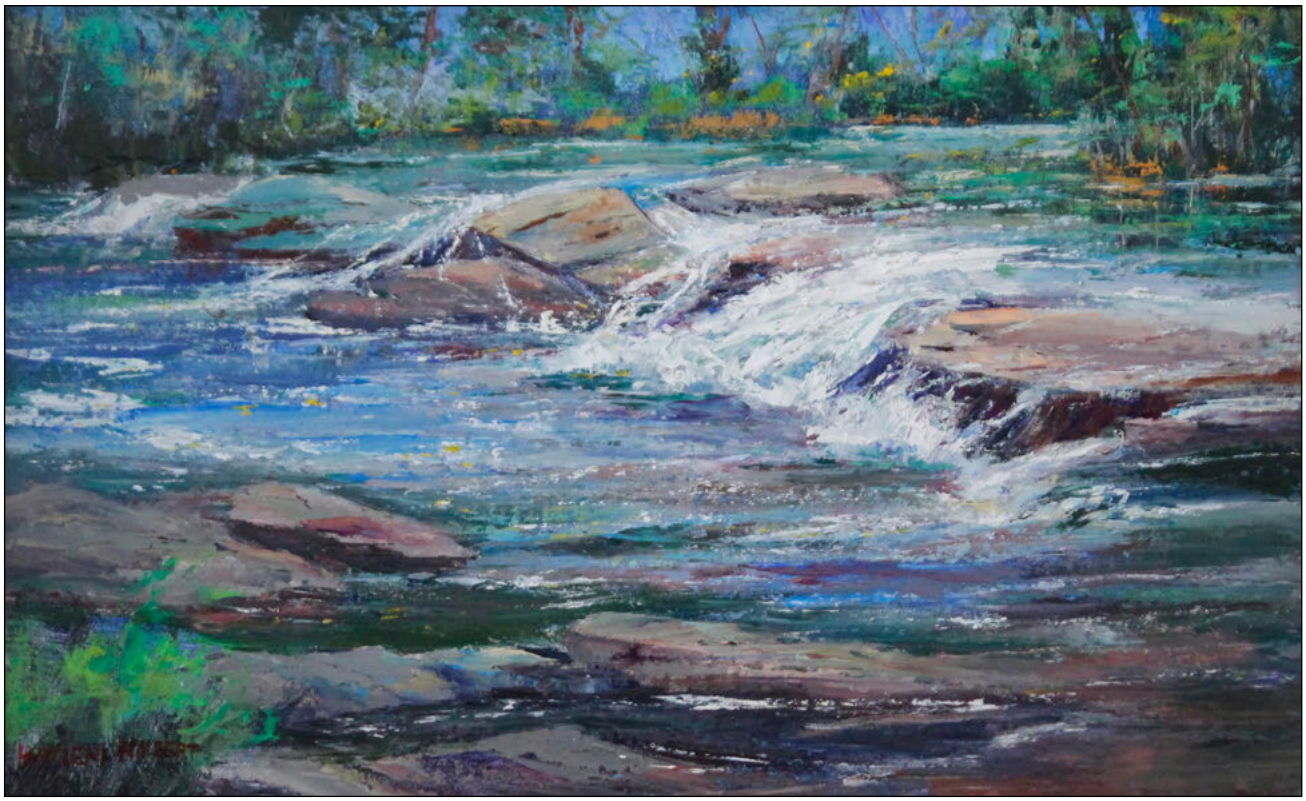
BAR BULLETIN

Official Publication of the State Bar of New Mexico

February 15, 2017 • Volume 56, No. 7



"Rushing Santa Fe River" by Karen Halbert (see page 3)

Marigold Arts Gallery

Inside This Issue

STATE BAR of NEW MEXICO

Officers, Board of Bar Commissioners
Scotty A. Holloman, President
Wesley O. Pool, President-elect
Gerald G. Dixon, Secretary Treasurer
J. Brent Moore, Immediate Past President

Board of Editors
Taylor V. Bui
Curtis G. Hayes
Jennifer R. James
Michael Sievers
Nancy L. Vincent
Gabrielle L. Dorian
Bruce L. Herr
Andrew Sefzik
Mark Standridge
Carolyn A. Wolf

State Bar Staff
Executive Director Joe Conte
Communications and Member Services Program Manager Evann Kleinschmidt
505-797-6087 • notices@nmbar.org
Graphic Designer Julie Schwartz
jschwartz@nmbar.org
Account Executive Marcia C. Ulibarri
505-797-6058 • mulibarri@nmbar.org
Digital Print Center
Manager Brian Sanchez
Assistant Michael Rizzo

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

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

February 15, 2017, Vol. 56, No. 7

Table of Contents

Meetings

February

15
Committee on Diversity in the Legal Profession, noon, State Bar Center

15
Real Property Trust and Estate Section Board: Trust and Estate Division
Noon, State Bar Center

17
Family Law Section Board
9 a.m., teleconference

17
Indian Law Section Board
Noon, State Bar Center

17
Trial Practice Section Board
Noon, State Bar Center

21
Appellate Practice Section Board
Noon, teleconference

21
Solo and Small Firm Section Board
11 a.m., State Bar Center

22
Animal Law Section Board
Noon, State Bar Center

22
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

Workshops and Legal Clinics

February

15
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

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

March

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

1
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

8
Common Legal Issues for Senior Citizens Workshop
10 a.m.–noon, Taos County Senior Program, Taos, 1-800-876-6657

15
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

About Cover Image and Artist: *Rushing Santa Fe River*, 18x24, oil on linen/panel
Karen Halbert, a former computer scientist and college professor of mathematics, transforms the beauty and patterns she sees in the numerical universe into the natural world of her paintings. Halbert spent her childhood in the American West and, it is in Santa Fe that Halbert has found her true home. In her studio, Halbert uses sketches and photographs from her plein-air work to create images full of the emotions she feels while working out-of-doors. For more of her work, visit www.karenhalbert.com.

Notices

Court News

New Mexico Supreme Court Board of Bar Examiners

New Office Location

The New Mexico Board of Bar Examiners is moving. After Feb. 15, send all correspondence to the Board, including application and reinstatement materials, to 20 First Plaza NW, Suite 710, Albuquerque, NM 87102. The Board's website and phone number remain the same: www.nmexam.org and 505-271-9706.

New Mexico Court of Appeals

Investiture Ceremony for Judge Julie J. Vargas

Members of the legal community are invited to the investiture ceremony for Hon. Julie J. Vargas of the New Mexico Court of Appeals. The ceremony will be at 4 p.m., Feb. 17, at the National Hispanic Cultural Center, Bank of America Theater, 1701 4th St. SW, Albuquerque. A reception will immediately follow at the National Hispanic Cultural Center Salon Ortega.

Third Judicial District Court

Announcement of Vacancy

A vacancy on the Third Judicial District Court will exist as of Feb. 1 due to the resignation of Hon. Darren M. Kugler effective Jan. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Alfred Mathewson, chair of the Third Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Download applications at lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., Feb. 16. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Third Judicial District Court Judicial Nominating Commission will meet at 9 a.m. on Feb. 23 to interview applicants for the position in Las Cruces. The Commission meeting is open to the public.

State Bar News

Attorney Support Groups

- Feb. 20, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)
- March 6, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- March 13. 13, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.

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

Professionalism Tip

With respect to my clients:

I will advise my client against pursuing matters that have no merit.

Appellate Practice Section

March Brown Bag Lunch with Judge French

Join the Appellate Practice Section and YLD for a brown bag lunch at noon, March 3, at the State Bar Center with guest Judge Stephen French of the New Mexico Court of Appeals. This lunch series is informal and is intended to create an opportunity for appellate judges and practitioners who appear before them to exchange ideas and get to know each other better. Those attending are encouraged to bring their own "brown bag" lunch. R.S.V.P. with Zach Ives at zach@ginlawfirm.com. Space is limited.

Solo and Small Firm Section

Random Walk Through Jurisprudence with Judge Kennedy

Judge Roderick T. Kennedy, recently retired after 16 years on the New Mexico Court of Appeals, will discuss "A Random Walk Through Jurisprudence, Science and the Liberal Arts" from noon–1 p.m., Feb. 21, at the State Bar Center. Judge Kennedy's talk is part of the Solo and Small Firm Section luncheon presentation on unique law-related subjects. All are welcome and lunch will be provided. Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P.

Young Lawyers Division

Volunteers Needed: Wills for Heroes in Albuquerque

YLD is seeking volunteer attorneys for its Wills for Heroes event for APD officers from 9 a.m.-noon, Feb. 25, at the Albuquerque Police Academy, located at 5412 2nd St in Albuquerque. Attorneys will provide free wills, healthcare and financial powers of attorney and advanced medical directives for first responders. Volunteers need no prior experience with wills. Paralegal and law student volunteers are also needed to serve at witnesses. Volunteers should arrive at 8:30 a.m. for orientation and breakfast. Contact Allison Block-Chavez at ablockchavez@abqlawnm.com to volunteer.

UNM

Law Library

Hours Through May 13

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

School of Law

'The Constitution at a Crossroads'

Leading legal scholar and "West Wing" consultant Akhil Reed Amar will present "The Constitution at a Crossroads" (1.0 G), an engaging 45 minute talk and 20 minute Q&A at 6:15 p.m., Feb. 16, at the UNM School of Law, located at 1117 Stanford NE, Albuquerque. A reception will follow. Early registration is advised. Visit goto.unm.edu/amar or call 505-277-8184.

Women's Law Caucus

Justice Mary Walters Award

Each year the Women's Law Caucus at the UNM School of Law chooses two outstanding women in the New Mexico legal community to honor in the name of former Justice Mary Walters, the first woman appointed to the New Mexico Supreme Court. In 2017 the WLC will honor Chief Judge Nan Nash of the Second Judicial District and First Assistant Federal Public Defender Margaret Katze at the Awards Dinner on March 22 at the Student Union Building on UNM's main campus. Individual tickets for the dinner can be purchased for $50. Tables can be purchased for $400 and seat approximately 10 people. Visit http://goto.unm.edu/walters to purchase tickets and receive additional

continued on page 7

Legal Education

February

16 **Use of Trust Protectors in Trust and Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **Ethics in Billing and Collecting Fees**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **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

23 **Ethics in Negotiations**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **Justice with Compassion—Facility Dogs Improving the Legal System (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **2016 Employment and Labor Law Institute**
6.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **The Ethics of Managing and Operating an Attorney Trust Account (2016 Ethicspalooza)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

28 **Estate Planning for Retirement Assets**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

March

1 **Trusts and Distributions: All About Non-Pro-Rata Distributions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **Management and Information Control Issues in Closely Held Companies: Strategies, Conflicts and Drafting Consideration**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

3 **32nd Annual Bankruptcy Year in Review Seminar**
6.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

9 **Advanced Workers Compensation**
5.6 G
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

10 **Reforming the Criminal Justice System**
6.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Indian Law 2016: What Indian Law Practitioners Need to Know**
1.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Journalism, Law and Ethics (2016 Annual Meeting)**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **New Mexico DWI Cases: From the Initial Stop to Sentencing (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

14 **Planning to Prevent Trust, Estate and Will Contests**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 **Lawyer Ethics and Investigations for and of Clients**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Drafting Demand Letters**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23–24 **Improving Client Relations in Your Practice: Using Microsoft Word, Excel and PDF Files**
12.3
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

March

24 **Microsoft Excel for Lawyers and Legal Staff**
2.8 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **What a Lawyer Needs to Know About PDF Files**
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Wildlife/Endangered Species on Public and Private Lands (2016)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Keynote Address with Justice Ruth Bader Ginsburg (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

29 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Environmental Regulations/Oil and Gas Industry (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Fear Factor: How Good Lawyers Get Into Ethical Trouble (2016)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **BDITs: Beneficiary Defective Inheritor's Trusts—Reducing Taxes, Retaining Control**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Family Law Internet Investigative and Legal Research on a Budget**
2.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **SALT: How State and Local Tax Impacts Major Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Ethics for Government Attorneys**
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

April

4 **Retail Leases: Drafting Tips and Negotiating Traps**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **All About Basis Planning for Trust and Estate Planners**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 **Add a Little Fiction to Your Legal Writing**
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

21 **Ethics of Representing the Elderly**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Settlement Agreements in Employment Disputes and Litigation**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

May

5 **Lawyer Ethics and Client Development**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Undue Influence and Duress in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **Ethics of Co-Counsel and Referral Relationships**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

continued from page 4

information. R.S.V.P. by March 14. For more information, email WLC President, Lindsey Goodwin goodwili@law.unm.edu.

Other Bars

First Judicial District Bar Association

Discounted Tickets at Ski Santa Fe

Join the First Judicial District Bar Association at Ski Santa Fe and enjoy discounted full- and half-day lift tickets on Feb. 25. Families are welcome. For more information about Ski Santa Fe (including discounted ticket prices, events, directions and transportation) visit www.skisantafe.com. To purchase lift tickets contact Mark Cox at mcox@hatcherlawgroupnm.com. Discounted tickets may not be purchased through Ski Santa Fe. Ticket payments through the FJDBA are due by close-of-business on Feb. 23. Note that refunds cannot be issued once payment is made and all participants must provide their own ski equipment and/or lessons.

New Mexico Chapter of the Federal Bar Association

An Amazing Time in the Supreme Court with Erwin Chemerinsky

The New Mexico Chapter of the Federal Bar Association is pleased to have Dean Erwin Chemerinsky return to Albuquerque. On March 31, Dean Chemerinsky will present his popular talk about the Supreme Court and its recent cases, "An Amazing Time in the Supreme Court." The talk will be presented at the Hotel Andaluz in downtown Albuquerque. The price is $75 for non-FBA members, $50 for FBA members, and $20 for law students. Check-in begins at 11:30 a.m., lunch begins at 11:45, and the CLE runs from 12:30 to 1:30. For more information, email nmfedbar@gmail.com.

State Bar of Arizona

Free Webinar on Dementia

Every 66 seconds, someone in the U.S. develops Alzheimer's disease. If dementia hasn't already impacted a colleague, friend or family member, it likely will soon. The State Bar of Arizona is offering a free webcast on this topic at 10–11:15 a.m. on Feb. 15. The program will address how to recognize dementia; responsibilities and opportunities when faced with dementia of a colleague, client, family member or yourself; and available resources. To register, visit https://azbar.inreachce.com/Details/Information/c07acd37-d3e1-46f4-9a28-9a077989a0f8.

From the Lawyers Professional Liability and Insurance Committee

Good Signs to Look for When Choosing a Professional Liability Insurance Company

Defense-within-limits policies will not erode more than half of the coverage amount.

A "defense-within-limits" policy contains a provision reducing the policy's applicable coverage by amounts paid by the insurer to defend the insured. Such provisions are also referred to as legal defense offset, shrinking limits, wasting coverage, cannibalizing limits, eroding or Pac-Man provisions. The New Mexico Public Regulation Commission has allowed such provisions to be placed in legal malpractice policies where the policy limit is at least $500,000. 13.11.2.9(B)(1)(h) NMAC.

In order for a defense-within-limits provision to be valid, the policy must not allow more than 50% of the policy limit to be eroded by defense costs. 13.11.2.10(A) NMAC. But that limitation may be omitted by the insurer if the policy allows the insured to select or consent to appointed defense counsel, participate in and assist in the direction of defense of the claim, and consent to a settlement. 13.11.2.10(C) NMAC. In other words, if the insurance policy allows significant participation by the insured attorney, the insurer may issue a policy allowing any amount of erosion of policy limits by defense costs. Depending on the policy and the claim, an insured may face a situation where he orshe has to choose between adequately defending a claim and maintaining enough of the policy limits to reach a settlement or protect his or her assets in the event of an adverse judgment.

The Lawyers Professional Liability and Insurance Committee recommends looking closely at a potential policy to determine whether it contains a legal defense offset provision and speaking with your agent or insurer to determine whether this is the best choice for you. If your chosen policy does allow for defense-within-limits, however, we recommend obtaining coverage where such wasting is limited to half of policy limits. Particularly if your policy provides for your significant participation in the defense of any claim, pay attention to any defense-within-limits provision. This could be important if you are sued and want to make sure you maintain enough coverage to pay or settle a claim while also adequately defending the suit.

This is part of a series of good signs to look for when choosing a professional liability insurance company, compiled by the Lawyers Professional Liability and Insurance Committee. Look for a new tip in the third issue of each month. Read the full list of tips and introduction in the Oct. 19, 2016, (Vol. 55, No. 42) issue of the Bar Bulletin.

Next in the Series: Positive Psychology for Lawyers

Lawyers Are at Risk for Secondary Traumatic Stress

By Hallie Neuman Love

This article, fourth in an occasional positive psychology series, examines what secondary trauma is and how positive psychology and body-based therapies are effective prevention and treatment approaches.

Introduction

Legal work is replete with stress. That's a given, but what is not as well understood is that secondary traumatic stress, also known as vicarious trauma or compassion fatigue, is a high occupational risk for lawyers.

Consider immigration and civil rights attorneys, public defenders, prosecutors, juvenile justice attorneys and family law attorneys (just to name a few) who are barraged on a daily basis with stories of traumatic hardship or violence. Many attorneys, day in and day out, directly observe their clients' pain, fear and terror as they listen to accounts of adversity and suffering. Many attorneys read stacks of heart wrenching reports of traumatic events, or view endless graphic evidence. The cumulative direct exposure to others' trauma can result in emotional duress to the lawyers and judges and other legal personnel who work with traumatized populations.

What is Secondary Trauma?

When lawyers are continually called on to support their clients and listen to their traumatized clients' feelings and experiences it is nearly unavoidable to not take in some emotional pain. Further, lawyers are obliged to control their reactions so they often maintain an image of toughness, or seek to appear unruffled as a stronghold of calm. They often feel a responsibility to fix their clients' trauma, conceivably by winning, even when they have no control over the outcome. Imaginably they may feel guilt when the outcome is not positive. To make matters more difficult, lawyers' high caseloads mean the exposure to trauma may never let up.

Under these conditions it's not surprising that some lawyers empathize with, internalize, and to some degree, experience their clients' feelings of fear, hopelessness, anger or rage. Secondary trauma can create within lawyers a state of psychological tension and preoccupation. Some may experience disturbing images from cases intruding into their thoughts or dreams, and they may experience intense emotions alongside these images. Another area of concern is that a lawyer, having been triggered by secondary trauma, may find him/herself re-experiencing personal past trauma memories.

Leading trauma, emotional intelligence, and resilience authorities agree that emotional residue from trauma gets lodged in the brain, body and nervous system. A brain response is the uncontrollable hair trigger for emotional hijacking. Body responses may be physical and emotional exhaustion, stomachaches, headaches, nausea, and a variety of physical illness. Nervous system responses may include feeling upset, on edge, or powerless and hopeless.

Secondary trauma can produce extreme imbalances in the autonomic nervous system, whereby one can get stuck in a neurochemical deluge of fight, flight, freeze, or shut-down physiology. Some nervous system symptoms of secondary trauma mimic posttraumatic stress disorder. These common symptoms include: anxiety, feeling emotionally overwhelmed, depression, insomnia and other sleeping problems, concentration problems, memory problems, feeling numb, feeling agitated and prone to anger, or hypervigilant and viewing the world as inherently dangerous.

Further, attorneys may begin to question their own competence or efficacy. With lower self-esteem and PTSD-like symptoms producing problems in work and personal relationships they may further spiral downward and be at risk for self-medicating and substance abuse. And, of course, all these responses to trauma result in less productivity and less effective representation.

While it's true that secondary trauma may be nearly unavoidable in some legal fields, it's important to understand that it is a logical response to the job. It is also vital to recognize that using prevention strategies can help you cope with your feelings and

support your nervous system to mitigate this trauma.

Those that chronically endure the effects of secondary trauma without fortifying themselves against its effects or treating it may experience debilitation that forces them to stop working or leave the field of law.

How Can Lawyers Prevent Secondary Trauma?

The types of tools for resilience training offered by the science of positive psychology can help prevent secondary trauma. "Resilience Training for Lawyers" will be the focus of a companion article in the *Bar Bulletin* Positive Psychology series, available in the near future. For now, here's a brief overview of resilience:

Resilience is the process of adapting well in the face of adversity, trauma, tragedy, threats or significant sources of stress. It means, "bouncing back" from difficult experiences.

Resilience training focuses on developing awareness of thoughts, emotions, behaviors and physiological responses (usually with mindfulness training) so you can self-regulate and change those thoughts, emotions, behaviors and physiology to achieve a desired positive outcome. Other important aspects of building resilience include a strengths-based focus in order to be more engaged, overcome challenges, and create a life aligned with one's values. Resilience is also significantly enhanced when one is able to cultivate close relationships, acquire the ability to look at situations from multiple perspectives, think creatively, develop optimism, and practice mind-body techniques that keep the autonomic nervous system in balance.

To prevent the long-term, deleterious effects from secondary trauma, it is advisable to conduct periodic self-assessments to determine if you are beginning to experience depletion, and to create an effective action plan.

Here are several effective preventative elements to incorporate into your life:

- Resilience training
- Self-care such as vacations, work breaks, exercise, healthy eating, quality sleep, hobbies or activities outside work and connection with friends and family;
- Regular use of stress-reduction techniques such as yoga, meditation, mindfulness, breathing exercises, body sensation scans and deep nervous system relaxation to turn off the fight, flight, or freeze nervous system response;
- Wherever possible have a reduced or diverse caseload, a holistic approach to work that includes overall life quality, and the ability to debrief with others who are knowledgeable and supportive of how you think and feel and how you are affected;
- Professional assistance, when necessary, is an additional avenue to increase well-being and resilience.

Treatment

It is now well understood that trauma affects the nervous system and that residue from trauma continues to affect neurophysiology even after the traumatic event has passed. To move the absorbed trauma out of the body, trauma experts agree that body-based techniques are key strategies.

Those that chronically endure the effects of secondary trauma without... treating it may experience debilitation that forces them to stop working or leave the field of law.

Here's how trauma can get lodged in the body: people who have experienced trauma often have continued autonomic nervous system and hypothalamic-pituitary-adrenal activity from the initial trauma. This is because a traumatized individual's brain doesn't distinguish between past trauma and present peril. The brain continues to indicate danger, and individuals feel body sensations from the danger long after the initial traumatic occurrence. Some body sensations may feel frightening—for example, a knot in the belly, breath-limiting tension or heart-pounding in the chest, a constricted throat, pain or thick fog in the head, the need to fight, take flight or freeze. Individuals can also experience hypo-arousal where they numb out, shut down or dissociate. If frightening sensations aren't given time and attention to move through the body and resolve or dissolve, individuals may continue to be traumatized.

Body-based therapy provides lawyers with safe, natural tools to manage and neutralize the physiological symptoms and body sensations related to trauma. Body-based therapies heal the fight-flight-freeze-collapse nervous system response and create a feeling of safety in the body whereby individuals can attain a calm and peaceful mind, experience emotions in a healthy way, feel a sense of strength, control and efficacy, and thereby begin to alleviate the malady.

Traditional talk therapy can help with insights, but when one digs up memories and relives the event by retelling the story, it can reignite the agony without undoing the effects of dread, anger, powerlessness, or depression contained within the body. This is one reason that individuals with PTSD-like symptoms respond well to body-based therapies coupled with psychotherapy.[1]

A three-year yoga and trauma study funded by the National Institutes of Health found that participation in trauma-informed yoga significantly reduced PTSD symptoms in women with treatment-resistant complex PTSD.[2]

Integrative Restoration® Yoga Nidra (iRest) is a proven body-based approach used by that the military, VA centers and countless other civilian organizations to overcome trauma.[3] As iRest founder Richard Miller explains, "It works directly by changing sensory, cognitive and emotional symptoms that keep PTSD in place. It's shown to bring about deep relaxation while also producing healthy changes in the structure of your brain, stimulating healing and tissue repair, providing you self-care skills for changing negative emotions and thoughts into positive ones… to restore an inner sense of ease and well-being."

What is Post Traumatic Growth?

People who endure psychological struggle following adversity often see positive growth afterward. As part of treatment for trauma, it's valuable to be aware of posttraumatic growth as a possibility. This is because if all you know is posttraumatic stress disorder and you have some horrible occurrence where you think you're going down a slippery slope, the symptoms will worsen. If instead, you understand that a typical response to trauma is resilience, that given time you may be stronger as a result of what you experienced, and that it's also possible to experience growth, the downward spiral can be stopped.

Psychologist Richard Tedeschi, professor of psychology at the University of North

Carolina, and Harvard psychologist Richard McNally, created a course taught to US Army soldiers on post-traumatic growth that begins with the wisdom that positive growth and personal transformation following trauma comes from a renewed appreciation of being alive, enhanced personal strength, acting on new possibilities, improved relationships, and spiritual deepening ("spiritual" meaning belonging to or serving something larger than the self). [4]

Conclusion

In conclusion, enhancing resilience can help prevent secondary trauma, and body-based therapies can help heal secondary trauma. It is important to take care of yourself in order to not become a victim of secondary trauma. Secondary trauma can cause debilitating physical and emotional symptoms as well as functional impairment such as difficulty solving problems, increased errors, and low motivation or productivity that interferes with effective legal representation and negatively impacts the legal profession.

In order to effectively advocate for your client—you need to effectively care for yourself first.

Remember, in order to effectively advocate for your client—you need to effectively care for yourself first. ■

Endnotes

[1] Sparrowe, Linda. Transcending Trauma: How Yoga Heals, YogaInternational.com, June 12, 2013.

[2] van der Kolk, BA[1], Stone L, West J, Rhodes A, Emerson D, Suvak M, Spinazzola J. Yoga as an adjunctive treatment for posttraumatic stress disorder: a randomized controlled trial. J Clin Psychiatry 2014 Jun; 75(6): 559-65

[3] Miller, Richard. The iRest Program for Healing PTSD. New Harbinger Publications, Inc. 2015

[4] hbr.org/2011/04/building-resilience

About the Author

Santa Fe attorney Hallie N. Love is nationally certified in positive psychology and mind-body therapies and is the co-author of *Yoga for Lawyers—Mind-Body Techniques to Feel Better all the Time*.

Opinions

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

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

Effective February 3, 2017

Published Opinions

No. 34257	2nd Jud Dist Bernalillo DM-06-3704, C JURY v V JURY (reverse and remand)	2/2/2017
No. 34564	2nd Jud Dist Bernalillo DM-06-3704, C JURY v V JURY (reverse and remand)	2/2/2017
No. 34410	12th Jud Dist Lincoln CR-13-61, STATE v A RAMOS (reverse and remand)	2/2/2017

Unpublished Opinions

No. 35748	2nd Jud Dist Bernalillo CR-16-269, STATE v A TAPIA (affirm)	1/30/2017
No. 34957	2nd Jud Dist Bernalillo JQ-13-127, CYFD v PAUL A (affirm)	1/30/2017
No. 35412	2nd Jud Dist Bernalillo CR-13-5537, STATE v R GALLEGOS (reverse and remand)	1/30/2017
No. 35514	12th Jud Dist Lincoln CR-15-178, STATE v A ARAUJO (reverse and remand)	1/30/2017
No. 35925	5th Jud Dist Chaves JQ-14-34, CYFD v HILARIO N (affirm)	1/31/2017
No. 35420	7th Jud Dist Socorro DM-09-9, M PADILLA v M GUM (affirm)	2/1/2017
No. 35632	9th Jud Dist Curry CR-15-233, STATE v G MAYFIELD (affirm)	2/1/2017
No. 35710	7th Jud Dist Torrance CV-11-90, BANK OF NY v S JORDAN (affirm)	2/1/2017
No. 35777	9th Jud Dist Roosevelt CR-15-74, STATE v R ORNELAS (affirm)	2/1/2017
No. 35302	8th Jud Dist Taos DV-13-135, T FASHEH v D LEIGH (reverse)	2/2/2017

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

Dated Jan. 27, 2017

Clerk's Certificate of Address and/or Telephone Changes

Robert M. Aurbach
Uncommon Approach, Inc.
2 Inglis Street
Williamstown, Australia 03016
045 889-1621
rob@uncommonapproach.com

Lauren M. Baldwin
N.M. Administrative Hearings Office
505 Marquette Avenue NW, Suite 1150
Albuquerque, NM 87102
505-383-0311
505-383-0315 (fax)
lauren.baldwin@state.nm.us

Timothy David Bergstrom
U. S. Navy
3005 Corbina Alley, Bldg. 259
San Diego, CA 92136
619-556-7437
timothy.bergstrom@navy.mil

Kari E. Brandenburg
12231 Academy Road NE
#301, PMB 338
Albuquerque, NM 87111
505-681-9540
505-433-3112 (fax)
kariblaw@aol.com

Darcy S. Bushnell
2017 Alvarado Drive NE
Albuquerque, NM 87110
505-379-5335
bushnell@law.unm.edu

Robert G. Cates
Cates Quintana Law Group
PO Box 523
Isleta Pueblo, NM 87022
505-228-4203
quincates@comcast.net

James L. Cook
Law Office of James L. Cook
2017 Quail Run Drive NE
Albuquerque, NM 87122
505-400-2785
866-340-0499 (fax)
jim@lojlc.com

Julie Marie DeWeese
Germer Bearman & Brown, PLLC
301 Congress Avenue, Suite 1700
Austin, TX 78701
512-472-0288
deweese.julie@gmail.com

Nancy A. Dominski
PO Box 10007
Saipan,
N. Mariana Islands 96950
670-234-6215
670-234-1009 (fax)
nancy.dominski@gmail.com

Shannon Laurie Donahue
208 Princessa Lane
Pismo Beach, CA 93449
505-918-3635
sldonahuepc@gmail.com

John D. Ellis
Law Offices of John D. Ellis, PLC
PO Box 40068
2030 E. Speedway Blvd., Suite 102 (85719)
Tucson, AZ 85717
520-624-5526
jellis@ellislaw.tuccoxmail.com

Veronica C. Gonzales-Zamora
Brownstein Hyatt Farber Schreck LLP
201 Third Street NW, Suite 1700
505-724-9586
505-244-9266 (fax)
vgonzales-zamora@bhfs.com

Stacey D. Haase
Law Offices of the Public Defender
800 Pile Street, Suite A
Clovis, NM 88101
575-219-6323
575-763-9808 (fax)
stacey.haase@lopdnm.us

Daniel J. Herbison
PO Box 3549
601 Solano Drive NE
Albuquerque, NM 87110
505-266-6549
dan@abqtax.com

Martin A. Juarez
Law Offices of the Public Defender
505 Marquette Avenue NW, Suite 120
Albuquerque, NM 87102
505-219-2836
martin.juarez@lopdnm.us

Charles William Kolberg
5110 Aspen Avenue NE
Albuquerque, NM 87110
505-266-6898
cwkolberg@gmail.com

Marcus A. Lucero
Office of the First Judicial District Attorney
PO Box 2041
327 Sandoval Street (87501)
Santa Fe, NM 87504
505-428-6915
505-827-5076 (fax)
mlucero@da.state.nm.us

Robert A. Mead
Washington State Library
PO Box 40751
415 Twelfth Avenue SW (98501)
Olympia, WA 98504
360-357-2156
360-357-2153 (fax)
rob.mead@courts.wa.gov

Vanessa I. Peake
Office of the Second Judicial District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102
505-222-1139
505-241-1139 (fax)
vpeake@da2nd.state.nm.us

William J. Pflugrath
Social Security Administration
5850 Lake Herbert Drive
Norfolk, VA 23502
866-779-5443
william.pflugrath@ssa.gov

David Shapiro
Office of the First Judicial District Attorney
PO Box 2041
327 Sandoval Street (87501)
Santa Fe, NM 87504
505-428-6947
dshapiro@da.state.nm.us

Dustin Slade
Pia Anderson Moss Hoyt
136 E. Temple, Suite 1900
Salt Lake City, UT 84111
801-350-9000
dslade@pamhlaw.com

Jeffrey Paul Stradling
Elmore Law, LLC
5901 Wyoming Blvd. NE, Suite J #226
Albuquerque, NM 87109
505-225-3567
jeff@elmorelawnm.com

Travis Kevin Wagman
Law Offices of the Public Defender
505 Marquette Avenue NW, Suite 120
Albuquerque, NM 87102
505-835-2246
travis.wagman@lopdnm.us

Bradley Neil Boodt
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702-669-4600
702-669-4650 (fax)
bnboodt@hollandhard.com

Ashley Nicole Bower
300 E. Basse Road #1337
San Antonio, TX 78209
ashleybower2@gmail.com

Michael Jeffrey Dale
Nova Southeastern University College of Law
3305 College Avenue
Fort Lauderdale, FL 33314
954-262-6159
954-262-3835 (fax)
dalem@nova.edu

Andrea R. De La Vega
PO Box 1157
Port Saint Joe, FL 32457
andreamreed@hotmail.com

Silvia Teresa Delgado
N.M. Human Services Department
Child Support Enforcement Division
635 Utah Avenue
Las Cruces, NM 88001
575-373-6001
575-524-6539 (fax)
silvia.delgado@state.nm.us

Jeffrey C. Lahann
Lahann Law Firm, LLC
665 E. University Avenue #2A
Las Cruces, NM 88005
575-523-4394
888-694-7421 (fax)
jeff@lahannlaw.com

Terese Renee Lahann
Lahann Law Firm, LLC
665 E. University Avenue #2A
Las Cruces, NM 88005
575-523-4394
888-694-7421 (fax)
tlahann@lahannlaw.com

Katherine Anne Nielsen
U.S. Department of Justice
1400 New York Avenue NW
Washington, DC 20005
nielsenk21@yahoo.com

Gerald Sterling O'Donnell
Law Office of
Gerald S. O'Donnell, P.A.
PO Box 13111
Las Cruces, NM 88013
575-522-2022
575-522-2023 (fax)
gsolaw@gmail.com

Khouloud E. Pearson
735 Tank Farm Road #270
San Luis Obispo, CA 93401
khouloudkayelmasri@gmail.com

Candra S. Rivers
Law Office of Steven Kim
1188 Bishop Street, Suite 2710
Honolulu, HI 96813
candrarivers01@gmail.com

Katherine R. Sutton
4317 San Pedro Drive NE #A12
Albuquerque, NM 87109
505-553-4524
ksutton01@gmail.com

Kay Ann Connelly Tyssee
3184 Dusty Moon Avenue
Henderson, NV 89052
ktyssee@yahoo.com

Terry Aguilar
4341 Paseo de la Acequia
Santa Fe, NM 87507
505-819-9057
terry@lawoffice-lh.com

Joseph M. Karnes
Sommer Karnes
& Associates, LLP
PO Box 2476
200 W. March Street,
Suite 133 (87501)
Santa Fe, NM 87504
505-989-3800
joseph@sommerkarnes.com

Michael N. Prinz
1517 Bishops Lodge Road
Santa Fe, NM 87506
505-819-3219
michaelprinzlaw@gmail.com

N. Naomi Salazar
PO Box 26542
Albuquerque, NM 87125
505-243-4433
505-243-1441 (fax)
naomisalazar@msn.com

Thomas C. Turner Jr.
Buckley & Turner, PLLC
1302 Waugh Drive #326
Houston, TX 77019
832-930-6846
866-407-3342 (fax)
tc.turner@buckleyturner.com

Linda Kay Wilson
Enlace Comunitario
PO Box 8919
2425 Alamo Avenue SE (87106)
Albuquerque, NM 87198
505-246-8972
505-764-4988 (fax)
lwilson@enlacenm.org

Carolyn A. Wolf
2955 Camino Piedra Lumbre
Santa Fe, NM 87505
505-490-0349
cawolf2955@gmail.com

Clerk's Certificate of Withdrawal

Effective January 26, 2017:
Scott S. Crocker
1301 W. 25th Street, Suite 408
Austin, TX 78705

Effective January 26, 2017:
Carolyn M. Dahlgren
34 Kings Row Street
Carbondale, CO 81623

Effective January 26, 2017:
Kyle J. Elliott
10730 Providence Way
San Antonio, TX 78240

Effective January 26, 2017:
Pamela Jill Porter Hamblin
2004 Redondo Peak Drive NW
Albuquerque, NM 87120

Effective January 26, 2017:
Temple Byrn Ingram Jr.
14512 Friendswood Lane
Austin, TX 78737

Effective January 26, 2017:
Suzanne E. Santemma
Los Alamos National Bank
1200 Trinity Drive
Los Alamos, NM 87544

Effective January 26, 2017:
Laura L. Watchempino
PO Box 407
Pueblo of Acoma, NM 87034

Effective January 26, 2017:
Michael L. Winchester
4226 Winchester Road
Las Cruces, NM 88011

In Memoriam

As of January 8, 2017:
Ralph P. Kress
9511 Elvin Avenue NE
Albuquerque, NM 87112

Clerk's Certificate of Reinstatement to Active Status

January 26, 2017:
Joel M. Sauer
2208 Lester Drive NE, Apt. 205
Albuquerque, NM 87112
951-880-8670
joelsauer1@gmail.com

Clerk's Certificate of Change to Inactive Status

Effective December 2, 2016:
Michael S. Martinez
1601 E. Lamar Blvd., Suite 114
Arlington, TX 76011

Effective December 8, 2016:
Richard Paul Fahey
200 Mansion Heights Drive
Missoula, MT 59803

Effective December 15, 2016:
Brendan K. Egan
PO Box 37322
Albuquerque, NM 87176

Effective December 31, 2016:
M. Daisy Everhart
PO Box 220077
El Paso, TX 79913

Janice D. Paster
5553 Eakes Road NW
Los Ranchos, NM 87107

Hon. Leon Schydlower
525 Magoffin Avenue,
Suite 551
El Paso, TX 79901

Archie A. Witham
PO Box 83
Nogal, NM 88341

Effective January 1, 2017:
Keith Scott Burn
1851 Copper Loop
Las Cruces, NM 88005

Gary J. Cade
8901 Comanche Road NE
Albuquerque, NM 87111

Rebecca Whisner Ehler
280 Bryce Avenue
White Rock, NM 87547

Jack R. Fisher
223 N. Guadalupe Street,
PMB 509
Santa Fe, NM 87501

Karen B. Foster
4400 Masthead Street NE
Albuquerque, NM 87109

Rachel Sarah King
2121 Euclid Avenue
Cleveland, OH 44115

Tiffany Sedillos
445 Minnesota Street,
Suite 1400
St. Paul, MN 55101

Trevor Thomas White
833 E. Plaza Circle, Suite 200
Yuma, AZ 85365

Effective January 1, 2017, and have new addresses:
James B. Hicks III
300 Oak Street, Suite 300
Abilene, TX 79602

James O'Connell
124 Splitrock Lane
Universal City, TX 78148

John Marvin Wells
934 Fairway Road NW
Albuquerque, NM 87107

Effective January 4, 2017:
Diane Daughton
2175 Deer Trail
Los Alamos, NM 87544

Effective January 9, 2017:
William Nathaniel Weiss
PO Box 32026
Santa Fe, NM 87594

Effective January 10, 2017:
Le Ette R. Lawrence
9713 Camino del Sol NE
Albuquerque, NM 87111

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective February 15, 2017

Pending Proposed Rule Changes Open for Comment:

There are no proposed rule changes currently open for comment.

Recently Approved Rule Changes Since Release of 2016 NMRA:

Effective Date (except where noted differently: 12/31/2016)

Rules of Civil Procedure for the District Courts

1-005.2	Electronic service and filing of pleadings and other papers	01/01/2017
1-007.2	Time limit for filing motion to compel arbitration	
1-009	Pleading special matters	07/01/2017
1-017	Parties plaintiff and defendant; capacity	07/01/2017
1-023	Class actions	
1-054	Judgments; costs	
1-055	Default	07/01/2017
1-060	Relief from judgment or order	07/01/2017
1-079	Public inspection and sealing of court records	05/18/2016
1-083	Local rules	
1-093	Criminal contempt	
1-096	Challenge of nominating petition	
1-104	Courtroom closure	
1-120	Domestic relations actions; scope; mandatory use of court-approved forms by self-represented litigants	
1-128	Uniform collaborative law rules; short title; definitions; applicability	
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/2016
1-128.1	Collaborative law participation agreement; requirements	
1-128.2	Initiation of collaborative law process; voluntary participation; conclusion; termination; notice of discharge or withdrawal of collaborative lawyer; continuation with successor collaborative lawyer	
1-128.3	Proceedings pending before tribunal; status report; dismissal	
1-128.4	Emergency order	
1-128.5	Adoption of agreement by tribunal	
1-128.6	Disqualification of collaborative lawyer and lawyers in associated law firm	
1-128.7	Disclosure of information	
1-128.8	Standards of professional responsibility and mandatory reporting not affected	
1 128.9	Appropriateness of collaborative law process	
1-128.10	Coercive or violent relationship	
1-128.11	Confidentiality of collaborative law communication	
1-128.12	Privilege against disclosure for collaborative law communication; admissibility; discovery	
1-128.13	Authority of tribunal in case of noncompliance	

Rules of Civil Procedure for the Magistrate Courts

2-110	Criminal contempt	
2-114	Courtroom closure	
2-305	Dismissal of actions	
2-702	Default	
2-705	Appeal	

Rules of Civil Procedure for the Metropolitan Courts

3-110	Criminal contempt	
3-114	Courtroom closure	
3-204	Service and filing of pleadings and other papers by facsimile	
3-205	Electronic service and filing of pleadings and other papers	
3-702	Default	

Civil Forms

4-204	Civil summons	
4-226	Civil complaint provisions; consumer debt claims	07/01/2017
4-306	Order dismissing action for failure to prosecute	
4-309	Thirty (30) day notice of intent to dismiss for failure to prosecute	
4-310	Order of dismissal for failure to prosecute	
4-702	Motion for default judgment	
4-702A	Affirmation in support of default judgment	
4-703	Default judgment; judgment on the pleadings	
4-909	Judgment for restitution	
4-909A	Judgment for restitution	
4-940	Notice of federal restriction on right to possess or receive a	05/18/2016
4-982	Withdrawn	
4-986	Withdrawn	
4-989	Withdrawn	
4-990	Withdrawn	

Rules of Criminal Procedure for the District Courts

5-102	Rules and forms	
5-104	Time	
5-112	Criminal contempt	
5-123	Public inspection and sealing of court records	05/18/2016
5-124	Courtroom closure	

5-304	Pleas	
5-511	Subpoena	
5-511.1	Service of subpoenas and notices of statement	
5-614	Motion for new trial	
5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/2016
5-801	Reduction of sentence	

Rules of Criminal Procedure for the Magistrate Courts

6-102	Conduct of court proceedings	
6-109	Presence of the defendant	
6-111	Criminal contempt	
6-116	Courtroom closure	
6-201	Commencement of action	
6-209	Service and filing of pleadings and other papers	
6-506	Time of commencement of trial	05/24/2016
6-601	Conduct of trials	

Rules of Criminal Procedure for the Metropolitan Courts

7-109	Presence of the defendant	
7-111	Criminal contempt	
7-115	Courtroom closure	
7-201	Commencement of action	
7-209	Service and filing of pleadings and other papers	
7-304	Motions	
7-506	Time of commencement of trial	05/24/2016
7-606	Subpoena	

Rules of Procedure for the Municipal Courts

8-102	Conduct of court proceedings	
8-108	Presence of the defendant	
8-110	Criminal contempt	
8-114	Courtroom closure	
8-201	Commencement of action	
8-208	Service and filing of pleadings and other papers	
8-506	Time of commencement of trial	05/24/2016
8-601	Conduct of trials	

Criminal Forms

9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/2016
9-611	Withdrawn	
9-612	Order on direct criminal contempt	
9-613	Withdrawn	

Children's Court Rules and Forms

10-103	Service of process	
10-163	Special masters	
10-166	Public inspection and sealing of court records	05/18/2016*
10-168	Rules and forms	
10-171	Withdrawn	05/18/2016*
10-315	Custody hearing	11/28/2016
10-318	Placement of Indian children	11/28/2016
10-322	Defenses and objections; when and how presented; by pleading or motion	
10-325	Notice of child's advisement of right to attend hearing	
10-340	Testimony of a child in an abuse or neglect proceeding	
10-408A	Withdrawn	
10-413	Withdrawn	
10-414	Withdrawn	
10-417	Withdrawn	
10-502	Summons	
10-521	ICWA notice	11/28/2016
10-560	Subpoena	
10-570	Notice of child's advisement of right to attend hearing	
10-571	Motion to permit testimony by alternative method	
10-604	Withdrawn	05/18/2016*
10-701	Statement of probable cause	
10-702	Probable cause determination	
10-703	Petition	
10-704	Summons to child Delinquency Proceeding	
10-705	Summons to parent or custodian or guardian – Delinquency Proceeding	
10-706	Order of appointment of attorney for child and notice and order to parent(s), guardian(s), or custodian(s)	
10-707	Eligibility determination for indigent defense services	
10-711	Waiver of arraignment and denial of delinquent act	
10-712	Plea and disposition agreement	
10-713	Advice of rights by judge	
10-714	Consent decree	
10-715	Motion for extension of consent decree	
10-716	Judgment and Disposition	
10-717	Petition to revoke probation	
10-718	Sealing order	
10-721	Subpoena	
10-722	Affidavit for arrest warrant	
10-723	Arrest warrant	
10-724	Affidavit for search warrant	
10-725	Search warrant	
10-726	Bench warrant	
10-727	Waiver of right to have a children's court judge preside over hearing	
10-731	Waiver of arraignment in youthful offender proceedings	
10-732	Waiver of preliminary examination and grand jury proceeding	
10-741	Order for evaluation of competency to stand trial	
10-742	Ex parte order for forensic evaluation	
10-743	Order for diagnostic evaluation	
10-744	Order for pre dispositional diagnostic evaluation	
10-745	Order for evaluation of amenability to treatment for youthful offender (requested by defense counsel)	
Rule Set 10 Table	Table of Corresponding Forms	

*On June 27, 2016, the Court issued Order No. 16-8300-003 provisionally approving amendments to Rule 10-166 NMRA and provisionally approving new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. On November 28, 2016, the Court issued Order No. 16-8300-037, withdrawing the provisionally-approved amendments to Rule 10-166 NMRA and the provisionally-approved new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. Accordingly, Rule 10-166 NMRA has been restored to the version approved by

Order No. 11-8300-010, and Rule 10-171 and Form 10-604 have been withdrawn.

Rules of Evidence

11-803	Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness

Rules of Appellate Procedure

12-101	Scope and title of rules
12-201	Appeal as of right; when taken
12-202	Appeal as of right; how taken
12-203	Interlocutory appeals
12-203.1	Appeals to the Court of Appeals from orders granting or denying class action certification
12-204	Appeals from orders regarding release entered prior to a judgment of conviction
12-206	Stay pending appeal in children's court matters
12-206.1	Expedited appeals from children's court custody hearings
12-208	Docketing the appeal
12-209	The record proper (the court file)
12-302	Appearance, withdrawal, or substitution of attorneys; changes of address or telephone number
12-305	Form of papers prepared by parties.
12-309	Motions
12-310	Duties of clerks
12-317	Joint or consolidated appeals
12-318	Briefs
12-319	Oral argument
12-320	Amicus curiae
12-321	Scope of review; preservation
12-322	Courtroom closure
12-402	Issuance and stay of mandate
12-403	Costs and attorney fees
12-404	Rehearings
12-501	Certiorari from the Supreme Court to the district court regarding denial of habeas corpus
12-503	Writs of error
12-504	Other extraordinary writs from the Supreme Court
12-505	Certiorari from the Court of Appeals regarding district court review of administrative decisions
12-601	Direct appeals from administrative decisions where the right to appeal is provided by statute
12-602	Appeals from a judgment of criminal contempt of the Court of Appeals
12-604	Proceedings for removal of public officials within the jurisdiction of the Supreme Court
12-606	Certification and transfer from the Court of Appeals to the Supreme Court
12-607	Certification from other courts to the Supreme Court
12-608	Certification from the district court to the Court of Appeals

Uniform Jury Instructions – Civil

13-1830	Measure of damages; wrongful death (including loss of consortium)

Uniform Jury Instructions – Criminal

14-301	Assault; attempted battery; essential elements
14-303	Assault; attempted battery; threat or menacing conduct; essential elements
14-304	Aggravated assault; attempted battery with a deadly weapon; essential elements
14-306	Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; essential elements
14-308	Aggravated assault; attempted battery with intent to commit a felony; essential elements
14-310	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements
14-311	Aggravated assault; attempted battery with intent to commit a violent felony; essential elements
14-313	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-351	Assault upon a [school employee] [health care worker]; attempted battery; essential elements
14-353	Assault on a [school employee] [sports official] [health care worker]; attempted battery; threat or menacing conduct; essential elements
14-354	Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery with a deadly weapon; essential elements
14-356	Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery; threat or menacing conduct with a deadly weapon; essential elements
14-358	Aggravated assault on a [school employee] [health care worker]; attempted battery with intent to commit a felony; essential elements
14-360	Aggravated assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements
14-361	Assault on a [school employee] [health care worker]; attempted battery with intent to commit a violent felony; essential elements
14-363	Assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-371	Assault; attempted battery; "household member"; essential elements
14-373	Assault; attempted battery; threat or menacing conduct; "household member"; essential elements
14-374	Aggravated assault; attempted battery with a deadly weapon; "household member"; essential elements
14-376	Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; "household member"; essential elements
14-378	Aggravated assault; attempted battery with intent to commit a felony; "household member"; essential elements
14-380	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; "household member"; essential elements
14-381	Assault; attempted battery with intent to commit a

	violent felony; "household member"; essential elements
14-383	Assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; "household member"; essential elements
14-990	Chart
14-991	Failure to register as a sex offender; 1999 and 2000 versions of SORNA; essential elements
14-992	Failure to register as a sex offender; 2005, 2007, and 2013 versions of SORNA; essential elements
14-993	Providing false information when registering as a sex offender; essential elements
14-994	Failure to notify county sheriff of intent to move from New Mexico to another state, essential elements
14-2200	Assault on a peace officer; attempted battery; essential elements
14-2200A	Assault on a peace officer; threat or menacing conduct; essential elements
14-2200B	Assault on a peace officer; attempted battery; threat or menacing conduct; essential elements
14-2201	Aggravated assault on a peace officer; attempted battery with a deadly weapon; essential elements
14-2203	Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with a deadly weapon; essential elements
14-2204	Aggravated assault on a peace officer; attempted battery with intent to commit a felony; essential elements
14-2206	Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with intent to commit a felony; essential elements
14-2207	Aggravated assault on a peace officer; attempted battery with intent to commit a violent felony; essential elements
14-2209	Aggravated assault on a peace officer; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-3106	Possession of a dangerous drug
14-4503	Driving with a blood or breath alcohol concentration of eight one hundredths (.08) or more; essential elements
14-4506	Aggravated driving with alcohol concentration of (.16) or more; essential elements
14-5120	Ignorance or mistake of fact

Rules Governing Admission to the Bar

15-104	Application
15-205	Grading and Scoring
15-302	Admission to practice

Rules of Professional Conduct

16-108	Conflict of interest; current clients; specific rules

Rules Governing Discipline

17-202	Registration of attorneys
17-204	Trust accounting
17-208	Incompetency or incapacity
17-214	Reinstatement

Rules Governing the Client Protection Fund

17A-005	Composition and officers of the commission

Rules Governing the Unauthorized Practice of Law

17B 005	Civil injunction proceedings
17B 006	Determination by the Supreme Court

Rules Governing the Recording of Judicial Proceedings

22-101	Scope; definitions; title
22-204.1	Temporary Certification for Court Reporters

Supreme Court General Rules

23-107	Broadcasting, televising, photographing, and recording of court proceedings; guidelines

Rules Governing the New Mexico Bar

24-101	Board of Bar Commissioners
24-102	Annual license fee
24-110	"Bridge the Gap: Transitioning into the Profession" program
24-111	Emeritus attorney

Recompiled and Amended Local Rules for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Judicial District Courts

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

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-099

No. 34,588 (filed August 22, 2016)

DAVID CHRISTOPHER and JULIA M. CHRISTOPHER, husband and wife,
Plaintiffs/Counter-Defendants-Appellees,
v.
KENNETH H. OWENS,
Defendant/Cross-Defendant-Appellee,

and

SONORA CORPORATION, a New Mexico Corporation,
Defendant/Counterclaimant/Cross-Claimant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
JAMES WAYLON COUNTS, District Judge

A. J. OLSEN
ALVIN F. JONES
OLIVIA R. MITCHELL
HENNIGHAUSEN & OLSEN, L.L.P.
Roswell, New Mexico
for Appellees
David & Julia M. Christopher

KELLY MACK CASSELS
SANDERS, BRUIN, COLL
& WORLEY, P.A.
Roswell, New Mexico
for Appellee Kenneth H. Owens

J. ROBERT BEAUVAIS
J. ROBERT BEAUVAIS, P.A.
Ruidoso, New Mexico
for Appellant

Opinion

Michael D. Bustamante, Judge

{1} This case—which may turn out to be much ado about nothing—presents an object lesson in how not to structure the purchase and sale of water interests in New Mexico. The district court ruled that Appellee Kenneth Owens did not—indeed, could not—reserve any cognizable water interest when he sold a ranch to Appellees David and Julia Christopher (Christophers). The district court also held that Owens did not provide any actionable warranty covenants when he deeded his interest to Appellant Sonora Corporation. Only Sonora appeals. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

{2} The historical facts giving rise to this case are simple and undisputed. In 1998 Owens sold his "High Nogal Ranch" to the Christophers by warranty deed. The ranch included a water source commonly known as the Maxwell Springs. Owens was apparently initially reluctant to include the land surrounding the Maxwell Springs in the sale, but eventually agreed to include the property in exchange for an additional $100,000 over the sale price and an agreement that he could retain an interest in the water produced from it. The warranty deed conveying the real estate includes the following language:

> Reserving, however, a right of way over the existing roads from Highway 54 to the Apache Ranch. Together with a full three[-]inch pipe line of water from Maxwell Springs to the High Nogal Ranch house through the existing three[-] inch pipe line. Water flow will be 24 hours a day 7 days a week. The balance of water produced from Maxwell Springs now existing or as developed in the future will be owned [fifty percent] each by David Christopher and Kenneth H. Owens.

{3} Owens then sold his fifty percent interest to Appellant Sonora in 2002 using a New Mexico form real estate contract. The real estate being conveyed was described as follows:

> All the Grantor's right, title and interest in and to the reservation to him of water and rights thereto from the Maxwell Springs located on the High Nogal Ranch contained in that certain [w]arranty [d]eed dated May 8, 1998[,] and filed for record on May 15, 1998[,] in Book 889 at Page 43 of the records of Otero County, New Mexico, by and between the Grantor and David Christopher and Julia M. Christopher, his wife, as Grantees. The division of water from said Maxwell Springs is stated therein as follows:
>
> "Together with a full three[-] inch pipe line of water from Maxwell Springs to the High Nogal Ranch House through the existing three[-] inch pipe line. Water [f]low will be 24 hours a day 7 days a week. The [b]alance of water produced from Maxwell Springs now existing or as developed in the future will be owned [fifty percent] each by David Christopher and Kenneth H. Owens."
>
> This conveyance is intended to not impair any rights granted to the Christophers, but includes all right, title and interest in said water from the Maxwell Springs retained by Kenneth H. Owens in said warranty deed.

The warranty deed accompanying the real estate contract repeated this legal description and, in accord with the statutory deed form, concluded "with warranty covenants." For reasons not important to our analysis, the real estate contract was later converted to a note and mortgage. As a result of the conversion, the deed was recorded in February 2009.

{4} The difficulties between the parties arose from their efforts to develop and market water from the Maxwell Springs. In January 2003 the Christophers filed an "Application for Permit to Appropriate" water from the Maxwell Springs with the New Mexico State Engineer. The record does not reveal what the current status of the application is, but it is not disputed that the City of Alamogordo (the City) filed an objection to the Christophers' application with the State Engineer. In January 2007 the Christophers and the City settled their

differences by entering into an agreement whereby they would not interfere with each other's attempts to establish water appropriation rights. In addition, the City agreed to purchase "up to the permitted amount of Maxwell Spring[s] water" subject to certain conditions. The record does not reveal whether the Christophers have received a permit or whether this agreement has been put to actual effect as yet.

{5} On or about July 2, 2007, Owens filed his own "Application for Permit to Appropriate" water from the Maxwell Springs. Given that Owens had sold his interest in the Maxwell Springs water to Sonora some five years earlier, it is not clear why Owens filed the application. The record below provides no clarity on the matter. In any event, Owens' application and the recording of the Owens/Sonora warranty deed apparently prompted the filing of this action.

{6} In March 2009 the Christophers filed a complaint naming only Owens as a defendant. Within three weeks they filed an amended complaint naming Sonora as an additional defendant. The substantive allegations of the complaints are the same. The complaints sought a declaration that Owens did not own an interest in the water from the Maxwell Springs and that his attempt to reserve an interest in the water was a legal nullity. The complaints also asserted that since Owens owned no legally cognizable interest in the waters of the Maxwell Springs, he had conveyed nothing to Sonora. And, thus Sonora had no basis on which it could seek to appropriate water from the Maxwell Springs either. The complaints also asserted claims of slander of title, civil conspiracy, and tortious interference with the contractual relations between the Christophers and the City.

{7} Initially represented by the same counsel, Owens and Sonora filed a joint answer, including a counterclaim for declaratory judgment in their favor as to the legal "effect of the reservation contained in the Owens-Christopher deed."

{8} After an initial discovery period, the parties filed motions for summary judgment. Relying on general water law principles, the Christophers argued that Owens never had a recognized water right in the Maxwell Springs water because he did not do anything required by New Mexico law while he owned the ranch to have such a right acknowledged and approved by the State Engineer. The Christophers also argued that he could not legally reserve any interest in the Maxwell Springs water because of the inherently speculative nature of such an interest. And, the Christophers argued, Owens' simple ownership of the land over the Maxwell Springs did not by itself create an ownership interest in the water located beneath the land. *Hydro Res. Corp. v. Gray*, 2007-NMSC-061, ¶ 17, 143 N.M. 142, 173 P.3d 749 (noting that "a water right is not an automatic stick in the bundle of rights a landowner receives upon purchasing even a fee interest in land" (internal quotation marks and citation omitted)).

{9} Still represented at the time by the same attorney, Owens' and Sonora's motion for summary judgment took an entirely different tack. Their argument was that the Owens/Christophers deed created a "joint relationship in which they would each own an undivided [fifty percent] interest in the present or future water to be derived from Maxwell Spring[s]." Carrying the thought further, Owens and Sonora argued that through the deed to the Christophers, Owens and the Christophers "agreed to become joint developers as to the excess water derived and to be derived from Maxwell Spring[s]." Owens and Sonora thus attempted to frame the issue as a matter of contract between the parties.

{10} The district court heard arguments on the two motions at the same time. Over two years later the district court entered a "Minute Order" granting the Christophers' motion and declaring that Owens and Sonora "have no rights to any water rights arising out of the Maxwell Springs." The district court also denied Owens' and Sonora's motion for summary judgment. The district court certified its order for interlocutory appeal, but this Court refused to accept the appeal.

{11} At this point the parties' tactics changed. The attorney who had represented both Owens and Sonora withdrew from the case and was replaced by separate counsel for the two defendants. Sonora promptly sought leave to supplement its answer and add a cross-claim against Owens. The cross-claim asserted that Owens was in breach of his warranty obligations under the Owens/Sonora deed to properly convey title and to defend the title conveyed.

{12} As before, this phase of the litigation was conducted by way of competing motions for summary judgment. Sonora filed its motion first, relying on the district court's ruling that Owens had no ownership in the Maxwell Springs to argue that Owens necessarily breached the warranty covenants of the deed as defined in NMSA 1978, Section 47-1-37 (1947). Owens filed a lengthy response, arguing that the warranty covenant was of no effect given the manner in which the property being conveyed was described in the deed. Sonora filed a second motion for summary judgment against Owens arguing a breach of contract theory that relied on the real estate contract the parties entered into in 2002. Owens' response relied on the theory of merger to argue that the real estate contract was no longer in effect or even relevant to the transaction.

{13} The district court agreed with Owens' arguments and dismissed Sonora's cross-claim in two orders—a "Minute Order" filed in December 2013 and a more formal judgment entered in March 2015.

{14} Interestingly, in August 2014 Owens filed a disclaimer wherein he disclaimed "any interest in the water rights which are the subject of this action." And, as a matter of historical note, the Christophers sold the High Nogal Ranch in February 2007 reserving in themselves "water rights for commercial, domestic, municipal, industrial, and subdivision purposes from Maxwell Springs per Grantors' pending application No. SP-4896 on file with the Office of the New Mexico State Engineer."

ANALYSIS

{15} The odd circumstances in this case present three issues: Did Owens reserve any cognizable interest in the water of the Maxwell Springs? If he did not, did he breach any warranty covenants when his deed failed to convey to Sonora any interest in the waters of the Maxwell Springs? Did he breach any contractual obligations when the deed he delivered to Sonora failed to convey any interest in the Maxwell Springs? We deal with each issue in turn.

A. Owens Reserved an Interest in the Maxwell Springs Waters Rights

{16} We conclude that Owens did reserve a cognizable interest in the water of the Maxwell Springs that he could enforce as to his buyers, the Christophers. We also conclude that Owens could sell and assign his interest to Sonora.

{17} Summary judgment is proper where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. Our review is de novo. *Id.*

{18} Unlike most cases in which the parties argue about the existence of material questions of fact based on a plethora of

evidence in the record, this matter is marked by the paucity of its record. For example, the deed conveying the High Nogal Ranch from Owens to the Christophers is the only document executed by them memorializing the sale. There are no affidavits in the record from the parties describing what they thought they were buying and selling. The Christophers' deposition testimony in the record does not reveal any questions and answers concerning what they thought the reservation language meant. Owens' deposition testimony does include his view of what he owned in the Maxwell Springs. Owens asserted in his deposition that he had not sold water rights. Rather, in his view, he simply sold "half the spring[s]" as an asset that he owned as part of the ranch. He saw it as an asset that he could sell or not. Over coffee with David Christopher, Owens agreed to sell the land surrounding the Maxwell Springs if he could keep a fifty percent interest in the water that might be developed from it.

{19} In short, the record is essentially devoid of evidence concerning the parties' construction of the deed. Given the state of the record we are left to "interpret the intention [of the parties] from the language of the instrument itself." *Atl. Ref. Co. v. Beach*, 1968-NMSC-003, ¶ 8, 78 N.M. 634, 436 P.2d 107. Thus, the inquiry as to the meaning and effect of the "reserving" language in the deed presents a question of law. Our review again is de novo. *Papatheofanis v. Allen*, 2009-NMCA-084, ¶ 8, 146 N.M. 840, 215 P.3d 778.

{20} Interestingly, the parties do not agree on which body of law should be applied. The Christophers argue that New Mexico's statutory and regulatory water law regime overrides all other considerations, and under that law Owens did not own any water rights that he could convey or retain. From the Christophers' standpoint the only relevant undisputed facts are that Owens never did anything before he sold the ranch to perfect a water right as such. He never filed for a permit to appropriate water or a declaration of ownership of water in connection with the Maxwell Springs with the State Engineer. In fact he had no dealings with the State Engineer while he owned the ranch. And he did not put the water from the Maxwell Springs to beneficial use for anything other than limited domestic use and whatever "irrigation" occurred naturally.

{21} Owens' and Sonora's position below relied on contract principles. They asserted that the deed reservation reflected an intent to create a joint effort in which the Christophers and Owens would work together to develop and market the waters of the Maxwell Springs. On appeal, Sonora argues that the deed was sufficient to reserve—as against the Christophers—one-half of the pre-1907 rights asserted by the Christophers in the Application for Permit to Appropriate they filed with the State Engineer.

{22} The district court apparently agreed with the Christophers' theory of the case, since it ruled that Owens and Sonora "have no rights to any water rights arising out of the Maxwell Springs." We disagree.

{23} We begin by reminding ourselves—and the parties—that the case does not involve a claim to "water rights" as against the world. Rather, the issue to resolve is what the Owens/Christophers deed means as between the parties to it. The concepts the Christophers rely on are thus largely irrelevant to this case because they are designed to order the ownership and use of water in a larger public arena. Water is a public and scarce resource. Competing claims against it must be known, weighed, tested, and balanced. The competition for recognition of permitted, licensed, and recognized "water rights" in a scarce public good—with as early a priority date as possible—is what drives the need for the statutory and regulatory process Owens admits he never followed.

{24} But the regulatory process of recognizing and prioritizing water rights is not applicable to the issues that may arise as between a buyer and seller and how they choose to structure a transaction between themselves.[1] The Christophers do not assert that they thought they were buying a recognized, licensed, and permitted water right. Owens does not assert that he was selling and reserving a recognized, licensed, and permitted water right. In fact, so far as the record here is concerned, there is still no recognized, licensed, and permitted water right founded on the Maxwell Springs. What, then, is the most likely interpretation of what the deed means? The parties obviously thought they were buying, selling, and reserving something—with that something valued by them at $100,000.

{25} It is a given that Owens did not own a recognized "water right" in the sense that term is normally used in New Mexico. He owned land that included water sources, specifically the Maxwell Springs. As the landowner he had the inchoate right to pursue the development, establishment, and perfection of water rights for the waters of the Maxwell Springs. The Christophers received no more than Owens had: a right to—or opportunity to—pursue the development, establishment, and perfection of water rights. They took advantage of that opportunity when they started their proceedings with the State Engineer.

{26} We fail to see why the parties could not agree to split or share that inchoate right to pursue "water rights." To the contrary, we conclude that the parties could agree to split the opportunity as they saw fit and that agreement would be enforceable as between them. The interpretation of the deed that best fits the facts as we know them is that Owens conveyed the realty within which the Maxwell Springs lay, but kept—or reserved—the right to pursue perfection of a water right equal to fifty percent of whatever water might be provable and available for application to beneficial use. On the Christophers' side of the ledger, they received the real estate surrounding the Maxwell Springs, which included the right to pursue perfection of a water right to an undivided half of the water available from the Maxwell Springs. The deed does no more than allocate the opportunity evenly between them.

{27} The Christophers cite no authority prohibiting two parties from entering into an arrangement such as we describe. As they note, except for appurtenant rights, water interests are separate from real estate surface interest. *See Hydro Res. Corp.*, 2007-NMSC-061, ¶ 17. We see no reason why this concept does not apply to the inchoate interest the parties were dealing in here.

{28} The most relevant argument the Christophers make is that Owens could not reserve an interest because of the speculative nature of his intent to divert water. The cases cited by the Christophers simply do not apply here. The facts in those

[1]We recognize that issues can arise with regard to the unintended conveyance of unsevered appurtenant water rights. *See Turner v. Bassett*, 2005-NMSC-009, ¶ 24, 137 N.M. 381, 111 P.3d 701 (recognizing a presumption that the issuance of a permit by the State Engineer allowing recognized irrigation water rights to be shifted to other users works as severance of those water rights from the land). No one here argues that there were any permitted, licensed, or recognized water rights appurtenant to the High Nogal Ranch when it was sold.

cases involve situations in which someone attempts to divert more water from a common source than they can actually use with the intent or purpose of then essentially extorting other potential users of water from the same source. *See Millheiser v. Long*, 1900-NMSC-012, ¶¶ 30-32, 10 N.M. 99, 61 P. 111 (holding that simply because claimants had diverted the entire run of the water at issue did not give them the ability to claim a right to all the water when they could not and had not put it to beneficial use); *see also New Mercer Ditch Co. v. Armstrong*, 40 P. 989 (Colo. 1895) (same); *Toohey v. Campbell*, 60 P. 396, 397 (Mont. 1900) (same); *Power v. Switzer*, 55 P. 32, 34-35 (Mont. 1898) (same). There is no evidence of such diversion or intent here.

{29} Further, we observe that the same objection—if available at all—could be made to the Christophers' use and potential development of the water. There is no evidence that they had any plan for diversion and use of the Maxwell Springs water when they purchased the High Nogal Ranch. As argued by the Christophers, the same charge of speculation could be made as to their reservation of "water rights for commercial, domestic, municipal, industrial, and subdivision purposes from Maxwell Springs per Grantors' pending application No. SP-4896" when they sold the High Nogal Ranch. There is no evidence that the Christophers had then applied any of the water to beneficial use. There is no indication that a permit had been issued prior to the sale or that one has been issued to date. As such, it could be argued that the Christophers did not have a water right to convey or reserve either. At most, they had an inchoate right that might eventually blossom into a water right. *See Hanson v. Turney*, 2004-NMCA-069, ¶¶ 9-10, 136 N.M. 1, 94 P.3d 1.

{30} It is important to note what we are not deciding. The record does not allow any discussion about the nature of the relationship between Owens (now Sonora) and the Christophers. The district court was correct in denying the motion for summary judgment asking it to hold that a joint development venture had been formed. The record does not support such a ruling in the summary judgment context; and—as with other aspects of this case—may never, even after discovery. Neither are we deciding whether the deed made Owens (now Sonora) joint tenants or co-tenants or simply separate owners of an undivided half interest. We leave this and other related questions to further litigation on remand. We decide only that Owens and the Christophers could divide the potential for water as between themselves and, as between them, the arrangement is enforceable.

{31} Given our ruling that Owens had a cognizable interest in the development of the Maxwell Springs, which he could reserve, we must also reverse the district court orders concerning the failure of the warranty covenants in Owens' deed to Sonora and applying the doctrine of merger. Sonora's cross-claim was based on the district court's ruling that Owens had nothing to convey to Sonora. Our ruling means that Owens did have something he could convey. Thus, the rationale for the cross-claim has evaporated. We reverse on that basis only. We venture no opinion on the law relied on by the district court for its ruling.

CONCLUSION

{32} We reverse and remand for further proceedings consistent with this Opinion.

{33} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:
LINDA M. VANZI, Judge
M. MONICA ZAMORA, Judge

Certiorari Denied, October 27, 2016, No. S-1-SC-36101

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-100

No. 34,261 (filed August 29, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
TAYLOR E.,
Child-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
MARCI E. BEYER, District Judge

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
WALTER HART
Assistant Attorney General
Albuquerque, New Mexico
for Appellant

BENNETT J. BAUR
Chief Public Defender
J.K. THEODOSIA JOHNSON
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellee

Opinion

Linda M. Vanzi, Judge

{1} Taylor E. (Child), a juvenile on probation, made incriminating statements to his probation officer that jeopardized his probationary status. In response to a subsequent petition to revoke his probation, Child moved to suppress those statements, contending that they were inadmissible because the State proffered no independent evidence of the admitted conduct and no evidence that the probation officer had advised Child of his rights under the Delinquency Act (the Act), NMSA 1978, §§ 32A-2-1 to -33 (1993, as amended through 2016), of the New Mexico Children's Code. The State challenges the district court's ruling that Child's incriminating statements must be suppressed. We reverse.

BACKGROUND

{2} In 2011, when Child was almost fourteen years old, the State filed a delinquency petition alleging that he had committed a battery against a household member. Child pleaded no contest and, pursuant to a consent decree, was placed on supervised probation for six months subject to certain terms and conditions, with an automatic six-month extension. Less than a year after Child signed the agreement stating the terms and conditions of probation, the State filed a petition to revoke Child's probation, alleging that Child had violated specific conditions of the probation agreement; i.e., by drug trafficking, possession of drugs and drug paraphernalia, running away, and being unsuccessfully discharged from treatment foster care. Child pleaded no contest, and the district court entered an order revoking Child's probation. The order committed Child to the Children, Youth and Families Department (CYFD) for two years, but ordered that the commitment be suspended and that, pursuant to Section 32A-2-19(B)(2), Child be placed on probation subject to terms and conditions for a period not to exceed two years.

{3} The terms and conditions of probation were memorialized in a probation agreement (the Agreement) signed by Child and his juvenile probation officer (JPO), among others. The Agreement listed twenty conditions, including that Child would attend school with no un-excused absences; that he would not use or possess alcohol, drugs, drug paraphernalia, or weapons; and that he would not commit any act forbidden by law. The Agreement also provided that Child's JPO could periodically visit Child's home, school, or work site, and could search Child's person and property if the JPO deemed it necessary.

{4} A month before his probation period was to expire, Child violated several conditions of the Agreement. Based on a report by Child's JPO, the State filed a petition to revoke probation, alleging that Child had twice failed to attend school "with no unexcused absences"; that he was "issued a Class III for Battery after he was involved in a physical confrontation with another student"; that he was in possession of a pipe in his pocket; and that he admitted to his JPO that he had smoked "spice" (a synthetic cannabinoid) that morning and had been smoking spice on a daily basis. The revocation petition contained no allegation that Child had committed a "delinquent act," nor does the record reveal that Child had been arrested for any of the conduct alleged in the revocation petition, or that a delinquency petition was filed alleging that Child had committed a delinquent act based on the conduct alleged in the revocation petition.

{5} Prior to the probation revocation hearing, Child filed a motion to suppress his admissions to the JPO that he had smoked spice, arguing that they were inadmissible under Section 32A-2-14(G) of the Act because the State failed to provide corroborating evidence of Child's spice use and because the JPO failed to give *Miranda* warnings and/or recitations required by Section 32A-2-14(D) before questioning him about his possession and use of spice.

{6} Child's JPO, Roscio Sarmiento, the sole witness at the suppression hearing, testified that Child's "mother" called her and reported that Child had been suspended from school because an officer had seen him in possession of a pipe. In response, Ms. Sarmiento set up a meeting with Child for the following day, which she described as "almost like a routine meeting. Anytime there's an incident with one of the [children, I] try to call them in as soon as possible." As she generally does in such situations, Sarmiento met with Child at her office.

{7} At the meeting, Sarmiento asked Child the same types of routine questions she asks her clients following an incident that might affect their probationary status. For example, she asks about the issue or incident, how they are doing in school, what led up to the incident, whether they are having problems at home, whether they are "clean," and whether they are using drugs. In addition to these questions, Sarmiento asked Child about the pipe and drug use. Although he initially said he was clean, Child later admitted that he had used drugs. Sarmiento testified that she did not give Child any *Miranda* warnings

before questioning him about his drug use; that she would have done so only if a new charge would be filed; and that she did not believe that there would be a new charge against Child in this instance.

{8} The district court granted Child's motion to suppress. The order contains no factual findings and states only that "[a]ny of [Child's] statements made to [Sarmiento] on September 17, 2014 related to this cause are hereby suppressed pursuant to Section 32A-2-14(G) . . . ,[1] Section 32A-2-14(C) [, and] Section 32A-2-14(D)." This appeal followed.

STANDARD OF REVIEW

{9} "A motion to suppress evidence involves a mixed question of fact and law." *State v. Vandenberg*, 2003-NMSC-030, ¶ 17, 134 N.M. 566, 81 P.3d 19. "Thus, our review . . . involves two parts: the first is a factual question, which we review for substantial evidence; the second is a legal question, which we review de novo." *Id.* As noted, the district court made no written findings of fact to support its decision to suppress Child's incriminatory statements to his JPO. In such circumstances, we generally draw all inferences and indulge all presumptions in favor of the district court's ruling in conducting our de novo assessment of whether the court correctly applied the law. *See State v. Nysus*, 2001-NMCA-102, ¶ 18, 131 N.M. 338, 35 P.3d 993 ("On appeal, we look to whether the law was correctly applied to the facts and review the evidence in the light most favorable to support the decision reached below, resolving all conflicts and indulging all inferences in support of that decision."). The relevant facts are undisputed.

{10} The question whether *Miranda* applies in these circumstances requires application of law to the facts and is reviewed de novo. *See State v. Nieto*, 2000-NMSC-031, ¶ 19, 129 N.M. 688, 12 P.3d 442 (applying de novo review of question whether there was a custodial interrogation requiring *Miranda* warnings). We also review de novo the question whether the district court correctly applied the Act. *See State v. Antonio T.*, 2015-NMSC-019, ¶ 12, 352 P.3d 1172 (stating that statutory interpretation is a question of law that is reviewed de novo).

DISCUSSION

{11} The question presented is whether the failure of Child's JPO to give "*Miranda*" warnings before questioning Child after she learned of his suspension from school because an officer had seen him in possession of a pipe rendered Child's inculpatory statements to the JPO inadmissible in Child's probation revocation proceedings.[2] Below, Child relied not only on the Act but also on law addressing the rights of adult probationers under the federal constitutional Miranda rule. Here, both parties rely on authority addressing constitutional protections against self-incrimination available to juveniles and adult probationers, as well as certain requirements for the application of the constitutional Miranda rule. The parties are less than precise in distinguishing between the constitutional Miranda rule and the "Miranda" protections available under the Act, but the Act itself references the "constitutional rights" of juveniles (*see* Sections 32A-2-14C, D), and Child relies on those provisions on appeal. In addition, New Mexico courts have considered constitutional Miranda jurisprudence in determining the scope of protections against self-incrimination available to adult probationers and to juveniles subject to the Act. And the issue in this case arises because our Supreme Court has not definitively delineated the scope of the protection against self-incrimination available to juveniles in this context. For these reasons, and because the rule Child advocates, if accepted, would have profound consequences for the administration of New Mexico's juvenile justice system, we consider in some detail the constitutional Miranda rule, the relevant provisions of the Act, and the aims and operation of the juvenile probation system.

A. The Federal *Miranda* Rule Does Not Bar Admission of Child's Incriminating Statements in a Probation Revocation Proceeding

{12} *Miranda v. Arizona*, 384 U.S. 436 (1966), established the federal constitutional rule that incriminatory statements made by a criminal suspect during "custodial interrogation" by law enforcement may not be admitted into evidence in a criminal proceeding unless the prosecution demonstrates that sufficient procedural safeguards were employed to protect the suspect's Fifth Amendment privilege against self-incrimination. *Id.* at 444. The rule is summarized as follows:

> [T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. . . . Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

Id. (footnote omitted).

{13} *Miranda* defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* It is settled that a suspect is not "in custody" and *Miranda*'s requirements do not apply unless "a suspect's freedom of action is curtailed to a degree associated with formal arrest." *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (internal quotation marks and citation omitted); *see Nieto*, 2000-NMSC-031, ¶¶ 20-21 (stating these requirements and that "[c]ustody is determined objectively, not from the subjective perception of any of the members to the interview" and holding that *Miranda* warnings were not required where facts showed routine, non-custodial police questioning).

{14} *Minnesota v. Murphy*, 465 U.S. 420 (1984), established that *Miranda*'s requirements do not apply to a probationer's

[1]Section 32A-2-14(G) provides, "An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence." Child concedes that this provision "is not a basis for suppressing a statement." Accordingly, we do not address the point.

[2]Child makes no argument that the New Mexico Constitution provides broader protection than the United States Constitution in these circumstances. We therefore assume without deciding that both afford equal protection in this context. *See State v. Gomez*, 1997-NMSC-006, ¶ 22, 122 N.M. 777, 932 P.2d 1.

statements made during an interview with his probation officer, reasoning, inter alia, that the defendant "was not 'in custody' for purposes of receiving *Miranda* protection since there was no formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Murphy*, 465 U.S. at 429-31 (internal quotation marks and citations omitted). Emphasizing that the defendant was not under arrest when he made incriminating statements to his probation officer and was free to leave after the meeting, the Court said that "[a] different question would be presented if [the defendant] had been interviewed by his probation officer while being held in police custody or by the police themselves in a custodial setting." *Id.* at 429 n.5. The Court also recognized that some questions put to a probationer could be relevant to probationary status but "pose[] no realistic threat of incrimination in a separate criminal proceeding" and that "a state may validly insist on answers to even incriminating questions, and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination." *Id.* at 435 n.7. Federal law thus recognizes that some incriminating statements that are admissible in probation revocation proceedings may be inadmissible in proceedings to adjudicate criminal liability on a charge for which the probationer has been prosecuted.

{15} This distinction is important and warrants emphasis: In a criminal prosecution, the defendant has been charged with having engaged in criminal conduct, and the purpose of the proceeding is to determine the defendant's criminal liability. In contrast, the respondent in a probation revocation proceeding is an individual who has already been adjudicated liable for criminal conduct, has been placed on probation as a result of that conduct and as an alternative to imprisonment, and is subsequently alleged to have violated one or more court-imposed (and usually agreed-upon) conditions of that probation. Our Supreme Court has recognized that a determination to revoke probation constitutes an adjustment of a previously imposed sentence, rather than an adjudication of criminal liability. *See State v. Lopez*, 2007-NMSC-011, ¶ 12, 141 N.M. 293, 154 P.3d 668 ("By failing to comply with probation conditions, a defendant demonstrates that clemency is not appropriate because he or she is not willing or able to be rehabilitated. It follows that the court must have broad power to adjust a defendant's sentence by revoking probation when necessary.").

{16} Consistent with this distinction between proceedings involving an already convicted individual and one being prosecuted to determine criminal liability on a new charge, the United States Supreme Court has held that, while loss of liberty may result in both types of proceedings, fewer protections are warranted for the former category of proceedings. *See Morrissey v. Brewer*, 408 U.S. 471, 480, 484-90 (1972) (explaining that "the revocation of parole is not part of a criminal prosecution, and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations" and that "[r]evocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions"; holding that this loss of liberty requires that the parolee be accorded certain due process protections, but not the full panoply of constitutional protections available in a criminal trial); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (explaining that "[p]robation revocation, like parole revocation, is not a stage of a criminal prosecution, but does result in a loss of liberty"; holding that probationers are entitled to the same due process protections as *Morrissey* specified for parolees). The due process protections specified in *Morrissey* do not include *Miranda*'s requirements. *See Morrissey*, 408 U.S. at 484-90; *State v. Gutierrez*, 1995-NMCA-018, ¶ 3, 119 N.M. 618, 894 P.2d 395.

{17} The United States Supreme Court has also held that, in the context of a "proceeding to determine whether a minor is a 'delinquent' and which may result in commitment to a state institution[,]" "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults." *In re Gault*, 387 U.S. 1, 44, 55 (1967). The Court "has not yet held that *Miranda* applies with full force to exclude evidence obtained in violation of its proscriptions from consideration in juvenile proceedings," although it has made that assumption without deciding the issue. *Fare v. Michael C.*, 442 U.S. 707, 717 n.4 (1979). The Court has, however, described *Gault* as treating a juvenile "delinquency" proceeding as "functionally akin to a criminal trial" and stated that "[a] juvenile charged with violation of a generally applicable statute is differently situated from an already-convicted probationer or parolee, and is entitled to a higher degree of protection." *Gagnon*, 411 U.S. at 789 n.12. *Gault* itself also emphasized that "what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process." 387 U.S. at 31 n.48.

{18} The Court has warned that *Miranda*'s requirements may not be extended in a manner that "would cut [*Miranda*'s] holding . . . completely loose from its own explicitly stated rationale" and "impose the burdens associated with the rule of *Miranda* on the juvenile justice system and the police without serving the interests that rule was designed simultaneously to protect." *Fare*, 442 U.S. at 723 (internal quotation marks and citation omitted).

{19} Applying the foregoing principles to the record before us, we see no basis to hold, as a matter of federal constitutional law, that the failure of Child's JPO to give *Miranda* warnings to Child before questioning him about the information she received from Child's mother—that Child had been suspended from school for possessing a pipe—renders Child's incriminating statements to his JPO regarding his spice use inadmissible in a probation revocation proceeding.

{20} As an initial matter, we note that the United States Supreme Court has not extended *Miranda*'s requirements "beyond the scope of the holding in the *Miranda* case itself[,]" and observe the constraint that "a [s]tate may not impose greater restrictions as a matter of *federal constitutional law* when [the United States Supreme] Court specifically refrains from imposing them." *Fare*, 442 U.S. at 717 (alteration, internal quotation marks, and citation omitted). Consistent with these principles, we have not extended *Miranda*'s requirements, as a matter of federal law, beyond the boundaries set by the United States Supreme Court.

{21} For example, this Court has previously recognized that *Miranda* warnings are "required to dissipate the overbearing compulsion caused by isolation of a suspect in police custody" and that "custodial interrogation and probation interviews are readily distinguishable for purposes of Fifth Amendment analysis." *Gutierrez*, 1995-NMCA-018, ¶¶ 12, 13 (alterations, internal quotation marks, and citation omitted). In *Gutierrez*, we quoted as follows *Murphy*'s

rationale for rejecting the probationer's argument in that case that *Miranda* applied to bar admission of the incriminatory statements he made to his probation officer:

> Custodial arrest is said to convey to the suspect a message that he has no choice but to submit to the officers' will and to confess. It is unlikely that a probation interview, arranged by appointment at a mutually convenient time, would give rise to a similar impression. Moreover, custodial arrest thrusts an individual into an unfamiliar atmosphere or an interrogation environment created for no purpose other than to subjugate the individual to the will of his examiner. Many of the psychological ploys discussed in *Miranda* capitalize on the suspect's unfamiliarity with the officers and the environment. The coercion inherent in custodial interrogation derives in large measure from an interrogator's insinuations that the interrogation will continue until a confession is obtained. Since [the defendant] was not physically restrained and could have left the office, any compulsion he might have felt from the possibility that terminating the meeting would have led to revocation of probation was not comparable to the pressure on a suspect who is painfully aware that he literally cannot escape a persistent custodial interrogator.

Gutierrez, 1995-NMCA-018, ¶ 13 (alterations omitted) (quoting *Murphy*, 465 U.S. at 433); *see Murphy*, 465 U.S. at 433 ("[The defendant's] regular meetings with his probation officer should have served to familiarize him with her and her office and to insulate him from psychological intimidation that might overbear his desire to claim the privilege.").

{22} In *State v. Hermosillo*, 2014-NMCA-102, ¶¶ 12-13, 336 P.3d 446, we explained that "probation is an act of clemency with the goal of education and rehabilitation" and that "[a]lthough a probationer does not lose the privilege against self-incrimination, the United States Supreme Court has refused to extend the requirements of *Miranda* warnings to prearranged routine probation interviews with probation officers." *Hermosillo* involved a probationer's incriminating statements made during a home visit by a probation officer, who was accompanied by a law enforcement officer, pursuant to an agreed-upon probation condition requiring the defendant to promptly answer the door, invite the visiting officers inside, and cooperate with them. *Id.* ¶¶ 4-5. The probation officer had not originally planned to visit the defendant but decided to do so because the defendant "had recently been testing positive for drugs." *Id.* ¶ 5. Noting that "*Murphy* informs us that a routine visit of a probationer by his probation officer . . . does not ordinarily present a Fifth Amendment situation that will be recognized as an in-custody interrogation[,]" *Hermosillo*, 2014-NMCA-102, ¶ 19, we explained, inter alia, that unscheduled home visits were specifically authorized by court order and agreement and that, having previously tested positive for drugs at office visits, the defendant "could reasonably expect that his probation officer might conduct a home visit to investigate these violations." *Id.* ¶ 26. "At the outset," we said, "the probation officer knew [the d]efendant had recently tested positive for drugs at prior office visits, and the home visit was specifically undertaken to investigate these prior violations." *Id.* ¶ 31. Thus, we held that *Miranda*'s requirements did not apply, notwithstanding the presence of law enforcement and that the defendant was placed in handcuffs during the encounter. *Hermosillo*, 2014-NMCA-102, ¶¶ 28-33; *see State v. Ponce*, 2004-NMCA-137, ¶¶ 37-38, 136 N.M. 614, 103 P.3d 54 (stating that, although the issue was not preserved, *Miranda* warnings were not required where probationer was not arrested "for independent criminal activity, but for breach of the no-alcohol condition of his probation which would result, at worst, in a revocation of [the d]efendant's probation, not in new criminal charges" and the defendant was not questioned "in a setting that could be characterized as unfamiliar or an interrogation environment").

{23} On this record, none of the factors triggering *Miranda*'s protections are implicated, nor does Child argue to the contrary. The facts establish that Child was no stranger to the juvenile probation system, having previously been placed on probation and having that probation revoked. The meeting at which Child made the incriminating statements occurred at a place familiar to him—his JPO's office—and was "almost like a routine meeting" at which the JPO asked Child the same types of routine questions she asks her clients following an incident that might affect their probationary status. While that meeting took place at the JPO's request, such meetings are specifically authorized under the Agreement, and Child should have expected that meetings with his JPO would occur in the ordinary course of his probation, including meetings to discuss reports of conduct that might impact Child's probationary status.

{24} In addition, the meeting took place because Child's mother had informed the JPO that Child had been suspended from school for possession of a pipe. Child had previously violated his probation by being in possession of drugs and drug paraphernalia, among other things. For this reason alone, Child could reasonably expect that his JPO might ask him about drug possession and use. There is no evidence that the meeting involved police presence, isolation, or confinement, let alone custodial interrogation initiated by law enforcement tantamount to a formal arrest or of coercion by the JPO when she questioned Child about his conduct. The JPO's questions were asked in furtherance of her role as Child's probation officer. No warnings were required by the federal *Miranda* rule.

B. The Act Provides Greater Protections Than Does the Federal *Miranda* Rule But It Does Not Require JPOs to Give Statutory Warnings in the Circumstances Presented Here

{25} As best we understand it, Child's statutory argument is as follows: (1) whenever a JPO "suspects" that a juvenile probationer has committed an act that might constitute a new delinquent act as well as a basis for probation revocation, the JPO may not question the juvenile about that act without first advising the juvenile of his/her constitutional rights and obtaining a knowing, intelligent, and voluntary waiver of those rights; (2) a JPO's failure to give those warnings renders inadmissible in a probation revocation hearing any inculpatory statements made by the juvenile to the JPO. While it is clear that the Act does provide many greater protections than those afforded to adults, including greater protections than those afforded by the federal *Miranda* rule, the Act and the related regulations and rules also reflect distinctions between delinquency proceedings and probation revocation proceedings, and between law enforcement officers and JPOs that bear significantly on the proper interpretation

of the Act's requirements in this context. Before addressing the Act's text, we outline the standards guiding and informing our interpretation of its requirements.

1. Principles of Statutory Construction

{26} "Statutory interpretation is an issue of law, which we review de novo." *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. "The text of a statute or rule is the primary, essential source of its meaning." NMSA 1978, § 12-2A-19 (1997). "When a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (alteration, internal quotation marks, and citation omitted).

{27} However, the "beguiling simplicity" of the plain-meaning rule "may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *Id.* ¶ 11 (internal quotation marks and citation omitted). "In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute." *Id.* (internal quotation marks and citation omitted). The literal meaning of a statute also does not control "when such an application would be absurd, unreasonable, or otherwise inappropriate." *Rivera*, 2004-NMSC-001, ¶ 13; *see Atchison, T. & S. F. Ry. Co. v. Town of Silver City*, 1936-NMSC-036, ¶ 13, 40 N.M. 305, 59 P.2d 351 ("Canons of construction are but aids in determining legislative intent and are not controlling if they lead to a conclusion, which by the terms or character of the legislation manifestly was not intended." (citation omitted)).

{28} Among other considerations, "we closely examine the overall structure of the statute we are interpreting, as well as the particular statute's function within a comprehensive legislative scheme[.]" *Rivera*, 2004-NMSC-001, ¶ 13 (citation omitted). "[W]henever possible we must read different legislative enactments as harmonious instead of as contradicting one another." *Id.* (alteration, internal quotation marks, and citation omitted). And we must construe a statute "so that no part of the statute is rendered surplusage or superfluous." *State v. Javier M.*, 2001-NMSC-030, ¶ 32, 131 N.M. 1, 33 P.3d 1 (internal quotation marks and citation omitted).

2. The Act, Regulations, and Rules

{29} The Act has several stated purposes, including the following:

> A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and *to provide a program of supervision, care and rehabilitation*, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;
>
> B. to provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives;
>
> C. to strengthen families and to successfully reintegrate children into homes and communities[.]

Section 32A-2-2 (emphasis added).

{30} The Act defines "delinquent act" as "an act committed by a child that would be designated as a crime under the law if committed by an adult," Section 32A-2-3(A), and "delinquent child" as "a child who has committed a delinquent act[,]" Section 32A-2-3(B). Other terms are defined by regulations promulgated under the Act (among other statutes), including the following: "Adjudication" means "a judicial determination that a juvenile has committed a *delinquent act*." 8.14.2.7(B) NMAC (emphasis added). "Adjudicatory hearing" means "children's court hearing to decide whether the evidence supports the allegations of a petition, i.e., whether a *delinquent act* has been committed." 8.14.2.7(C) NMAC (emphasis added). "Petition" means "a legal document in which the state formally alleges the client to be a delinquent . . . due to the commission of a *delinquent act(s)*, or of a family subject to FINS." 8.14.2.7(W) NMAC (emphasis added). "Juvenile probation" means "a court-ordered sanction and disposition which *places an adjudicated client under the supervision and care of a juvenile probation officer*." 8.14.2.7(T) NMAC (emphasis added). "Juvenile probation officer (JPO)" means "a department staff person who[] provides court-ordered and informal *supervision* for clients." 8.14.2.7(U) NMAC (emphasis added). "Probation" means "a court-ordered sanction and disposition that *places an adjudicated client under the*[] *supervision and care of a* [*JPO*]." 8.14.2.7(Z) NMAC (emphasis added). "Preliminary inquiry (PI)" refers to "a conference between the JPO, client, and parent or guardian to assess whether a referral to the [children's court attorney (CCA)] should be made to file a *delinquency petition*." 8.14.2.7(Y) NMAC (emphasis added).

{31} Section 32A-2-7(A) of the Act provides that "[c]omplaints *alleging delinquency* shall be referred to probation services, which shall conduct a *preliminary inquiry* to determine the best interests of the child and of the public with regard to any action to be taken." (Emphasis added); *see* Rule 10-211(A) NMRA ("Prior to the filing of a *petition alleging delinquency*, probation services shall complete a *preliminary inquiry* in accordance with the Children's Code." (emphasis added)). Section 32A-2-7(B) states, in part, that "[a]t the commencement of the *preliminary inquiry*, the parties shall be advised of their basic rights pursuant to Section 32A-2-14" and that "[t]he child shall be informed of the child's right to remain silent." Section 32A-2-7(B) (emphasis added); *see* 8.14.2.9(B) NMAC (stating that "[a]t the *commencement of the preliminary inquiry*, the [JPO] shall advise the client, parent, guardian, or custodian of the client's basic rights" and enumerating those rights).

{32} The Act's provisions concerning "basic rights" are described in Section 32A-2-14. Subsection A states, "A child subject to the provisions of the . . . Act is entitled to the same basic rights as an adult, *except as otherwise provided in the Children's Code, including rights provided by the . . . Act, except as otherwise provided in the Children's Code*." Section 32A-2-14(A) (emphasis added). Section 32A-2-14 also provides,

> C. No person subject to the provisions of the . . . Act *who is alleged or suspected of being a delinquent child* shall be interrogated or questioned without first advising the child of the child's *constitutional rights* and securing a knowing, intelligent and voluntary waiver.
>
> D. Before any statement or confession may be introduced at a trial or hearing *when a child is alleged to be a delinquent child*, the state shall prove that the

> statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's *constitutional rights* was obtained.

Section 32A-2-14(C), (D) (emphasis added).

{33} Section 32A-2-14(E) lists factors to be considered in determining whether the child "knowingly, intelligently and voluntarily waived the child's rights[.]" Section 32A-2-14(F), although not applicable in the case before us, provides that "[n]otwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition" and that "[t]here is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible." Section 32A-2-14(G) states, "An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence." Section 32A-2-14(L) provides, "A person afforded rights under the . . . Act shall be advised of those rights at that person's first appearance before the court on a petition under that act."

{34} Section 32A-2-5 of the Act specifically addresses juvenile probation and parole. Among other things, it provides that "the department" (CYFD) shall provide juvenile probation and parole services, *see* § 32A-2-5(A), and has "the power and duty to:"

> (1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the . . . Act;
>
> (2) make case referrals for services as appear appropriate or desirable;
>
> . . . .
>
> (4) supervise and assist a child placed on probation or supervised release or under supervision by court order or by the department[.]

Section 32A-2-5(B); *see* 8.14.2.16 NMAC (stating tasks performed concerning probation and supervised release). This section specifies that "[a] juvenile probation and parole officer does *not* have the powers of a law enforcement officer." Section 32A-2-5(C) (emphasis added).

{35} Section 32A-2-24 states:

> A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the . . . Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.
>
> B. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of the child's probation, the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

Rule 10-261 NMRA similarly states, in pertinent part:

> B. Revocation of Probation. If the child fails to fulfill the terms or conditions of probation, the children's court attorney may file a petition to revoke probation.
>
> C. Revocation Procedure. Proceedings to revoke probation shall be conducted in the same manner as proceedings on petitions alleging delinquency. The child whose probation is sought to be revoked shall be entitled to all rights that a child alleged to be delinquent is entitled to under law and these rules, except that:
>
> (1) *no preliminary inquiry shall be conducted*;
>
> (2) the hearing on the petition shall be to the court without a jury;
>
> (3) the petition shall be styled as a "Petition to Revoke Probation" and shall state the terms of probation alleged to have been violated and the factual basis for these allegations[.]

Rule 10-261(B), (C) (emphasis added).

3. Construction

{36} Our review of the Act, regulations, and rules leads us to conclude that the Legislature intended that the statutory right to warnings asserted by Child is not triggered by the circumstances presented here. We explain.

{37} The Act's provisions concerning "basic rights" begins with the statement, "A child subject to the provisions of the . . . Act is entitled to the same basic rights as an adult, *except as otherwise provided in the Children's Code, including rights provided by the . . . Act, except as otherwise provided in the Children's Code*." Section 32A-2-14(A) (emphasis added). The provisions of the Act (and the regulations and rules) consistently qualify requirements with specific references to "delinquency," "delinquency petition," "delinquent act," and "delinquent child," employing those terms to limit the application of certain requirements. These terms are defined by the Act, regulations, and rules to mean *acts* that "would be designated as a *crime* under the law if committed by an adult," Section 32A-2-3(A) (emphasis added); *a child* determined to have committed such acts, Section 32A-2-3(B); *complaints* alleging such acts, Section 32A-2-7(A); *petitions* alleging such acts, 8.14.2.7(W) NMAC; Rule 10-211(B); and *proceedings* to determine whether a child has committed such acts, 8.14.2.7(B), (C) NMAC.

{38} The Act requires that "[a] person afforded rights under the . . . Act shall be advised of those rights *at that person's first appearance before the court* on a petition under that act." Section 32A-2-14(L) (emphasis added). As to out-of-court circumstances, the Act provides, "No person subject to the provisions of the . . . Act *who is alleged or suspected of being a delinquent child* shall be interrogated or questioned without first advising the child of the child's *constitutional rights* and securing a knowing, intelligent and voluntary waiver." Section 32A-2-14(C) (emphasis added). Thus, the Act requires that a child "who is alleged or suspected of being a delinquent child" may not be questioned unless the questioner first advises the child of his or her "constitutional rights" and secures "a knowing, intelligent and voluntary waiver" of those rights. *Id.* But the Act is also clear

that this warning requirement does not apply generally to anyone "subject to the provisions of the . . . Act," which a juvenile probationer is, but only where a child "is alleged or suspected of being a delinquent child." *Id.*

{39} This limitation is also evident in the provisions of the Act, regulations, and rules concerning and defining "preliminary inquiry." As noted, Section 32A-2-7(A) provides that "[c]omplaints *alleging delinquency* shall be referred to probation services, which shall conduct a *preliminary inquiry* to determine the best interests of the child and of the public with regard to any action to be taken." *Id.* (emphasis added); *see* Rule 10-211(A) ("Prior to the filing of a *petition alleging delinquency*, probation services shall complete a *preliminary inquiry* in accordance with the Children's Code." (emphasis added)); 8.14.2.7(Y) NMAC (defining "[p]reliminary inquiry (PI)" as "a conference between the JPO, client, and parent or guardian to assess whether a referral to the CCA should be made to file a *delinquency petition*").

{40} Section 32A-2-7(B) requires that statutory warnings be given at "the commencement of the preliminary inquiry[.]" Section 32A-2-7(B) (stating that "[a]t the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to Section 32A-2-14" and that "[t]he child shall be informed of the child's right to remain silent"); *see* 8.14.2.9(B) NMAC (stating that "[a]t the commencement of the preliminary inquiry, the [JPO] shall advise the client, parent, guardian, or custodian of the client's basic rights" and enumerating those rights). Again, the Act is clear that the warning requirements do not apply generally to anyone subject to the Act, but only at the commencement of a preliminary inquiry to determine "whether a referral to the CCA should be made to file a delinquency petition." 8.14.2.7(Y) NMAC; *see* § 32A-2-7(A). And Rule 10-261(C)(1), applicable to juvenile probation, provides that "*no* preliminary inquiry shall be conducted" in connection with a petition to revoke probation. (Emphasis added.)

{41} The Act is equally clear that the requirement that the State "prove that [a] statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained" applies only in proceedings involving an allegation that the child is a delinquent child, and not generally to anyone subject to the Act. Section 32A-2-14(D).

{42} Although there is no doubt that the Legislature intended the Act to provide certain protections to children greater than those the law affords to adults (including even greater protections to younger children, *see* § 32A-2-14(F)), there is also no doubt that the Act's text indicates a legislative intention to make certain protections available only where a child is suspected or alleged to be a delinquent child. These textual limitations—and the result that statements inadmissible in a proceeding to adjudicate criminal liability may still be admissible in a proceeding to determine whether a probationer has violated conditions of probation—are rational and entirely consistent with the constitutional law concerning criminal defendants, probationers, and juveniles.

{43} As discussed above, the law recognizes a significant difference between a proceeding to determine whether an already convicted individual has violated a condition of probation, warranting an adjustment of a previously imposed sentence (in juvenile parlance, "disposition"), and a proceeding to determine criminal liability on a new charge; differences recognized by New Mexico courts. *See, e.g.*, *Lopez*, 2007-NMSC-011, ¶ 12 ("By failing to comply with probation conditions, a defendant demonstrates that clemency is not appropriate because he or she is not willing or able to be rehabilitated. It follows that the court must have broad power to adjust a defendant's sentence by revoking probation when necessary."); *Gutierrez*, 1995-NMCA-018, ¶ 3 (noting that protections available in parole and probation revocation proceedings do not include *Miranda*'s requirements).

{44} The law concerning federal constitutional protections for juveniles also recognizes that constitutional protections afforded juveniles in delinquency proceedings may not be available to an already-convicted juvenile probationer. *See Gagnon*, 411 U.S. at 789 n.12 (describing *Gault* as treating a juvenile "delinquency" proceeding as "functionally akin to a criminal trial" and stating that "[a] juvenile charged with violation of a generally applicable statute is differently situated from an already-convicted probationer or parolee, and is entitled to a higher degree of protection"); *Gault*, 387 U.S. at 30 n.48 (emphasizing that "what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage [to determine delinquency] has no necessary applicability to other steps of the juvenile process").

{45} The Act's textual limitations are also consistent with the purposes of probation and the role of the JPO in serving those purposes, reflected in the language of the Act and regulations as well as the case law discussed above. *See, e.g.*, *Lopez*, 2007-NMSC-011, ¶ 8 ("The Legislature has granted district courts the power to revoke probation when a probation condition is violated because rehabilitation, which is the primary goal, is not being achieved."); *Rivera*, 2004-NMSC-001, ¶ 24 ("The primary goal of probation, which is defendant rehabilitation, may be defeated by delaying the commencement of a defendant's probationary sentence pending appeal."); *Hermosillo*, 2014-NMCA-102, ¶ 12 ("[P]robation is an act of clemency with the goal of education and rehabilitation[.]").

{46} The Act's stated purposes include "provid[ing] a program of supervision, care and rehabilitation[.]" Section 32A-2-2(A). The regulations define "juvenile probation" as "a court-ordered sanction and disposition which places an adjudicated client under the supervision and care of a [JPO]," 8.14.2.7(T) NMAC, and define "JPO" as "a department staff person who[] provides court-ordered and informal supervision for clients." 8.14.2.7(U) NMAC. The Act, moreover, expressly states that a JPO "does not have the powers of a law enforcement officer." Section 32A-2-5(C). We think it evident that the primary role of the JPO is to supervise juvenile probationers in service of the Act's stated purpose of "provid[ing] a program of supervision, care and rehabilitation," Section 32A-2-2(A), and that the text of Section 32A-2-5(C) reflects a legislative intention that the JPO perform a role in the juvenile justice system separate and distinct from that of law enforcement, a distinction consistent with other statutes providing that rehabilitation is the principal duty of probation and parole officers. *See Rayos v. State ex rel. N.M. Dep't of Corr.*, 2014-NMCA-103, ¶ 19, 336 P.3d 428 (interpreting the adult Probation and Parole Act), *cert. quashed*, 2015-NMCERT-007, 368 P.3d 2.

{47} Child's contention that "[JPOs] are clearly law enforcement" is self-serving and contrary to the statutory and regulatory provisions discussed above. And the broad rule Child advocates could, in most circumstances, undermine, rather than serve, the supervisory and rehabilitative functions of juvenile probation. Child contends that if a JPO "suspects" a juvenile probationer of having committed an act

in violation of a probation agreement that might also constitute a delinquent act, the JPO may not question the juvenile about that act without first providing statutory warnings, and that a JPO's failure to give those warnings renders inadmissible in a probation revocation hearing inculpatory statements made by the juvenile to the JPO. That rule is nowhere suggested, let alone stated, in the Act, regulations, or rules. The inevitable consequence of such a rule, moreover, would generally transform the relationship between the juvenile probationer and the JPO into an adversarial one.

{48} Almost any question a JPO asks in the course of supervising a probationer has the potential to elicit an inculpatory statement. And the JPO may have no idea at the moment the question is asked whether the probationer's response might be incriminatory as to a "delinquent act" or merely a basis for probation revocation that does not amount to a delinquent act. Accordingly, if the broad rule Child advocates were adopted, the JPO would be required to give statutory warnings at the commencement of every encounter with the probationer, thereby making every such encounter an adversarial one. Nothing in the Act suggests that the Legislature intended such a result be broadly applied in all probation violation proceedings. To the contrary, our review of the Act, regulation, and rules leads us to conclude that the Legislature intended the relationship between juvenile probationer and JPO to be non-adversarial, and chose to draw the lines and distinctions embodied in the text to reflect that intention.

{49} Our conclusion is not altered by Section 32A-2-24(B)'s statement that (with certain limited exceptions that are not relevant here) "proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition" or the similar statement in Rule 10-261(C), "[p]roceedings to revoke probation shall be conducted in the same manner as proceedings on petitions alleging delinquency." The word "proceeding" as it applies in law is generally understood to refer to "a lawsuit, including all acts and events between the time of commencement and the entry of judgment[,]" more commonly, "[a]ny procedural means for seeking redress from a tribunal or agency." *Proceeding*, *Black's Law Dictionary* (10th ed. 2014). Thus, we understand these statements in the Act and rule to refer to the manner in which trials and hearings are conducted in court and not to events taking place before the commencement of a court proceeding.

{50} In addition to reading these provisions according to the ordinary meaning of "proceeding," *see Bettini v. City of Las Cruces*, 1971-NMSC-054, ¶ 6, 82 N.M. 633, 485 P.2d 967 (stating that "[s]tatutory words are presumed to be used in their ordinary and usual sense"), we see no indication that the Legislature intended this statement in Section 32A-2-24(B) to override every limitation to "delinquency," "delinquent act," and "delinquent child" we have previously identified. And even if the text of the Act (and the regulations and rules) were not plain but ambiguous, statutory-construction principles require that we "consider the policy implications of the various constructions of the statute[,]" *Rivera*, 2004-NMSC-001, ¶ 14; interpret "different legislative enactments as harmonious instead of as contradicting one another," *id.* ¶ 13 (internal quotation marks and citation omitted); construe a statute "so that no part of the statute is rendered surplusage or superfluous[,]" *Javier M.*, 2001-NMSC-030, ¶ 32 (internal quotation marks and citation omitted); "reject[] a formalistic and mechanical statutory construction when the results would be absurd, unreasonable, or contrary to the spirit of the statute[,]" *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022; and "favor . . . an interpretation driven by the statute's obvious spirit or reason" if adherence to the literal words would lead to "injustice, absurdity or contradiction," *State v. Trujillo*, 2009-NMSC-012, ¶ 21, 146 N.M. 14, 206 P.3d 125 (internal quotation marks and citations omitted). These considerations mandate a reading of Section 32A-2-24(B) and Rule 10-261(C) that applies only to the conduct of court proceedings, consistent with the ordinary meaning of "proceeding."

{51} We are aware of statements in prior cases to the effect that "an allegation of a juvenile probation violation is treated as if it were a charge brought in a delinquency proceeding." *State v. Trevor M.*, 2015-NMCA-009, ¶ 7, 341 P.3d 25 (alteration, internal quotation marks, and citation omitted); *State v. Erickson K.*, 2002-NMCA-058, ¶ 15, 132 N.M. 258, 46 P.3d 1258 (same). Those decisions, however, addressed only the conduct of court proceedings, discussing the applicability of the rules of evidence (*Erickson K.*) and the right of confrontation (*Trevor M.*) at a probation revocation proceeding. *Erickson K.* essentially acknowledged as much, citing Section 32A-2-24 as stating that "probation revocation proceedings [are] to be conducted as outlined in Section 32A-2-16[,]" which governs the "[c]onduct of hearings." *Erickson K.*, 2002-NMCA-058, ¶ 16; *see* § 32A-2-16. Neither case, moreover, addressed rights applicable *before* the commencement of a probation revocation proceeding or involved an asserted right that would burden the administration of the juvenile probation system as would the broad rule advocated by Child in this case. *Cf. Fare*, 442 U.S. at 723 (warning that *Miranda*'s requirements may not be extended in a manner that "would cut [*Miranda*'s] holding . . . completely loose from its own explicitly stated rationale" and "impose the burdens associated with the rule of *Miranda* on the juvenile justice system and the police without serving the interests that rule was designed simultaneously to protect" (internal quotation marks and citation omitted)).

{52} In sum, applying well-settled principles of statutory construction to the facts in this case, we conclude that the broad rule advocated by Child is not required by the Act, regulation, or rules. *See Rivera*, 2004-NMSC-001, ¶¶ 15-24 (construing NMSA 1978, Section 31-11-1(A) (1988) in light of, inter alia, its history, background, function within the comprehensive statutory scheme, including the state's sentencing scheme and probation statutes emphasizing constructive rehabilitation and general policy considerations and concluding that these factors compelled a different construction from that suggested by "[a] literal reading of Section 31-11-1(A) [which] would seriously undermine" rehabilitative goals).

{53} We also conclude that the undisputed facts establish that the information Child's JPO had when she arranged the meeting at which Child made the statements he moved to suppress—reported to her by Child's mother, not law enforcement—were that Child had been suspended from school because an officer had seen him in possession of a pipe and that the JPO did not believe there was a basis for "a new charge," i.e., a delinquent act forming the basis for a delinquency petition, that was separate and distinct from a probation revocation petition. We emphasize that there is no evidence that the JPO arranged for the meeting because she "suspected" that Child had committed a new delinquent act, as opposed to a violation of a condition of his probation, and that the revocation petition

did not allege that Child had committed a new delinquent act but only that Child had violated several conditions of his probation. Law enforcement was not present when the JPO questioned Child about what Child's mother had reported to her. Nor is there any evidence that the officer who had seen Child in possession of a pipe arrested him, or that a petition was considered or potentially being filed alleging a new charge of delinquency based on the conduct cited in the revocation petition.

3. Case Law Supports Our Interpretation of the Act

{54} Our interpretation of Section 32A-2-14 is supported by recent decisions of our Supreme Court that make clear that, although Section 32A-2-14 provides broad protection for juveniles suspected or alleged to have committed a delinquent act, those protections are limited by the Act's text.

{55} In *Javier M.* our Supreme Court affirmed its understanding that "[c]ustodial interrogation occurs when 'an individual is swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion so that the individual feels under compulsion to speak,' " 2001-NMSC-030, ¶ 15 (alterations omitted) (quoting *Miranda*, 384 U.S. at 461); that "[c]ustodial interrogation was the essential predicate to the Court's decision in *Miranda*[,]" *id.* ¶ 42; and that "[i]n the absence of custodial interrogation an officer is not constitutionally mandated to give any warnings." *Id.* While concluding that *Miranda* did not apply to the police officer's detention of the child in that case because the detention "did not rise to the status of a custodial interrogation[,]" *id.* ¶¶ 21-23, the Court held that Section 32A-2-14(C) does not require that a child "be subject to custodial interrogation in order to be afforded the right to be advised of his or her constitutional rights prior to police questioning[,]" *Javier M.*, 2001-NMSC-030, ¶ 29, because "Section 32A-2-14 is not a mere codification of *Miranda*, but was intended instead to provide children with greater statutory protection than constitutionally mandated." *Javier M.*, 2001-NMSC-030, ¶ 32.

{56} Significantly, *Javier M.* also made clear that Section 32A-2-14's protections are limited. Section 32A-2-14(C) "only protects against a child's statements which are made during an investigatory detention in response to a police officer's questioning that could not be mere administrative questions and that is intended to confirm or dispel the officer's suspicions that the child is or has committed a delinquent act[,]" and where a child is subject to such investigatory detention, Section 32A-2-14(C) requires the officer to advise the child, prior to questioning him, only of his right to remain silent and that anything he says may be used against him. *Javier M.*, 2001-NMSC-030, ¶¶ 40-41. Section 32A-2-14's protections, moreover, are triggered only "in two circumstances: (1) after formal charges have been filed against a child; and (2) when a child is seized pursuant to an investigatory detention and not free to leave." *Javier M.*, 2001-NMSC-030, ¶ 38. *Javier M.* concluded that the Legislature did not intend to "hamper the traditional function of police officers in investigating crime[,]" and rejected a proposed "standard of requiring warnings whenever an officer asks a question which is likely to lead to an incriminating response" as "a standard [that] unduly burdens a police officer's required duties." *Id.* ¶ 39. It also held that "[a]s a prerequisite to requiring that a child be advised of his or her rights under Subsection (C), the [c]hild must be either 'alleged' or 'suspected' of being a *delinquent child*." *Id.* ¶ 34 (emphasis added); *see* § 32A-2-14(C) ("No person subject to the provisions of the . . . Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.").

{57} In sum, the analysis in *Javier M.* makes clear that Section 32A-2-14(C)'s requirements are triggered, not by a JPO's suspicion that a probationer may have violated a condition of probation or where the child is alleged in a revocation petition to have done so, but only where a law enforcement officer questions a child based on a suspicion that the child has committed a "delinquent act" or where the child is alleged to have done so in a delinquency petition. *See Javier M.*, 2001-NMSC-030, ¶ 47 ("By enacting Section 32A-2-14, we conclude that the Legislature intended to exempt children from the general rule of self invocation by requiring that children be reminded of their right not to incriminate themselves and be advised of the consequences of waiving that right. Accordingly, we conclude that when a child is *subject to an investigatory detention*, *law enforcement* must advise the child of his or her right to remain silent and that if the right is waived anything that the child says can be used against them in any *delinquency hearing*." (emphasis added)). To the extent Child contends that *Javier M.* mandates the rule he advocates, he is mistaken. As discussed above, law enforcement did not question Child and was not even present when the JPO questioned Child. Nor does this case require us to decide whether Child's statements would be admissible in a delinquency proceeding, as distinct from a probation revocation proceeding.

{58} Child cites *Antonio T.*, 2015-NMSC-019, ¶ 20, in support of his contention that "[t]here are no exceptions based on which State actor elicited the statement or at what type of proceeding: if the child was suspected of a delinquent act and not free to leave, the State must *always* prove a voluntary, knowing, and intelligent waiver." Child's reliance on *Antonio T.* is also misplaced under the facts in this case.

{59} In *Antonio T.*, two teachers escorted the child, a seventeen-year-old high school student, to the assistant principal's office on the suspicion that he had consumed alcohol. *Id.* ¶¶ 2, 4. The principal questioned the child about his possession of alcohol in the presence of the student resource officer, a certified law enforcement officer in full uniform. *Id.* ¶ 4. While the principal questioned the child, asking the kinds of questions she routinely asked in performing her job enforcing discipline at the school, the officer prepared a breath alcohol test a few feet away from the child. *Id.* ¶ 5. Although the officer usually questioned students suspected of drinking alcohol before administering a breath test, he just listened because the principal asked questions he would have asked. *Id.* The child admitted that he had consumed alcohol, that he had brought the alcohol to school in a plastic bottle, and that he had disposed of the bottle in a bathroom trash can. *Id.*

{60} While the officer administered the breath test, the results of which corroborated the child's confession, the principal searched the child's backpack and found a pocketknife. *Id.* ¶ 6. At the principal's request, the officer searched for the plastic bottle but could not find it. *Id.* ¶ 7. When he returned, he advised the child of his constitutional *Miranda* rights. *Id.* The child then answered the officer's questions about the knife but refused to answer his questions about alcohol consumption. *Id.* The statements the child made in response to the principal's questions were documented in the officer's police report under the heading "investigation." *Id.* The state later charged the child with possession of alcoholic beverages by a minor—a delinquent act. *Id.* ¶ 3. In his subsequent delinquency proceeding, the child moved to suppress his inculpatory statements on the ground that they were elicited without a knowing, intelligent,

and voluntary waiver of his right to remain silent, citing Section 32A-2-14(D). *Antonio T.*, 2015-NMSC-019, ¶ 8.

{61} Our Supreme Court reversed the district court's decision (affirmed by this Court) denying the motion, holding that "a school official may insist that a child answer questions for purposes of school disciplinary proceedings" but that statements elicited by a school official "in the presence of a law enforcement officer may not be used against the child in a delinquency proceeding unless the child made a knowing, intelligent, and voluntary waiver of his or her statutory right to remain silent." *Id.* ¶ 3 (citing Section 32A-2-14(C), (D)). The Court concluded that the officer's "mere presence during [the principal's] questioning of [the child] subjected [the child] to an investigatory detention that triggered the statutory protections provided by Section 32A-2-14(C) and (D)." *Antonio T.*, 2015-NMSC-019, ¶ 11. Accordingly, Section 32A-2-14(C) required the officer "to advise [the child] that he had a right to remain silent, and that if [the child] waived the right, anything he said could be used against him in criminal delinquency proceedings[,]" and the officer's failure to do so before the principal questioned the child in his presence rendered the child's incriminating statements inadmissible under Section 32A-2-14(D). *Antonio T.*, 2015-NMSC-019, ¶ 11.

{62} The Court made clear that, although the principal suspected the child of being intoxicated at school and that this conduct constituted "a school disciplinary violation that would also render him a delinquent child[,]" the principal's suspicion and investigation into the child's alcohol consumption were insufficient to trigger Section 32A-2-14(C), "because [the principal] is neither a law enforcement officer nor was she acting as an agent of law enforcement." *Antonio T.*, 2015-NMSC-019, ¶ 24. "Questioning a child for school disciplinary matters is distinguishable from questioning a child for suspected criminal wrongdoing[,]" the Court explained, and "[b]ecause maintaining security and order in schools requires a certain degree of flexibility in school disciplinary procedures, we recognize the value of preserving the informality of the student-teacher relationship." *Id.* (emphasis, alteration, internal quotation marks, and citation omitted). The principal "was entitled to act on her suspicion and compel answers from [the child] for the purposes of school discipline[,]" and "[a]bsent any agency relationship between school officials and law enforcement authorities, interrogating [the child] alone in her office about school disciplinary matters would not have constituted an investigatory detention." *Id.*

{63} Section 32A-2-14(C) was triggered in *Antonio T.*, not because a school official suspected and investigated conduct in violation of school rules, but because the presence of law enforcement during a school official's questioning about the conduct of a juvenile that the law enforcement officer knew constituted a delinquent act "created a coercive and adversarial environment that does not normally exist during interactions between school officials and students[,]" 2015-NMSC-019, ¶ 25; "converted the school disciplinary interrogation into a criminal investigatory detention," *id.* ¶ 26; and granted the law enforcement officer "access to evidence necessary to prosecute criminal delinquent behavior[,]" *id.* ¶ 27. The Court emphasized that its holding "should not be construed to require school administrators to advise a child of his or her right to remain silent in order to use incriminating statements elicited from the child against that child in school disciplinary proceedings." *Id.* ¶ 32; *see State v. Tywayne H.*, 1997-NMCA-015, ¶ 13, 123 N.M. 42, 933 P.2d 251 ("[T]here is a sharp distinction between the purpose of a search by a school official and a search by a police officer. The nature of a . . . search by a school authority is to maintain order and discipline in the school. The nature of a search by a police officer is to obtain evidence for criminal prosecutions." (internal quotation marks and citation omitted)).

{64} Contrary to Child's apparent assumption, *Antonio T.* does not require suppression of Child's inculpatory statements to his JPO in probation revocation proceedings. Indeed, the reasoning of *Antonio T.* supports our conclusion that statements inadmissible in a delinquency proceeding may nonetheless be admissible in a probation revocation proceeding. It also supports our conclusion that the JPO's questioning in this case was in furtherance of her non-adversarial supervisory role and not for the purpose of collecting evidence to be used to support a new charge of a delinquent act. However, the rationale of *Antonio T.* will need to be addressed where the JPO's inquiries were prompted by a request from law enforcement, the facts establish that the JPO was acting as an agent of law enforcement to investigate a new delinquent act, or if law enforcement was present during the questioning of a child. In that circumstance, whether statements made by a child are admissible in a new delinquency proceeding will involve a different analysis. This case does not require us to decide whether Child's statements would be admissible in a delinquency proceeding; the record shows that law enforcement played no role in the JPO's questioning of Child; and the JPO testified that at the time of the questioning, no new criminal charge was contemplated.

{65} Under the rule Child advocates, because a child might be suspected or alleged to have committed a delinquent act, depending on his or her answer to almost any question a JPO might ask, the JPO must *always* treat every child as if he or she might be suspected of having committed a delinquent act, thereby transforming a relationship intended to be rehabilitative, at least in part, into an adversarial relationship between law enforcement and suspect. If this is what the Legislature intended, it would not have written the Act as it did. There would be no point, for example to a provision stating that juvenile probation officers do not have the powers of law enforcement officers.

{66} We conclude that fidelity to legislative intent in this instance requires that we interpret the Act in a manner that preserves, rather than ignores, the lines previously drawn by the Legislature in distinguishing delinquency from probation revocation and the role of a JPO from the role of a law enforcement officer, and the lines previously drawn in the case law concerning the circumstances required to trigger Section 32A-2-14. Respect for these distinctions requires no more than acceptance that some incriminating statements that may be inadmissible in delinquency proceedings (to adjudicate criminal liability on a charge for which the probationer has not been prosecuted) are admissible in probation revocation proceedings. This result is rational and consistent with the Act's text and prior case law. We do not hold that a JPO is never required to give warnings under the Act, only that, under the circumstances presented here, the JPO's failure to give warnings did not render Child's incriminatory statements inadmissible in a probation revocation proceeding.

CONCLUSION

{67} We reverse and remand.

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

LINDA M. VANZI, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
TIMOTHY L. GARCIA, Judge

Certiorari Denied, October 27, 2016, S-1-SC-36107

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-101

No. 34,345 (filed August 31, 2016)

COULTON QUEVEDO, by and through his
Attorney-in-Fact (with power of attorney), AIMEE BEVAN;
BARBARA GUILFOYLE, individually;
SUSAN WECKESSER, as Conservator for RYAN MORGAN;
CHERYL MORGAN, individually; JORDAN ALMANZA, individually;
and MARC FLEMING, individually,
Plaintiffs-Appellants,
v.
NEW MEXICO CHILDREN, YOUTH & FAMILIES DEPARTMENT,
NEW MEXICO LICENSING AND CERTIFICATION AUTHORITY, a division of the
NEW MEXICO COMMUNITY OUTREACH AND BEHAVIORAL HEALTH PROGRAMS, and NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS,
Defendants-Appellees.

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

RANDI MCGINN
A. ELICIA MONTOYA
MICHAEL E. SIEVERS
MCGINN, CARPENTER, MONTOYA & LOVE, PA
Albuquerque, New Mexico
for Appellants

MICHAEL DICKMAN
LAW OFFICE OF MICHAEL DICKMAN
Santa Fe, New Mexico
for Appellees

Opinion

Michael D. Bustamante, Judge

{1} Plaintiffs appeal the grant of summary judgment in favor of the Children, Youth, and Families Department (CYFD) on the ground that CYFD was immune from suit under the New Mexico Tort Claims Act. We conclude that questions of material fact preclude summary judgment and reverse.

BACKGROUND

{2} Tierra Blanca Ranch High Country Youth Program (TBR) is a private, for-profit business in New Mexico that provides troubled adolescent residents with schooling, counseling, and therapy. CYFD is a cabinet-level department of the state government. NMSA 1978, §§ 9-2A-1 to -24 (1992, as amended through 2011).

{3} Plaintiffs Quevedo, Morgan, Almanza, and Fleming, together with the other plaintiffs (collectively, Plaintiffs), filed a multi-count complaint in 2013 against CYFD[1] and TBR alleging that while they were participants in TBR's program, they were physically and emotionally abused by TBR staff and other participants. Some also allege that they were deprived of adequate food, denied access to their families, shackled, and forced to perform extreme exercise. Plaintiffs further allege that CYFD knew of abusive practices at TBR, that TBR was not licensed pursuant to statute and CYFD regulations governing licensing of "multi-service homes" and "community homes," and that CYFD negligently failed to license and regulate TBR. They point to the fact that, in 2005, CYFD initiated the licensing process with TBR. CYFD subsequently stated in a 2006 letter to TBR that it "ha[d] determined that TBR is a multi[-]service home under [S]ection 7.8.3.10(B) [NMAC] of the Shelter Care Regulations" and that "TBR must have a license to continue in operation." However, CYFD eventually ceased its efforts to license TBR. CYFD maintains that "the applicable New Mexico statutes [do not] allow[] or require[] CYFD to license TBR[]."

{4} Instead of answering the complaint, CYFD filed a motion for summary judgment on the ground that the so-called "building waiver" in NMSA 1978, Section 41-4-6(A) (2007) of the New Mexico Tort Claims Act (the TCA) does not waive immunity for Plaintiffs' claims. *See* NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015); Rule 1-056 NMRA. After a hearing on the motion for summary judgment, the district court granted the motion. Plaintiffs appeal. Additional facts are included as pertinent to our discussion of Plaintiffs' arguments.

DISCUSSION

{5} "Summary judgment is proper if there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Callaway v. N.M. Dep't of Corr.*, 1994-NMCA-049, ¶ 2, 117 N.M. 637, 875 P.2d 393 (internal quotation marks and citation omitted). "However, summary judgment should not be used as a substitute for trial on the merits so long as one issue of material fact is present in the case." *Id.* "In addition, when the facts are insufficiently developed or further factual resolution is essential for determination of the central legal issues involved,

[1]Plaintiffs' complaint also named the Department of Workforce Solutions (DWS), a cabinet-level department of the state. NMSA 1978, § 9-26-4 (2007). The district court granted summary judgment "in favor of the [s]tate [d]efendants," including both CYFD (and its Licensing and Certification Authority) and DWS. While on appeal Plaintiffs state that they appeal the grant of summary judgment in its entirety, they posit no arguments related to DWS's duties to them nor do they cite to any statutes or regulations defining DWS's obligations vis á vis TBR. We therefore consider Plaintiffs' appeal of the grant of summary judgment to DWS abandoned. *See State ex rel. Office of State Eng'r v. Lewis*, 2007-NMCA-008, ¶ 74, 141 N.M. 1, 150 P.3d 375 ("A party that fails to present argument or authority to support a contention runs a very substantial risk that this Court will not address the contention, either because of the failure of argument or authority, or because the party is deemed to have abandoned the contention.").

summary judgment is not appropriate." *Id.* "An issue of fact is 'material' if the existence (or non-existence) of the fact is of consequence under the substantive rules of law governing the parties' dispute." *Martin v. Franklin Capital Corp.*, 2008-NMCA-152, ¶ 6, 145 N.M. 179, 195 P.3d 24. Our review of summary judgment is de novo. *Farmington Police Officers Ass'n v. City of Farmington*, 2006-NMCA-077, ¶ 13, 139 N.M. 750, 137 P.3d 1204.

{6} Here, the relevant substantive law is the TCA, which "grant[s] governmental entities and employees a general immunity from tort liability, but . . . waive[s] that immunity in certain defined circumstances." *Cobos v. Doña Ana Cty. Hous. Auth.*, 1998-NMSC-049, ¶ 6, 126 N.M. 418, 970 P.2d 1143; *see* § 41-4-4(A). "In each of these waivers the Legislature identified a specific existing duty on the part of public employees, . . . which, if breached, could result in liability 'based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.' " *Cobos*, 1998-NMSC-049, ¶ 6 (quoting Section 41-4-2(B)).

{7} "The 'building waiver' waives governmental immunity for damages caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment[,] or furnishings." *Id.* ¶ 7 (internal quotation marks and citation omitted); *see* § 41-4-6. In *Cobos*, the Court held that the building waiver is not limited to public buildings, stating that "[t]he Legislature defined 'scope of duties' to mean 'any duties that a public employee is requested, required, or authorized to perform . . . *regardless of the time and place of performance*.' " *Cobos*, 1998-NMSC-049, ¶ 8 (omission in original) (quoting Section 41-4-3(G)). "Accordingly, the 'building waiver' in Section 41-4-6 on its face excepts immunity for the negligent operation or maintenance of *any* building by a public employee acting within the scope of duty." *Cobos*, 1998-NMSC-049, ¶ 8.

{8} Moreover, "the waiver is not limited to injuries resulting from a physical defect on the premises." *Encinias v. Whitener Law Firm, P.A.*, 2013-NMSC-045, ¶ 10, 310 P.3d 611. "Instead, we interpret Section 41-4-6(A) broadly to waive immunity where due to the alleged negligence of public employees an injury arises from an unsafe, dangerous, or defective condition on property owned and operated by the government." *Encinias*, 2013-NMSC-045, ¶ 10 (internal quotation marks and citation omitted). "The waiver applies to more than the operation or maintenance of the physical aspects of the building, and includes safety policies necessary to protect the people who use the building." *Upton v. Clovis Mun. Sch. Dist.*, 2006-NMSC-040, ¶ 9, 140 N.M. 205, 141 P.3d 1259.

A. The "Building Waiver" Permits Suit When There Is a Duty of Care Created by a Relationship Between the Parties

{9} Case law indicates that the relationship between a governmental entity and a person can influence whether the building waiver applies in a given circumstance. Two cases are particularly instructive. In *Cobos*, the plaintiff sued the Doña Ana County Housing Authority (Housing Authority) for the wrongful death of her daughter and granddaughters as a result of a fire. 1998-NMSC-049, ¶ 4. The plaintiff and her family "were participants in a federally[]subsidized low-income housing program administered by the . . . Housing Authority. Their home was privately owned and rented to them through the [Housing] Authority's Section 8 Existing Housing Program." *Id.* ¶ 2. The Housing Authority argued that the building waiver did not apply to permit suit against it because it did not have a sufficient legal interest in the home, which was owned by a private individual. *Id.* ¶ 4. The Court of Appeals affirmed the dismissal of the complaint on immunity grounds and because the Housing Authority had not received the required notice under the TCA. *Id.* ¶¶ 4-5.

{10} The Supreme Court granted certiorari to address only "whether [the p]laintiff [had] stated a claim under the building waiver based on the duties of the public employees who appear as individual defendants in [that] case." *Id.* ¶ 5. It held first that "the effect of the [building] waiver should not be determined by the legal status of or the title to the real property, but should instead be determined by an examination of the public employees' duties." *Id.* ¶ 7. It next observed that "statutes, regulations, and contracts [are] sources of duties of ordinary care imposed on public employees that may bring them within a [TCA] waiver[,]" *id.* ¶ 12, and made a detailed examination of statutes and regulations governing the Housing Authority. *Id.* ¶¶ 13-14. The Municipal Housing Law authorized the Housing Authority to "construct, maintain, operate[,] and manage any housing project[,]" which was defined as "any work or undertaking of the county to provide decent, safe, and sanitary dwellings . . . for persons of low income." *Id.* ¶ 13 (omission in original) (emphasis, internal quotation marks, and citations omitted). It also required compliance with federal regulations connected with funding through the federal Section 8 Existing Housing Program. *Id.* ¶ 14. Through the program, "the [Housing] Authority screens for and certifies a qualified needy participant, and represents that it will subsidize the participant's rental of approved homes to an extent that is prorated by income, need, and family size. The [Housing] Authority then contracts with the owner of the property to provide rental housing for the participant." *Id.* This arrangement "create[d] a relationship among the [Housing] Authority, the private landowners, and the family in need." *Id.* In addition, federal regulations required the Housing Authority to inspect the home before leasing it and annually thereafter and gave the Housing Authority the right to terminate the contract with the owner if the owner failed to maintain the home to certain standards. *Id.* The Court concluded that "[u]nder the state law and the federal regulations, the [Housing] Authority exercised at least some control over the quality of the private housing by inspecting and selecting the proper dwelling and by providing in its contract with the owners a large degree of control over the building." *Id.* It concluded that "the relationships of the actors . . . imposed at least limited duties of operation or maintenance on [Housing] Authority employees" such that the plaintiff's claim could proceed under the building waiver provision of the TCA. *Id.* ¶ 18.

{11} In reaching this conclusion, the Court rejected the Housing Authority's argument that its relationship with the home and owner was "one of mere regulation and inspection of private property[,]" *id.* ¶ 15, or the result of a "general regulatory relationship between the government and its citizens." *Id.* ¶ 16. The Court stated that

> [t]he Legislature created the Authority for the purposes of operating and maintaining housing projects in a decent, safe[,] and sanitary condition. The Housing Authority . . . chose to do so by using private property in the manner prescribed by the federal regulations. Thus, the privately[] owned home was substituted for

> publicly[]owned low-income housing . . . , [and the Housing Authority's] duties under the Municipal Housing Law and Existing Housing Program went far beyond a mere duty to inspect and regulate private conduct.

Id. ¶ 15; *see id.* ¶ 16 (stating that the Housing Authority's "voluntary undertaking to effectuate the policies in [the Municipal Housing Law] by providing [the p]laintiff's family with safe housing they could not otherwise obtain" and stating that [t]his undertaking gives rise to a more specific relationship among the parties than does general regulation for the public good").

{12} In *Young v. Van Duyne*, this Court considered whether the building waiver could apply to permit suit against CYFD based on CYFD's failure to inform the plaintiff's family that the child they fostered and later adopted had violent tendencies. 2004-NMCA-074, ¶ 3, 135 N.M. 695, 92 P.3d 1269. The child later killed the plaintiff's wife with a baseball bat. *Id.* This Court held that the plaintiff's claims survived a Rule 1-012(B)(6) NMRA motion to dismiss and that the plaintiff "must be permitted to proceed on the merits of his claim that CYFD operated the [plaintiff's] foster home within the meaning of the [building] waiver." *Young*, 2004-NMCA-074, ¶¶ 17, 23. Its reasoning was based in part on the special concurrence in *M.D.R. v. State ex rel. Human Services Department*, in which Judge Minzner wrote that "[t]he placement of a child in foster care within a private home involves the state in the lives of its citizens in a unique way" because the statutes and regulations governing foster care required the state to maintain a degree of control over the child. 1992-NMCA-082, ¶ 17, 114 N.M. 187, 836 P.2d 106 (Minzner, J., specially concurring); *see Young*, 2004-NMCA-074, ¶ 20. Although the claims presented in *M.D.R.* were based on allegations that the state negligently placed a child in the plaintiffs' foster home, Judge Minzner observed that claims related to the day-to-day functioning of the foster home might have fallen within the "operation" prong of the building waiver. *M.D.R.*, 1992-NMCA-082, ¶ 21. Based on the special concurrence in *M.D.R.* and *Cobos*, the *Young* Court remanded to permit the plaintiff to "prove a regulatory scheme or conduct from which a fact[-]finder can conclude pre-adoption operation of the [plaintiff's] home as contemplated under [the building waiver]." *Young*, 2004-NMCA-074, ¶¶ 20-21, 35.

{13} We recognize that, because of its procedural posture, *Young* is not dispositive of whether CYFD was "operating" foster homes so as to permit suit under the building waiver. Similarly, *Cobos* is not dispositive. Nevertheless, *Young* and *Cobos* together suggest that the building waiver may apply when an agency undertakes to provide housing for clients when permitted or required to do so under specific statutory authority. *Cobos*, 1998-NMSC-049, ¶ 16 (stating that the Housing Authority's "voluntary undertaking to effectuate the policies in [the Municipal Housing Law] . . . [gave] rise to a more specific relationship among the parties than does general regulation for the public good").

B. CYFD Owes a Duty of Ordinary Care to Children Under Its Jurisdiction

{14} As indicated in *Cobos*, CYFD's duty is imposed in a variety of statutes and regulations. *See id.* ¶ 12 ("Our appellate courts regularly look to statutes, regulations, and contracts as sources of duties of ordinary care imposed on public employees that may bring them within a [TCA] waiver."). For instance, the Children's Code establishes standards for the housing of children by CYFD. The Children's Shelter Care Act, the purpose of which is to "divert children out of the juvenile justice system," NMSA 1978, § 32A-9-2(B)(2) (1993), provides for the placement by CYFD of children alleged to be in need of supervision, children determined to be in need of supervision, or alleged delinquent children "in a community-based shelter-care facility." NMSA 1978, § 32A-9-6 (1993); *see* NMSA 1978, § 32A-9-3(B)-(D) (1993). Other parts of the Children's Code indicate that "community-based shelter-care facilities" include the home of a relative, a licensed foster home or group home, or "a facility operated by a licensed child welfare services agency[.]" NMSA 1978, § 32A-4-8 (1993); *see* NMSA 1978, § 32A-3B-6 (1993). Similarly, children alleged to be neglected or abused, or from a family in need of services, may be placed with a family member, or in a licensed foster home, facility operated by a licensed child welfare services agency, or a facility provided for in the Children's Shelter Care Act. Sections 32A-4-8, -3B-6. Placement of children alleged to be delinquent or youthful offenders is limited to a similar list of facilities. NMSA 1978, § 32A-2-12 (2009).

{15} In addition to these statutes governing where CYFD may place children, CYFD has promulgated extensive licensing requirements and regulations governing residential shelter-care facilities for children, including crisis shelters, multi-service homes, community homes, and "[n]ew or [i]nnovative programs" that provide children's services, as well as foster homes. 7.8.3.2 NMAC (09/15/1975, as amended through 08/15/2011) (licensing requirements for shelter-care homes); 8.26.4 NMAC (licensing requirements for foster and adoptive homes). The shelter-care regulations specify the records that must be kept for each child, licensing requirements for each facility, reporting requirements, and space and building requirements, as well as setting standards for medical care, nutrition, housekeeping, waste disposal, and seclusion rooms, among other things. 7.8.3.2 NMAC (12/23/1987, as amended through 05/15/2001). More relevant to Plaintiffs' claims, the regulations require facilities in which CYFD is permitted or required to place or refer children pursuant to statute or regulation to "support, protect, and enhance the rights of children" including "the right to receive visitors in private at reasonable times" and "the right to written and telephone access." 7.8.3.28 NMAC(B)(7), (8). The regulations also prohibit use of "unusual or unnecessary punishments including, but not limited to," physical exercise as a form of punishment, denial of food, water, or rest, denial of visiting or communication privileges, use of restraints, verbal abuse, and spanking, hitting, or "aggressive physical contact with a child." 7.8.3.80(F) NMAC. The regulations also include requirements for staffing levels and records, staff qualifications, staff training and evaluation, and staff health certificates and criminal background checks. 7.8.3.30 to .34 NMAC. Similarly, the statutes and regulations governing foster care, discussed in *M.D.R.*, provide for substantial oversight of foster homes and foster parents. 1992-NMCA-082, ¶ 17 (Minzner, J., specially concurring); *see* 8.26.4 NMAC. Both the shelter-care regulations and foster home regulations clearly address a wide variety of aspects of the day-to-day operation of the subject facilities.

{16} Even "community homes," which are excluded from particular regulations governing residential shelter-care facilities, *see* 7.8.3.2 NMAC, and "group homes" are required to "observe standards comparable to pertinent recognized state or national group home standards for the care of children[.]" NMSA 1978, § 9-8-13(B) (2007) (defining "group home" as "any home the

principal function of which is to care for a group of children on a [24]-hour-a-day residential basis," which (1) "receives no funds as such directly from or through the department" and (2) "is a member of any state or national association that *requires it to observe standards comparable to pertinent recognized state or national group home standards for the care of children*" (emphasis added)); 8.26.6.7(D) NMAC (regulations governing community homes, defining a community home as "a facility which operates 24 hours a day and provides full time care, supervision[,] and support to no more than 16 children in a single residential building, and which meets the definition of 'group home' as outlined in . . . [Section] 9-8-13."); 7.8.3.2 NMAC (stating that community homes are subject to only some of the regulations in 7.8.3 NMAC).

{17} What we glean from these statutes and regulations is that CYFD has an obligation to house children in its care in homes or facilities that meet certain minimum health and safety standards. This obligation may create a relationship between CYFD, the homes or facilities in which children are placed, and the children. *See Cobos*, 1998-NMSC-049, ¶ 14. We conclude that the waiver of immunity in Section 41-4-6(A) permits suit against CYFD when such a relationship exists.

C. Questions of Material Fact Preclude Summary Judgment

{18} We turn now to the immediate question presented by Plaintiffs' appeal. The question centers factually on whether and under what circumstances, children were sent or referred to TBR by CYFD, a question that raises a genuine issue of material fact, requiring reversal and remand. Once answered, the issue becomes a legal one, what duty of care, if any, CYFD owed to any particular child placed or referred to TBR by CYFD. Based on the facts and arguments on appeal, we construe Plaintiffs' assertions to go beyond a failure by CYFD to license and regulate TBR. Plaintiffs argue that CYFD "failed to operate and maintain TBR safely despite having a duty to do so." Plaintiffs' assertions can be read as being similar to those made at the motion to dismiss stage in *Cobos* and in Justice Minzner's scenario in *M.D.R.*, to include an assertion that CYFD failed to exercise ordinary care "to provide for the care, protection, and wholesome mental and physical development of children" under statutory or regulatory circumstances requiring CYFD to do so and to do so in a manner that could have prevented the alleged abuse of one or more children sent or referred to TBR by CYFD. To be explored in further discovery and proof are Plaintiffs' allegations and any evidence in the record in regard to whether, and if so to what extent, CYFD was involved in sending or referring children to TBR, and what duty existed, if any, to follow up on their well-being. Included within this analysis is the extent, if any, indicated by evidence in the record, to which CYFD's juvenile justice division may have received funds earmarked for TBR in 1999, and also the extent, if any, to which inferences can be drawn that TBR and CYFD had financial dealings then or at any other time. We note that, at the hearing on the motion, CYFD appeared to admit that CYFD had placed children at TBR. Since CYFD did not respond to Plaintiffs' allegations in writing and the admission was only in a passing comment, we decline to give this statement more import than is deserved. In spite of CYFD's statement, we conclude that the questions of whether and under what circumstances children were placed at TBR by CYFD present disputed material factual issues.[2]

{19} In its pleadings related to the motion for summary judgment, CYFD did not respond to Plaintiffs' assertions that CYFD sent children in its care to TBR or that CYFD has or had a financial arrangement with TBR. The district court did not set out the undisputed facts on which it relied in granting summary judgment.

{20} In reviewing a motion for summary judgment, the district court "must resolve all reasonable inferences in favor of the nonmovant and must view the pleadings, affidavits, depositions, answers to interrogatories and admissions in a light most favorable to a trial on the merits." *Garcia-Montoya v. N.M. Treasurer's Office*, 2001-NMSC-003, ¶ 7, 130 N.M. 25, 16 P.3d 1084. "Summary judgment is an extreme remedy that should be imposed with caution[,]" and is improper if the nonmovant demonstrates "a reasonable doubt as to the existence of a genuine factual issue." *Ocana v. Am. Furniture Co.*, 2004-NMSC-018, ¶¶ 12, 22, 135 N.M. 539, 91 P.3d 58 (internal quotation marks and citation omitted). Here, Plaintiffs' assertions raise a reasonable doubt as to the existence of material factual issues, to wit, whether CYFD placed children in its care at TBR.

CONCLUSION

{21} We conclude that questions of material fact preclude summary judgment on the issue of whether the TCA's building waiver applies to permit Plaintiffs' suit. We hold that summary judgment should have been denied. *See Espinoza v. Town of Taos*, 1995-NMSC-070, ¶ 5, 120 N.M. 680, 905 P.2d 718 ("Summary judgment is inappropriate when resolution of a factual dispute is required to determine a legal question before the [c]ourt."). We therefore reverse and remand for further proceedings.

{22} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

I CONCUR:
MICHAEL E. VIGIL, Chief Judge
JONATHAN B. SUTIN, Judge

[2]In support, Plaintiffs attached a copy of the general appropriations bill containing the earmark to TBR and a complaint filed by Scott and Colette Chandler, who own and operate TBR, in which the Chandlers asserted that "[o]ver the existence of the TBR Youth Program, TBR Youth Program has received youths from New Mexico [CYFD], referrals from juvenile justice and parole, the courts, as well as private placements." The Chandlers further stated that "[f]or enrollment in the TBR Youth program, Scott Chandler is contacted either by a program facilitator, a social worker, a . . . Juvenile Justice Police Officer [sic], therapist and/or a parent."

A Civilized Approach to Civil Mediation

We create a safe and respectful environment for parties

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

Evan Spain Hobbs, J.D., LL.M.

Advising trustees and litigators on: the construction, modification and termination of trusts; fiduciary duties; breach of trust; remedies; limits on liability; and unjust enrichment.

(505) 433-4518
ehobbs.law@gmail.com
www.abqtrust.com

Robert C. Casey

EXPERT WITNESS

PREMISES LIABILITY

20 Years experience
bobkcpi@comcast.net
505-239-0101

California Attorney
10+ years of experience in litigation and transactional law in California. Also licensed in New Mexico. Available for associations, referrals and of counsel.
Edward M. Anaya
(415) 300-0871 • edward@anayalawsf.com

JANE YOHALEM
Appeals Specialist
(505) 988-2826 • jbyohalem@gmail.com

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

Shona L. Zimmerman, Esq.
Legal Research & Writing
Civil & Domestic Matters
Quality, Timely & Affordable
Shona@esqlimited.com
(505) 449-8141

Bridge the Gap
Mentorship Program

For more information and to apply, go to www.nmbar.org

To learn more, contact Jill Yeagley 505-797-6003, or email bridgethegap@nmbar.org

STATE BAR of NEW MEXICO

BAR BULLETIN
Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

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

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

Classified

Positions

Litigation Attorney
Fast-paced, personal injury firm located in Albuquerque immediately seeking a litigation attorney. Excellent salary and benefits. Ideal candidate will have 5+ years of experience managing a busy caseload. Primary responsibilities include handling cases through all stages of suit and collaborating with other attorneys and support staff to move cases forward. Position requires excellent time management skills and the ability to work well with others. Intelligent, thoughtful, and efficient litigation skills with a background in personal injury (plaintiff or defense) is also required. If interested, please send a resume and cover letter to andyr@2keller.com. All inquiries will be kept strictly confidential.

Attorney
WILLIAM F. DAVIS & ASSOC., P.C. a law firm located in North East Albuquerque, is accepting applications for an Attorney with 0 to 3 years experience with motivation to learn and grow in a dynamic law firm concentrating in the area of business reorganizations. Candidate should be willing to work hard and learn the bankruptcy practice. Law school courses/experience in Bankruptcy, Secured Transactions and UCC preferred. Our practice consists primarily of Chapter 11 bankruptcy proceedings and general commercial litigation. Our firm offers competitive salary, excellent benefits and a positive work environment. The position is available immediately. Please send resume via email to: diane@nmbankruptcy.com

Associate Attorney
Ray McChristian & Jeans, P.C., an insurance defense firm, is seeking a hard-working associate attorney with 2-5 years of experience in medical malpractice, insurance defense, insurance law, and/or civil litigation. Excellent writing and communication skills required. Competitive salary, benefits, and a positive working environment provided. Please submit resume, writing sample and transcripts to palvarez@rmjfirm.com.

HIDTA-Deputy District Attorney
The Sixth Judicial District Attorney's Office has an immediate opening for a HIDTA-Deputy District Attorney in the Deming. Salary DOE: between $50,000-$60,000 w/benefits. Please send resume to Francesca Estevez, District Attorney: FMartinez-Estevez@da.state.nm.us or call (575)388-1941.

Legal Notice
Request for Proposal Number: 17-0002
Title: Impartial Hearing Officers on-behalf of NMDVR. Issued by: State of New Mexico, Division of Vocational Rehabilitation (NMDVR). Purpose: The purpose of this Request for Proposals (RFP) is to procure one or more Offerors to provide Impartial Hearing Officer (IHO) services for New Mexico Division of Vocational Rehabilitation (NMDVR) and the New Mexico Commission for the Blind (NMCFTB) in administrative proceedings involving vocational rehabilitation or independent living services. One of the major goals NMDVR and NMCFTB is to put individuals with disabilities to work through its vocational rehabilitation services programs. Another goal is to assist individuals with disabilities in becoming and remaining as independent as possible through the NMDVR and NMCFTB's independent living programs. An NMDVR or NMCFTB applicant or eligible individual may request an administrative hearing if the individual is dissatisfied with a determination made by NMDVR or NMCFTB personnel pertaining to issues such as eligibility, service provision or case closure. The IHO determines whether the NMDVR or NMCFTB's position will be upheld or whether the individual's position should be adopted by the NMDVR or NMCFTB. The IHO makes decisions applying applicable State plans, Federal vocational rehabilitation and independent living laws and regulations, and State rules and policies that are consistent with Federal requirements. General information: NMDVR has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below: Maureena Williams; New Mexico Division of Vocational Rehabilitation, 435 St. Michael's Dr. Building D, Santa Fe, NM 87505; Telephone Number (505) 954-8532; Email: MaureenaR.Williams@state.nm.us. Issuance: The Request for Proposals will be issued on Wednesday February 1, 2017. Interested persons may access and download the document copy of the RFP from the NMDVR website at: http://www.dvrgetsjobs.com or by contacting Maureena Williams, Procurement Manager, and requesting a copy of RFP#17-0002 Impartial Hearing Officers on-behalf of NMDVR. Any questions or inquiries concerning this request including obtaining referenced documents, should be directed to the NMDVR Procurement Manager. Pre-Proposal Conference: A pre-proposal conference will be held on Friday February 10, 2017, beginning at 10:00 am Mountain Standard Time/Daylight for the purpose of reviewing the Request for Proposal as indicated in the sequence of events. Proposal Due Date and Time: Proposals must be received by the Procurement manager no later than 3:00 PM Mountain Standard Time/Daylight on Wednesday March 22, 2017. Sealed proposals must be sent to the attention of Maureena Williams Procurement Manager, Division of Vocational Rehabilitation, 435 St. Michael's Drive, Building D, and Santa Fe, New Mexico 87505. Proposals received after this deadline will not be accepted.

Real Estate Attorney
Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for an attorney with 5-8 years experience in real estate matters for our Albuquerque office. Experience in land use, natural resources, water law, environmental law and/or other real estate related practice areas a plus. Prefer New Mexico practitioner with strong academic credentials and broad real estate background. Firm offers excellent benefit package. Salary commensurate with experience. Please send indication of interest and resume to Cathy Lopez, P.O. Box 1888, Albuquerque, NM 87103 or via e-mail to hr@rodey.com. All inquiries kept confidential.

13th Judicial District Attorney
Senior Trial Attorney, Trial Attorney, Assistant Trial Attorney
Cibola, Sandoval, Valencia Counties
Senior Trial Attorney - This position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence, as well as the ability to handle a full-time complex felony caseload. Admission to the New Mexico State Bar and a minimum of five years as a practicing attorney are also required. Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for an entry to mid-level attorney to fill the positions of Assistant Trial Attorney. This position requires misdemeanor and felony caseload experience. Assistant Trial Attorney - an entry level position for Cibola (Grants), Sandoval (Bernalillo) or Valencia (Belen) County Offices. The position requires misdemeanor, juvenile and possible felony cases. Upon request, be prepared to provide a summary of cases tried. Salary for each position is commensurate with experience. Send resumes to Reyna Aragon, District Office Manager, PO Box 1750, Bernalillo, NM 87004, or via E-Mail to: RAragon@da.state.nm.us. Deadline for submission of resumes: Open until positions are filled.

Trial Attorney

Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will based primarily in Sierra County (Truth or Consequences). Must be admitted to the New Mexico State Bar and be willing to relocate within 6 months of hire. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Associate Attorney

The Jones Firm in Santa Fe is seeking an associate attorney with one to five years' experience to join our practice. The associate will assist with our regulatory practice before administrative agencies and provide support to the Firm's litigation team. We are looking for attorneys with excellent trial, research, and writing skills and consider clerkship experience beneficial. The Jones Firm offers competitive compensation and benefits. Please provide a resume, references, recent writing sample, and university and law school grade transcripts to terri@thejonesfirm.com by February 28, 2017.

Associate Attorney

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

Attorney

McGinn, Carpenter, Montoya & Love, P.A. is seeking a full time New Mexico licensed attorney with 0-3 years of legal experience. Candidates must have excellent written communication skills. Please send a resume with cover letter and a writing sample to Jenn@mcginnlaw.com. All replies will be kept confidential.

Assistant Attorney General I
Albuquerque
Full time
Job Reference # 10105573

The New Mexico Office of the Attorney General, Consumer and Environmental Protection Division, an Equal Employment Opportunity (EEO) employer, is seeking applicants for an "At Will" (not classified) Assistant Attorney General I position. An "At Will" position is one which is exempt from the Personnel Act, Section 10-9-4 NMSA 1978, and the employee serves at the pleasure of the New Mexico Attorney General. Job Responsibilities include: Investigating consumer complaints to determine the need for and viability of action, up to and including litigation; Negotiating informal and formal settlement agreements with targets; Meeting with and interviewing consumers; Drafting agreements, pleadings, memoranda, correspondence, and opinions; Appearing in Court. Job Requirements include: Licensed to practice law in New Mexico; 1-3 years' experience with all aspects of civil litigation, including motions practice and discovery; Ability and desire to work as part of a team; Well-developed oral and written communication skills; Bilingual preferred. Salary is commensurate with experience. Letter of interest, resume, writing sample and three professional references should be sent to the Office of the Attorney General. The position will remain open until filled. Applicants selected for an interview must notify the Attorney General's Office of the need for a reasonable accommodation due to a Disability. Please send resumes to: The Office of the Attorney General, Attn: Cholla Khoury; E-mail: ckhoury@nmag.gov; (505) 490-4052; P.O. Drawer 1508, Santa Fe, NM 87504-1508.

Attorney

Midland oil and gas firm seeks New Mexico-licensed attorney with at least three years of title examination experience. Transactional, probate, and/or litigation experience a plus. Must have excellent analytical skills and demonstrate initiative and the ability to self-direct. Competitive salary, excellent benefits, and partnership potential. We have an "all hands on deck" mentality, and seek a coworker that is willing to learn and to pitch in where necessary. Please send resumes to jmoore@wmafirm.com

Entry-Level Associate Trial Attorney

Position available for an entry-level Associate Trial Attorney in Las Vegas, New Mexico. Requirements include J.D. and current license to practice law in New Mexico. Please forward your letter of interest and resumé to Richard D. Flores, District Attorney, P.O. Box 2025, Las Vegas, New Mexico 87701; or via e-mail: rflores@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

Associate Attorney

Seeking applicants for Associate Attorney position: you will receive outstanding compensation and benefits as part of a vibrant, growing plaintiffs personal injury practice. Mission: To provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients the attention needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows that Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Strong negotiation skills. Ability to thrive in a productive and fast-paced work environment. Organized. Detail-oriented. Team player. Willing to tackle challenges with enthusiasm. Frequent contact with your clients, team, opposing counsel and insurance adjusters is of paramount importance in this role. Integrate the 5 values of our team: Teamwork, Talent, Tenacity, Truth, and Triumph. Compelled to do outstanding work. Strong work ethic. Barriers to success: Lack of fulfillment in role. Not enjoying people. Lack of empathy. Not being time-effective. Unwillingness to adapt and train. Arrogance. If you are interested in this position, and you have all the qualifications necessary, please submit your resume detailing your experience, a cover letter explaining why you want to work here, and transcripts of grades. Send documents to Bert@ParnallLaw.com, and type "Mango" in the subject line.

Litigation Associates

Atwood, Malone, Turner & Sabin, PA, is a defense litigation firm specializing in medical malpractice, worker's compensation, and general insurance defense throughout the State of New Mexico. The firm is seeking a 0-2 year and a 2-4 year associate to join its Roswell office. Candidates should be eligible for admission to the New Mexico bar. The lateral candidate should have litigation experience in one or more of the following practice areas: General Liability including employment and municipality defense; Professional liability;or Medical malpractice defense. The ideal candidates will have solid academic credentials, the ability to write persuasively and articulate a position clearly, the ability to work effectively within a team, and a desire to travel within the state of New Mexico. We offer competitive compensation and superb mentorship and training to help associates build their careers toward partnership. This is an excellent opportunity to join a sophisticated law practice located in a community with nearby outdoor recreational activities, great public schools, and a low cost of living. Salary and benefits are competitive. Please send resumes, references, and writing sample to qperales@atwoodmalone.com.

Paralegal/Administrative Assistant

Non-profit law firm and advocacy organization seeks highly organized Paralegal/Administrative Assistant who will assist in conducting advocacy and litigation on behalf of the NM Center on Law and Poverty, specifically with the Center's Education Team. Successful applicant will assist attorneys by: communicating with clients; locating witnesses to testify; factual investigation such as obtaining documents, photographs and other evidence; performing legal research; editing/proofing pleadings and other legal documents; organizing, analyzing, summarizing and indexing documents; preparing charts, tables and other demonstrative evidence; investigating and developing cases and projects assigned, and conducting necessary interviews. Requirements: college degree; paralegal certification or equivalent experience required; high level of proficiency in verbal and written communication; excellent research and analytic skills; self-motivated and dependable; detail-oriented; demonstrated commitment to addressing poverty and/or equal access to justice issues; experience working with low-income people, people of color, and other marginalized groups. Preferred characteristics: experience with and/or knowledge of New Mexico's public education system; Spanish proficiency. Salary range for this position: Commensurate with experience. The initial contract would be for six months, with an extension contingent on funding and Center needs. To apply, send cover letter and resume to veronica@nmpovertylaw.org. The NM Center on Law and Poverty is an equal opportunity employer. People with disabilities, people of color, former recipients of public assistance, or people who have grown up in poverty are especially encouraged to apply.

Account Executive

Ready for a positive change, to utilize your unique skills, and take your career in a new direction? Aon is looking for an attorney with 2-5 years of experience in contract law or areas of litigation that lend itself to success in our risk management firm. As part of an industry-leading team, you will help empower results for our clients by delivering innovative and effective solutions as part of our Property & Casualty (P&C) business group within Aon Risk Solutions in Albuquerque, NM. The position will be responsible for the day to day account management of P&C business. This person would identify and meet client needs, as well as retain and grow a book of business. After a successful mentoring period, we would look for this individual to assume a leadership role in the P&C practice, with the capability to identify talent, and create a positive team culture. Please apply online: http://bit.ly/2jzr2vL To learn more about Aon: www.aon.com

Paralegal

Seeking applicants for a Paralegal; experience needed for busy, growing, plaintiffs personal injury law firm. We offer great pay and generous benefits (health/dental/401K/bonus plan) for the right candidate. Mission: To work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Organized. Detail-oriented. Meticulous but not to the point of distraction. Independent / self-directed. Able to multitask. Proactive. Take initiative and ownership. Courage to be imperfect, and have humility. Willing / unafraid to collaborate. Willing to tackle the most unpleasant tasks first. Willing to help where needed. Willing to ask for help. Acknowledging what you don't know. Eager to learn. Integrate 5 values of our team: Teamwork; Tenacity; Truth; Talent; Triumph. Compelled to do outstanding work. Know your cases. Strong Work ethic. Work Hours: Monday to Friday 8AM to 5PM. Barriers to success: Lack of fulfillment in role. Treating this as "just a job." Not enjoying people. Lack of empathy. Thin skinned to constructive criticism. Not admitting what you don't know. Guessing instead of asking. Inability to prioritize and multitask. Falling and staying behind. Not being time-effective. Unwillingness to adapt and train. Waiting to be told what to do. Overly reliant on instruction. We need to see superior grades, or achievement and longevity in prior jobs. 8AM-5PM M-F. Email cover letter, resume and any recent transcripts to James@ParnallLaw.com and print "Apples" in the subject line.

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.

Part Time Paralegal/Legal Assistant

For small but extremely busy law firm. 20 Hours per week. Must have personal injury experience which includes preparing demand packages. Salary DOE. Fax resume to 314-1452

Legal Assistant

Legal Assistant with experience needed for small law office located in Old Town area of Albuquerque. Commercial transactions and commercial litigation. Need a self-motivated person with attention to detail and good writing and document review/revision skills. Compensation DOE. Full or part time. No overtime required. Medical coverage available. Please visit www.oldtownlawoffice.com/hiring for further information.

Services

Albuquerque/Santa Fe Paralegal

Civil Litigation Paralegal with over 25 years of experience available for all case management and litigation tasks including jury selection. For resume and references - newmexicoparalegal@gmail.com.

Office Space

Santa Fe Office Wanted

Attorney seeks office share/office in Santa Fe. 930-2407

Two Offices For Rent

Two offices for rent, one block from courthouses, all amenities: copier, fax, printer, telephone system, conference room, high speed internet, and receptionist, office rent $400 and $700, call Ramona @ 243-7170.

In the Historic Rio Grande Corridor

Executive Office for Rent. Short distance from Courthouses and downtown, all amenities, copier, telephone service, conference room, high speed internet and receptionist. Free parking in private lot. Office rent $2,000.00 p/mo. including workstation for secy./admin. asst. Call Rich/Pat at (505) 243-3500.

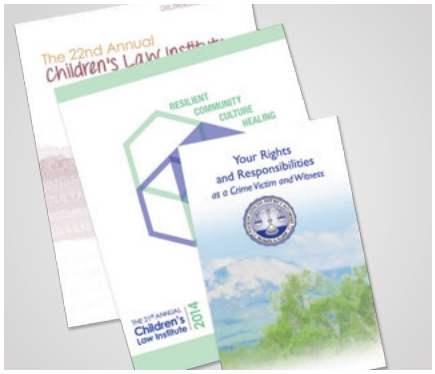
Miscellaneous

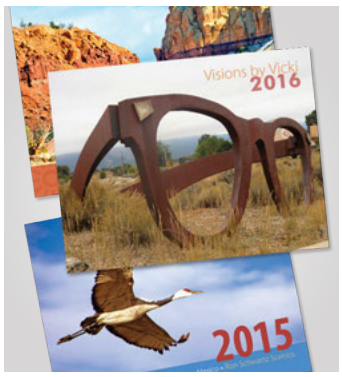
Searching for a Will

Searching for a Will for Amelia Dimas Lesperance. Deceased. Please call Robert Archibeque @ 505 850-2117.

DPC
Digital Print Center

Quality, **full-color** printing.
Local service with fast turnaround.





Business Cards • Letterhead • Envelopes • Booklets
Brochures • Calendars • Greeting Cards • Invitations • and much more!

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

Ask about **YOUR** member discount!

STATE BAR of NEW MEXICO
DIGITAL PRINT CENTER

AMERICAN BAR ASSOCIATION
Young Lawyers Division

ABA YLD Mountain West States Regional Summit

Colorado • New Mexico • Texas
Utah • Wyoming

March 30–April 2
Hotel Albuquerque, Albuquerque, N.M.

Save the Date!

Join us in the Land of Enchantment for informative programming, networking and fun!

Programming will address law practice and courtroom skills for young lawyers, bar service and leadership, the future of the legal profession in the Mountain West region, in-depth discussion of the Uniform Bar Exam and bar reciprocity. Programming will also include networking events and an introduction to ABA YLD leadership and affiliates for law students. Excursion activities include travel to nearby Santa Fe and a ride on the Sandia Peak Tramway, the longest aerial tram in the United States.

Registration will open soon.

For more information, contact SBNM YLD Chair Tomas Garcia at tomas.garcia@modrall.com.

Hosted by the State Bar of New Mexico Young Lawyers Division.

Funded in part by the American Bar Association on behalf of the Young Lawyers Division and through the Fund for Justice and Education and in part by the partnering states.

For hotel reservations, call 800-237-2133 and reference "Mountain West States ABA YLD Regional Summit" to receive the group rate of $129 per night. Reservations can also be made online at **https://goo.gl/DWrzNH** using the Group Code "1703MWS."

CBA Colorado Bar Association
State Bar of New Mexico
Texas Young Lawyers Association Organized in 1939
Utah State Bar Organized 1931
wyoming State Bar