ask how do we define the boundaries of these spaces.

{17} As we explained in *Muqqddin*, "[i]t is the nature of the enclosure that creates the expectation of privacy. Enclosure puts the public on notice." 2012-NMSC-029, ¶ 45. To define the boundaries of enclosures, we embraced the following test: "'[t]he proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions.'" *Id.* (alteration in original) (quoting *People v. Nible*, 247 Cal. Rptr. 396, 399 (Ct. App. 1988), *holding modified by People v. Valencia*, 46 P.3d 920, 924-27 (Cal. 2002)).

{18} Based on the foregoing, we determine that putting one's fingers behind a window screen affixed to a residential dwelling is an intrusion into an enclosed, private, prohibited space and constitutes an "entry" for the purposes of New Mexico's breaking-and-entering statute. Section 30-14-8(A). It is reasonable for the citizens of New Mexico to expect that their window screens afford them protection from unauthorized intrusions. As the *Nible* Court explained, a window screen "is not to be considered as a mere protection against flies, but rather as a permanent part of the dwelling," and, as such, "a reasonable person would believe a window screen provides some protection against unauthorized intrusions." 247 Cal. Rptr. at 399 (internal quotation marks and citation omitted).

{19} The law has long been settled in New Mexico that "entry," for purposes of the burglary statute, occurs where there is "[a]ny penetration, however slight, of the interior space . . . ." *State v. Tixier*, 1976-NMCA-054, ¶ 12, 89 N.M. 297, 551 P.2d 987. In *Tixier*, the Court of Appeals held that a one-half inch penetration into a building by an unidentified instrument was sufficient to constitute an entry. *See id.* In *State v. Sorrelhorse*, 2011-NMCA-095, ¶¶ 4, 8, 150 N.M. 536, 263 P.3d 313, the defendant forcibly entered an apartment; however, the entry consisted of nothing more than the defendant's foot going in "a little way." As noted, our breaking-and-entering statute is intertwined with our burglary statute. The Uniform Jury Instruction for breaking and entering directs that, where "entry is in issue," the court is to instruct the jury that "the least intrusion constitutes an entry." UJI 14-1410 & n.2. To the extent *Sorrelhorse* and *Tixier* suggest that the least intrusion must be into some "interior space," that space simply refers to the area beyond the boundary that a reasonable person would expect to afford them protection from unauthorized intrusions. *See Sorrelhorse*, 2011-NMCA-095, ¶ 7; *Tixier*, 1976-NMCA-054, ¶ 12; *cf. Nible*, 247 Cal. Rptr. at 399 ("[W]hen a screen which forms the outer barrier of a protected structure is penetrated, an entry has been made for purposes of the burglary statute.").

C. Sufficiency of the Evidence

{20} "In reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (citations omitted). In that light, the Court determines whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted). "[T]he [j]ury instructions become the law of the case against which the sufficiency of the evidence is to be measured." *State v. Arrendondo*, 2012-NMSC-013, ¶ 18, 278 P.3d 517 (second alteration in original) (internal quotation marks and citation omitted).

{21} To convict Holt of the breaking-and-entering charge, the jury was instructed that it had to find beyond a reasonable doubt that "1. The defendant entered [Stamper's address] without permission; the least intrusion constitutes an entry; 2. The entry was obtained by the dismantling of a window screen; 3. This happened in New Mexico on or about the 19th day of December, 2010."

{22} The only element for which Holt contends there was insufficient evidence is the entry instruction. Stamper testified that she was two and a half feet from Holt when she saw him removing the screen from her window. She testified that Holt's fingers were over the screen, i.e., beyond the boundary created by the window screen. Holt concedes that Stamper so testified. Therefore, the evidence was sufficient to support the conviction.

III. CONCLUSION

{23} Holt placed his fingers behind Stamper's window screen. The screen marked the outer boundary of Stamper's home. Thus, Holt entered Stamper's residence for purposes of Section 30-14-8(A). Accordingly, we affirm.

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

JUDITH K. NAKAMURA, Justice

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

From the New Mexico Supreme Court

Opinion Number: 2016-NMSC-012

No. S-1-SC-33884 (filed March 3, 2016)

CONCEPTION AND ROSARIO ACOSTA et al.,
Plaintiffs/Intervenors-Petitioners,
v.
SHELL WESTERN EXPLORATION AND PRODUCTION, INC.,
and SHELL OIL COMPANY,
Defendants-Respondents.

ORIGINAL PROCEEDING ON CERTIORARI
FREDDIE JOSEPH ROMERO, District Judge

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Opinion

Charles W. Daniels, Justice

I. INTRODUCTION

{1} From the 1920s through 1993, Defendants Shell Western Exploration and Production, Inc. and Shell Oil Company (collectively, Shell) engaged in oil and gas operations in Hobbs, New Mexico. Environmental contamination from these operations was discovered years later, and over two hundred residents of the contaminated area brought this toxic tort action against Shell for personal injury damages that included systemic lupus erythematosis (lupus) and other autoimmune disorders. Plaintiffs allege that toxic chemicals from crude oil caused their autoimmune disorders. They challenge the district court's exclusion of the scientific evidence and expert testimony they offered in support of this theory, and they challenge the resulting partial summary judgment in favor of Shell.

{2} We hold that the district court applied an incorrect standard of admissibility in its evidentiary rulings and that Plaintiffs' causation evidence should have been admitted. Because summary judgment as to Shell's culpability for the autoimmune disorders was granted to Shell as a result of this improper exclusion of evidence, we reverse the summary judgment and remand to the district court for further proceedings.

II. BACKGROUND

{3} Plaintiffs ar0e residents of the Westgate subdivision in Hobbs. Westgate was built in the late 1970s on and near an unlined storage pit where, during its oil drilling operations, Shell had placed toxic hydrocarbons in direct contact with the earth from the 1940s until Shell covered the pit with "fill dirt"during the 1960s. Shell did not conduct any environmental risk assessment of the pit while it was in operation or after it was covered. Shell never reported releases or leaks of toxic chemicals to the New Mexico Oil Conservation Division and did not notify the Westgate subdivision builder that the hydrocarbon storage pit existed beneath Tasker Drive in the new subdivision.

{4} Shell had conducted oil and gas operations on the Grimes lease. The operations included storing crude oil in the Grimes tank battery, located just west of the Tasker pit. Shell decommissioned the Grimes tank battery in 1993 and turned the Grimes lease over to Altura Energy, Ltd. by 1997. Massive hydrocarbon contamination of the soil, extending sixty-five feet below ground level and into the aquifer, was discovered while dismantling the Grimes tank battery in 1997. Later that year, home builders in Westgate discovered a hard layer of hydrocarbon contaminants one to two feet below the ground surface that varied in thickness from several inches to several feet. Below that layer was oily soil saturated with toxic hydrocarbons. The contamination extended across properties on both sides of Tasker Drive. Parts of the area remained contaminated at the time of trial, despite years of attempted remediation involving removal of hundreds of truckloads of contaminated earth, massive tents, the closure of part of Tasker Drive, noise, foul smells, and dusty air.

{5} Plaintiffs asserted claims against Shell for negligence, strict liability, nuisance, and trespass and alleged that they had suffered injuries from their exposure to contamination from Shell's oil operations. The alleged injuries included lupus and other autoimmune disorders, neurological diseases, and respiratory diseases. Only the claims involving autoimmune disorders are at issue in this appeal.

{6} Plaintiffs sought to offer the expert testimony of Dr. James Dahlgren that Plaintiffs' lupus and other autoimmune disorders were caused or aggravated by long-term exposure to a mixture of benzene and other organic solvents, hydrocarbons such as pristane and phytane, and mercury (the agents), all of which are toxic chemicals found in crude oil. As support for this causation opinion, Dahlgren provided numerous animal and human studies that linked the agents to immune system disruption, autoimmune diseases, and lupus.

{7} Lupus is a complex and potentially fatal inflammatory disorder that can affect various parts of the body, including the joints, skin, kidneys, heart, lungs, blood vessels, and brain. Physicians diagnose lupus when a patient presents with at least four of the American College of Rheumatology's "Eleven Criteria of Lupus." These criteria include rashes, ulcers, arthritis, and immunological disorders.

{8} Humans and mice with lupus also demonstrate a deficit of natural killer cells (NKC) that play a critical role in the normal functioning of a healthy immune system. Dahlgren proffered his own published and peer-reviewed epidemiological study that quantified Plaintiffs' exposure to the agents, gathered Plaintiffs' medical histories, studied their medical conditions, compared these results with those of a control group in a nonexposed community,

and discussed a number of toxicological studies on mice that associated autoimmune disorders with exposure to pristane (the animal studies).

{9} Dahlgren's study obtained medical records and questionnaire responses from all Plaintiffs, samples of blood from a volunteer subgroup of Plaintiffs, samples of house dust from some of their Westgate homes, and analysis results of the air monitored by Shell at multiple locations in the exposed Westgate neighborhood. The sample analysis results were used to measure the presence of the agents in the subjects' environment and in the volunteer subjects themselves. As compared to the analysis results of equivalent samples obtained from volunteers in the control community and from their surroundings, Dahlgren measured elevated levels of pristane and phytane in Plaintiffs' blood samples and elevated levels of mercury, pristane and phytane, benzene, and other hydrocarbons in Plaintiffs' home environments.

{10} Dahlgren also compiled the medical histories and physical examination results from a "volunteer sample of 90 adult[]" Plaintiffs of the Westgate subgroup and from members of the nonexposed control community to compare the occurrence of disease and symptoms in the two communities. He observed an "[i]ncreased prevalence[] of symptoms thought to be predictive of autoimmune disorder" in Plaintiffs' community. The NKC were significantly fewer in the Westgate residents than in residents of the control community while the presence of B-lymphocytes was significantly greater in the Westgate population. The deficit of NKC in combination with elevated B-lymphocytes indicated abnormalities in Plaintiffs' immune systems.

{11} Dahlgren's study of Plaintiffs "by questionnaire and medical record review" identified thirteen diagnosed cases of lupus on two blocks in the area of the Westgate neighborhood on or near the Tasker pit. In the Westgate community, diagnoses of lupus and rheumatic disease, another autoimmune disorder, were ten times those in the control community. Plaintiffs "got the diseases . . . after moving into the neighborhood," and many of them reported a lessening or even a total remission of the symptoms after leaving the Westgate neighborhood. To explain the prevalence of these diseases in Westgate compared to the unexposed control community, Dahlgren concluded that the agents caused the statistically significant elevation in occurrences of autoimmune disorders.

{12} Dahlgren's study acknowledged that it could not point definitively to any human cases of pristane-induced lupus, but it referred to a number of other studies demonstrating that mercury is "conclusively known" to cause immune system disruption in animals and humans and that benzene adversely impacts the immune system in humans. Dahlgren also referred to at least thirteen animal studies establishing that pristane exposure in mice induces autoimmunity and lupus, one study stating that pristane could be involved in some cases of human lupus, and one study indicating that phytane would have a similar effect due to its comparable molecular structure and toxicity.

{13} In his affidavit, Dahlgren asserted that his study was conducted pursuant to the methodological standards set by the Federal Judicial Center's *Reference Manual on Scientific Evidence* (2d ed. 2000). Dahlgren's study included (1) an analysis of Plaintiffs' medical conditions through patient history, medical records, physical examination, and diagnostic testing, (2) an analysis of exposure information and the temporal relationship between exposure and illness, (3) a review of the medical and scientific evidence to determine whether the exposure can cause the illness ("general causation"), and (4) an application of the general knowledge to the specific circumstances of the case to determine whether the exposure did cause the illness, including consideration of other possible causes ("specific causation").

{14} Dahlgren presented evidence that extrapolation of the results of the animal studies referenced in his study provided the scientifically valid basis for his causation opinion in this case. He determined that the dose of pristane Plaintiffs received from prolonged household exposure, adjusted for the weight of a human, was within the range of the potentially "harmful dose" determined in the animal studies. He discussed several other studies of oilfield outbreaks of autoimmune disease, one of which cited a rate of lupus that was well above the national rate but only one eighth the rate of lupus found in Westgate.

{15} Dahlgren also ruled out several possible alternative explanations for the elevated occurrence of autoimmune disorders in Westgate, such as genetic susceptibility or drug-induced autoimmunity. He then hypothesized that the agents found in the Westgate community, including pristane, phytane, benzene, and mercury, have a synergistic effect and are more toxic in combination than their additive, comparable, individual toxicities. He cited the *Reference Guide on Toxicology* and the Environmental Protection Agency guidelines regarding the concerted effect of mixtures of toxic agents on the body. *See* Bernard D. Goldstein & Mary Sue Henifin, *Reference Guide on Toxicology*, *in* Fed. Jud. Ctr., *Reference Manual on Scientific Evidence* 401, 429, 436 (2d ed. 2000); Guidelines for the Health Risk Assessment of Chemical Mixtures, 51 Fed. Reg. 34014, 34014-34022 (Sept. 24, 1986). Even Shell's expert agreed that it is important for an expert to consider how multiple chemicals interact and to use scientific judgment to determine whether they interact.

{16} Dahlgren considered all of this evidence and more before concluding that Plaintiffs' inhalation, ingestion, and absorption of the combination of various toxins from Shell's oil and gas operations caused or aggravated their lupus and other autoimmune disorders.

{17} The district court excluded Dahlgren's study of blood pristane data and his determination of Plaintiffs' cumulative dose from prolonged exposure as unreliable, and Plaintiffs did not challenge those rulings on appeal. But the district court also excluded the animal studies and Dahlgren's study itself as not relevant, reasoning they failed to show general causation between the mixture of identified chemicals and lupus. Contrary to Dahlgren's affidavit, the district court found that he had not considered the dose-response relationship necessary for inferring causation in humans from toxicological results in animals and stated that the animal studies were "so dissimilar to the facts presented [t]herein that the [district c]ourt d[id] not find them relevant." It concluded that Dahlgren's study had "limited value as a basis for a causal connection opinion" because it was a "hypothetical" study "admittedly done only for comparison purposes" and therefore that it had failed to "bridge the gap from association to causation" and could not stand alone to support Plaintiffs' claims of a causal relationship between the alleged mixture and lupus. As a result, the district court excluded Dahlgren's causation opinion due to "insufficient" evidentiary support and, based on the consequential lack of causation evidence, granted Shell's motion for summary judgment on Plaintiffs' claims for damages from lupus and other autoimmune disorders.

{18} Plaintiffs appealed the grant of summary judgment, challenging the district court's exclusions of the animal studies and Dahlgren's study based on relevance and its exclusion of Dahlgren's causation opinion for "insufficient" evidence. *Acosta v. Shell W. Expl. & Prod., Inc.*, 2013-NMCA-009, ¶¶ 1, 12, 293 P.3d 917. The Court of Appeals affirmed the district court's grant of summary judgment, holding that the district court did not abuse its discretion when it concluded that Dahlgren's study and the animal studies were "not sufficient" in either bridging the analytical gap from association to causation or in establishing causation between the agents and Plaintiffs' lupus and autoimmune disorders. *Id.* ¶¶ 27, 30, 33.

{19} The Court of Appeals interpreted the district court's evidentiary ruling that Dahlgren's study did not "fit" the case as an issue of relevance. *See id.* ¶¶ 20, 28 (stating that "the district court specifically chose not to address whether Dr. Dahlgren's methodology was reliable" and instead "excluded Dr. Dahlgren's epidemiologic study and his opinion testimony on the basis of relevance"). The Court of Appeals agreed with the district court, stating that "Plaintiffs could not articulate any study, other than Dr. Dahlgren's own study of the Westgate population, that would support the opinion that the petrochemical mixture caused the lupus and other autoimmune disorders identified in this case" and that "Dr. Dahlgren's study is only relevant to show a generally higher incidence of certain medical disorders in two community groups but is insufficient to establish a general causation link to lupus and other autoimmune disorders." *Id.* ¶¶ 26, 32. We granted certiorari and now reverse the Court of Appeals and the district court. *See Acosta v. Shell W.*, 2012-NMCERT-012.

III. STANDARD OF REVIEW

{20} Generally, the admission or exclusion of evidence is reviewed on appeal for abuse of discretion. *State v. Downey*, 2008-NMSC-061, ¶ 24, 145 N.M. 232, 195 P.3d 1244. But in this case, the threshold question is whether the district court applied the correct evidentiary standard, a legal question we review de novo. *State v. Torres*, 1999-NMSC-010, ¶ 28, 127 N.M. 20, 976 P.2d 20. We also review de novo the related inquiry of whether the district court properly granted Shell's motion for partial summary judgment. *See Smith v. Durden*, 2012-NMSC-010, ¶ 5, 276 P.3d 943 ("We view the facts in the light most favorable to the party opposing the summary judgment and indulge all reasonable inferences in favor of a trial on the merits."). Summary judgment is appropriate only where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Rule 1-056(C) NMRA.

IV. DISCUSSION

{21} "Admissibility is a minimal standard for individual items of evidence, including expert opinions." *State v. Consaul*, 2014-NMSC-030, ¶ 67, 332 P.3d 850. "[T]o be admissible an item of evidence need only add something to the debate; it need only have a 'tendency to make a fact more or less probable than it would be without the evidence.'" *Id.* (quoting Rule 11-401 NMRA).

A. The Admissibility of Expert Testimony Under New Mexico Law

{22} The admissibility of expert testimony in New Mexico is guided by Rule 11-702 NMRA, which sets out three requirements: "(1) that the expert be qualified; (2) that the testimony be of assistance to the trier of fact; and (3) that the expert's testimony be about scientific, technical, or other specialized knowledge with a reliable basis." *Downey*, 2008-NMSC-061, ¶ 25.

{23} The district court found that Dahlgren was qualified to provide opinions regarding specific and general causation in this case. Further, the district court "[d]isregard[ed] the questions of invalid data, unreliable methodology and the other issues raised by Shell," focusing instead on the second admissibility requirement of whether Dahlgren's testimony would assist the trier of fact. This requirement "goes primarily to relevance" as "[e]xpert testimony which does not relate to any issue in the case is not relevant and, ergo, nonhelpful." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591 (1993) (internal quotation marks and citation omitted).

{24} Shortly after *Daubert*, this Court stated that the "pertinent inquiry" for determining whether expert testimony will assist the trier of fact under the second requirement of Rule 11-702 "must focus on the proof of reliability of the scientific technique or method upon which the expert testimony is premised." *State v. Alberico*, 1993-NMSC-047, ¶ 53, 116 N.M. 156, 861 P.2d 192. A court must determine whether the proffered expert testimony is "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *Downey*, 2008-NMSC-061, ¶ 30 (internal quotation marks and citation omitted). "[T]he scientific methodology [must] 'fit[]' the facts of the case and thereby prove[] what it purports to prove." *Id.* The inquiry is "a flexible one," and its focus "must be solely on principles and methodology, not on the conclusions that they generate." *Daubert*, 509 U.S. at 594-95; *see also Alberico*, 1993-NMSC-047, ¶ 72 ("There is no requirement that a scientific technique or method prove conclusively what it purports to prove."). As the United States Supreme Court emphasized, "it would be unreasonable to conclude that the subject of scientific testimony must be 'known' to a certainty; arguably, there are no certainties in science." *Daubert*, 509 U.S. at 590. Rather, "the scientific procedure which supports the testimony [must be] capable of supporting opinions based upon a reasonable probability rather than conjecture." *Alberico*, 1993-NMSC-047, ¶ 98 (internal quotation marks and citation omitted).

{25} Since *Daubert*, the federal courts have continued to refine the standards for admissibility of expert testimony, but New Mexico has not followed these changes in lockstep with the federal courts. In *Kumho Tire Co. v. Carmichael*, the United States Supreme Court extended a trial court's gate-keeping function under *Daubert* to include expert testimony based on nonscientific experience and training. *See Kumho Tire Co.*, 526 U.S. 137, 151 (1999). Yet, in *Torres*, this Court limited application of the *Daubert*/*Alberico* requirements to expert testimony that requires scientific knowledge. *See Torres*, 1999-NMSC-010, ¶ 43. Accordingly, committee commentary on Rule 11-702 warns of the differences between federal and New Mexico law in applying the *Daubert* requirements. *See* Rule 11-702 comm. cmt. ("New Mexico has not adopted the changes made to the federal rule in 2000 to incorporate the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in light of the differences between federal law and New Mexico law regarding whether *Daubert* applies to nonscientific testimony."); *see also Banks v. IMC Kalium Carlsbad Potash Co.*, 2003-NMSC-026, ¶ 19, 134 N.M. 421, 77 P.3d 1014 (observing that "after *Kumho Tire Co.*, we apply *Daubert* somewhat differently than do the federal courts").

{26} In *General Electric Co. v. Joiner*, the United States Supreme Court affirmed a district court's determination to exclude an expert's causation testimony on grounds of relevance, noting that "[a] court may

conclude that there is simply too great an analytical gap between the data and the opinion proffered." 522 U.S. 136, 146 (1997). In the case at bar, both the district court and the Court of Appeals cited this *Joiner* proposition as a key reason for excluding Dahlgren's general causation testimony pertaining to Plaintiffs' development of lupus and other autoimmune conditions and determined that the analytical gap between the evidence presented and the inference drawn on the ultimate issue of causation was too wide. *See Acosta*, 2013-NMCA-009, ¶¶ 23-24, 27.

{27} But New Mexico has never adopted the *Joiner* rule that a judge may reject expert testimony where the "analytical gap" between the underlying evidence and the expert's conclusions is "too great," *see* 522 U.S. 146, and we refuse to do so in this case. Historically, this Court has placed great value on allowing a jury to hear evidence and decide a case on the merits. *See, e.g.*, *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶¶ 10-11, 335 P.3d 1243 (stating that this Court has maintained New Mexico's notice pleading requirements based on our "policy of avoiding insistence on hypertechnical form and exacting language" and on a rationale of resolving disputes on their merits); *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 8, 148 N.M. 713, 242 P.3d 280 ("New Mexico courts, unlike federal courts, view summary judgment with disfavor, preferring a trial on the merits.").

{28} *Joiner* is inconsistent with long-standing New Mexico law that leaves credibility determinations and weighing of the evidence to the trier of fact. *See, e.g.*, *State v. Hughey*, 2007-NMSC-036, ¶¶ 15, 17, 142 N.M. 83, 163 P.3d 470 (concluding that evidentiary rulings based on witness credibility usurp the role of the jury and that doubt as to scientific conclusions should be resolved not by exclusion but by cross-examination, rebuttal evidence, and argumentation). "Given the capabilities of jurors and the liberal thrust of the rules of evidence, we believe any doubt regarding the admissibility of scientific evidence should be resolved in favor of admission, rather than exclusion." *Lee v. Martinez*, 2004-NMSC-027, ¶ 16, 136 N.M. 166, 96 P.3d 291. "'Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.'" *Id.* ¶ 48 (quoting *Daubert*, 509 U.S. at 596).

B. Proof of Causation in Toxic Tort Litigation

{29} Although litigation of toxic torts is often complex, this does not alter the district court's gatekeeping function. The crucial issue in this case is causation. To prove causation in a toxic tort case, a plaintiff must first show that a suspected cause actually "is capable of causing a particular injury or condition in the general population." *Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 881 (10th Cir. 2005). After establishing such general causation, the plaintiff must then demonstrate specific causation: that the suspected cause did actually cause the plaintiff's injury. *Id.* Because the district court determined that Dahlgren's study and the proffered testimony would not assist the trier of fact in determining whether the chemical mixture at issue in this case is capable of causing lupus or other autoimmune disorders, it never reached the question of specific causation.

{30} "When the connection between an agent and disease is strong and well documented, general-causation issues fade into the background." Restatement (Third) of Torts: Physical and Emotional Harm § 28 cmt. c(3) (Am. Law Inst. 2010). But demonstrating that a chemical is capable of causing a particular injury in the general population is often difficult in first-exposure cases where it has not been the subject of extensive scientific analysis.

{31} We agree with other jurisdictions that "[t]he first several victims of a new toxic tort should not be barred from having their day in court" simply because scientific analysis on a particular chemical cause has not yet been fully developed. *Turner v. Iowa Fire Equip. Co.*, 229 F.3d 1202, 1209 (8th Cir. 2000); *see also Best v. Lowe's Home Ctrs., Inc.*, 563 F.3d 171, 180-81 (6th Cir. 2009) ("[T]here is no requirement that a medical expert must always cite published studies on general causation in order to reliably conclude that a particular object caused a particular illness." (internal quotation marks and citation omitted)); *Norris*, 397 F.3d at 882 ("In cases where there is no epidemiology challenging causation available, epidemiological evidence would not necessarily be required.").

{32} In some cases where epidemiology is absent, jurists and scientists have employed the nonformulaic guidelines of Sir Austin Bradford Hill to assess whether an epidemiological study's finding of an association between a substance and an injury supported an inference of causation. Michael D. Green, D. Michal Freedman, & Leon Gordis, *Reference Guide on Epidemiology*, in Fed. Jud. Ctr., *Reference Manual on Scientific Evidence* 599-600 & 599 n.141 (3d ed. 2011). The Bradford Hill factors that guide experts in making judgments about causation include: (1) temporal relationship, (2) strength of the association, (3) dose-response relationship, (4) replication of the findings, (5) biological plausibility (coherence with existing knowledge), (6) consideration of alternative explanations, (7) cessation of exposure, (8) specificity of the association, and (9) consistency with other knowledge. *Id.* at 600. These criteria are nonexclusive, and no one factor is dispositive in the general causation inquiry. *See id.*

{33} In essence, the Bradford Hill factors measure the ability of an epidemiological study to determine whether an association found by the study is sufficient to satisfy an ultimate question of fact regarding causation or whether the association is merely spurious. *See Milward v. Acuity Speciality Prods. Grp., Inc.*, 639 F.3d 11, 17 (1st Cir. 2011) (describing the Bradford Hill factors as a scientific method of weighing the evidence to make causal determinations, involving "a mode of logical reasoning often described as 'inference to the best explanation.'" (citation omitted)); Green et al., *supra* at 598 ("[E]pidemiology cannot prove causation; rather, causation is a judgment for epidemiologists and others interpreting the epidemiologic data."). As the First Circuit noted,"[i]n this mode of reasoning, the use of scientific judgment is necessary," and "[t]he fact that the role of judgment in [this] approach is more readily apparent than it is in other methodologies does not mean the approach is any less scientific." *Milward*, 639 F.3d at 18.

{34} While the relevance of a particular methodology depends on the relationship of the methodology to the facts and circumstances of each case, *see Downey*, 2008-NMSC-061, ¶ 30, application of the Bradford Hill factors in assessing general causation is widely accepted. *See, e.g.*, Green et al., *supra* at 598-606 (describing application of the Bradford Hill criteria in determining whether an established association between exposure to an agent and development of a disease is causal); Restatement (Third) of Torts: Physical and Emotional Harm § 28 cmt. c(3) (Am. Law Inst. 2010) (describing the Bradford Hill criteria for assessing whether an association is causal in an analysis of general

causation); Ian S. Spechler, *Physicians at the Gates of Daubert: A Look at the Admissibility of Differential Diagnosis Testimony to Show External Causation in Toxic Tort Litigation*, 26 Rev. Litig. 739, 742 (2007) ("General causation testimony should rely on hard science, and courts should evaluate the reliability of that science under the Bradford Hill criteria.").

C. Dahlgren's Testimony and the Studies He Relied on Were Probative of Causation and Should Have Been Admitted

{35} Dahlgren's causation opinion, his study, and the animal studies it relied on are relevant and admissible if they demonstrate a valid scientific relationship that is probative of causation, regardless of their sufficiency to sustain Plaintiffs' entire burden of proof. *See Ambrosini v. Labarraque*, 101 F.3d 129, 135 (D.C. Cir. 1996) ("The dispositive question [concerning relevance] is whether the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue, not whether the testimony satisfies the plaintiff's burden on the ultimate issue at trial." (internal quotation marks and citation omitted)).

{36} Relying on *Joiner*, the district court excluded the animal studies because it found them "not . . . relevant" as "studies . . . so dissimilar to the facts" associated with Plaintiffs' exposures, and it emphasized the need to consider the "dose-response relationship" when "inferring human causation from animal studies." The district court concluded that in the absence of such "scientifically reliable evidence . . . to support general causation between the [agents] and lupus . . . , the study does not 'fit' any issue to be presented to the jury, and is inadmissible."

{37} The science of toxicology provides evidence that a certain dose of a particular chemical causes particular effects in the bodies of humans or other animals. *See* Bernard D. Goldstein & Mary Sue Henifin, *Reference Guide on Toxicology*, in Fed. Jud. Ctr., *Reference Manual on Scientific Evidence* 633, 635-37, 641 (3d ed. 2011) (describing dose-response as how the response to the chemical varies with changing dose of the chemical). A dose-response relationship, while not essential evidence of a causal relationship between an agent and disease, is considered strong evidence of a causal relationship. *See* Green et al., *supra* at 603. In particular, consideration of a dose-response relationship is important when inferring human causation from animal studies. *See id.* at 563.

{38} To support Dahlgren's inference from the animal studies that the agents caused Plaintiffs' illnesses in this case, the results of the animal studies needed to be adjusted by extrapolation to humans. *See* Goldstein & Henifin, *Reference Guide on Toxicology*, in Fed. Jud. Ctr., *Reference Manual on Scientific Evidence* at 646, 661-63 (3d ed. 2011) (describing scientific issues involved with extrapolating the results of an animal study to humans). Contrary to the assertions of the lower courts, Dahlgren presented evidence that the results of the animal studies adjusted by extrapolation to the humans in this case could provide a scientifically valid basis for his inference of causation in Plaintiffs. His methodology reflected that the harmful dose of pristane the mice received, adjusted for the weight of a human, was comparable to Plaintiffs' dose determined by their daily inhaled exposure (dose per day or concentration), adjusted for the prolonged duration of that exposure to convert to dose. *See id.* at 638 & n.12 ("Dose is a function of both concentration and duration."), 681 (defining dose as "[a] product of . . . the concentration of a chemical . . . agent and the duration . . . of exposure"). This result of Dahlgren's extrapolation from the animal study is evidence that supports an inference of causation. The credibility of the extrapolation and the weight it should be accorded are questions for the jury.

{39} The district court's basis for excluding Dahlgren's study was the study's "fail[ure] to bridge the gap from association to causation." In his study, Dahlgren collected medical and environmental data from the Westgate Plaintiffs and their neighborhood and from the unexposed control community subjects and their neighborhood. He concluded that Plaintiffs' community showed both higher levels of the toxic agents at issue and a dramatic prevalence of lupus and symptoms of autoimmune disease compared to the control community. An epidemiological study compiles information on the determinants of a disease in a population to establish a correlation (or "association") between a toxic agent and the disease and to map the "incidence, distribution, and etiology of [the] disease in human populations." Green et al., *supra* at 551, 623.

{40} Having established an association between the chemical exposure and Plaintiffs' diseases, Dahlgren then demonstrated, consistent with the widely accepted Bradford Hill guidelines, that the association revealed by his epidemiological study was causal. Consistent with expectations of the dose-response in a causal relationship, his study found that the occurrences of lupus and other autoimmune diseases in the exposed Plaintiffs significantly exceeded the occurrences in the unexposed control group and that the symptoms manifested after Plaintiffs' exposures and lessened or disappeared if Plaintiffs moved away from the area. Dahlgren extrapolated the harmful dose of pristane found to induce lupus in mice to a human equivalent and determined that Plaintiffs had received a dose within that range. In addition to the animal studies involving pristane, Dahlgren cited numerous other studies where environmental contaminants consisting of the agents at issue here or similar chemicals were associated with clusters of autoimmune disorders believed to be environmentally induced. He provided a plausible biological basis for the theory that environmental toxins could induce autoimmune disease by referring to several other studies that had found such correlations. He summarized the current knowledge that benzene and mercury, two of the agents at issue here, adversely affect the human immune system, and he reviewed the studies showing that pristane triggers the formation of lupus-specific autoantibodies in mice. Dahlgren discussed alternative explanations for the association between the agents and Plaintiffs' autoimmune disorders, such as genetic susceptibility or drug-induced autoimmune disorders, and ruled them out. Having performed his study consistent with the Bradford Hill guidelines, Dahlgren was then able to use his expert judgment to assess whether the associations revealed by his own study, the animal studies, and other published studies regarding chemical exposure provided reliable support for an inference of causation in humans. Any question regarding credibility of his judgment or interpretation is proper for the trier of fact to resolve.

{41} When the district court found that Dahlgren's study "fail[ed] to bridge the gap from association to causation," it improperly blurred the line between the district court's province to evaluate the reliability of Dahlgren's methodology and the jury's province to weigh the strength of Dahlgren's conclusions. *See Ambrosini*, 101 F.3d at 141 ("By attempting to evaluate the credibility of opposing experts and the persuasiveness of competing scientific studies, the district court conflated the questions of the admissibility of expert

testimony and the weight appropriately to be accorded such testimony by a fact finder."). In doing so, "the trial court failed to distinguish between the threshold question of admissibility of expert testimony and the persuasive weight to be accorded such testimony by a jury." *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1228 (9th Cir. 1998). In *Kennedy*, the court focused on the methodology an expert applied to determine whether a medical product was capable of causing autoimmune diseases and stated, "The fact that a cause-effect relationship between [the agent] and lupus in particular [had] not been conclusively established [did] not render [the expert's] testimony inadmissible." *Id.* at 1230. Because the expert "set forth the steps he took in arriving at his conclusion in his deposition" and used "analogical reasoning . . . based on objective, verifiable evidence and scientific methodology of the kind traditionally used by" experts in his field, the court concluded that the proffered testimony was supported by scientific evidence and would assist the trier of fact in weighing the expert's testimony against opposing evidence and in making a judgment about causation. *Id.* at 1230-31.

{42} In this case, Dahlgren similarly set forth the steps he took in arriving at his conclusions. His reasoning was based on scientific methodology of the kind traditionally used by experts addressing causation in toxicological epidemiology. We conclude that the methodology of Dahlgren's study supports a valid scientific inference that is probative of causation, even if it does not conclusively establish that the specific chemicals at issue here, the agents, can cause lupus or other autoimmune disorders. Accordingly, Dahlgren's study and his causation testimony should have been admitted.

D. Summary Judgment Was Improperly Granted

{43} Based on an improper conclusion that Plaintiffs' general causation evidence was inadmissible, the district court granted partial summary judgment to Defendants on Plaintiffs' claims concerning lupus and other autoimmune disorders. Because we reverse that determination of inadmissibility, we reverse the grant of summary judgment as the evidence creates a genuine issue of material fact that precludes summary judgment. *See* Rule 1-056(C).

V. CONCLUSION

{44} We reverse the district court's exclusion of Dahlgren's expert causation testimony, his study, and the animal studies on which his study relied. We also reverse the summary judgment granted on the basis of those exclusions. We remand to the district court for proceedings consistent with this opinion.

{45} **IT IS SO ORDERED.**
CHARLES W. DANIELS, Justice

WE CONCUR:
BARBARA J. VIGIL, Chief Justice
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
JUDITH K. NAKAMURA, Justice, not participating

From the New Mexico Supreme Court

Opinion Number: 2016-NMSC-013

No. S-1-SC-34726 (filed March 3, 2016)

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE FOR MORGAN STANLEY ABS CAPITAL 1 INC. TRUST 2006-NC4,
Plaintiff-Petitioner,
v.
JOHNNY LANCE JOHNSTON,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
MANUEL I. ARRIETA, District Judge

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Opinion

Edward L. Chávez, Justice

{1} This case requires us once again to examine traditional rules of jurisdiction and standing in the context of modern mortgage foreclosure actions. In *Bank of New York v. Romero*, 2014-NMSC-007, ¶¶ 19-38, 320 P.3d 1, we concluded that the plaintiff did not establish standing to foreclose on the defendant's home when it could not prove that it had the right to enforce the promissory note on the mortgage at the time it filed suit. *See* NMSA 1978, § 55-3-301 (1992) (defining " '[p]erson entitled to enforce' [a negotiable] instrument"). In the present case, Petitioner Deutsche Bank National Trust Company, acting as trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2006-NC4 (Deutsche Bank), filed a complaint seeking foreclosure on the home of Respondent Johnny Lance Johnston (Homeowner) and attached to its complaint an unindorsed note, mortgage, and land recording, both naming a third party as the mortgagee. Deutsche Bank later provided documentation and testimony showing that (1) a document assigning the mortgage to Deutsche Bank was dated *prior* to the filing of the complaint but recorded *after* the complaint was filed; (2) Deutsche Bank possessed a version of the note indorsed in blank at the time of trial; and (3) a servicing company began servicing the loan to Homeowner on behalf of Deutsche Bank prior to the filing of the complaint. After receiving this evidence, the district court found that Deutsche Bank had standing to foreclose on Homeowner's property. The Court of Appeals disagreed, opining that "standing is a jurisdictional prerequisite for a cause of action," and concluded that the evidence provided by Deutsche Bank did not establish its standing as of the time it filed its complaint. *Deutsche Bank Nat'l Tr. Co. v. Beneficial N.M. Inc.*, 2014-NMCA-090, ¶¶ 8, 13-15, 335 P.3d 217, *cert. granted*, 2014-NMCERT-008. Although we hold that standing is not a jurisdictional prerequisite in this case, we nonetheless affirm the Court of Appeals's ultimate conclusion that the evidence provided by Deutsche Bank did not establish standing.

I. BACKGROUND

{2} On January 31, 2006, Homeowner refinanced his home by executing a promissory note made payable to New Century Mortgage Corporation (New Century). The note was secured by a mortgage on Homeowner's property in Las Cruces. Homeowner defaulted on his loan payments beginning in August 2008, and received a letter notifying him of his default dated October 12, 2008 from American Servicing Company (ASC), a loan servicing company.

{3} On February 24, 2009, Deutsche Bank filed a complaint for foreclosure. Deutsche Bank attached two exhibits to its complaint: (1) a January 31, 2006 promissory note made payable to New Century which did not contain an indorsement; and (2) a January 31, 2006 mortgage on Homeowner's property recorded in the Doña Ana County Office of the County Clerk on February 7, 2006 by New Century, which the County Clerk also names as the mortgagee. In its complaint, Deutsche Bank alleged that it owned the mortgage through assignment and was a holder in due course of the note. Homeowner "acknowledge[d]" this allegation in his pro se answer to Deutsche Bank's complaint.

{4} On August 11, 2010, Homeowner filed an amended motion to dismiss for lack of standing, contending that Deutsche Bank "did not show ownership of the note, nor a security interest," and that it provided no other evidence that it was the holder of the note as of the date that it filed its complaint. Deutsche Bank's response to Homeowner's motion to dismiss attached an assignment of mortgage document dated February 7, 2006 and recorded in Doña Ana County on December 9, 2009

as proof that Deutsche Bank held the note at the time it filed the complaint.[1]

{5} The district court set the hearing on Homeowner's motion to dismiss for the same day as trial. After concluding that Homeowner's arguments on the motion to dismiss would be similar to his arguments on the merits, the district court took Homeowner's motion under advisement and agreed to consider it during the bench trial on the merits.

{6} At trial, Deutsche Bank offered further evidence to prove that it owned the note. First, Deutsche Bank proffered a version of the January 31, 2006 note that was indorsed in blank by New Century. This new note was identical to the original note attached to Deutsche Bank's complaint except that the note attached to the complaint did not contain any indorsement. Second, Deutsche Bank offered the testimony of Erin Hirzel Roesch, a litigation specialist for the loan servicing company. Ms. Roesch was employed by Wells Fargo Bank, NA, which she testified is effectively the same company as ASC. Ms. Roesch testified based on her review of the file on Homeowner's mortgage. She testified that because the proffered note was indorsed in blank, Deutsche Bank, as holder of the note, could act as the lender of the note; that Deutsche Bank was assigned the mortgage on February 7, 2006; and that her company began servicing the loan in July 2006.

{7} The district court concluded that Deutsche Bank was "the current holder of the Note and Mortgage." The court also concluded that Homeowner was "in default in payment of the principal and interest on the Note and Mortgage described in [Deutsche Bank's] Complaint." Based on these findings, the district court then held that Deutsche Bank was entitled to a foreclosure judgment on Homeowner's property.

{8} The Court of Appeals reversed and remanded to the district court "with instructions to vacate its judgment of foreclosure" because Deutsche Bank lacked standing to foreclose. *Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶¶ 15, 18. The Court of Appeals reasoned that under *Bank of New York*, 2014-NMSC-007, ¶ 17, "standing is a jurisdictional prerequisite for a cause of action and must be established at the time the complaint is filed." *Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶ 8. Accordingly, "to establish standing to foreclose, a lender must show that, *at the time it filed its complaint for foreclosure*, it had: (1) a right to enforce the note, which represents the debt, and (2) ownership of the mortgage lien upon the debtor's property." *Id.* (emphasis added). In practical terms, the Court of Appeals's decision requires a party seeking to establish its right to enforce a note to either produce an original or properly indorsed note with its complaint for foreclosure or to later introduce a dated indorsed note executed prior to the initiation of the foreclosure suit. *See id.* ¶ 12. The Court concluded that in this case, "neither the unindorsed copy of the note produced with the foreclosure complaint nor the indorsed note produced at trial were sufficient to show that [Deutsche Bank] held the note when it filed the complaint" and that the assignment of mortgage proffered by Deutsche Bank had "no bearing on the validity or the timing of the note's indorsement." *Id.* ¶¶ 13-14.

{9} We granted Deutsche Bank's petition for certiorari to review (1) whether standing is jurisdictional in mortgage foreclosure cases; (2) whether the Court of Appeals erred in interpreting *Bank of New York* to require a plaintiff who presents an original, indorsed-in-blank promissory note at trial to establish that it is the holder of the note by presenting an indorsement dated prior to the filing of the complaint or by attaching an indorsed copy of the note to the complaint; and (3) whether the Court of Appeals erred by concluding that an assignment of mortgage dated prior to the filing of the complaint cannot by itself establish standing. While we take this opportunity to clarify that standing is not a jurisdictional prerequisite in mortgage foreclosure cases in New Mexico, we otherwise affirm the result reached by the Court of Appeals based on principles of prudential standing.

II. DISCUSSION

A. The Doctrine of Standing in New Mexico

{10} Deutsche Bank challenges the Court of Appeals's statement that "standing is a jurisdictional prerequisite for a cause of action." *Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶ 8 (citing *Bank of N.Y.*, 2014-NMSC-007, ¶ 17). Deutsche Bank accurately observes that our jurisprudence has previously recognized that standing is jurisdictional in the context of statutory causes of action rather than all causes of action. *Bank of N.Y.*, 2014-NMSC-007, ¶ 17. With that distinction in mind, Deutsche Bank then argues that the cause of action to enforce a promissory note existed at common law and was not created by statute. Deutsche Bank concludes that standing in this case therefore cannot be jurisdictional. We agree with Deutsche Bank that standing is not jurisdictional in this case because the cause of action to enforce a promissory note was not created by statute. Therefore, only prudential rules of standing apply to the claims in this case.

{11} As a general rule, "standing in our courts is not derived from the state constitution, and is not jurisdictional." *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9, 144 N.M. 471, 188 P.3d 1222. However, " '[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.' " *Id.* ¶ 9 n.1 (quoting *In re Adoption of W.C.K.*, 2000 PA Super 68, ¶ 6, 748 A.2d 223 (Pa. Super. Ct. 2000), *abrogated by In re Nomination Petition of de Young*, 903 A.2d 1164, 1168, 1168 n.5 (Pa. 2006)). In light of the conclusions reached by the Court of Appeals in this case, *Deutsche Bank National Trust Co.*, 2014-NMCA-090, ¶ 8, we take this opportunity to clarify our statements in *Bank of New York*, 2014-NMSC-007, ¶ 17, and hold that mortgage foreclosure actions are not created by statute. Therefore, the issue of standing in those cases cannot be jurisdictional.

{12} The cause of action to enforce a promissory note originated at common law and already existed when New Mexico adopted the Uniform Commercial Code (UCC) in 1961. *See Kepler v. Slade*, 1995-NMSC-035, ¶ 14, 119 N.M. 802, 896 P.2d 482 ("Under the common law rule, an action to foreclose on real property is separate and distinct from an action to recover on an underlying promissory note."); *Edwards v. Mesch*, 1988-NMSC-085, ¶ 4, 107 N.M. 704, 763 P.2d 1169 ("The rights of a holder of a promissory note were discussed by this court as early as [1853]."). New Mexico's adoption of the UCC did not

[1]Deutsche Bank's response to Homeowner's motion to dismiss claimed that the assignment of mortgage was recorded on January 9, 2009, which would have been prior to its February 24, 2009 complaint. However, Deutsche Bank did not provide any evidence establishing that the assignment was recorded on that date.

create the rights and remedies associated with actions to enforce promissory notes, but instead merely codified those rights and clarified their scope in the interest of attaining uniformity with other states that had adopted the UCC. *See Males v. W.E. Gates & Assocs.*, 504 N.E.2d 494, 495 (Ohio Misc. 2d 1985) ("[A]ctions on promissory notes are rooted in the common law of contracts. The Uniform Commercial Code represents the fifty states' effort toward achieving uniformity and certainty in commercial transactions. Thus, this action is not a representative of a right created by statute, such as a wrongful death action."). *See also* 1A C.J.S. Actions § 37 (2015) (noting that the UCC "has been held to displace common-law remedies even though *it does not create new causes of action*, where it provides a comprehensive remedy" (emphasis added) (footnotes omitted)). Indeed, the UCC recognizes the continuing vitality of common law "principles of law and equity" which supplement its provisions. Section 55-1-103(b). *See also Venaglia v. Kropinak*, 1998-NMCA-043, ¶¶ 11-12, 125 N.M. 25, 956 P.2d 824 ("There are two principal sources of law governing the rights and duties of the parties with respect to a guarantee of a promissory note. One is Article 3 of the Uniform Commercial Code. . . . The other is the common law."). Thus, an action to enforce a promissory note fell within the district court's general subject matter jurisdiction in this case because it was not created by statute.

{13} When standing does not act as a jurisdictional threshold, as in this case, prudential considerations govern our analysis. *See ACLU of N.M.*, 2008-NMSC-045, ¶ 9. While New Mexico courts are not subject to the jurisdictional limitations imposed by Article III, Section 2 of the United States Constitution, the standing jurisprudence in our courts has "long been guided by the traditional federal standing analysis." *ACLU of N.M.*, 2008-NMSC-045, ¶ 10. "Thus, at least as a matter of judicial policy if not of jurisdictional necessity, our courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court's authority to decide the merits of a case." *Id.*; *see also Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008) ("To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling."). However, it is well settled that New Mexico courts are also not bound by the limitations on standing that are constitutionally imposed on federal courts and we have occasionally granted standing when it would not otherwise exist under the federal analysis, most notably in instances where a case presents a "question of fundamental importance to the people of New Mexico." *See, e.g.*, *Baca v. N.M. Dep't of Pub. Safety*, 2002-NMSC-017, ¶ 4, 132 N.M. 282, 47 P.3d 441 (holding that validity of the Concealed Handgun Carry Act raised important constitutional question sufficient to ignore normal limitations on standing (internal quotation marks and citation omitted)); *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶¶ 1-2, 15, 120 N.M. 562, 904 P.2d 11 (claim that the Governor lacked authority to enter into various compacts pursuant to the Indian Gaming Regulatory Act was of sufficient public importance to confer standing without examining the standing of individual litigants); *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, ¶ 7, 86 N.M. 359, 524 P.2d 975 (conferring standing under this Court's discretionary power due to great public importance of constitutional challenge to partial vetoes); *State ex rel. Gomez v. Campbell*, 1965-NMSC-025, ¶¶ 15, 18, 75 N.M. 86, 400 P.2d 956 (concluding that the plaintiffs did not establish standing but proceeding to the merits of the constitutional question in that case due to its "great public interest").

{14} In *ACLU of New Mexico*, we reaffirmed our adherence to the federal three-pronged approach in cases that do not present issues of fundamental public importance; we also recognized that the injury in fact requirement in particular is "deeply ingrained in New Mexico jurisprudence." 2008-NMSC-045, ¶¶ 10-22. Even a slight injury establishes an injury in fact sufficient to confer standing. *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 12, 126 N.M. 788, 975 P.2d 841. However, we have repeatedly emphasized that the injury in fact prong of our standing analysis "[r]equir[es] that the party bringing suit show that he [or she] is injured or threatened with injury in a direct and concrete way" as a matter of "sound judicial policy." *ACLU of N.M.*, 2008-NMSC-045, ¶ 19 (internal quotation marks and citation omitted); *see also N.M. Right to Choose/NARAL*, 1999-NMSC-005, ¶ 12 (litigant generally must show direct injury to establish standing). Although the UCC's definition of who may enforce a note does not create a jurisdictional prerequisite in this case, it nonetheless guides our determination of whether the plaintiff can articulate a direct injury that the cause of action is intended to address. *See Bank of N.Y.*, 2014-NMSC-007, ¶¶ 19-38 (analyzing whether foreclosure plaintiff had standing under provisions of Section 55-3-301 defining who is legally entitled to enforce a promissory note); *see also Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶¶ 10-11, 121 N.M. 764, 918 P.2d 350 (determining that the question of whether a party has standing to sue is not distinct from whether that party can assert a cause of action under a particular statute). The UCC provides that there are three scenarios in which a person is entitled to enforce a negotiable instrument such as a promissory note: (1) when that person is the holder of the instrument; (2) when that person is a nonholder in possession of the instrument who has the rights of a holder; and (3) when that person does not possess the instrument but is still entitled to enforce it subject to the lost-instrument provisions of UCC Article 3. Section 55-3-301. To show a "direct and concrete" injury, Deutsche Bank needed to establish that it fell into one of these three statutory categories that would establish both its right to enforce Homeowner's promissory note and its basis for claiming that it suffered a direct injury from Homeowner's alleged default on the note. *ACLU of N.M.*, 2008-NMSC-045, ¶ 19; *see also Bank of N.Y.*, 2014-NMSC-007, ¶ 19.

B. Homeowner Did Not Waive the Issue of Standing

{15} Deutsche Bank contends that because standing was not a jurisdictional prerequisite in this case, the issue "may be and was admitted and waived" because Homeowner " 'acknowledge[d]' " Deutsche Bank's allegation within its complaint that Deutsche Bank owned both the note and the mortgage. We agree that our determination that standing is not jurisdictional in this case opens up the possibility that Homeowner could have waived the issue, but disagree that Homeowner waived it here.

{16} Arguments based on a lack of prudential standing are analogous to asserting that a litigant has failed to state a legal cause of action. As we have previously discussed, we generally require "injury in fact, causation, and redressability" to establish standing. *ACLU of N.M.*, 2008-NMSC-045, ¶ 10. If these elements are not met, as a logical matter, a plaintiff generally cannot show

that he or she has stated a cause of action entitling him or her to a remedy. *See Key*, 1996-NMSC-038, ¶¶ 10-11. Thus, while a plaintiff's failure to state a cognizable claim for relief and a plaintiff's lack of prudential standing are not strictly jurisdictional, both implicate the "properly limited . . . role of courts in a democratic society" and are relevant concerns throughout a litigation. *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746 (internal quotation marks and citation omitted). Under Rule 1-012(H)(2) NMRA, "[a] defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted or ordered . . . or by motion for judgment on the pleadings, or at the trial on the merits." We hold that Rule 1-012(H)(2) applies to issues of prudential standing and precludes any waiver of standing prior to the completion of a trial on the merits. *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, ¶ 25, 109 N.M. 683, 789 P.2d 1250.

{17} In this case, Homeowner did not waive standing because he raised the issue in a motion filed on August 11, 2010, over a month before the September 16, 2010 trial. In addition, the district court considered Homeowner's challenge to Deutsche Bank's standing during the trial on the merits. Homeowner therefore raised the issue of standing both by motion and at the trial on the merits, either of which would independently constitute a timely assertion of this defense. Rule 1-012(H)(2).

{18} Further, we are not convinced by Deutsche Bank's argument that Homeowner waived his right to challenge its standing because in his answer to Deutsche Bank's complaint, he "acknowledge[d]" Deutsche Bank's allegation that it owned Homeowner's note and mortgage through assignment. Even under the generous assumption that Homeowner's "acknowledge[ment]" that Deutsche Bank was entitled to enforce the note was an admission of that fact, we disagree with Deutsche Bank's premise that Homeowner could have waived this defense through his initial responsive pleading. When standing is a prudential consideration, it can be raised for the first time at any point in an active litigation, just like a defense of failure to state a claim, and unlike defenses relating to personal jurisdiction, venue, and insufficient service of process, all of which must be raised in an initial or amended responsive pleading. *Compare* Rule 1-012(H)(2) *with* Rule 1-012(H)(1).

{19} Moreover, it would be nonsensical to place any burden on a foreclosure defendant to know whether the party seeking foreclosure is actually entitled to do so. For example, in the present case, Homeowner signed his financing agreement with New Century; received correspondence regarding his defaults on his mortgage payments from ASC, the loan servicing company, which was apparently also the same company as Wells Fargo Bank, N.A.; and he was ultimately sued by Deutsche Bank. Under these circumstances, there is no indication that either Homeowner or any defendant being sued over a securitized mortgage, for that matter, would be in a position to have personal knowledge of who had the right to enforce his or her mortgage. In addition, as we will explain, allowing a foreclosure defendant to waive the issue of standing would not only vitiate that homeowner's rights, but could in fact cloud the title of the underlying property and lead to other problems to the detriment of New Mexico's property system as a whole. Adam J. Levitin, *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title*, 63 Duke L.J. 637, 662 (2013). The important societal interests in maintaining the integrity of the property system, protecting subsequent purchasers of the property, and the minimal probative value of the alternative, convince us that a foreclosure defendant cannot voluntarily waive a challenge to the plaintiff's standing during the course of the litigation.[2]

C. Standing Must Be Established as of the Date of Filing Suit in Mortgage Foreclosure Cases

{20} Before turning to a specific analysis of Deutsche Bank's standing in this case, we will clarify why standing must be established as of the time of filing suit in mortgage foreclosure cases, despite our determination that standing is not a jurisdictional issue in such cases. *Bank of New York*, relying on *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71, 570 n.5 (1992), states that "standing to bring a foreclosure action" must exist "at the time [a plaintiff] file[s] suit." 2014-NMSC-007, ¶ 17. Deutsche Bank asks this Court to revisit this requirement, contending that (1) unlike in federal courts, standing in New Mexico courts is not a jurisdictional issue such that standing does not necessarily have to exist at the time of filing; and (2) as a prudential matter, requiring foreclosure plaintiffs to establish that they had standing at the time of filing contravenes our interest in judicial economy. Neither argument advanced by Deutsche Bank convinces us to deviate from well-established principles of standing, which are solidly supported by several prudential and policy considerations that arise in the particular context of mortgage foreclosure actions.

{21} There are sound policy reasons for requiring strict compliance with the traditional procedural requirement that standing be established at the time of filing in mortgage foreclosure actions. This procedural safeguard is vital because the securitization of mortgages has given rise to a pervasive failure among mortgage holders to comply with the technical requirements underlying the transfer of promissory notes, and more generally the recording of interests in property. *See* Elizabeth Renuart, *Uneasy Intersections: The Right to Foreclose and the U.C.C.*, 48 Wake Forest L. Rev. 1205, 1209-10 (2013) ("[T]he failure to deliver the original notes with proper indorsements [to assignees], the routine creation of unnecessary lost note affidavits, the destruction of the original notes, and the falsification of necessary indorsements . . . is widespread."). Under these circumstances, not even the plaintiffs may be sure if they actually own the notes they seek to enforce. As Professor Levitin notes, Article 3 of the UCC and the land records recording system are each based upon the notion of strict "compliance with demonstrative legal formalities to achieve property rights," which admittedly carries "up-front costs," but also ensures "a high degree of security in the property rights, both vis-à-vis other competing claimants to the property rights and as to the ability to enforce the mortgage property rights." Levitin, *supra*, at 648. This regime is also desirable for its simplicity—"possession clarifies title because there can be only one possessor at a time," while "[i]ndorsement creates a chain of title that travels with the instrument and provides an easy, objective manner for establishing who has rights to the instrument." Levitin, *supra*, at 662. These formalities are strengthened by

[2]As we will explain in Section II, Part E, a foreclosure defendant effectively waives his right to challenge the plaintiff's standing once a final judgment has been entered.

strict standing requirements. Otherwise, institutions could potentially cloud title by foreclosing on a property upon which they do not possess the right to foreclose.[3] **{22}** Indeed, standing in foreclosure actions "is not a mere procedural detail"; it protects homeowners against double liability such as "when the wrong party sells the home and the note holder later appears seeking full payment on the note," or when a homeowner faces multiple lawsuits in different jurisdictions. Renuart, *supra*, at 1212. Reducing the potential for double liability is also beneficial to the property system at large because "[i]f a debtor fears multiple satisfaction of the same debt, the debtor will not borrow, thereby chilling economic activity," whereas strict compliance with UCC requirements "enables verification of the terms of the obligation[,] and hence greater ability to enforce[, and] provid[es] a mechanism for verifying the discharge of the obligation." Levitin, *supra*, at 664. In our view, the minor up-front compliance costs that foreclosure plaintiffs will incur by confirming that they have the proper documentation *before* filing suit are a small price to pay for protecting the rights of New Mexico homeowners and the integrity of the State's title system by requiring strict and timely compliance with long-standing property law requirements. To be clear, perhaps despite recent industry practices, this is *not* an additional requirement that we impose punitively; it is simply a symptom of compliance with long-standing rules. *See* Levitin, *supra*, at 650-51 ("A mortgage loan involves a bundle of rights, including procedural rights. These procedural rights are not merely notional; they are explicitly priced by the market. Mortgage finance availability and pricing is statistically correlated with variations in procedural protections for borrowers. Retroactively liberalizing the rules for mortgage enforcement creates an unearned windfall for mortgagees." (footnote omitted)). In other words, requiring that standing be established as of the time of filing provides strong and necessary incentives to help ensure that a note holder will not proceed with a foreclosure action before confirming that it has a right to do so.

{23} Further, although we are sympathetic to the additional burdens this may impose on an entity seeking to foreclose on a home, New Mexico is hardly alone among the states in requiring a foreclosure plaintiff to prove that it was entitled to enforce the note when it filed suit. *See* Levitin, *supra*, at 642-44 ("[T]here is broad agreement among courts that some sort of standing or similar status is necessary for both judicial and nonjudicial foreclosure . . . . There is also broad agreement that the party bringing the foreclosure action or sale *must have standing at the time the litigation . . . is commenced*." (emphasis added) (footnote omitted)). For example, in *Federal Home Loan Mortgage Corp. v. Schwartzwald*, 2012-Ohio-5017, ¶¶ 24-25, 979 N.E.2d 1214, *overruling on other grounds recognized by Bank of New York Mellon v. Grund*, 2015-Ohio-466, ¶¶ 23-24, 27 N.E.3d 555, the Supreme Court of Ohio clarified that, under Ohio law, standing must be analyzed as of the commencement of an action in mortgage foreclosure cases. *See also U.S. Bank Nat'l Ass'n v. McConnell*, 305 P.3d 1, 8 (Kan. Ct. App. 2013) (concluding that the foreclosure plaintiff had standing because it was undisputed that the plaintiff held the note *prior* to the date that suit was filed). Therefore, "[p]ost-filing events that supply standing that did not exist on filing may be disregarded . . . despite a showing of sufficient present injury caused by the challenged acts and capable of judicial redress." *Fed. Home Loan Mortg. Corp.*, 2012-Ohio-5017, ¶ 26 (first alteration in original) (internal quotation marks and citation omitted). The Supreme Court of Oklahoma has similarly explained that if a foreclosure plaintiff "became a person entitled to enforce the note . . . after the foreclosure action was filed," the plaintiff's initial lack of standing could not be cured and the proper remedy was to dismiss the case without prejudice. *Deutsche Bank Nat'l Tr. v. Brumbaugh*, 2012 OK 3, ¶ 11, 270 P.3d 151; *see also McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. Dist. Ct. App. 2012) ("While it is true that standing to foreclose can be demonstrated by the filing of the original note with a special endorsement in favor of the plaintiff, this does not alter the rule that a party's standing is determined at the time the lawsuit was filed. Stated another way, the plaintiff's lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case is filed." (internal quotation marks and citation omitted)); *Deutsche Bank Nat'l Tr. Co. v. Mitchell*, 27 A.3d 1229, 1234-36 (N.J. Super. Ct. App. Div. 2011) (stating that a plaintiff must have standing at the time the foreclosure complaint is filed, and a lack of standing cannot be cured by showing that a plaintiff acquired standing after the complaint was filed); *Wells Fargo Bank, N.A. v. Marchione*, 887 N.Y.S.2d 615, 616-17 (N.Y. App. Div. 2009) (noting that a plaintiff-assignee lacked standing where the note and mortgage were assigned to the plaintiff after commencement of the foreclosure action); *U.S. Bank Nat'l Ass'n v. Kimball*, 2011 VT 81, ¶¶ 12-20, 27 A.3d 1087 (stating that standing must be established at the time of filing suit, and it did not contravene the interest of judicial efficiency to dismiss the complaint of a foreclosure plaintiff who acquired standing after the complaint had been filed). As a result, we conclude that it is not presumptuous to require, as do a substantial number of other states, that a company claiming to be a mortgage holder must produce proof that it was entitled to enforce the underlying promissory note prior to the commencement of the foreclosure action by, for example, attaching a note containing an undated indorsement to the initial complaint or producing a note dated before the filing of the complaint at some appropriate time in the litigation. We agree with the Vermont Supreme Court, which opined that "[i]t is neither irrational nor wasteful to expect a foreclosing party to actually be in possession of its claimed interest in the note, and have the proper supporting documentation in hand when filing suit." *Kimball*, 2011 VT 81, ¶ 20.

{24} Deutsche Bank also argues that our insistence that it demonstrate that a note indorsed in blank was indorsed prior to the time of filing improperly adds a new requirement that indorsements be dated, in contravention of the UCC. *See Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶ 12 (holding that "if [a] lender produces the indorsed note after filing the complaint,

[3]Professor Levitin illustrates this idea with the following example:

If the seller is not the person entitled to foreclose, the foreclosure sale is no different from a sale of the Brooklyn Bridge. Accordingly, the foreclosure-sale purchaser has no ability to transfer title to the property, no matter [his or] her equities, because [he or] she lacks title, just like the hapless buyer of the Brooklyn Bridge.

Levitin, *supra*, at 646.

the indorsement must be dated to show that the indorsement was executed prior to the initiation of the foreclosure suit"). We agree with Deutsche Bank that the UCC does not require that instruments be dated. *See* NMSA 1978, § 55-3-113(b) (1992) ("If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder."). However, Deutsche Bank conflates the need to date a negotiable instrument, so as to create an enforceable promissory note, with the requirement that Deutsche Bank establish that it was entitled to enforce the instrument at the time of filing. Because the time of filing requirement does not affect the validity of an underlying negotiable instrument, *see Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶ 12, this rule does not add a new requirement under the UCC.

{25} Deutsche Bank additionally contends that "when a plaintiff presents the original note to the court with a blank indorsement, the plaintiff establishes it is then the holder of the note, and is entitled to enforce the note and foreclose the mortgage." Deutsche Bank is correct that the holder of a note indorsed in blank may, as a general matter, enforce the note. *See* § 55-3-301; NMSA 1978, § 55-3-205(b) (1992). However, Deutsche Bank again conflates two distinct concepts: whether it may, as the holder of a note indorsed in blank, enforce the note and whether it can establish that it owned the note at the time of filing. If Deutsche Bank had presented a note indorsed in blank with its initial complaint, it would be entitled to a presumption that it could enforce the note at the time of filing and thereby establish standing. However, Deutsche Bank did not produce a note indorsed in blank when it filed suit in this case, and the subsequent production of a blank note does not prove that Deutsche Bank possessed the blank note *when it filed suit*.

{26} We further disagree with Deutsche Bank's argument that the Court of Appeals's opinion in this case, *Deutsche Bank Nat'l Tr. Co.*, 2014-NMCA-090, ¶¶ 11-13, requires that a "plaintiff conclusively establish its standing upon first filing the complaint." Deutsche Bank contends that this requirement would contravene well-established notice pleading standards in New Mexico, which require a complaint to contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 1-008(A)(2) NMRA. According to Deutsche Bank, it should satisfy minimum pleading requirements for a foreclosure plaintiff to merely allege that it is the holder of the note, and then later prove this fact through more detailed documentation, either at trial or in connection with a dispositive motion. We agree with Deutsche Bank that "it is only at trial or in a dispositive motion that plaintiffs are required to *prove* the necessary elements of their claims," including standing, and that a bare statement that the plaintiff holds the note may satisfy pleading standards. *See N.M. Pub. Sch. Ins. Auth. v. Arthur J. Gallagher & Co.*, 2008-NMSC-067, ¶ 11, 145 N.M. 316, 198 P.3d 342 ("In reviewing the district court's decision to dismiss for failure to state a claim, we accept as true all well-pleaded factual allegations in the complaint and resolve all doubts in favor of the complaint's sufficiency.").

{27} However, this is an issue of proof rather than pleading standards. The elements of standing

> are not mere pleading requirements but rather an indispensable part of the plaintiff's case, [and therefore] each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.

Lujan, 504 U.S. at 561. For example, a foreclosure plaintiff may satisfy pleading requirements by simply alleging that it is the holder of the note without attaching any additional documentary evidence, but when a defendant subsequently raises the defense that the plaintiff lacks standing to foreclose, the plaintiff must then prove that it held the note *at the time of filing*. Attaching the note to the complaint is not the only means of proving that the plaintiff held the note at the time of filing because standing can also be proven through a dated indorsement establishing when the note was indorsed to the plaintiff. Therefore, neither *Bank of New York* nor the Court of Appeals's opinion in this case establish an additional pleading requirement, as Deutsche Bank argues, but rather set forth requirements that must be met to prove standing, should that issue be raised by the defendant or *sua sponte* by the Court.[4]

D. Deutsche Bank Did Not Establish Standing

{28} Deutsche Bank argues that substantial evidence supports the district court's determination that Deutsche Bank had standing to pursue its foreclosure complaint against Homeowner. We review the district court's determination that Deutsche Bank had standing under a substantial evidence standard of review. *Bank of N.Y.*, 2014-NMSC-007, ¶ 18. " 'Substantial evidence' means relevant evidence that a reasonable mind could accept as adequate to support a conclusion. This Court will resolve all disputed facts and indulge all reasonable inferences in favor of the trial court's findings." *Id.* (internal quotation marks and citations omitted). However, "[w]hen the resolution of the issue depends upon the interpretation of documentary evidence, this Court is in as good a position as the trial court to interpret the evidence." *Id.* (alteration in original) (internal quotation marks and citation omitted).

{29} Deutsche Bank contends that there was sufficient evidence to establish standing for two reasons. First, Deutsche Bank argues that "the Assignment of Mortgage in this case . . . evidence[d] the timing of the transfer of the note." Second, Deutsche Bank avers that other corroborating evidence presented at trial, in conjunction with the assignment of mortgage, established that it owned the note at the time of filing. Deutsche Bank's arguments do not persuade us that there is substantial evidence to support the district court's determination that Deutsche Bank had standing.

{30} In response to Homeowner's motion to dismiss for lack of standing, Deutsche Bank produced an assignment of mortgage dated February 7, 2006. Deutsche Bank's proffer of the February 7, 2006 assignment of mortgage in this case was insufficient to establish standing because (1) the assignment of mortgage does not establish that Deutsche Bank was injured for the purposes of standing; and (2) it does not prove if or when the note was transferred. As we have previously stated, to establish standing we require that a plaintiff show that he or she has actually suffered a direct

[4]In instances where a foreclosure plaintiff seeks a default judgment, courts should raise the standing issue *sua sponte* and carefully scrutinize the plaintiff's standing to safeguard the integrity of New Mexico's property system and protect subsequent bona fide purchasers.

and concrete injury. *ACLU of N.M.*, 2008-NMSC-045, ¶ 19 (citation omitted). "A party who only has the mortgage but no note has not suffered any injury given that bare possession of the mortgage does not endow its possessor with any enforceable right absent possession of the note." *BAC Home Loans Servicing, LP v. McFerren*, 2013-Ohio-3228, ¶ 12, 6 N.E.3d 51 (citing Restatement (Third) of Prop.: Mortgages § 5.4(e), at 385 (1996) ("[I]n general a mortgage is unenforceable if it is held by one who has no right to enforce the secured obligation.")). Consequently, "possession of the mortgage is of no import unless there is possession of the note." *BAC Home Loans Servicing, LP*, 2013-Ohio-3228, ¶ 12. Moreover, because an assignment of mortgage does not "effect an assignment of a note," an assignment of mortgage does not prove "transfer of [a] note." *Bank of Am., NA v. Kabba*, 2012 OK 23, ¶ 9, 276 P.3d 1006. As a result, the date that Homeowner's *mortgage* was assigned to Deutsche Bank does not establish a corresponding date indicating when the *note* was transferred to Deutsche Bank, or even *if* the note was transferred.

{31} Deutsche Bank's proffer of additional evidence to establish standing similarly fails to meet the threshold for substantial evidence. First, Deutsche Bank contends that because Ms. Roesch, an employee of a loan servicing company, "testified that the Assignment of Mortgage was dated February 7, 2006," Deutsche Bank established ownership of the note at the time of filing. Once again, this assertion fails because the date on the assignment of mortgage does not establish either when or whether Deutsche Bank obtained the right to enforce the note. *See id.* Second, Deutsche Bank argues that Ms. Roesch's testimony that her company began servicing the note in 2006 proves that Deutsche Bank owned the note prior to its February 2009 complaint. This testimony does not establish that Deutsche Bank had standing. Again, the assertion that an entity allegedly started servicing the loan on behalf of Deutsche Bank prior to the time of filing suit does not prove anything regarding the actual ownership of the note, and further, because "falsification of necessary indorsements" appears to be a "widespread" phenomenon, Renuart, *supra*, at 1210, there is reason to believe that creditors could potentially seek to enforce notes that they do not hold under the law. Thus, the additional evidence supplied by Deutsche Bank does not bear on whether Deutsche Bank actually owned the note at the time of filing, nor does it establish when the necessary indorsements were made, so that whether Deutsche Bank had the right to enforce the note as of February 24, 2009 remains unclear.

{32} Finally, the unindorsed note attached to Deutsche Bank's original complaint did not establish standing. "Possession 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." *Bank of N.Y.*, 2014-NMSC-007, ¶ 23. In addition, as we have discussed, the undated indorsed note that Deutsche Bank presented at trial did not prove that Deutsche Bank had standing when it filed its complaint. Because Deutsche Bank failed to provide evidence establishing its right to enforce the note on Homeowner's home, we hold that the district court's determination that Deutsche Bank established standing to foreclose was not supported by substantial evidence, and we accordingly reverse the district court's decision and affirm the result reached by the Court of Appeals.

E. Completed Foreclosure Judgments Should Not Be Voided for Lack of Standing

{33} We also take this opportunity to address Deutsche Bank's assertion that "several lower courts . . . have vacated long-completed foreclosure judgments under Rule 1-060(B) NMRA[,] holding they are 'void' for lack of subject matter jurisdiction." To avoid this issue in the future, we will clarify the practical implications of our holding that standing is not jurisdictional in mortgage foreclosure cases.

{34} "Jurisdiction of the subject matter and of the parties is the right to hear and determine the suit or proceeding in favor of or against the respective parties to it." *Sundance Mech. & Util. Corp.*, 1990-NMSC-031, ¶ 22 (internal quotation marks and citations omitted). Further, a party can raise subject matter jurisdiction at any time, even through a collateral attack alleging that a final judgment is void for lack of subject matter jurisdiction. *Chavez v. Cty. of Valencia*, 1974-NMSC-035, ¶ 15, 86 N.M. 205, 521 P.2d 1154; *see also* Rule 1-012(H)(3) ("*Whenever* it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." (emphasis added)). However, as we have previously discussed, a challenge to standing is in many ways analogous to a defense for failure to state a claim because it does not deprive the court of subject matter jurisdiction over the case, but instead bears on whether the plaintiff has stated a cognizable claim for relief. A failure to state a claim may only be raised "during the pendency of the action," including on appeal, *Sundance Mech. & Util. Corp.*, 1990-NMSC-031, ¶ 25, but it cannot be the basis for a collateral attack on a final judgment. *See Palmer v. Palmer*, 2006-NMCA-112, ¶¶ 13-22, 140 N.M. 383, 142 P.3d 971 (considering whether a court which entered a settlement agreement between the parties had subject matter jurisdiction, but refusing to consider after the entry of the judgment whether one party had failed to state a claim). Therefore, a final judgment from a cause of action that may have lacked standing as a jurisdictional matter may be subject to a collateral attack, while a final judgment on any other cause of action, including an action to enforce a promissory note such as this case, is not voidable under Rule 1-060(B) due to a lack of prudential standing.

III. CONCLUSION

{35} For the foregoing reasons, we affirm the judgment of the Court of Appeals and remand this matter to the district court with instructions to vacate its judgment of foreclosure against Homeowner.

{36} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Justice

WE CONCUR:
BARBARA J. VIGIL, Chief Justice
PETRA JIMENEZ MAES, Justice
CHARLES W. DANIELS, Justice
JUDITH K. NAKAMURA, Justice

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-026

No. 32,661 (filed December 8, 2015)

SONIDA, LLC,
Plaintiff-Appellee,
v.
SPOVERLOOK, LLC,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
VIOLET C. OTERO, District Judge

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Opinion

Roderick T. Kennedy, Judge

{1} Defendant SPOverlook, LLC, (SPO) appeals an award of attorney fees to Plaintiff Sonida, LLC (Sonida), whom the district court found to be the prevailing party in a "dispute arising out of or relating to a lien action" under NMSA 1978, Section 48-2-14 (2007). The award of attorney fees was made following a jury trial that awarded money to both parties following a dispute over construction of a house. SPO asserts that Sonida's lien was invalid, that the district court's denial of its motion for summary judgment based on the invalidity of Sonida's lien was erroneous, and that an invalid lien cannot support the award of fees.

{2} The contents of mechanics' and materialmen's liens are prescribed by statute, NMSA 1978, §§ 48-2-1 to -17 (1880, as amended through 2015), and require specifically that any claim "must be verified by the oath of [the claimant] or of some other person." Section 48-2-6. We face two questions in this case: can Sonida prevail on a claim to foreclose an unverified materialmen's lien, and was the district court's award of attorney fees based on work performed in conjunction with "contract and lien claims" sufficiently justified as a "dispute arising out of or relating to a lien action" to permit the award? Section 48-2-14.

{3} We hold that even in light of decades of liberal construction and permitting substantial compliance in drafting lien claims, Sonida's unverified lien was void *ab initio.* To the extent that no valid lien existed, nothing supported an award of attorney fees predicated on a claim "arising out of or related to a lien[.]" Section 48-2-14. Since the district court's sole justification for the award was Section 48-2-14, we conclude that the award of attorney fees to Sonida was erroneous, and we reverse the district court, remanding for entry of an amended judgment.

BACKGROUND

{4} The parties do not dispute the facts underlying this appeal. Real estate developer SPO contracted with New Mexico Dream Home, LLC (NMDH) to construct a house in Sandoval County for a television show. SPO in turn subcontracted with homebuilder Sonida to build the home, agreeing to pay Sonida approximately one million dollars for the job. Before construction began, SPO and Sonida did not have a written agreement between them, although subsequent arrangements were reached, and Sonida began construction of the home. As construction went forward, NMDH issued three payments of approximately $250,000 each to SPO. SPO forwarded two payments to Sonida. A dispute arose when SPO did not forward a third payment to Sonida.

{5} Sonida filed a claim of lien against the home to protect its interests, and then amended it twice; all of which were recorded in the Sandoval County Clerk's office. All three lien documents were signed by a Sonida representative and acknowledged before Sonida's attorney, who notarized them. However, none of Sonida's lien documents included any language verifying upon oath the truth of its contents.

{6} Sonida then brought suit in the district court against SPO and NMDH for the money it maintained it was owed. In Count 4 of Sonida's complaint, Sonida sought foreclosure of its lien. SPO's answer denied that Sonida was entitled to file a claim of lien, foreclose on the lien that it had filed, or collect attorney fees for litigating its foreclosure. SPO thereafter filed a motion for summary judgment asserting that the lien claim was invalid and unenforceable because it was not verified pursuant to *Home Plumbing & Contracting Co. v. Pruitt*, 1962-NMSC-075, 70 N.M. 182, 372 P.2d 378. In its response to SPO's motion, Sonida argued that SPO had waived its 'void for lack of verification' argument because SPO had not raised it as an affirmative defense in the its answer. The district court denied SPO's motion without explanation, and the case proceeded to trial.

{7} Following a jury trial in which both parties received awards, Sonida moved for an award of attorney fees claiming it was the prevailing party in a lien action under Section 48-2-14. The parties submitted proposed findings of fact and conclusions of law, including SPO's renewed assertion that Sonida was not the prevailing party in a lien action. The district court entered its final judgment granting Sonida's request for attorney fees. In separate findings and conclusions, the district court found that "Sonida prevailed on its lien claim against . . . Defendant SPO" and concluded that "[a] prevailing party in a dispute arising out of or relating to a lien action is entitled to recover from the other party the reasonable attorney fees, costs and expenses incurred by the prevailing party." Section 48-2-14. SPO now appeals the district court award to Sonida of $136,375.75 in attorney fees.

DISCUSSION

Standard of Review

{8} Ordinarily, we review an award of attorney fees for an abuse of discretion. *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 10, 287 P.3d 318. "Section 48-2-14 empowers the court to award reasonable attorney fees in the district and supreme courts in actions to enforce mechanics' and materialmen's liens." *Lenz v. Chalamidas*, 1991-NMSC-099, ¶ 2, 113 N.M. 17, 821 P.2d 355 (emphasis omitted). However, our determination of

whether an unverified lien satisfies the requirements of Section 48-2-6 involves the interpretation of a statute that we review de novo. *State ex. rel. Madrid v. UU Bar Ranch Ltd. P'ship*, 2005-NMCA-079, ¶ 11, 137 N.M. 719, 114 P.3d 399. With regard to SPO's motion for summary judgment, where there are no genuine issues of material fact, and the movant may be entitled to judgment as a matter of law, our review is also de novo. *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582.

I. Sonida Did Not File Valid Claims of Lien

{9} We begin by addressing SPO's argument that the district court erred by failing to reject as a matter of law Sonida's unverified claim of lien. In order to analyze this issue, we must discuss the requirements for a claim of lien to be valid.

{10} Section 48-2-6[1] generally sets out two requirements for the contents of a valid lien: a statement of the nature of the claim against the property owner, and a verification by oath. The purpose of the former is to "give notice [to all interested parties] of the extent and nature of the lienor's claim." *Garrett Bldg. Ctrs., Inc. v. Hale*, 1981-NMSC-009, ¶ 10, 95 N.M. 450, 623 P.2d 570 (internal quotation marks and citation omitted). Since they are not in dispute in this case, we are not concerned with the sufficiency of Sonida's statement of the debt and terms of the claim.

{11} As to the verification requirement, we first observe that the use of the word "must" in the statute requiring verification by oath conveys the Legislature's setting a mandatory precondition to the lien's validity. The Uniform Statute and Rule Construction Act compels us to regard the word "must" as expressing "a duty, obligation, requirement or condition precedent." NMSA 1978, § 12-2A-4(A) (1997); *see also*, *State v. Lujan*, 1977-NMSC-010, ¶ 4, 90 N.M. 103, 560 P.2d 167 (holding that the word "must" in the statute indicates "that the provisions of a statute are mandatory and not discretionary").

{12} It is undisputed that the claims of lien filed in this case were not verified. Sonida attempts to address this "technical defect" by arguing that the claim as filed satisfied the purposes of the statute, which should be "liberally construed," and by implication, permits "substantial compliance" by the claimant. New Mexico is a state that affords liberal construction to the drafting of lien notices, and permits substantial compliance with Section 48-2-6. *Chavez v. Sedillo*, 1955-NMSC-039, ¶ 17, 59 N.M. 357, 284 P.2d 1026. To a point. "[T]he reason which underlies the [liberal construction rule] is that the claim of lien must not only contain a statement of the terms, time given and conditions of the contract, but such statement must be true." *Id.* (emphasis omitted). However, no New Mexico case has yet made the verification requirement superfluous. For reasons that follow, we conclude that even in a common law atmosphere with plenty of slack for drafting liens, there are requirements that are immutable, particularly a verification upon oath of the underlying claim that must be set out in the lien notice. Sonida misapprehends the latitude our courts have provided claims of lien as affording sanction to their total lack of compliance with the verification requirement of the statute.

A. Verification Requires a Formal Assertion of the Truth of the Lien's Contents

{13} By definition, "verification" is "confirmation of correctness, truth, or authenticity by affidavit, oath, or deposition." *Black's Law Dictionary*, 1732 (1968 4th ed). Our courts' construction of what it means for a lien to "be verified by the oath of [the claimant] or of some other person" is of long standing. Section 48-2-6. "In the early days of our history, [our Supreme Court] was disposed to hold that the mechanics lien law was in derogation of the common law and should be strictly construed[.]" *Home Plumbing*, 1962-NMSC-075, ¶¶ 6-7 (internal quotation marks and citation omitted). This construction applied to the verification requirement. *Finane v. Las Vegas Hotel & Improvement Co.*, 1885-NMSC-023, ¶ 13, 3 N.M. 411, 5 P. 725 ("[Verification] is a substantial and necessary requirement, and must be complied with in order to make the claim of lien effectual. The statute makes it obligatory by the use of the word 'must,' and we think it was error for the court below to have admitted the [unverified] paper in evidence."), *overruled on other grounds by Ford v. Springer Land Ass'n*, 1895-NMSC-011, 8 N.M. 37, 41 P. 541.[2]

{14} In *Minor v. Marshall*, 1891-NMSC-029, 6 N.M. 194, 27 P. 481, the Supreme Court of the Territory New Mexico loosened the requirements for stating the claim itself under the statute, permitting substantial compliance to suffice in alleging its five factual requirements. *Id.* ¶ 6. With regard to the requirement that the claim be "verified by the oath of himself, or of some other person[,]" it held "if such claim is not verified, it is no notice, and binds no one; it raises no lien whatever." *Id.* ¶ 7 (internal quotation marks and citation omitted). Although the strict view as to a lien's factual claims was repudiated in *Ford*, as noted above, this was only to the extent that the statements covered by the claimant's oath be liberally construed. *Ford* went on to explain that "the notice of claim of lien, being the foundation of the action, must contain all the essential requirements of the statute, and the failure or omission on the part of the person claiming the lien of any of the substantial requisites of the statute is fatal, and will defeat the action." 1895-NMSC-011, ¶ 7. The verification requirement has always been regarded as a requisite element of compliance with the statute. *Hot Springs Plumbing & Heating Co. v. Wallace*, 1933-NMSC-092, ¶ 40, 38 N.M. 3, 27 P.2d 984

[1]"Every original contractor, within one hundred and twenty days after the completion of his contract, and every person, except the original contractor, desiring to claim a lien pursuant to Sections 48-2-1 through 48-2-19 NMSA 1978, must, within ninety days after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the county clerk of the county in which such property or some part thereof is situated, a claim containing a statement of his demands, after deducting all just credits and offsets. The claim shall state the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, and shall include a statement of the terms, time given and the conditions of the contract, and also a description of the property to be charged with the lien, sufficient for identification. *The claim must be verified by the oath of himself or of some other person*." (Emphasis added.)

[2]Although *Ford* is generally recognized as overruling *Finane*, and instituting the "liberal construction," we note that the claim of lien in *Ford* was properly verified, and the issue of verification was not raised. 1895-NMSC-011, ¶ 9. *Ford* applied solely to the description of the claim. *Id.* ¶ 8.

(citing *Lyons v. Howard*, 1911-NMSC-039, 16 N.M. 327, 117 P. 842), held that notwithstanding liberal construction, and substantial compliance with verification, the claimant must still "verify [the] same on his own oath, or the oath of some other person" to verify the good faith of his claim of right to a lien. *Id.*

{15} Although the requirement of verification on oath has not changed, there has been some "liberal construction" permitted with regard to verification. Under *Lyons*, "[n]o particular *form* of verification is required by our statute, nor is it specifically required thereby that the verification shall be true to the knowledge of affiant." *Lyons*, 1911-NMSC-039, ¶ 5 (emphasis added). Neither is it required that the affiant has personal knowledge of the claim's truth. *Id.* ¶ 6. This is, however, the extent of "liberal construction" permitted a lienor's verification of good faith under Section 48-2-6. However liberally the contents of a notice of lien might be construed, no case to date obviates the specific requirement for a positive verification upon oath of the contents of a notice of lien, and Sonida directs us to none. *See, e.g.*, *ITT Educ. Servs., Inc. v. Taxation & Revenue Dep't*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969 (holding that this court does not consider arguments not supported by citation to authority).

B. *Home Plumbing* and *Garrett* Affirm the Requirement of Verification

{16} Liberal construction of the lien statute cannot reach so far as to rescue an unverified lien. In *Home Plumbing*, two related but separate businesses sought to foreclose on their respective claims of lien against property owned by the defendant. 1962-NMSC-075, ¶ 1. Both claims of lien were signed by the same person. On the the first claim of lien, as in this case, the signature was only followed by "an acknowledgment in the form generally provided by § 43-1-9, N.M.S.A.1953, for acknowledging instruments affecting real estate." *Home Plumbing*, 1962-NMSC-075, ¶ 4. The second indicated that the person who signed it, "[b]eing duly sworn . . . has read said claim and knows the contents thereof; and that the matters and facts therein started (sic) are true and correct." *Id.* ¶ 5 (internal quotation marks and citation omitted). Because the question in the case was "if the two claims here in issue are verified by oath" as required by the statute, *id.* ¶ 6, the court concluded that the latter claim was verified. *Id.* ¶ 9. The Court stated that, owing to the absence of "any words whatsoever which by intendment, plain, or otherwise, 'were designed to operate as a verification,' " it did not "find where the statement of claim was in any manner sworn to." *Id.* ¶ 10 (internal quotation marks omitted). The Court held that liberal construction did not apply:

> While reiterating our adherence to the rule of liberal construction, we are convinced that with a total absence of any words confirming correctness, truth or authenticity by affidavit, oath, deposition or otherwise, to conclude that the acknowledgment to the instant claim of lien was a sufficient compliance with the requirements of a verification would be stretching the rule of liberal construction beyond recognition, and would approach judicial repeal of the legislative mandate that claims should be verified by oath.

Id. ¶12. *Garrett* also recognizes that Section 48-2-6 requires "that a materialman's claim of lien must be verified by the oath of the party or some other person." 1981-NMSC-009, ¶ 3.

{17} Because the ultimate goal in statutory construction "is to ascertain and give effect to the intent of the Legislature[,]" *State v. Cleve*, 1999-NMSC-017, ¶ 8, 127 N.M. 240, 980 P.2d 23, we hold that the intent of the Legislature in enacting Section 48-2-6 is to require some positive affirmation of good faith undertaken upon oath as to the contents of a notice of lien to render any claim thereof valid. Following *Home Plumbing* and *Garrett*, the absence of some discernable and formal confirmation of the truth, correctness, or authenticity of a claim of lien by the claimant or another person constitutes no verification, and any claim of lien that fails in that regard creates no lien.

C. Sonida's Concept of "Substantial Compliance" Is Unavailing

{18} According to Sonida, in *Garrett*, our "Supreme Court recognized that the liens at issue, even though they did not meet the statutory requirements, were filed and recorded and were sufficient notice to the parties that the liens existed." (Emphasis omitted.) It seems Sonida urges us to adopt a liberal construction rule to obviate verification entirely, as they suppose the Supreme Court applied it in that case. Sonida is not specific in its brief as to which "statutory requirements" *Garrett* dealt with, but Sonida immediately quotes *New Mexico Properties, Inc. v. Lennox Industries, Inc. (Lennox)*, 1980-NMSC-087, 95 N.M. 64, 618 P.2d 1228, holding that the lack of an acknowledgment does not defeat "an otherwise valid lien" that had been filed and recorded between the parties to the action. We take this as an indication that perhaps Sonida believes that since *Garrett* permitted unrecorded notices to give effect to notice between "parties to the action," 1981-NMSC-009, ¶ 9, its acknowledgments will carry the day. However in both *Garrett* and *Lennox*, the liens were properly verified. *Lennox*, 1980-NMSC-087, ¶¶ 2, 7; *Garrett*, 1981-NMSC-009, ¶ 5. Both cases specifically recognized that verification was a mandatory requirement of the lien statute. *Lennox*, 1980-NMSC-087, ¶ 6; *Garrett*, 1981-NMSC-009, ¶ 5. Sonida's reliance on both cases fails because the liens it filed were not "otherwise valid" under Section 48-2-6, whatever the status of a lien's acknowledgments. Thus, Sonida's briefing misstates the law in two important respects. First, both *Lennox* and *Garrett* specifically affirmed "the statutory requirement that the lien must be verified by oath of a party." *Garrett*, 1981-NMSC-009, ¶ 5. Second, in *Lennox,* our Supreme Court specifically recognized that an acknowledgment is "insufficient to comply with the verification requirement of Section 48-2-6." *Lennox*, 1980-NMSC-087, ¶ 6. Without compliance with the verification to establish the lienor's good faith in attaching its claim to the property of another, and thereby putting the claimant's "skin in the game" so to speak, Sonida's acknowledgments cannot in any way validate its claims of lien.

D. Acknowledgments Do Not Substitute For Verification

{19} *Home Plumbing* clearly establishes that the total absence of words of verification in a claim of lien renders it "unenforceable." 1962-NMSC-075, ¶ 12. "It is established in law that a verification is a sworn statement of the truth of the facts stated in the instrument which is verified. A verification differs from an acknowledgment in that the latter is a method of authenticating an instrument by showing that it was the act of the person executing it." *H.A.M.S. Co. v. Elec. Contractors of Alaska, Inc.*, 563 P.2d 258, 260 (Alaska 1977). Section 48-2-6 does not require that liens contain an acknowledgment, and a lien's validity is not affected by the lack of acknowledgment under NMSA 1978, Section 14-8-4 (2013). *See* § 14-8-4 ("Acknowledgment necessary for recording; exceptions."); *Lennox*, 1980-NMSC-087, ¶ 7 ("Absent a valid

acknowledgment, an instrument may not be treated as a recorded instrument."). Our Supreme Court has stated that although the lien statute is remedial in nature and liberally construed, our appellate courts "will not apply liberal construction to create a lien where none is authorized." *Vulcraft v. Midtown Bus. Park, Ltd.*, 1990-NMSC-095, ¶ 12, 110 N.M. 761, 800 P.2d 195. As in *Home Plumbing*, we cannot take up Sonida's invitation to write out of existence even a liberally-construed verification requirement. We know from *Lennox*, 1980-NMSC-087, ¶ 2, that pre-printed lien forms with sufficient verifications are available for sale. Had Sonida's attorney verified the liens, rather than only notarized their acknowledgments, the lien would have been valid. *See Marsh v. Coleman*, 1979-NMSC-067, ¶ 23, 93 N.M. 325, 600 P.2d 271 (holding that an attorney can verify a lien stating a belief that the claims were true); *but see*, *In re Reif*, 1996-NMSC-026, ¶ 10, 121 N.M. 758, 918 P.2d 344 (holding that a verification signed "for" the client "by" the attorney was "a nullity, being neither the oath [of the client] nor [the attorney]").

E. Sonida's Lien Was Void *Ab Initio*

{20} We are not alone in our view that these New Mexico cases uphold the verification requirement. Both *Home Plumbing* and *Garrett* were recognized by the Wyoming Supreme Court as demonstrating that, even under a liberal construction and substantial compliance rule, "the courts require some language in the lien statement which indicates the subscriber swears to the truth of the materials contained therein in order to comply with the verification requirement." *White v. Diamond Int'l Corp.*, 665 P.2d 463, 468 (Wyo. 1983). Similarly, the Utah Supreme Court cited *Home Plumbing* as one of a number of cases holding that, although inclusion of sufficient specified facts can constitute substantial compliance with a lien statute, the verification requirement was a separate portion of the statute that articulates "mandatory conditions precedent to the very creation and existence of the lien[,]" without which "no lien is created." *First Sec. Mortg. Co. v. Hansen*, 631 P.2d 919, 922 (Utah 1981) (internal quotation marks and citation omitted); *Home Plumbing*, 1962-NMSC-075, ¶ 12 ("[T]he court erred in its conclusion that the [unverified lien] . . . was enforceable."). Put another way in *First Security Mortgage*, "Verification is not a hypertechnicality that we can discount. Without verification, no lien is created. Our statute leaves no room for doubt as to the requirement of a verified notice of claim . . . . [S]ince a mechanic's lien is statutory and not contractual, a lien cannot be acquired unless the claimant complies with the statutory provisions." 631 P.2d at 922. "The simple and conclusive answer to the suggestion is that a mechanic's lien never comes into existence unless the notice upon which it is founded substantially complies with the statute which authorizes the creation of such liens." *Toop v. Smith*, 73 N.E. 1113, 1115 (N.Y. 1905).

{21} Irrespective of any latitude permitted in its form, the absence of a lien claimant's verification upon oath defeats an immutable requirement under Section 48-2-6. Sonida's failure to verify the claims of lien that it filed thus caused no valid lien to be created. We hold that because, according to Sonida, "the Claims of Lien lack the verification," they are void *ab initio*, because no valid lien was created. They could not therefore support a foreclosure action on the lien as a matter of law, *State ex rel. Madrid v. UU Bar Ranch Ltd. P'ship*, 2005-NMCA-079, ¶ 19, 137 N.M. 719, 114 P.3d 399 (holding that failure to comply with a clear, unambiguous and mandatory statutory requirement or condition precedent invalidated the subsequent action), or provide any basis for action under Section 48-2-14 or attorney fees to be awarded under that statute.

Sufficiency of a Lien Is Not an Affirmative Defense That Must Be Raised In the Complaint

{22} SPO specifically denied in its answer that the lien(s) filed entitled Sonida either to foreclose on them, or to any award of attorney fees in an action based upon them. It followed up its averments by filing a motion for summary judgment on Sonida's foreclosure claim, requesting that the district court declare the "Claims of Lien to be void *ab initio*" based specifically on *Home Plumbing*, as well as failure to comply with Section 48-2-6, even by substantial compliance. Sonida's response to the motion conceded that "as to the form of the Claims of Lien there is no disputed fact[,]" yet asserted that SPO was not entitled to judgment as a matter of law for failure to plead a fatal defect in the liens as an affirmative defense. The district court denied SPO's motion.

{23} Both the district court and Sonida seem to be laboring under a misconception. SPO's pleading that Sonida's lien was void *ab initio* for failure to comply with the statute (both with regard to its factual contents and its verification) is a purely legal question directed to an essential element of Sonida's foreclosure action. Sonida's response averred that it had no obligation to "specifically plead the verification or other specific contents of the Claims of Lien, even though those elements might form a condition precedent to recovery on the Claims of Lien." This is incorrect as a matter of law. "A lienholder must . . . prove compliance with the Act's provisions to establish his right to the statutory remedy and cannot claim surprise when a defendant attempts to defeat his claim by proof of noncompliance." *Cordeck Sales, Inc., v. Constr. Sys., Inc.*, 917 N.E.2d 536, 541 (Ill. App. Ct. 2009). Our courts have always held that when a lien is specifically created by statute, the lien must comply with the requirements of the statute. *Air Ruidoso, Ltd. v. Exec. Aviation Ctr., Inc.*, 1996-NMSC-042, ¶ 6, 122 N.M. 71, 920 P.2d 1025 (holding that "[a] lienor who seeks to enforce a statutory lien must comply with any statutory requirement with respect to enforcement of such a lien" (quoting *Unger v. Checker Taxi Co.*, 174 N.E.2d 219, 221 (Ill. App. Ct. 1961)).

{24} The proper verification of a lien is a mandatory predicate to its validity, and the existence of a valid lien is an element of a cause of action in foreclosure of it. Sonida is obligated to affirmatively demonstrate its compliance with Section 48-2-6 to plead a prima facie case in its complaint. Sonida's complaint alleged nothing more than it was "entitled to claim" a lien. SPO's raising the lien's validity is not an affirmative defense if based on Sonida's failure to comply with the statute's requirements. *See Cordeck*, 917 N.E.2d at 541 (holding that the assertion of statutory non-compliance is no surprise to the plaintiff, for whom compliance is an element of his cause of action, and cannot be held to be an affirmative defense); *Sullivan Contracting, Inc. v. Turner Constr. Co.*, 875 N.Y.S.2d 695, 697 (N.Y. App. Div. 2009).

{25} Sonida's reliance on *Beyale v. Arizona Public Service Co.*, 1986-NMCA-071, 105 N.M. 112, 729 P.2d 1366, to defeat SPO's motion as an affirmative defense "that was not pled in their answer" is of no avail. In *Beyale*, we clearly stated that an affirmative defense is a "state of facts provable by [a] defendant that will bar [a] plaintiff's recovery once a right to recover is established." *Id.* ¶ 13. The invalidity of the lien in this case is based in a defect barring the very right to recover on the elements of the claim as a matter of law, not facts. As

such, it is not an affirmative defense. We have already held that a right to recovery cannot be established based on an invalid lien. There is no virtue in Sonida's assertion that it is not obligated to plead as part of its complaint those elements of the lien under Section 48-2-6 as a predicate for recovery; regardless of its pleading, it had the obligation to meet its burden of proof.

{26} Further, in *Beyale*, a workers' compensation case, we held that because a failure to give notice of an injury had not been raised by the defense until a motion for a new trial, it was fairly denied by the trial court. We specifically stated that although the defense must have been pled, it did not have to be specifically pled in the defendant's answer, as would an affirmative defense. 1986-NMCA-071, ¶ 24. In this case, SPO raised the issue of the defect in the lien in its motion for summary judgment, and Sonida conceded in its response that there were no material facts in dispute concerning the form of the liens. From both parties' pleadings regarding the issue, we cannot but conclude that Sonida was aware of its obligations regarding compliance with the statute.

CONCLUSION

{27} Because no lien was created, no award of attorney fees can be "related to" or "arise out of" an action based upon a nullity. For the foregoing reasons, we reverse the district court's award of attorney fees and remand for proceedings consistent with this Opinion.

{27} IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

MICHAEL D. BUSTAMANTE, Judge

Classified

Positions

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. The position is situated in Albuquerque, New Mexico for 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/public housing, consumer law, unemployment compensation 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 proprietary 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.

General Counsel and Standards of Conduct Officer

Farm Credit of New Mexico, ACA in Albuquerque, NM is seeking an exempt position of General Counsel to include the duties of the Standards of Conduct officer for our organization. Applicants must be licensed to practice law in the State of New Mexico, or meet the state of NM requirements for in house practice; a minimum of three (3) years' experience in applicable areas of law including, without limitation, commercial and consumer lending, general corporate, human resources, real property, bankruptcy, mortgage/secured transactions, regulatory compliance and other areas of law and regulation applicable to activities conducted by Farm Credit of New Mexico, ACA. As Standards of Conduct Officer will be responsible for all legal and regulatory matters impacting Standards of Conduct and Conflict of Interest. Please submit a letter of interest, a resume, and at least three professional references to Georgiana Contreras at Georgiana.contreras@farmcreditnm.com. For more information, call (505)875-6067.

Associate Attorney

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

Associate Attorney Position

Albuquerque Business Law, P.C. is seeking an associate attorney with 0 to 3 years' experience for its foreclosure defense and civil litigation practice. Candidates will be part of a dynamic team, but able to work independently. Strong writing, research, and communication skills required. Please send cover letter, resume, references, writing sample, and salary requirements via email to clucero@abqbizlaw.com. Benefits available including health and dental.

Attorney

Keller & Keller, a rapidly growing personal injury firm, is seeking an attorney with 2+ years of plaintiff or defense personal injury litigation experience. This position requires a highly motivated and dedicated individual. Attention to detail and strong organizational and computer skills are essential. Being a bilingual Spanish speaker is a plus. This is an exciting and fast paced career opportunity which includes working with a great team of professionals. Salary commensurate with experience. Please send resume by email only to adrianar@2keller. All inquiries will be kept confidential.

Eleventh Judicial District Attorney's Office, DIV II

The McKinley County District Attorney's Office is currently seeking immediate resumes for one (1) Assistant Trial Attorney. Position is ideal for persons who recently took the bar exam. Persons who are in good standing with another state bar or those with New Mexico criminal law experience in excess of 5 years are welcome to apply. Agency guarantees regular courtroom practice and a supportive and collegial work environment. Salaries are negotiable based on experience. Submit letter of interest and resume to Kerry Comiskey, Chief Deputy District Attorney, or Gertrude Lee, Deputy District Attorney 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to Kcomiskey@da.state.nm.us or Glee@da.state.nm.us by 5:00 p.m. June 24, 2016.

Associate Litigation Attorney

Boutique regional law firm seeks an associate attorney with 3 to 6 years of litigation experience for office in Albuquerque or Santa Fe. 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.

Attorney

JOIN OUR TEAM! Fast paced, fun, plaintiff Personal Injury practice seeks energetic, dedicated full-time attorney. Spanish-speaking a plus. Salary DOE, PTO, paid holidays, retirement plan. All inquiries will be kept strictly confidential. Please send resume and references to lawfirmjob44@yahoo.com

Assistant Trial Attorney and Experienced Senior Trial Attorney

The 11th Judicial District Attorney's Office, Division I, (San Juan County) is accepting resumes for immediate positions of Assistant Trial Attorney and Experienced Senior Trial Attorney. Salary is based on experience ($48,980 - $78,364). Send resumes to Lori Holesinger, HR Administrator, 335 S. Miller Ave. Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us. Equal Opportunity Employer.

Mgr. Employer Outreach

The School of Law seeks a motivated individual for a full-time Manager, Employer Outreach position. Best consideration 6/30/2016. Duties: Manages the promotion and execution of employer outreach services in the legal community and other employment markets, including employer liaison, on/off-campus recruitment, career fairs, and other initiatives; advises students and graduates regarding employment options. Requires: ability to create/deliver presentations on legal career/employer development topics; knowledge of legal career outreach methods, programs, services, resources. Must be able to interact professionally with diverse constituencies. Occasional evening/weekend work required. Applicants possessing J.D. degree from ABA accredited law school strongly preferred. To apply: http://unmjobs.unm.edu

Legal Director

The American Civil Liberties Union (ACLU) of New Mexico seeks a full-time Legal Director, based in Albuquerque. This senior staff position supervises a team of attorneys and oversees the ACLU's program of impact-oriented litigation and support for non-litigation advocacy. For the full position announcement and how to apply: http://www.aclu-nm.org/legaldirector. Position open until filled.

Experienced Paralegal/Legal Assistant

Aldridge, Hammar, Wexler & Bradley, P.A., an uptown law firm seeks full-time, experienced Paralegal/Legal Assistant. The candidate must have at least three years' experience, excellent drafting and editing skills, and be a team player. This full-time position is eligible for health insurance, dental, paid time off, retirement plan, and other rewarding benefits. Salary DOE. E-mail resume, cover letter, and references to Manager@ABQLawNM.com. All replies will be maintained as confidential.

Paralegal/Legal Assistant

The Gentry Law Firm is seeking professional, motivated, organized, highly skilled individual with great attention to detail and ability to multitask for position in busy, nonsmoking office. Excellent computer skills required. Bachelor's degree or two years paralegal experience required. Please email resume to staff@jgentrylaw.com.

Paralegal

Litigation Paralegal with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules, online research, trial preparation, document control management, and familiar with use of electronic databases and related legal-use software technology. Seeking skilled, organized, and detail-oriented professional for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Paralegal Advanced (NMDOT)

The NMDOT seeks to fill a Paralegal & Legal Assistant - Advanced position. The position provides assistance to the lawyers by conducting legal research, investigating facts, interviewing witnesses, reviewing document production for Inspection of Public Records requests and discovery requests, preparing legal documents and exhibits, and maintaining the legal library and overseeing the maintenance of reference files. Direct experience as a paralegal, providing support in construction, governmental entity defense or complex civil litigation matters, and/or ProLaw is highly desirable. Candidate is required to become &/or maintain a current New Mexico Notary Public commission. The minimum qualifications for this position require an Associate's Degree in Paralegal Studies and two (2) years of work experience drafting and preparing legal correspondence, conducting legal research and maintaining a case management/tracking system. A combination of education from an accredited college or university in a related field and direct experience in this occupation totaling four (4) years may substitute for the required minimum qualifications. Position is a Pay Band 60, hourly salary range from $13.83 to $24.06, depending on qualifications and experience, with all state benefits to apply. Overnight travel throughout the state is required. A valid New Mexico driver's license must be maintained at all times during employment. Working conditions: Primarily in an office setting requiring extensive personal computer and phone use, with occasional high pressure situations. Applicants must apply through the State Personnel Office: http/www.state.nm.us/spo by the closing date listed. The New Mexico Department of Transportation is an equal opportunity employer.

Experienced Paralegal

Kasdan LippSmith Weber Turner LLP, a plaintiff's firm emphasizing Construction Defect Litigation, is seeking an experienced litigation paralegal with construction defect experience and a paralegal certificate. Responsibilities include case management coordination, calendaring, client contact, preparation of correspondence, pleadings and discovery, document review, records management organization, research and analysis of data, e-filing and service, as well as answering incoming phone calls. Position includes light receptionist duties. Must have the ability to perform site work and business development inspections, which includes driving to the site with own vehicle. Must have a valid New Mexico Drivers License. Computer proficiency with Excel, Word, Power Point, Outlook and Access. Strong organizational skills and the ability to prioritize assignments and work independently are required, as well as communication skills for communicating with co-workers, clients, and other professionals. Must have ability to handle office equipment, including cameras, laptops, scanners, printers and projectors. Must be able to work overtime. Please provide cover letter, resume and salary requirements to dochoa@kasdancdlaw.com.

Administrative Assistant to the Dean

The School of Law seeks an excellent, diplomatic communicator with superb organizational skills for the position of Administrative Assistant to the Dean. Best Consideration 6/26/2016. Duties: Provides a wide range of administrative and operational support to the Deans, serves as primary contact and liaison to diverse internal and external constituencies, projects a positive image for the Law School; manages the Deans' calendars and travel, and is responsible for program coordination, records management, and scheduling for NM state courts Judicial Nominating Commission meetings, including research assistance, procedural improvement, and recruitment support. Requires occasional work outside regular business hours and in-state travel. To apply: https://unmjobs.unm.edu

Positions Wanted

Part-Time or Contract Legal Work

Attorney/Registered Nurse licensed to practice law in New Mexico since 1988 with 25+ years of litigation experience in medical malpractice cases. Seeking part-time or contract legal work, defense or plaintiff. Contact gdicharry@gmail.com or (505) 269-3757.

Services

Vocal Presentation Coach
Open and close with a BANG. Seasoned writer/WB recording artist/Licensed Speech Pathologist. Refs. bigvoice4u@gmail.com

Office Space

Experienced Business Attorney Seeking Office Share
Attorney seeks office sharing arrangement with referrals/collaboration in business-oriented practice. Albuquerque or Santa Fe preferred. nmatty6@gmail.com

503 Slate NW
503 Slate NW, Affordable, five large offices for rent, with secretarial area, located within one block of the courthouses. Rent includes parking, utilities, phones, fax, wireless internet, janitorial services, and part-time bilingual receptionist. All offices have large windows and natural lighting with views of the garden and access to a beautiful large conference room. Call 261-7226 for appointment.

Santa Fe Office Space
Three offices for rent (furnished or unfurnished), separately or together ranging from $500 to $550 per office. Rent includes parking, janitorial services and a receptionist. Access to copier, fax and postage meter on a per use basis. Call (505) 988-4575 ext. 105 or email dwells@bbpcnm.com for an appointment.

820 Second Street NW
820 Second Street NW, offices for rent, one to two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170.

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.

STATE BAR of NEW MEXICO FOUNDATION

New Mexico State Bar Foundation 2016 Silent Auction

The New Mexico State Bar Foundation will hold a silent auction as part of the 2016 Annual Meeting—Bench & Bar Conference at the Buffalo Thunder Resort & Casino. Please help by donating an auction item(s) for the event. Auction items can be anything from gift cards/certificates, hotel stays, art, jewelry, etc. The auction will take place Friday, Aug. 19 with a preview on Thursday, Aug. 18. All proceeds will go directly to the New Mexico State Bar Foundation. **Won't you help be part of the festivities?!**

Silent auction contributors will be promoted throughout the three day Annual Meeting, in the Annual Meeting Program Guide, and in the *Bar Bulletin*, the State Bar's official publication distributed weekly to more than 8,000 members of the New Mexico legal community. We expect more than 600 lawyers and their guests to attend the event. Your donation is also tax-deductible.

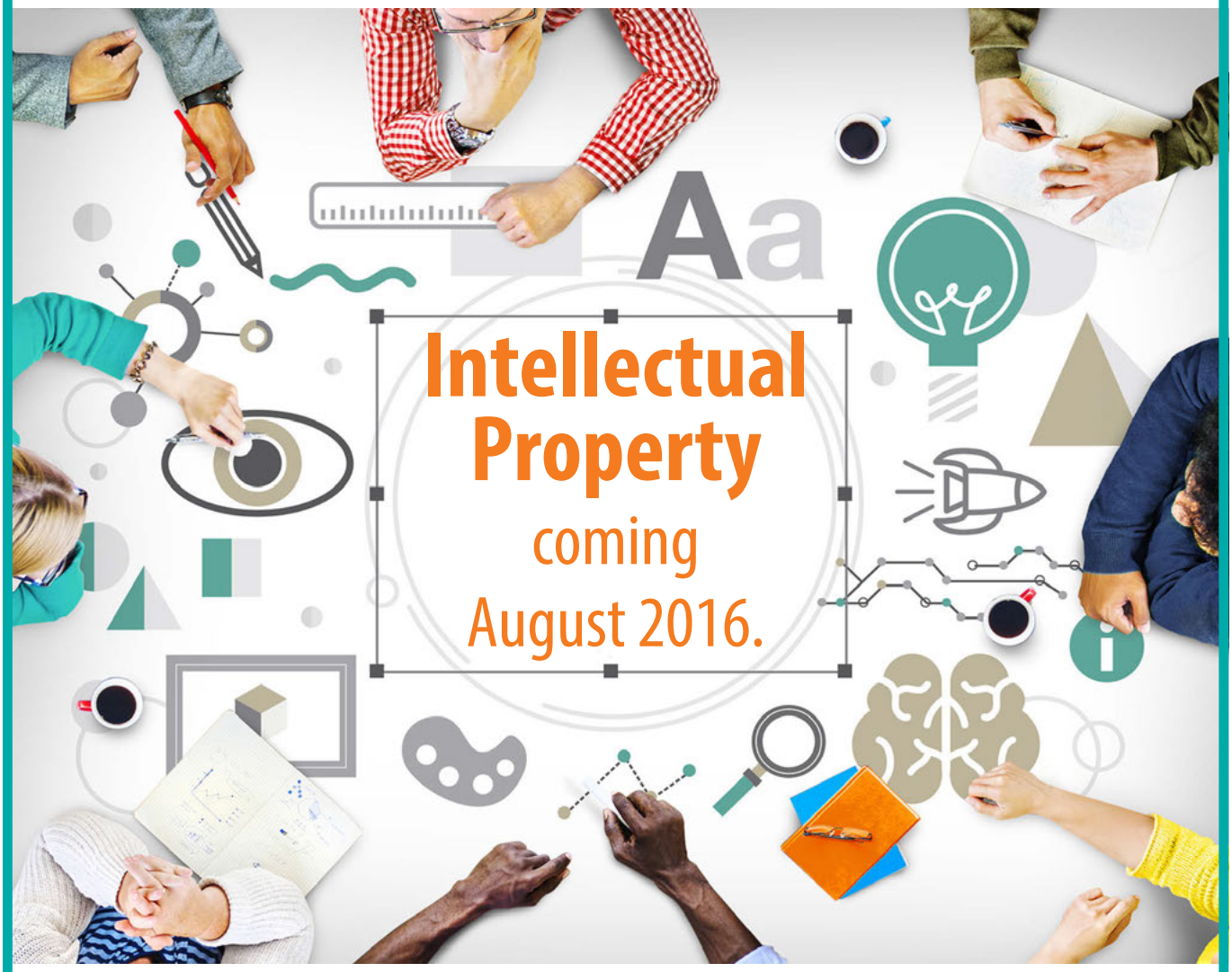
If you have an item you are willing to donate, please contact:

Stephanie Wagner
Development Director, New Mexico State Bar Foundation
505-797-6007
swagner@nmbar.org

The New Mexico State Bar Foundation is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the foundation are to:

- *Enhance* access to legal services for underserved populations
- *Promote* innovation in the delivery of legal services
- *Provide* legal education to members and the public.

NEW MEXICO Lawyer



Advertising submission is July 15.
Contact Marcia Ulibarri,
mulibarri@nmbar.org, 505-797-6058.

STATE BAR of NEW MEXICO