Official Publication of the State Bar of New Mexico

Bar Bulletin

April 12, 2017 • Volume 56, No. 15

Sixteen Pyramids, by Dean G. Loumbas (see page 3)

Inside This Issue

Notices 4

Comment on Proposed Rule Changes 4

Register for the Jackrabbit Bar Conference ... 4

Gov. Susana Martinez to Speak at Solo and Small Firm Section Luncheon 4

Volunteer for Ask-a-Lawyer Law Day Call-in Program 5

Clerk's Certificates 13

From the New Mexico Court of Appeals

2017-NMCA-011, No. 34,285: Freed v. The City Of Albuquerque 16

2017-NMCA-012, No. 34,180: Williams v. Mann 20

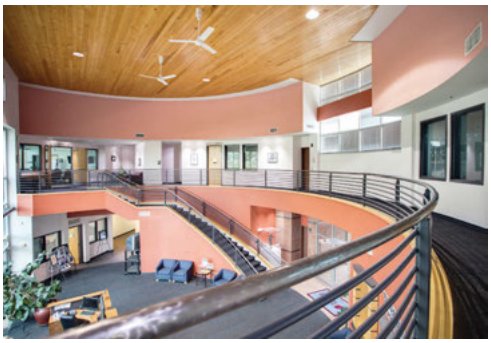
2017-NMCA-013, No. 34,195: Holzem v. Presbyterian Healthcare Services 26

2017-NMCA-014, No. 34,759: State v. Pacheco 30

Annual Meeting Information Inside! Flip to page 7.

State Bar Center

Your Meeting Destination



Hold your conference, seminar, training, mediation, reception, networking social or meeting at the State Bar Center.

- Multi-media auditorium
- Board room
- Small to medium conference rooms
- Classrooms
- Reception area
- Ample parking
- Free Wi-Fi

For more information, site visits and reservations, call 505-797-6000.

STATE BAR of NEW MEXICO

www.nmbar.org

5121 Masthead NE
Albuquerque, NM 87109

Conveniently located in Journal Center

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

April 12, 2017, Vol. 56, No. 15

Table of Contents

Notices 4
Court of Appeals Opinions List 6
2017 Annual Meeting—Bench & Bar Conference Registration Now Open 7
Continuing Legal Education Calendar 11
Clerk's Certificates 13
Recent Rule-Making Activity 15
Opinions
From the New Mexico Court of Appeals
2017-NMCA-011, No. 34,285: Freed v. The City of Albuquerque 16
2017-NMCA-012, No. 34,180: Williams v. Mann 20
2017-NMCA-013, No. 34,195: Holzem v. Presbyterian Healthcare Services 26
2017-NMCA-014, No. 34,759: State v. Pacheco 30
Advertising 32

Meetings

April

12
Taxation Section Board
11 a.m., teleconference

12
Noon, Children's Law Section Board
Juvenile Justice Center

13
Business Law Section Board
4 p.m., teleconference

13
Public Law Section Board
Noon, Montgomery & Andrews, Santa Fe

14
Prosecutors Section Board
Noon, State Bar Center

19
Animal Law Section
Noon, State Bar Center

19
Real Property, Trust and Estate Section Board,
Noon, State Bar Center

21
Family Law Section Board
9 a.m., teleconference

21
Trial Practice Section Board
Noon, State Bar Center

25
Intellectual Property Law Section Board
Noon, Lewis Roca Rothgerber Christie

Workshops and Legal Clinics

April

14
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

19
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

25
Common Legal Issues for Senior Citizens
Presentation, 10 a.m.–noon,
Agnes Kastner Head Community Center, Hobbs, 1-800-876-6657

26
Consumer Debt/Bankruptcy Workshop
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

26
Common Legal Issues for Senior Citizens
Presentation, 10 a.m.–noon,
Catron County Commission on Aging Senior Center, Reserve
1-800-876-6657

26
Common Legal Issues for Senior Citizens
Presentation, 10 a.m.–noon,
Chavez County J.O.Y. Center, Roswell
1-800-876-6657

About Cover Image and Artist: Dean Loumbas is a speech-language pathologist residing and working in San Francisco. Loumbas' paintings have been published as cover art for the *Journal of Pediatric and Adolescent Medicine*, the *Journal of Academic Medicine* and the *Journal of Speech-Language Pathology*. His current work redefines the solid form by presenting geometric shapes in close relationships which create horizons and abstract 'landscapes' that takes the viewer on multiple journeys through numerous visual and spatial transformations. For more information and additional work, email dlou33@cs.com.

Notices

Court News

New Mexico Supreme Court

Proposed Revisions

To comment on the proposed amendments below before the Court takes final action, submit a comment electronically through the Supreme Court's website at http://supremecourt.nmcourts.gov/open-for-comment.aspx or send written comments by mail, email, or fax to: Joey D. Moya, Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, New Mexico 87504-0848; nmsupremecourtclerk@nmcourts.gov; or 505-827-4837 (fax). Comments must be received by the Clerk on or before April 17. Note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Rules of Criminal Procedure for the District Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Metropolitan Courts, and Rules of Appellate Procedure: Proposal 2017-041

The Supreme Court is considering the adoption of new rules to govern pretrial detention proceedings, see Proposed New Rules 5-409, 6-409, and 7-409 NMRA, as well as amendments to the rules governing appeals from orders concerning pretrial detention or release pending appeal. See Rules 5-405, 12-204, and 12-205 NMRA. Read the full proposed amendments in the March 29 *Bar Bulletin*, or on the Supreme Court's website, at supremecourt.nmcourts.gov/open-for-comment.aspx.

Proposed Revisions to the Rules of Criminal Procedure for the District Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Metropolitan Courts, Rules of Procedure for the Municipal Courts, and Criminal Forms Governing Pretrial Release: Proposal 2017-042

The Supreme Court is considering amendments to the rules governing pretrial release, Rules 5-401, 6-401, 7-401, and 8-401 NMRA; the adoption of new rules to govern pretrial release by designee, Rules 5-408, 6-408, 7-408, and 8-408 NMRA; the adoption of a proposed new financial affidavit form, Form 9-301A NMRA; amendments to Forms 9-302 and 9-303 NMRA; and the withdrawal of Form 9-303A NMRA. Read the full proposed amendments in the April 5 *Bar Bulletin*, or on the Supreme Court's website, at supremecourt.nmcourts.gov/open-for-comment.aspx.

Professionalism Tip

With respect to opposing parties and their counsel:

I will not make improper statements of fact or of law.

Board of Legal Specialization

Comments Solicited

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

Family Law: Virginia R. Dugan

Third Judicial District Court

Gov. Martinez Appoints Conrad Perea as Judge

On March 23, Gov. Susana Martinez announced the appointment of Conrad Perea to Division III of the Third Judicial District Court, filling the vacancy created by the resignation of Judge Darren M. Kugler.

Sixth Judicial District Court

Announcement of Vacancy

A vacancy on the Sixth Judicial District Court exists as of March 27 due to the retirement of Hon. H.R. Quintero effective March 24. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Alfred Mathewson, chair of the Sixth 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. Applications may be obtained from the Judicial Selection website: lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., April 13. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Sixth Judicial District Court Judicial Nominating Commission will meet beginning at 9 a.m. on April 27 to interview applicants for the position in Silver City. The Commission meeting is open to the public and anyone who has comments will be heard.

State Bar News

Attorney Support Groups

- April 17, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)
- May 1, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- May 8, 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.

Jackrabbit Bar Conference

Registration Now Open

The Jackrabbit Bar is an association of state bars of the Northwestern Plains and mountains including Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah and Wyoming. This year's conference is hosted by the State Bar of New Mexico June 1–3 at the Inn and Spa at Loretto in Santa Fe. The conference is open to anyone and has been approved for up to 7.8 general CLE credits. Call 866-582-1646 to reserve a room at the Inn at Loretto. Rooms under the group rate are $189 (cutoff date: May 2). To register and view a tentative agenda, visit www.nmbar.org/nmstatebar/JBC.aspx. For more information about the conference, contact Kris Becker at 505-797-6083 or kbecker@nmbar.org.

Solo and Small Firm Section

May Presentation Features Gov. Susana Martinez

The Solo and Small Firm Section will host Gov. Susana Martinez from noon-1 p.m., May 9, at the State Bar Center in Albuquerque. Gov. Martinez will speak to State Bar of New Mexico members on any lingering issues from the coming legislative special session and her vision for our state

in the remainder of her second term and the future. The Section welcomes all attorneys and judges to its monthly speaker series. The State Bar Center joins the Section in hosting a complimentary luncheon from 1-2 p.m. following Gov. Martinez' presentation. Those interested in attending are encouraged to register as soon as possible by visiting www.nmbar.org/solos. Space is limited and seating will be available on a first come, first served basis.

Young Lawyers Division
Volunteers Needed for Ask-a-Lawyer Law Day Call-in Program

Volunteer attorneys in the Albuquerque and Roswell areas are needed to provide brief legal advice to callers from around the state from 9 a.m.-noon on Saturday, April 29. Volunteers should arrive at the call-in location at 8 a.m. for orientation and breakfast. Questions may include the following areas of the law: family law, landlord/tenant disputes, consumer law, personal injury, collections and more. Attorneys fluent in Spanish are needed. The call-in location will be provided following volunteer sign up. Visit www.nmbar.org/AskALawyer for more information and 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.

Mexican American Law Student Association
Fighting for Justice Banquet

Join the Mexican American Law Student Association for the 22nd Annual Fighting for Justice Banquet honoring Emerita Professor Eileen Gauna. Executive Director of Enlace Comunitario Antoinette Sedillo-Lopez will be the keynote speaker for the evening. The event will start at 6 p.m., April 14, at Hotel Albuquerque in Old Town Albuquerque and will feature a cocktail hour, live music and a silent auction. To purchase tickets or sponsorship packages visit www.malsanm.org or contact MALSA President Mish Rosete at mishrosete@gmail.com.

Other Bars
Albuquerque Bar Association
2017 Law Day Luncheon

The Albuquerque Bar Association's annual Law Day luncheon will be 11:45 a.m.–1:30 p.m. (arrive at 11 a.m. for networking) on May 2 at the Hyatt Regency Albuquerque. Chief Judge Christina Armijo will present "14th Amendment: Transforming American Democracy." Law Day is celebrated each year on May 1 and, this year, Gov. Susana Martinez has proclaimed May 2 as New Mexico Law Day. Individual and table tickets and sponsorships are available. For more information about the luncheon or to register, visit www.abqbar.org.

National College of Probate Judges
Spring Conference in Santa Fe

The National College of Probate Judges invites members of the State Bar of New Mexico to attend the NCPJ Spring Conference May 17–20 at the Eldorado Hotel in Santa Fe. For more information and to register, visit ncpj.org/2017_spring_conference/. A discounted registration rate applies until April 17.

Women's Bar Association
2017 Henrietta Pettijohn Reception

Join the Women's Bar Association for its annual Henrietta Pettijohn Reception from 6–9:30 p.m., May 4, at Hotel Albuquerque. WBA will honor Judge Wendy York and Shona Zimmerman, Esq., as well as present the 2017 Supporting Women in the Law Award to the University of New Mexico's Office of University Counsel. Hors d'oeuvres will be served and there will be a silent auction with proceeds going to law student bar review scholarships. Tickets are $20 for students, $35 for Women's Bar Association members and $45 for non-members. Visit www.nmwba.org to purchase tickets. On-site childcare will be provided for WBA members. Contact Barbara Koenig at bkoenig617@gmail.com by May 2 to R.S.V.P. for childcare.

Other News
Christian Legal Aid
Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. Christian Legal Aid will be hosting a Training Seminar from noon–5 p.m. on April 21 at the State Bar Center. Join them for free lunch, free 4 general CLE credits and training on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800 or email christianlegalaid@hotmail.com.

New Mexico Workers' Compensation Administration
New Judge Reassignment

Effective April 10, all pending and administratively closed cases before the New Mexico Workers' Compensation Administration previously assigned to Judge Terry Kramer will be reassigned to newly appointed Judge Rachel Bayless. Parties who have not yet exercised their right to challenge or excuse will have 10 days from April 10 to challenge or excuse Judge Bayless pursuant to N.M.A.C. Rule 11.4.4.13. Questions about case assignments should be directed to WCA Clerk of the Court Heather Jordan at 505-841-6028.

Volunteer Attorney Program
CLE for Volunteer Attorneys

The Volunteer Attorney Program and Justice for Families Project are holding a CLE for volunteer attorneys (1.5 G) from 3:30–5 p.m. on April 13 at New Mexico Legal Aid, in Albuquerque or via Skype. The CLE will be presented by Grace Allison, Andrew H. Weinstein and Katie Withem. The seminar is free for VAP volunteers and attorneys willing to sign up to take a VAP/JFP case. Donations welcome from non-volunteers ($25 or more per person suggested). For more information or to register, contact Katie Withem at 505-768-6134 or katiew@nmlegalaid.org.

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 March 31, 2017

PUBLISHED OPINIONS

No. 34932	1st Jud Dist Santa Fe CV-10-1470, J DOVE v STATE FARM (reverse and remand)	3/28/2017

UNPUBLISHED OPINIONS

No. 35255	1st Jud Dist Santa Fe CV-10-4375, PNC v H KHALSA (reverse and remand)	3/27/2017
No. 33249	6th Jud Dist Luna CR-12-109, STATE v P GARCIA (affirm in part and remand)	3/28/2017
No. 35742	13th Jud Dist Sandoval CV-14-534, PENNYMAC v S JEFFERS (affirm)	3/29/2017
No. 36003	13th Jud Dist Sandoval DM-12-385, C CHAVEZ v R CHAVEZ (affirm)	3/29/2017
No. 35794	2nd Jud Dist Bernalillo DM-13-735, G CHAVEZ v A CHAVEZ (affirm)	3/30/2017

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

2017 Annual Meeting—Bench & Bar Conference

Inn of the Mountain Gods Resort, Mescalero • July 27-29

Registration Now Open!

Stay tuned for announcements regarding our featured speakers and final schedule. This year, programming will begin on Thursday afternoon and will continue through Saturday. The Annual Meeting will provide a minimum of 12 CLE credits. For up-to-date information on the Annual Meeting, visit **www.nmbar.org/AnnualMeeting**. Have questions? Call 505-797-6033.

Featured Speakers

A full speaker line-up and final schedule will be coming soon! In the meantime, look forward to two of our high-profile speakers:

- **Mark Curriden, Esq.,** writer and general counsel for Texas Lawbook; writer for Dallas Morning News and the *ABA Journal*; author of *Contempt of Court: Lynchings at the Turn of the Century that Launched 100 Years of Federalism.*
- **Professor Sheldon H. Nahmod,** Chicago-Kent College of Law, a well-known expert and author of several publications on constitutional law, civil rights and the law of Section 1983.

Special Events

Purchase tickets for these special events through registration.

Play a round of golf while networking with other attendees.

- **Golf Outing**

  Inn of the Mountain Gods Championship Golf Course | Thursday, July 27

  Experience New Mexico golf at its finest on one of the most spectacular golf courses in the country, nestled among tall pine trees under the majestic Sierra Blanca Peak. The Course recently garnered a spot in the *Golf Digest* "Top 40 Casino Golf Courses"! Sign up as an individual or a foursome for our annual fun and informal golf outing. Shotgun start is at 11:30 a.m.

Explore the Annual Meeting's historic host city.

- **Guest Event: Spencer Theater Backstage Tour and Downtown Ruidoso Outing**

  Friday, July 28

  Receive a special private tour of the historic Spencer Theater for the Performing Arts which was created and funded by the late Jackie Everts Bancoft Spencer Morgan. The $22 million monumental structure was designed by architect Antoine Predock and opened in 1997. During the tour, you will also see the magnificent blown glass art sculptures by Seattle artist Dale Chiluly. Afterwards, discover the rustic and quaint downtown Ruidoso. Browse shops, eat at local restaurants and enjoy mountain views. Transportation included; shuttle departs Inn of the Mountain Gods at 8:30 a.m. and returns at approximately 1 p.m.

Relax with an evening of art and culture.

Performance: Shining a New Light on the Arts

Spencer Theater for the Performing Arts | Saturday, July 29

An original juxtaposition of dramatic movement, classical singing and vigorous dance stars an international cast of singers and dancers (including Jackie Spencer's granddaughter Natalie Bancroft, the production's lead vocalist and artistic director), with music accompaniment by the Las Cruces Chamber Ensemble. Tickets for the orchestra and separate buffet dinner of shrimp and chicken kebabs prior to the show are available through the registration form. Roundtrip transportation from the Inn of the Mountain Gods to the Spencer Theater is available for $10/person. *The dinner begins at 6 p.m. and the show starts at 8 p.m.*

Dust off your dancing shoes!

Jam out to the smooth tunes of Albuquerque-based Rock/Blues/Reggae band, The Incredible Woodpeckers. Catch the band after the Welcome Reception on Thursday, July 27, beginning at 8:30 p.m. in Club 49 in the casino. This event is open to all attendees and included in the registration fee.

Nominate a Colleague for the State Bar Annual Awards

The 2017 Annual Awards recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2016 or 2017. This year's awards will be presented during the Annual Meeting on Friday, July 28. Visit **www.nmbar.org/Awards** to view award descriptions and for nomination instructions. ***The deadline for nominations is May 12.***

Reserve your room today!

Rates at the Inn of the Mountain Gods Resort start at $139.99 for a standard room (per night plus tax). Mention your State Bar affiliation. **Reserve by June 26.** Contact Debra Enjady at 800-545-6040, ext. 3.

Basket Fundraising Extravaganza

Help support the **New Mexico State Bar Foundation** by purchasing a raffle ticket for one of our beautiful themed gift baskets, generously funded by local restaurants, shops and members of our legal community. Baskets are valued at more than $250! The raffle will take place during a reception on Friday, July 28.

Purchase raffle tickets on the registration form for $10 each. Get two free tickets for every 10 purchased! This advance purchase bonus is not available at the event. *You must be present to win.*

For more information or to make a donation, contact **Stephanie Wagner at 505-797-6007**.

STATE BAR of NEW MEXICO FOUNDATION

Red Raider HOSPITALITY SUITE

Sponsored by the

TEXAS TECH UNIVERSITY School *of* Law™

The Texas Tech University School of Law is a proud supporter of the 2017 Annual Meeting—Bench & Bar Conference and is honored that Texas Tech alumnus Scotty Holloman is the 2017 president of the State Bar of New Mexico. Join Scotty Holloman and other attendees in the Texas Tech School of Law "Red Raider" Hospitality Suite for complimentary cocktails and light snacks. The fun starts at 7 p.m. each night of the Annual Meeting.

2017 Annual Meeting–Bench and Bar Conference

July 27-29 • Inn of the Mountain Gods, Mescalero, NM

Name _____ SBNM Bar No. _____

Name for Badge (if different than above) _____

Firm/Organization _____

Address _____

City _____ State _____ ZIP _____

Phone _____ Fax _____ Email _____

Guest 1 _____ Guest 2 _____ Guest 3 _____

Name badge required to attend all functions.

REGISTRATION FEES	**Price**	**Qty.**	**Subtotal**
Includes CLE tuition, access to conference app, materials, MCLE filing fees, two breakfasts and lunches, breaks, Opening/President's Reception and Friday Happy Hour Mixer/*Bar Foundation Basket Extravaganza Raffle* *(Total food value $285/person; total CLE value $409/person)*			
Must be postmarked by June 15			
❒ Standard Fee (Thursday through Saturday)	$450	_____	_____
❒ YLD, Paralegal, Government and Legal Services Attorney Fee	$350	_____	_____
❒ Daily Fee, **Thursday and Friday, July 27-28** (includes both days)	$275	_____	_____
❒ Daily Fee, **Saturday, July 29**	$200	_____	_____
❒ **After June 15 add $50**	$50	_____	_____
❒ Guest Fee (Includes name badge, breakfasts, lunches, Opening/President's Reception and Friday Happy Hour Mixer/Raffle)	$150	_____	_____

Conference Materials: All registrants will receive a flash drive with updates on the website following the conference.

SEPARATELY TICKETED EVENTS

❒ ***Bar Foundation Basket Extravaganza Raffle****, Friday, July 28 **(Advanced purchase bonus--not available at the event–2 free tickets for every 10 purchased!)** **You must be present to win*	$10/ticket	_____	_____
Golf Outing: Inn of the Mountain Gods, (18-hole), Thursday, July 27, 11:30 a.m. (lunch not included)			
❒ Individual (Handicap/Average Golf Score ____)	$95	_____	_____
❒ Foursome Players are:	$380	_____	_____
1. _____ (Handicap/Average Golf Score _____) 2. _____ (Handicap/Average Golf Score _____)			
3. _____ (Handicap/Average Golf Score _____) 4. _____ (Handicap/Average Golf Score _____)			
❒ **Guest Event: Spencer Theater Backstage Tour and Downtown Ruidoso**, Friday, July 28 (transportation included—shuttle departs Inn of the Mountain Gods at 8:30 a.m. and returns at approximately 1:30 p.m.)	$8	_____	_____
The Spencer Theater (Shining a New Light on the Arts), Saturday, July 29, 8 p.m.			
❒ Orchestra	$59	_____	_____
❒ Spencer Theater Buffet Dinner, 6 p.m.	$20	_____	_____
❒ Roundtrip transportation from the Inn of the Mountain Gods to the Spencer Theater	$10/person	_____	_____
		TOTAL	**$**_____

PAYMENT OPTIONS

❒ Check or P.O. # _____ (Make checks payable to: New Mexico State Bar Foundation or NMSBF)

I authorize the NMSBF to charge my credit card. ❒ VISA ❒ Master Card ❒ American Express ❒ Discover

❒ Credit Card Acct. No. _____ Exp. Date _____ CVV# _____

Name (as it appears on credit card) _____

Register by mail or fax.

Mail: State Bar of New Mexico Accounting, PO Box 92860, Albuquerque, NM 87199-2860 **Email:** accounting@nmbar.org **Fax:** 866-588-9437

Cancellations and Refunds: If you find that you must cancel your registration, send a written notice of cancellation via email or fax by 5 p.m. July 17. A refund, less a $50 processing charge, will be issued. Registrants who fail to send notification by July 17 will not receive a refund.

CLE Credit Information: The Center for Legal Education of the NMSBF is an accredited CLE course provider. Complete and submit a personal attendance record provided at the reception desk.

Hotel information is available on www.nmbar.org/AnnualMeeting

Questions about registration? Call 505-797-6033.

Legal Education

April

13 **Representing Low Income Taxpayers Before the IRS**
1.5 G
Live Seminar, Albuquerque
New Mexico Legal Aid
505-814-5038

19 **Estate Planning and Elder Law**
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

19 **Examining the Excessive Cost of Lawyer Stress**
2.0 EP
Live Seminar, Albuquerque
TRT CLE
www.trtcle.com

20 **ECL, Solo and Small Firm Business Bootcamp Part I of II**
3.4 G, 2.7 EP (total)
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

21 **Legal Aid Training Seminar**
4.0 G
Live Seminar, Albuquerque
New Mexico Christian Legal Aid
christianlegalaid@hotmail.com

21 **36th Annual Update on New Mexico Tort Law**
6.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Trial Lawyers Association
www.nmtla.org

26 **Landlord Tenant Law**
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

27 **ECL, Solo and Small Firm Business Bootcamp Part II of II**
3.4 G, 2.7 EP (total)
Webcast/Live Seminar, Albuquerque
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

27 **Annual Conference**
13.0 G
Live Seminar, Santa Fe
Transportation Lawyers Association
www.translaw.org

28 **Diversity Issues Ripped From the Headlines**
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

May

5 **32nd Annual Bankruptcy Year in Review (2017)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **Deposition Practice in Federal Cases (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **2016 Mock Meeting of the Ethics Advisory Committee**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

5 **Charitable Estate Planning—What Opportunities Am I Missing?**
2.5 G
Live Seminar, Santa Fe
St. Vincent Hospital Foundation
505-913-5209

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

18 **Annual Estate Planning Update**
5.0 G, 1.0 EP
Live Seminar, Albuquerque
Wilcox Law Firm
www.wilcoxlawnm.com

19 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

May

19 **NM DWI Cases: From the Initial Stop to Sentencing; Evaluating Your Case (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Human Trafficking (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Ethics in Discovery Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Drafting Gun Wills and Trusts—and Preventing Executor Liability**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Living with Turmoil in the Oil Patch: What It Means to New Mexico (2016)**
5.8 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **27th Annual Appellate Practice Institute (2016)**
6.4 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

31 **Ethics and Artificial Intelligence in Law Practice Software and Tools**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

June

1–3 **2017 Jackrabbit Bar Conference**
7.8 G
Live Seminar, Santa Fe
State Bar of New Mexico
www.nmbar.org/nmstatebar/JBC.aspx

2 **Drafting Employee Handbooks**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

6 **2017 Ethics in Civil Litigation Update, Part 1**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **2017 Ethics in Civil Litigation Update, Part 2**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Gender and Justice (2016 Annual Meeting)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

9 **The Disciplinary Process (2016 Ethicspalooza)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Reforming the Criminal Justice System (2017)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Avoiding Discrimination in the Form I-9 or E-Verify (2017)**
1.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Ethical Issues of Social Media and Technology in the Law (2016)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **The Ethics of Supervising Other Lawyers**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 **Representing Victims of Domestic and Sexual Violence in Family Law Cases**
2.0 G
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038

22 **Lawyer Ethics and Credit Cards**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

22 **Decanting and Otherwise Fixing Broken Trusts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Copy That! Copyright Topics Across Diverse Fields (2016)**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **2016 Real Property Institute**
4.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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 March 21, 2017

Clerk's Certificate of Address and/or Telephone Changes

Justin Ralph Baer
Hirschi Baer & Clayton, PLLC
136 E. South Temple, Suite 1650
Salt Lake City, UT 84111
801-990-0500
801-322-0594 (fax)
justin@hbcfirm.com

Jonathan L. Barela
Borderplex Alliance
1340 Milton Road
Las Cruces, NM 88001
915-298-1000
jbarela@borderplexalliance.org

Dana Lynn Beisman
2201 San Pedro Drive NE,
Bldg. 2-211
Albuquerque, NM 87110
505-888-7978
nmbeagle@yahoo.com

Hon. Henry M. Bohnhoff
New Mexico Court of Appeals
PO Box 2008
237 Don Gaspar Avenue
(87501)
Santa Fe, NM 87504
505-827-4914
505-827-4946 (fax)

Ramon M. Carrillo
11219 Spyglass Hill Lane NE
Albuquerque, NM 87111
505-400-4592
rmorenocarrillo@msn.com

Andrew Robert Clinton
The Clinton Law Firm, PLLC
4101 W. Green Oaks Blvd.
Arlington, TX 76016
432-230-5588
andrew@clintonpllc.com

Loren S. Foy
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
816-983-0000
816-983-8080 (fax)
loren.foy@huschblackwell.com

Angie Buchanan
679 E. Second Avenue,
Suite 11B
Durango, CO 81301
970-403-1770
abuchananlaw@yahoo.com

Debra S. Doll
331 E. D Street
Purcellville, VA 20132
571-258-8087
oceanblu62@gmail.com

Marx Michael Elmer
5426 Plainfield Street
Pittsburgh, PA 15217
412-580-3758
412-621-6411 (fax)
elmerlaw@aol.com

Dana Kanter Grubesic
Walther Family Law PC
6501 Americas Parkway NE,
Suite 820
Albuquerque, NM 87110
505-889-8240
505-889-8242 (fax)
danag@waltherfamilylaw.com

Joel Elena Hagaman
Catholic Charities
2010 Bridge Street SW
Albuquerque, NM 87105
505-724-4649
hagamanj@ccasfnm.org

David N. Hernandez
20181 N. 86th Street
Scottsdale, AZ 85255
505-228-5912
dnhnm@yahoo.com

Ryan Hilton
86 AW/JA, Unit 3201
APO, AE 09094
011-496-3714
ryan.hilton@us.af.mil

Peter James Horan
Carpenter & Associates
4700 Montgomery Blvd. NE,
Suite 300
Albuquerque, NM 87109
505-243-0065
505-243-0067 (fax)
phoran@carpenterlawnm.com

J. Michael Hyatt
Prima Title, LLC
123 Grant Avenue
Santa Fe, NM 87501
505-984-1884
505-984-1883 (fax)
mike@primatitle.com

Jennifer Rose Kletter
Office of the Fifth Judicial
District Attorney
102 N. Canal Street, Suite 200
Carlsbad, NM 88220
575-885-8822 Ext. 15027
575-887-3516 (fax)
jkletter@da.state.nm.us

Albert J. Kraai-Moore
Unit 3130 Box 40
DPO, AA 34034
781-742-0268

Neva J. Lind
Machol & Johannes, LLLP
4209 Montgomery Blvd. NE
Albuquerque, NM 87109
505-217-2850
505-214-5601 (fax)
neva.lind@mjfirm.com

Gregory W. Lisemby
Dubose Law Firm, PLLC
4310 N. Central Expressway
Dallas, TX 75206
214-819-8199
214-389-8399 (fax)
glisemby@duboselawfirm.com

Victoria Maqueda
Santa Fe Dreamers Project
PO Box 8009
Santa Fe, NM 87504
505-490-2789
victoria@
santafedreamersproject.org

Elizabeth A. Martin
3130 Fairview Park Drive #500
Falls Church, VA 22042
703-269-5625

Michael Quinten Martin
1015 N. West Street
Silver City, NM 88061
575-654-0790
quinnmartin520@gmail.com

Aimee Martuccio
Law Office of James H. Wood
423 Sixth Street NW
Albuquerque, NM 87102
505-340-3134
awhitsell@jameswoodlaw.com

Stephen J. Rhoades
3201 El Toboso Drive NW
Albuquerque, NM 87104
505-235-1551
srhoadesnm@gmail.com

Nghiem Nguyen
Krehbiel & Barnett, PC
8214 Second Street NW, Suite C
Albuquerque, NM 87114
505-858-3400
505-858-3404 (fax)
nnguyen@lady-justice.us

Sonia R. Russo
New Mexico Court of Appeals
PO Box 2008
237 Don Gaspar Avenue
(87501)
Santa Fe, NM 87504
505-827-4817
505-827-4946 (fax)
coasrr@nmcourts.gov

Noel Anthony Suniga
Gonzalez Olivieri, LLC
2200 Southwest Freeway,
Suite 550
Houston, TX 77098
713-481-3040
713-588-8683 (fax)
nsuniga@gonzalezolivieri.com

Flynn Evelyn Sylvest
Ventura Co.
1001 Partridge Drive
Ventura, CA 93003
805-658-4479
805-650-1521 (fax)

Jonathan Tsosie
1029 E. Eighth Avenue
Denver, CO 80218
505-414-6035
jktsosie@gmail.com

Stephanie M. Zorie
N.M. Corrections Department
PO Box 27116
4337 N.M. Highway 14
(87508)
Santa Fe, NM 87502
505-827-8674
stephanie.zorie@state.nm.us

Hannah Bridget Bell
108 Wellesley Drive SE
Albuquerque, NM 87106
575-613-5365
hannah@exhibitanm.com

Graham P. B. Boswell
Lathrop & Gage LLP
1515 Wynkoop Street, Suite 600
Denver, CO 80202
720-931-3111
720-931-3201 (fax)
gboswell@lathropgage.com

James L. Carroll
Mixon, Carroll & Frazier, PLC
PO Box 1619
Columbia, LA 71418
318-649-9284
318-649-0277 (fax)
jcarroll@mixoncarroll.com

Christina R. Cavaleri
PO Box 36173
Albuquerque, NM 87176
christinacavaleri@gmail.com

Jean M. Conner
N.M. Children, Youth and
Families Department
1031 Lamberton Place NE
Albuquerque, NM 87107
505-469-4268
jean.conner@state.nm.us

A. Blair Dunn
Western Agriculture,
Resource and Business
Advocates, LLC
400 Gold Avenue SW,
Suite 1000
Albuquerque, NM 87102
505-750-3060
505-226-8500 (fax)
abdunn@ablairdunn-esq.com

Katharine Cook Fishman
The Espanola Mercantile
Company
1302 N. Riverside Drive
Espanola, NM 87532
505-753-2176
505-753-2610 (fax)
kfishman@espmerc.com

Cheryl D. Hamer
17335 Bernardo Vista Drive
San Diego, CA 92128
858-432-4382
cherylhamer400@yahoo.com

Ryan Lindley Latham
Diamondback E&P LLC
500 W. Texas Avenue, Suite
1200
Midland, TX 79701
ryan.l.latham@gmail.com

Helen Laura Lopez
PO Box 9332
238 Griffin Street (87501)
Santa Fe, NM 87504
505-988-4657
505-988-4658 (fax)
hllawyer@mac.com

Sophie S. Martin
N.M. Board of Bar Examiners
20 First Plaza NW, Suite 710
Albuquerque, NM 87102
505-271-9706
505-271-9768 (fax)
smartin@nmexam.org

Patrick Brian McRorie
Lathrop & Gage LLP
1515 Wynkoop Street, Suite
600
Denver, CO 80202
720-931-3226
pmcrorie@lathropgage.com

Jonathan Ray Mitchell
Machol and Johannes, LLC
700 17th Street
Denver, CO 80202
919-672-2016
jonathan.mitchell@mjfirm.com

Francisco M. Ortiz
5752 Carmen Road NW
Albuquerque, NM 87114
575-526-8247
ortizlaw1@gmail.com

P. Renee Reimer
6000 Burgoyne Road
Houston, TX 77057
rreimerhr@aol.com

Thomasine P. Ross
U.S. Department of the
Interior
1001 Indian School Road NW
Albuquerque, NM 87104
thomasine.ross@bia.gov

Amy Sirignano
Law Office of
Amy Sirignano, PC
5901 J Wyoming Blvd. NE,
PMB #250
1121 Fourth Street NW, Suite
1D (87102)
Albuquerque, NM 87109
505-242-2770
505-242-2774 (fax)
amy@abqnmlaw.com

Jennifer Vega-Brown
N.M. Corrections Department
615 First Street NW
Albuquerque, NM 87102
jennifer.vega-brown@state.
nm.us

Stephen Joseph Vogel
1203 Morningside Drive NE
Albuquerque, NM 87110
505-288-9945
svogel@vogelcampbell.com

Jeffery Bennett Waddell
Department of Military
Affairs
Headquarters Bldg. 10
47 Bataan Blvd.
Santa Fe, NM 87508
505-474-1877
505-471-8231 (fax)
jeffery.b.waddell@state.nm.us

Cassandra Joyce Brown
Weed Law Firm, LLC
157 Jemez Canyon Dam Road
Bernalillo, NM 87004
505-750-7583
505-771-3333 (fax)
cassandra.brown@
weedlawfirmllc.com

Deena L. Buchanan
Ray, McChristian & Jeans, PC
6000 Uptown Blvd. NE,
Suite 307
Albuquerque, NM 87110
505-855-6000
505-212-0140 (fax)
dbuchanan@rmjfirm.com

Grieta A. Gilchrist
Ray, McChristian & Jeans, PC
6000 Uptown Blvd. NE,
Suite 307
Albuquerque, NM 87110
505-212-8022
505-212-0140 (fax)
ggilchrist@rmjfirm.com

Rosa R. Lima
Rosa Lima, PC
10719 Crandall Road SW
Albuquerque, NM 87121
505-515-6137
505-994-2592 (fax)
rl102802@aol.com

Duane J. Lind
Law Offices of
Duane Lind, LLC
10400 Academy Road NE,
Suite 140
Albuquerque, NM 87111
505-292-6400
505-292-2795 (fax)
duane@duanelindlaw.com

Jessica Mendez
Law Office of
Jessica Mendez, PC
1205 E. Yandell Drive
El Paso, TX 79902
915-626-5036
915-626-5011 (fax)
jmendez@mendezlawpc.com

Adam Christopher Reed
The Law Office of
Chrysti Bryant
2280 N. Greenville Avenue
Richardson, TX 75082
972-701-1840
855-305-2530 (fax)
adreed@geico.com

Joshua Sutin
Dykema Cox Smith
112 E. Pecan Street, Suite 1800
San Antonio, TX 78205
jsutin@dykema.com
210-554-5500

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 April 12, 2017

Pending Proposed Rule Changes Open for Comment:

Please see the special summary of proposed rule amendments 2017-001 to -40 published in the March 8, 2017, issue of the Bar Bulletin. *The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below.* ***The comment deadline for proposed rule amendments 2017-001 to -040 is April 5, 2017.***

In addition, please see proposed rule amendments 2017-041 and -042 on the Supreme Court's website at the address noted below. ***The comment deadline for proposed rule amendments 2017-041 and -042 is April 17, 2017.***

Recently Approved Rule Changes Since Release of 2017 NMRA:

		Effective Date
Rules of Civil Procedure for the District Courts		
1-079	Public inspection and sealing of court records	03/31/2017
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
Rules of Civil Procedure for the Magistrate Courts		
2-112	Public inspection and sealing of court records	03/31/2017
Rules of Civil Procedure for the Metropolitan Courts		
3-112	Public inspection and sealing of court records	03/31/2017
Civil Forms		
4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
4-941	Petition to restore right to possess or receive a firearm or ammunition	03/31/2017
Rules of Criminal Procedure for the District Courts		
5-123	Public inspection and sealing of court records	03/31/2017
5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	03/31/2017
Rules of Criminal Procedure for the Magistrate Courts		
6-114	Public inspection and sealing of court records	03/31/2017
6-207	Bench warrants	04/17/2017
6.207.1	Payment of fines, fees, and costs	04/17/2017
Rules of Criminal Procedure for the Metropolitan Courts		
7-113	Public inspection and sealing of court records	03/31/2017
7-207	Bench warrants	04/17/2017
7-207.1	Payment of fines, fees, and costs	04/17/2017
Rules of Procedure for the Municipal Courts		
8-112	Public inspection and sealing of court records	03/31/2017
8-206	Bench warrants	04/17/2017
8-206.1	Payment of fines, fees, and costs	04/17/2017
Criminal Forms		
9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
Children's Court Rules and Forms		
10-166	Public inspection and sealing of court records	03/31/2017
Rules of Appellate Procedure		
12-314	Public inspection and sealing of court records	03/31/2017

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

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-011

No. 34,285 (filed September 9, 2016)

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS REGARDING AIR QUALITY PERMIT NO. 3135

MARGARET M. FREED, MARY ANN ROBERTS, and PAT TOLEDO,
Petitioners-Appellants,
v.
THE CITY of ALBUQUERQUE and SMITH'S FOOD & DRUG CENTERS, INC.,
Respondents-Appellees.

APPEAL FROM THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
FELICIA L. ORTH, Hearing Officer

PETE V. DOMENICI, JR.
DOMENICI LAW FIRM, P.C.
Albuquerque, New Mexico
for Appellants

FRANK C. SALAZAR
SUTIN, THAYER & BROWNE, P.C.
Albuquerque, New Mexico
for Appellee Smith's Food & Drug Centers, Inc.

JESSICA M. HERNANDEZ
City Attorney
CAROL M. PARKER
Assistant City Attorney
CITY OF ALBUQUERQUE CITY ATTORNEY'S OFFICE
Albuquerque, New Mexico
for Appellee City of Albuquerque

Opinion

J. Miles Hanisee, Judge

{1} In this appeal, we consider whether the Albuquerque-Bernalillo County Air Quality Control Board (the Board) gave sufficient notice of its hearing on motions to summarily resolve a challenge to a permit issued by the City of Albuquerque Environmental Health Department (the Department), as required by Section 74-2-7(I) of the Air Quality Control Act (the AQCA), NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2009) and its own regulations. Concluding that it did not, we vacate the Board's decision and remand for further proceedings.

BACKGROUND

{2} In November 2013 Respondent Smith's Food & Drug Centers, Inc. (Smith's) submitted an application to the Department seeking a permit to construct a gas station with authorization to pump up to 7,000,000 gallons of gasoline per year. After holding a public hearing on the application, the Department granted Smith's application and issued the requested permit.

{3} Petitioners Margaret Freed, Mary Ann Roberts, and Pat Toledo (collectively Petitioners) filed a written petition challenging the permit with the Board. Petitioners contended that the Department had failed to take into account various "quality-of-life concerns raised by [hearing] participants" and that the Department's decision to grant the permit application would cause "emissions, odors, fumes, increased traffic[,] and other negative impacts on [Petitioners'] property."

{4} The Board appointed a hearing officer, who entered a "prehearing order" scheduling a public hearing on the petition for September 10, 2014.[1] The prehearing order required the parties to engage in "limited written discovery" and "early filing of technical testimony in full narrative" in order to "obviate the need for depositions."[2] The prehearing order required Petitioners or any other interested participants to file a "notice of intent to present technical testimony" prior to the hearing which summarized the technical testimony that Petitioners would offer at the hearing. The Board published a notice stating that "public comment of a non-technical nature" would be heard at the September 10, 2014, hearing, and that any member of the public who sought to present technical evidence would be required to file a notice of intent before August 8, 2014. The notice also stated that "[u]pon conclusion of the evidentiary hearing, the hearing officer will announce the post hearing process. At a later date, the Board will deliberate and decide whether the permit appeal will be granted . . . or be denied."

{5} On August 26, 2014, the hearing officer amended the prehearing order. The hearing officer's order rescheduled the hearing on Petitioners' appeal of the Department's permit decision for November 5, 2014, and stated that "[i]n the event dispositive motions are timely filed, the Board will hear them on October 8, 2014, as part of the Board meeting beginning at 5:30 p.m." The Board published an amended notice in the *Albuquerque Journal* that reflected the new date that the hearing would take place. The notice stated that "public comment of a non-technical nature" would be heard at the rescheduled hearing on November 5, 2014. The amended notice further stated that "[i]n the event pre-hearing motions are timely filed, the Board will conduct a motion hearing on October 8, [2014], as

[1]*See* Section 74-2-7(J) (stating that "[t]he environmental improvement board or the local board may designate a hearing officer to take evidence in the hearing").

[2]The prehearing order defines "[t]echnical evidence or testimony" as "scientific, engineering, economic or other specialized evidence or testimony. It does not mean legal argument, general comments or statements of policy." This definition paraphrases the definition of "[t]echnical evidence" set out in Board regulations. *See* 20.11.81.7(T) NMAC.

part of a Board meeting that will begin at 5:30 p.m."

{6} Respondents each filed a motion for summary judgment, contending that the Board was required to uphold the Department's issuance of the permit because neither the AQCA nor any regulations the Board had promulgated in accordance therewith permitted the modification or denial of a construction permit based on Petitioners' health concerns and the putative opinion of the expert witness they intended to call at the Board's hearing on the petition. After hearing argument from the parties on the motions at its regularly-scheduled hearing on October 8, 2014, the Board granted summary judgment to Respondents by a vote of six to one and vacated the hearing on the petition scheduled for November 5, 2014. Petitioners appeal.

STANDARD OF REVIEW

{7} We have statutory jurisdiction to review an appeal taken by "[a]ny person adversely affected by an administrative action" by the Board. Section 74-2-9(A). We may set aside the Board's action if it is "(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law." Section 74-2-9(C).

DISCUSSION

{8} We begin our discussion by sketching relevant provisions of the AQCA governing appeals of the Department's permitting decisions. We then address Petitioners' argument that the Board's decision in this case violated the AQCA.

{9} The Environmental Improvement Board has statewide jurisdiction to administer and enforce the AQCA except where, as here, a qualifying county or municipality has "adopt[ed] an ordinance providing for the local administration and enforcement of the [AQCA]." Section 74-2-4(A); *see also* § 74-2-3(B) (providing that "the jurisdiction of the environmental improvement board extends to all areas of the state except within the boundaries of a local authority"). Where a county or municipality has assumed jurisdiction, it is required to establish local equivalents of the statewide agencies that would otherwise administer and enforce the AQCA: "(1) . . . a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board"; and "(2) . . . a local agency [(in this case the Department)] to administer and enforce the provisions of the AQCA within the boundaries of the local authority that shall . . . perform all of the duties required of the [State Environment D]epartment[.]" Section 74-2-4(A)(1), (2). *See* Bernalillo County, N.M., Ordinance Ch. 30, art. II, §§ 30-32, 30-34 (1994) (establishing the Board and the Department).

{10} Under the AQCA, any person who seeks to construct a "source" of air contaminants must obtain a construction permit from the Department. *See* § 74-2-7(A)(1); *see also* § 74-2-2(T) (defining "source" as "a structure, building, equipment, facility, installation or operation that emits or may emit an air contaminant"). The AQCA sets out minimal requirements for the Board's regulations governing permit applications, *see* § 74-2-7(B), as well as the grounds that the Department may use to deny an application, *see* § 74-2-7(C), and permissible conditions that the Department may attach to a permit approval under Section 74-2-7(D).

{11} The AQCA also allows any person who is "adversely affected" by the Department's permitting decision to petition the Board for review. Section 74-2-7(H). Once a petition challenging a permit decision is filed,

> the environmental improvement board or the local board shall hold a hearing within sixty days after receipt of the petition. [The B]oard shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the environmental improvement board or the local board to substantially affect the public interest, [The B]oard shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

Section 74-2-7(I). The AQCA assigns the burden of proof to the petitioner, and "[b]ased upon the evidence presented at the hearing, . . . [the B]oard shall sustain, modify or reverse the action of the [D]epartment[.]" Section 74-2-7(K).

{12} Petitioners argue that Section 74-2-7(I) provides that whenever the Department's permitting decision is challenged by the filing of a "timely petition," the Board "shall hold a hearing." *Id.* According to Petitioners, Section 74-2-7(I)'s use of the mandatory "shall[,]" combined with Section 74-2-7(I) through (K)'s detailed requirements that the Board give the public notice of the hearing and an opportunity to present evidence, and its requirement that the Board's decision be "[b]ased upon the evidence presented at the hearing" combine to obligate the Department to resolve appeals from permitting decisions only after a public hearing has taken place. Section 74-2-7(K). Having failed to hold such a hearing in this case, Petitioners contend that we must vacate the Board's decision.

{13} Although this argument seems straightforward on its face, it consists of two distinct propositions. First, Petitioners broadly assert that the Board may not decide a petition based only on written submissions, and must instead decide every petition based on testimony and written submissions at an evidentiary hearing. This argument calls into question the Board's use of pre-hearing procedures which require that technical evidence be submitted in advance of a hearing on a petition, since Section 74-2-7(K) requires the Board to reach its decision "[b]ased upon the evidence presented *at the hearing*[.]" (Emphasis added.) It also calls into question the Board's expedited procedure under 20.11.81.20(A) NMAC, which allows the Board to decide a petition based on "legal arguments presented in written briefs" and to "limit presentations at the hearing to oral arguments by parties and interested participants." *Id.* This provision arguably denies "[t]he public . . . a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing." Section 74-2-7(I).[3]

[3]This argument raises an interesting possible response, which Respondents did not raise below or in their answer brief: Perhaps Petitioners' challenge to the Board's use of summary procedure is better understood as a challenge to the validity of the Board's regulations. If so, it seems untimely: Judicial review of the Board's actions under Section 74-2-9 must be commenced less than thirty days from the date of the action, and "[f]or appeals of regulations, the date of the action shall be the date of the filing of the regulation." Section 74-2-9(A), (B).

{14} Petitioners' second, narrower position is that whatever the validity of the Board's use of summary procedure, it failed to provide the public with sufficient notice of its right to participate in the Board's hearing on Respondents' motions for summary judgment. We find it unnecessary to address Petitioners' first, broader, position, because we agree with Petitioners' argument on this narrower ground, and that is enough to decide this appeal. We explain our reasoning in the following paragraphs.

{15} The Board itself concluded that the petition at issue in this appeal would substantially affect the public interest, so the Board was required to "ensure that the public receives notice of the date, time and place of the hearing . . . [and] a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing" on the petition. Section 74-2-7(I). The amended public notice the Board published in the *Albuquerque Journal* reads in relevant part as follows:

> A hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board), previously scheduled for September 10th and 11th, 2014, is now scheduled to begin on **Wednesday, November 5, 2014** at 9:00 a.m. and continue as necessary through **November 6th**.
>
> . . . .
>
> **PUBLIC COMMENT of a non-technical nature: Wednesday, November 5, 2014, 5:00 pm to 5:30 pm** or longer as necessary to accept all public comment offered (per 20.11.81.14.I.(2)). The Hearing Officer may take public comment at other times throughout the hearing as necessary.
>
> . . . .
>
> **MOTION HEARING:** In the event pre-hearing motions are timely filed, the Board will conduct a motion hearing on October 8, as part of a Board meeting that will begin at 5:30 p.m.

In our view, this notice plainly fails to inform the public that the Board might well resolve the appeal by use of summary procedure prior to the November 5, 2014, public hearing.[4] The amended public notice makes no suggestion that the "pre-hearing motions" that the Board would possibly entertain at its regularly-scheduled meeting could be dispositive and result in cancellation of the noticed public hearing. The amended notice suggests just the opposite: that the Board would *not* decide the petition until it heard public comment at a hearing scheduled for November 5, 2014. As such, the public was deprived of a reasonable opportunity to participate in the proceeding. Pursuant to Section 74-2-7(I), therefore, the Board's decision is contrary to law and must be vacated.

{16} Respondents offer two arguments in opposition to this conclusion. First, Respondents contend that the Board was permitted to dispose of the petition using summary judgment under two provisions in the Board's regulations: 20.11.81.12(A) NMAC, which provides that "[i]n the absence of a specific provision in 20.11.81[. 1 to .20] NMAC governing an action, the [B]oard and the [B]oard's hearing officer may look to the New Mexico Rules of Civil Procedure . . . for guidance[;]" and 20.11.81.12(B)(1) NMAC, which permits the Board to "specify procedures in addition to, or that vary from the procedures provided in 20.11.81 NMAC in order to expedite the efficient resolution of the action." But under 20.11.81.12(A) NMAC, the Board may not look to the Rules of Civil Procedure if doing so would "extend or otherwise modify the authority and jurisdiction of the board." *Id.* 20.11.81.12(B)(1) NMAC contains a similar limitation: the Board may not vary its procedures if doing so creates a "conflict with the act or the regulations, or prejudice the rights of any party." *Id.*

{17} The upshot of these regulations and Section 74-2-7(I)'s mandatory requirement that the Board "ensure that the public receives notice of the date, time and place of *the* hearing" on a petition is that the Board may not decide a petition without giving the public notice and an opportunity to weigh in on the petition. *Id.* (emphasis added). This requirement is reflected in the Board's existing regulations relating to evidentiary hearings, *see* 20.11.81.14(H)(2) NMAC, and expedited decisions. *See* 20.11.81.20(A)(2) NMAC. Whatever the merit of the Board's conclusion that its regulations governing permit appeals did not "govern" Respondents' motions for summary judgment, the Board may not use the *absence* of a provision requiring public notice in Rule 1-056 NMRA as a justification for ignoring the straightforward requirement in Section 74-2-7(I) requiring such notice to be given. When an agency is required by statute to provide public notice of a hearing, that notice must "fairly apprise[] the average citizen . . . with the general purpose of what was contemplated." *Nesbit v. City of Albuquerque*, 1977-NMSC-107, ¶ 9, 91 N.M. 455, 575 P.2d 1340. If the notice is "ambiguous, misleading or unintelligible to the average citizen, it is inadequate to fulfill the statutory purpose of informing interested persons of the hearing so that they may attend and state their views." *Id.* The notice at issue plainly fails this test: it does nothing to apprise the reader that the "pre-hearing motions hearing" would be the one and only hearing on the petition. And it affirmatively misleads the reader by suggesting that the public would be given an opportunity to comment on the petition at the November 5, 2014 hearing, when in fact the hearing was never held. To say the least, misinformation does not comport with the publicly inclusive spirit of the applicable statutory framework.

{18} The City nevertheless contends that the Board provided sufficient notice to the public because "the August 3, 2014 [amended] notice included instructions for persons other than parties who wished to participate to submit an entry of appearance and explained how to file a notice of intent." The City points out that if interested members of the public filed an entry of appearance or notice of intent, they would have received individual notice of Respondents' motions for summary judgment and the possibility that Petitioners' appeal would be decided prior to the scheduled November 5, 2014 hearing. *See* 20.11.81.14(G) NMAC. But the problem with this argument is that it overlooks the central deficiency in the amended notice: it plainly suggests that the Board would consider "public comment of a non-technical nature" at the November 5, 2014 hearing, which the Board never held.

[4]We note that the amended public notice's description of the "pre-hearing motions hearing" is similar to the amended prehearing order's description of the same hearing, except that the public notice omits the amended prehearing order's characterization of the pre-hearing motions as possibly "dispositive." *Compare* Amended Prehearing Order ("[i]n the event dispositive motions are timely filed, the Board will hear them on October 8, 2014, as part of the Board meeting beginning at 5:30 p.m."), *with* Amended Public Notice ("In the event pre-hearing motions are timely filed, the Board will conduct a motion hearing on October 8, as part of a Board meeting that will begin at 5:30 p.m.").

A member of the public reading this notice thus would have reasonably believed and relied on the amended notice's assertion that he or she would have an opportunity to communicate his or her views to the Board at this hearing *without* having to submit a notice of intent or enter their appearance. Having failed to hold the hearing, the Board's amended notice is contrary to the requirement in Section 74-2-7(I) that the public be given notice of, and an opportunity to participate in, its hearing on a petition relating to a permit which affects the public interest.

{19} Respondents also argue that any deficiency in the Board's notice did not prejudice Petitioners' case, so we should nonetheless affirm. In other words, Respondents contend that the Board's decision (and this appeal) would turn out the same even if the Board had held a hearing on the merits and considered public comment on the petition. *See P.R. Aqueduct & Sewer Auth. v. U.S. EPA*, 35 F.3d 600, 606 (1st Cir. 1994) (upholding the use of summary procedure in agency adjudication where "it appears conclusively from the papers that, on the available evidence, the case only can be decided one way"). Indeed, this Court too has accepted as a general proposition that unless the party challenging an agency's violation of procedural rules or regulations can demonstrate prejudice, we will not reverse an agency decision that would have been the same in the absence of the violation. *See BC & L Pavement Servs., Inc. v. Higgins*, 2002-NMCA-087, ¶ 38, 132 N.M. 490, 51 P.3d 533, *overruled on other grounds by Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

{20} Pursuant to the authority it cites, Respondents would have us evaluate the merits of the parties' arguments on appeal, and uphold the Board's decision if, as they contend, Petitioners' health-and-traffic-related concerns cannot as a matter of law furnish a basis for modifying or denying a permit under the AQCA. *See generally Colonias Dev. Council v. Rhino Envtl. Servs.*, 2005-NMSC-024, ¶¶ 29-35, 138 N.M. 133, 117 P.3d 939 (noting that an administrative agency's "authority to address" health and safety concerns "requires a nexus to a regulation"). As counsel for the City explained at oral argument, the public's right to notice and an opportunity to comment is contingent on a person who participated in the Department's permitting action lodging a challenge to the Board's issuance of a permit. *See* § 74-2-7(H). Otherwise, the Department's permitting decision is "conclusive" as to the permittee's compliance with the AQCA. *See* § 74-2-7(L). Because of the contingent nature of public participation in permit appeals to the Board, Respondents maintain that the Board cannot be faulted for failing to provide sufficient notice to the public when the challengers' underlying appeal would have failed in any event.

{21} We reject this argument. First, it is by no means certain, as Respondents contend, that the Board's failure to solicit public input on the petition had no effect on the outcome of its decision. It may be that the party challenging a decision by the Department carries the burden of proof on appeal before the Board. Section 74-2-7(K). But the AQCA unambiguously requires the Board to consider "data, views or arguments" offered at a public hearing when a permitting action "substantially affect[s] the public interest[.]" Section 74-2-7(I). Since the Board must decide a petition "[b]ased upon the evidence presented at the hearing," Section 74-2-7(K), it follows that the Board may modify or overturn a permit based on evidence presented by the public, not just the party who challenged the Department's decision in the first instance. So even if Petitioners failed to present sufficient evidence to justify overturning or modifying the Department's permit decision, it does not follow that any evidence the public could have presented would be deficient in the same way.

{22} To be sure, the Board's own regulations allow it to require that any "technical" evidence be presented before the hearing, *see* 20.11.81.14(H)(1), (I)(2) NMAC, and its notice to the public in this case says as much. Respondents' argument on the merits is that the only evidence that could have furnished a basis for overturning or modifying the Department's permitting decision was evidence concerning the proposed gas station's compliance with various state and federal regulations, which is technical in nature. Since Petitioners failed to present any such evidence and no member of the public signaled any intent to present additional technical evidence prior to the motion hearing, Respondents' argument is that we should excuse the Board's failure to hold a hearing on November 5, 2014, where the public would only be allowed to present "comment of a non-technical nature[.]"

{23} But even if the public would have been disallowed from presenting any evidence that would have justified overturning or modifying the Department's permitting action, we conclude that the Board's failure to provide the public with sufficient notice requires reversal in this case for a second, independent reason. Respondents would have us read language into the AQCA that allows the Board to dispense with the requirement that it allow the public to present its views or arguments whenever it determines that the public's views or comments will have no nexus to an applicable regulation. *See In re Rhino Envtl. Servs.*, 2005-NMSC-024, ¶ 29. But the AQCA unambiguously requires the Board to consider the public's "views or arguments" when a permitting action "substantially affect[s] the public interest[.]" Section 74-2-7(I). Accordingly, the issue of the Board's need to consider public comment turns on whether a petition affects the public interest, not whether the public will provide evidence that is relevant to the Board's ultimate decision. *Id.* Thus, in permitting actions that substantially affect the public interest, the Legislature has recognized the intrinsic value of public input separate from its technical relevance by requiring the Board to consider public input prior to reaching a decision. "When a statute makes sense as written, we will not read in language that is not there." *State v. Torres*, 2006-NMCA-106, ¶ 8, 140 N.M. 230, 141 P.3d 1284. The Board's failure to provide the public with notice of its hearing on Petitioners' challenge is contrary to the dictates of the statute and undermines its apparent purpose—giving the public an opportunity to comment on a challenge to a permitting decision which substantially affects the public interest. Accordingly, its decision must be vacated.

CONCLUSION

{24} Section 74-2-7(I) requires the Board to publish a notice and afford the public an opportunity to participate in all petitions challenging permit decisions which substantially affect the public interest. The Board's decision upholding the Department's issuance of a permit to Smith's was contrary to law because the Board did not provide the public with notice or an opportunity to provide input on the Petition, as Section 74-2-7(I) unambiguously requires.

{25} The decision of the Board is vacated, and the petition is remanded for proceedings consistent with this opinion.

{26} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
STEPHEN G. FRENCH, Judge

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-012

No. 34,180 (filed October 17, 2016)

MELISSA WILLIAMS,
Plaintiff-Appellant,
v.
TYLER MANN and FOUR CORNERS FAMILY DENTAL, LLC,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
SANDRA A. PRICE, District Judge

MONNICA L. GARCIA
LAW OFFICE OF
MONNICA L. GARCIA, LLC
Albuquerque, New Mexico
for Appellant

MICHAEL E. MOZES
LAW OFFICES OF MICHAEL E.
MOZES
Albuquerque, New Mexico
for Appellees

Opinion

J. Miles Hanisee, Judge

{1} Plaintiff appeals the district court's dismissal on statute of limitations grounds of her claim for quid pro quo discrimination on the basis of sex under the New Mexico Human Rights Act (NMHRA), NMSA 1978, §§ 28-1-1 to -14 (1969, as amended through 2007), and its subsequent judgment in Defendants' favor after a bench trial on her claim for unpaid overtime wages under the Minimum Wage Act (MWA), NMSA 1978, §§ 50-4-19 to -30 (1955, as amended through 2013). We reverse the district court's dismissal of Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC, and affirm the district court's judgment in all other respects.

BACKGROUND

{2} Plaintiff's statute of limitations argument turns on the convoluted procedural history of this case that includes a related complaint Plaintiff filed in federal district court. We have simplified our recitation of relevant procedural facts where possible and separate our recitation of background facts into two sections: (1) facts relevant to the district court's dismissal of Plaintiff's NMHRA claim on statute of limitations grounds; and (2) facts relevant to the district court's ruling in Defendants' favor after a bench trial on Plaintiff's MWA claims. We provide additional facts and procedural history where pertinent within our discussion of Plaintiff's issues on appeal.

Facts Relevant to the District Court's Dismissal of Plaintiff's NMHRA Claim on Statute of Limitations Grounds

{3} On May 27, 2011, Plaintiff filed a pro se complaint against Defendant Tyler Mann in state district court. Plaintiff's complaint sought damages for "destruction of personal property, . . . unlawful eviction, . . . reimbursement for start-up capital funds for business ventures[,] and punitive damages for severe emotional distress." On June 28, 2011, Plaintiff (this time represented by counsel) filed a complaint in federal district court against Defendant Four Corners Family Dental, LLC. The federal complaint alleged that Plaintiff was hired by Tyler Mann (Defendant here, but not in the federal case) to "open, manage[,] and operate his dental practices in Pagosa Springs, Colorado and Farmington, New Mexico." The federal complaint further alleged that Plaintiff was not paid wages she was due under the terms of her employment, was "consistently required to work in excess of forty (40) hours a week," and that her employment was terminated after she had refused Tyler Mann's sexual advances. The federal complaint sought damages for unlawful discriminatory and retaliatory practices in violation of the NMHRA, quid pro quo sexual harassment in violation of Title VII of the federal Civil Rights Act, 42 U.S.C. §§ 2000e-1 to -17 (2012), and unpaid regular and overtime wages under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (2012) and the MWA.

{4} On November 8, 2011, Plaintiff filed an opposed motion to dismiss her federal complaint without prejudice. *See* Fed. R. Civ. P. 41(a). Plaintiff additionally filed an unopposed motion to stay discovery pending the federal district court's resolution of her motion to dismiss on December 19, 2011. No longer proceeding pro se in state district court, on December 28, 2011, Plaintiff filed an opposed motion to amend her pro se state complaint in order to incorporate the factual averments in her federal complaint, and to bring claims against both Defendants for unlawful discriminatory practices under the NMHRA and for unpaid regular and overtime wages under the MWA. Before Defendants responded to Plaintiff's motion to amend, on January 27, 2012, the state district court granted Plaintiff leave to amend her complaint. As amended, Plaintiff's state law action included the claims she previously asserted federally and added Four Corners Family Dental, LLC, as a Defendant.

{5} The federal district court denied Plaintiff's motion to stay, and discovery and discovery-related motions practice in federal court ensued without a ruling on Plaintiff's request that her federal complaint be dismissed. Defendants filed a motion for summary judgment on Plaintiff's federal and supplemental state law claims. But on April 20, 2012, before Plaintiff filed a response to Defendants' motion for summary judgment, the federal district court entered an order granting Plaintiff's opposed motion to dismiss and dismissed all of the claims in Plaintiff's federal action without prejudice.

{6} Back in state district court, Defendants filed a pretrial motion in limine to exclude all evidence relevant to Plaintiff's NMHRA claims at trial, arguing that those claims were untimely because her motion to amend her state complaint was filed after the applicable statute of limitations had expired. The district court treated Defendants' motion in limine as a motion to dismiss and granted it, dismissing Plaintiff's unlawful discriminatory practice claims with prejudice.

Facts Relevant to Plaintiff's MWA Claims

{7} The district court held a bench trial on the two remaining claims in Plaintiff's amended complaint: (1) unpaid wages under Section 50-4-22(A), and (2) unpaid overtime under Section 50-4-22(D). *See* § 50-4-26(C), (D) (providing that "an employer who violates any provision of Section 50-4-22 . . . shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus

interest, and in an additional amount equal to twice the unpaid or underpaid wages[,]" and providing that "[a]n action to recover such liability may be maintained in any court of competent jurisdiction"). During trial, Plaintiff testified that Defendant Mann agreed to pay Plaintiff $25 per hour when her employment began but never discussed what Plaintiff's job responsibilities would entail. Instead, Plaintiff testified that she performed whatever duties Defendant Mann assigned to her. Those included purchasing dental equipment at Defendant Mann's direction, arranging for the placement of paid advertisements in the telephone book, setting up LLC and phone service at Defendant Mann's Pagosa Springs office, and even calling Defendant Mann's alma mater to obtain a copy of Defendant Mann's diploma.

{8} As the dental practice grew, Plaintiff's job responsibilities shifted. Plaintiff worked as a receptionist when other employees went out to lunch, processed insurance claims at Defendants' Pagosa Springs office, and also addressed problems with insurance claims made through Defendants' Farmington office. Plaintiff executed contracts with various insurance companies at Defendant Mann's direction and researched dental office management software and assisted Defendant Mann during negotiations over software license agreements.

{9} On cross examination, Plaintiff admitted that she understood herself to be an "independent contractor" when she first began her employment relationship with Defendants; that she performed "administrative" duties around the office; that she held herself out on résumés and business cards as an "office manager" who had "open[ed], operate[d], and manage[d]" Defendants' dental practices; that she was paid a flat salary of $600 per week; and that her daily responsibilities involved managing patient accounts, developing business plans, handling payroll for office employees, acting as a signatory on Defendants' financial accounts, arranging for the payment of bills and invoices to suppliers, and maintaining employee personnel files.

{10} After taking evidence and hearing arguments from the parties, the district court found that Defendants were liable to Plaintiff for $625 in unpaid wages. The district court doubled Defendants' liability to Plaintiff for these wages, added interest under Section 50-4-26(C), and ordered that Defendants pay Plaintiff's attorney fees under Section 50-4-26(E). The district court granted Defendants' motion for judgment as a matter of law under Rule 1-050 NMRA on Plaintiff's claim for unpaid overtime under Section 50-4-22(D), reasoning that Plaintiff was an administrative employee and therefore exempt from overtime pay requirements. *See* § 50-4-21(C)(2) ("As used in the [MWA,] . . . 'employee' includes an individual employed by an employer, but shall not include . . . an individual employed in a bona fide executive, administrative or professional capacity.").

DISCUSSION

{11} Plaintiff appeals the district court's dismissal of her unlawful discriminatory practice claims on statute of limitations grounds as well as the district court's decision (sitting as finder of fact at a bench trial) resolving Plaintiff's MWA claim against Defendants for unpaid overtime wages against her. We address each issue in turn.

The Statute of Limitations on Plaintiff's NMHRA Claim Against Defendant Four Corners Family Dental, LLC, but Not Against Defendant Mann, Was Tolled Throughout the Pendency of Her Federal Action

{12} Before a lawsuit seeking damages for an unlawful discriminatory practice may be filed, the putative plaintiff must exhaust a detailed grievance and administrative reconciliation process set out in the NMHRA and administered by the Human Rights Commission. *See* § 28-1-10(A), (B); *see also Luboyeski v. Hill*, 1994-NMSC-032, ¶ 7, 117 N.M. 380, 872 P.2d 353. A suit alleging an unlawful discriminatory practice under the NMHRA must be commenced within 90 days of the termination of this process. Section 28-1-13(A). In this case, Plaintiff filed a pro se complaint in state district court against Defendant Mann, less than 90 days after she received a no probable cause notice from the Commission, but her complaint did not include any claims under the NMHRA. Also within 90 days, she filed a federal district court complaint in which she pleaded a NMHRA claim and a federal Title VII claim against Defendant Four Corners Family Dental, LLC.

{13} Title VII of the United States Code also prohibits discrimination on the basis of sex, *see* 42 U.S.C. § 2000e-2(a)(2), and gives federal district courts jurisdiction over such causes of action. 42 U.S.C. § 2000e-5(f)(3). Often enough (as in this case) a plaintiff will bundle his or her claims under federal law with state NMHRA claims, and a federal district court may exercise supplemental jurisdiction over both. *See* 28 U.S.C. § 1367(a) (2012) (providing that "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution"). So what happens if—sometimes by a plaintiff's own doing, as happened here—the invocation of federal jurisdiction is successfully withdrawn, the case ends up solely in state district court, and the defendants raise a statute of limitations argument? Which claims are timely, and against whom? To paraphrase the Bard, the course of litigation in such cases "never [does] run smooth[.]" William Shakespeare, *A Midsummer Night's Dream*, act 1, sc. 1.

{14} In this instance, it turns out answers are surprisingly straightforward. The federal district court had jurisdiction over Plaintiff's NMHRA claim under 28 U.S.C. § 1367(a). And under 28 U.S.C. § 1367(d), the statute of limitations for any applicable state law claim over which a federal district court exerts supplemental jurisdiction under 28 U.S.C. § 1367(a) is "tolled while the claim is pending and for a period of 30 days after it is dismissed unless [s]tate law provides for a longer tolling period."[1] Because Plaintiff brought her timely NMHRA claim against Defendant Four Corners Family Dental, LLC in federal court, the statute of limitations on that claim was tolled under 28 U.S.C. § 1367(d) through the pendency of her federal action and for 30 days after the federal district court dismissed it pursuant to Rule 41 of the Federal Rules of Civil Procedure. Because the district court granted Plaintiff's motion to amend her complaint to bring a NMHRA claim against Four Corners Family Dental, LLC prior to the dismissal of her federal action, her NMHRA claim against this Defendant was timely. Accordingly, the district court should not have dismissed it.

[1]Because the parties neglected to cite 28 U.S.C. 1367(d) in their briefing, this Court ordered supplemental briefing as to the provision's applicability here.

{15} Defendants argue that 28 U.S.C. § 1367(d) operates only to toll supplemental state law claims that are filed in state district court after federal law claims are dismissed, and does not toll the statute of limitations for any claims filed in state district court prior to their dismissal by the federal district court. That, however, would be to say that 28 U.S.C. § 1367(a) gives federal district courts *exclusive* jurisdiction over related state law claims, a contention that is unsupported by the text of the statute itself, or New Mexico courts' traditional understanding of tolling statutes, which "operate[] to *suspend* the running of an otherwise applicable statute of limitations when an action is timely commenced and later dismissed[.]" *Gathman-Matotan Architects & Planners, Inc. v. State Dep't of Fin. & Admin.*, 1990-NMSC-013, ¶ 8, 109 N.M. 492, 787 P.2d 411 (emphasis added). If Plaintiff's federal complaint tolled the NMHRA's statute of limitations throughout the pendency of her federal case until the date of its dismissal, it stands to reason that her amended complaint, filed before the federal district court dismissed that claim, was timely filed.

{16} Finally, given that we raised the possibility that 28 U.S.C. § 1367(d) may control the outcome of this issue ourselves, Defendant's strongest argument against reversal of the district court's order is that Plaintiff's failure to expressly cite 28 U.S.C. § 1367(d) at all before the district court meant that she failed to preserve any argument for reversal based on that statute. But Rule 12-216(A) NMRA simply requires that a party "invoke[] a ruling of the trial court on the same grounds argued in the appellate court." *Woolwine v. Furr's, Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M. 492, 745 P.2d 717. The purpose of the preservation rule is to enable "the trial court . . . an opportunity to correct the mistake" and to give the opposing party "a fair opportunity to meet the objection." *Gracia v. Bittner*, 1995-NMCA-064, ¶ 18, 120 N.M. 191, 900 P.2d 351. Given the circumstances of this case, we think Plaintiff's argument that her NMHRA claim was tolled by the federal court's assertion of jurisdiction over it under 28 U.S.C. § 1367(a) was sufficient to preserve the issue and to alert the district court to the question we have answered above. Also, Defendants had an opportunity on appeal to address the more specific subsection of the same statute Plaintiff cited when we ordered the parties to submit supplemental briefs. Plaintiff's failure to specifically cite 28 U.S.C. § 1367(d) in her briefing below and in her brief in chief on appeal is certainly unfortunate, but it does not mandate deploying our rules governing preservation in an "unduly technical manner to avoid reaching issues that would otherwise result in reversal." *Gracia*, 1995-NMCA-064, ¶ 18. Indeed, Defendants can be said to share much of the blame for the district court's apparent ignorance of 28 U.S.C. § 1367(d), since their statute of limitations argument was first raised on the eve of trial in a motion in limine—not even a motion for summary judgment or to dismiss—that makes no mention of 28 U.S.C. § 1367(d), which plainly was enacted to apply to circumstances exactly such as this. In other words, Defendants, like Plaintiff, had an obligation to alert the district court to its existence. *See* Rule 16-303(A)(2) NMRA ("A lawyer shall . . . disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel[.]"). Here, Plaintiff pointed to the body of federal law governing federal district courts' ability to assert jurisdiction over claims brought under state law; under these circumstances, we decline to hold that Plaintiff forfeited any argument for reversal based on a specific provision contained within the same applicable statute. Accordingly, we reverse the district court's dismissal of Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC, the only defendant against whom the NMHRA claim was pleaded in federal court.

{17} Turning to Plaintiff's NMHRA claim against Defendant Mann, we must reach a contrary conclusion. While 28 U.S.C. § 1367(d) warrants reversal of the district court's dismissal of Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC, it is also sufficient to affirm the district court's dismissal of Plaintiff's NMHRA claim against Defendant Mann. Because Defendant Mann was not named as a defendant in Plaintiff's federal action,[2] the federal district court did not exert supplemental jurisdiction over that claim under 28 U.S.C. § 1367(a). It follows that the statute of limitations on that claim as to Defendant Mann was not tolled under 28 U.S.C. § 1367(d). Having brought no NMHRA claim against Defendant Mann in state or federal district court, Plaintiff's claim against Defendant Mann was not timely under the NMHRA, and the district court correctly dismissed it.

{18} Plaintiff makes several arguments that her NMHRA claim against Defendant Mann was timely despite her failure to name him as a defendant in her federal court complaint. None of these arguments persuades us. First, noting that Rule 1-008(A)(2) NMRA only requires "a short and plain statement of the claim showing that the pleader is entitled to relief" and the liberal interpretive treatment we give pro se pleadings, Plaintiff argues that her pro se complaint against Defendant Mann was itself sufficient to state a claim for an unlawful discriminatory practice under Section 28-1-7(A), thereby rendering her NMHRA claim against Defendant Mann timely. But "[pro se] pleadings, however inar[t]fully expressed, must tell a story from which, looking to substance rather than form, the essential elements prerequisite to the granting of the relief sought can be found or reasonably inferred." *Birdo v. Rodriguez*, 1972-NMSC-062, ¶ 6, 84 N.M. 207, 501 P.2d 195. Plaintiff's complaint references "damages [for] destruction of personal property, . . . monies due for unlawful eviction[,] . . . reimbursement for start-up capital funds for business ventures[,] punitive damages for severe emotional distress[,]" and breach of contract. Plaintiff argues that her conclusory request for punitive damages "for severe emotional distress" in the complaint was sufficient to assert the necessary claim. But while her request for punitive damages bespeaks a unique form of relief designed to punish a tortfeasor, it does not by itself indicate *why* Defendant Mann should be punished. In sum, no matter how charitably we read Plaintiff's initial pro se complaint, its factual allegations simply cannot support an inference that Defendant Mann had engaged in an unlawful discriminatory practice: "refus[ing] to hire, to discharge,

[2]Our review of Plaintiff's federal complaint and the docket sheet of the short-lived federal case indicate that Plaintiff sought only to hold Defendant Four Corners Family Dental, LLC accountable for Defendant Mann's asserted NMHRA violations under the doctrine of respondeat superior, despite the availability of individual liability under the NMHRA had Plaintiff chosen to proceed directly against Defendant Mann. *See Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 2007-NMCA-122, ¶ 11, 142 N.M. 583, 168 P.3d 155 (stating that the doctrine of respondeat superior is a theory of vicarious liability).

to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition[.]" Section 28-1-7(A).[3]

{19} Plaintiff next points out that the complaint references a letter sent by her attorney to Defendants' attorney and asserts that this letter contained an explanation of Plaintiff's claim for an unlawful discriminatory practice. But the letter was not attached to the complaint, and it is not part of the record on appeal. "Upon a doubtful or deficient record, every presumption is indulged in favor of the correctness and regularity of the trial court's decision, and the appellate court will indulge in reasonable presumptions in support of the order entered." *Reeves v. Wimberly*, 1988-NMCA-038, ¶ 21, 107 N.M. 231, 755 P.2d 75. Accordingly, even if we agreed with Plaintiff's argument that a claim for relief set out in a letter to Defendant's attorney that is referenced but not attached to a pro se complaint is sufficient to state a claim for relief under Rule 1-008, we must presume that the letter did not satisfy this rule, given Plaintiff's failure to include the letter in the record on appeal.

{20} Plaintiff additionally argues that her amended complaint relates back to her pro se complaint under Rule 1-015(C) NMRA and is therefore timely. *See id.* ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."). But we have already concluded that Plaintiff's pro se complaint sets forth no allegations of fact that give rise to a claim for an unlawful discriminatory practice under Section 28-1-7(A). Thus, the amended complaint does not relate back under Rule 1-015(C). *See DeVargas v. State ex rel. N.M. Dep't of Corr.*, 1981-NMCA-109, ¶ 4, 97 N.M. 447, 640 P.2d 1327; *Raven v. Marsh*, 1980-NMCA-017, ¶ 7, 94 N.M. 116, 607 P.2d 654 ("The liberality with which Rule [1-015] is to be viewed applies mainly to the manner in which the court's discretion shall be exercised in permitting amended pleadings. It does not permit us to so liberalize limitation statutes when new facts, conduct and injuries are pleaded, that the limitation statutes lose their meaning." (citation omitted)).

{21} Plaintiff finally argues that under the procedural circumstances in this case, Section 28-1-13(A)'s 90-day statute of limitations should be equitably tolled for her untimely claim against Defendant Mann for an unlawful discriminatory practice. The general rule for determining whether a statute of limitations should be equitably tolled is whether "a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Slusser v. Vantage Builders, Inc.*, 2013-NMCA-073, ¶ 13, 306 P.3d 524 (internal quotation marks and citation omitted). Here, Plaintiff contends that "Defendants litigated this case for three years, with absolutely no indication until a week before trial that they would proffer a [statute of limitations defense]." Defendants' conduct, Plaintiff urges, is an extraordinary event, beyond her control, which prevented her from timely filing her NMHRA claim against Defendant Mann. Initially, we note that Defendant's conduct, even if we assume it was sufficiently egregious, did not prevent Plaintiff from timely filing an NMHRA claim against Defendant Four Corners Family Dental, LLC in federal district court. Even ignoring this seemingly fatal fact, Plaintiff provides no chronologic explanation for how Defendants' conduct post-filing somehow prevented her from timely filing her NMHRA claim against Defendant Mann. In short, this argument is simply too confused, too riddled with internal contradictions, for us to give it any further consideration. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (observing that we do not review unclear or undeveloped arguments that require us to guess at what parties' arguments might be).

{22} Similarly, we reject Plaintiff's argument that Defendant Mann should have been estopped from raising a statute of limitations defense. As Plaintiff concedes, a defendant's actions must have some causal relationship with the plaintiff's failure to timely file a claim in order for equitable estoppel to apply. *Slusser*, 2013-NMCA-073, ¶ 7. Here, Plaintiff argues that Defendant Mann's failure to launch a statute of limitations defense earlier means that the doctrine of equitable estoppel applies. But again, Plaintiff does not explain why Defendants' post-complaint acts have any relationship with Plaintiff's failure to timely file her NMHRA claim against Defendant Mann prior to any of the complained-of conduct taking place.[4]

{23} In sum, we hold that 28 U.S.C. § 1367(d) tolled the statute of limitations on Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC. But we affirm the district court's dismissal of her NMHRA claim against Defendant Mann because he was not named in Plaintiff's federal complaint and because Plaintiff's state complaint bore no direct or indirect relation whatsoever to the NMHRA claim she now wishes to assert against Defendant Mann.

The District Court's Finding That Plaintiff Was an Exempt Administrative Employee Was Supported by Substantial Evidence; Accordingly, the Court Did Not Err in Concluding That Defendants Were Not Liable to Plaintiff for Overtime Pay Under the MWA

{24} Plaintiff's next issue on appeal challenges the district court's decision in Defendants' favor on her MWA claim after a bench trial. But before we can address the merits of this issue, we must iron out a wrinkle in our standard of review. The wrinkle comes from the confusing procedure the district court employed in deciding Plaintiff's overtime wage claim. Before the bench trial, Defendants had filed a motion for summary judgment on Plaintiff's MWA overtime claim, which the district court denied. But at the close of Plaintiff's evidence at the bench trial, the

[3]Plaintiff also argues that Defendants' reference to her prior accusation of discrimination in their pro se answer to her pro se complaint means that Defendants were on notice of her claim for a discriminatory practice. But Plaintiff cites no authority in support of her implicit argument that an answer to a complaint can toll the statute of limitations on a claim that is not asserted in the complaint. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 ("Issues raised in appellate briefs which are unsupported by cited authority will not be reviewed by us on appeal.).

[4]Plaintiff also raises a constitutional challenge to the notice she was provided by the Human Rights Commission. But this argument was not raised in any way before the district court and is thus forfeited as a basis for reversal on appeal. *See Woolwine*, 1987-NMCA-133, ¶ 20 ("To preserve an issue for review on appeal, it must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court.").

district court granted Defendant's motion for judgment as a matter of law under Rule 1-050. But Rule 1-050 is by its own terms restricted to circumstances where a "party has been fully heard on an issue during a *jury trial* and the court finds that a reasonable *jury* would not have a legally sufficient evidentiary basis to find for the party on that issue[.]" Rule 1-050(A)(1) (emphasis added). As the text of the rule makes clear, a directed verdict is only to be used in a jury trial, and it employs a standard very similar to the standard for evaluating motions for summary judgment under Rule 1-056 NMRA. *Compare* Rule 1-050(A)(1), *with* Rule 1-056(C) ("[Summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."). The district court did not explain or otherwise attempt to reconcile its conclusion that there was sufficient evidence supporting Plaintiff's claims for unpaid and overtime wages to require a trial but insufficient evidence at the end of that trial, and our own review of the record leaves us similarly unable to reconcile the district court's conflicting rulings.

{25} The district court's erroneous use of Rule 1-050 to decide Plaintiff's overtime wage claim is problematic because we ordinarily review de novo the district court's decision to grant a motion for judgment as a matter of law under Rule 1-050, resolving all conflicts in the evidence in the nonmoving party's favor. *See McNeill v. Rice Eng'g & Operating, Inc.*, 2003-NMCA-078, ¶ 31, 133 N.M. 804, 70 P.3d 794. But when a district court holds a bench trial, we ordinarily give deference to the district court's findings of fact to the extent they are supported by substantial evidence. *Skeen v. Boyles*, 2009-NMCA-080, ¶ 17, 146 N.M. 627, 213 P.3d 531. Plaintiff suggests that we should simply reverse the district court and remand this case for a new trial based on its use of an incorrect legal standard. Although we believe that the confusing procedure employed by the district court in this case makes our review more difficult, we disagree with Plaintiff that a new trial is required as a result. Regardless of whether the district court's decision on appeal is framed as a grant of a motion for judgment as a matter of law under Rule 1-050 or as a conclusion of law based on findings of fact, the standard of review we must apply is either de novo (to the legal standard the district court employed, whether the standard is Rule 1-050 or the district court's interpretation of the MWA) or a question of fact, which we review deferentially for substantial basis in the record. In these circumstances, we do not think the district court's erroneous characterization of its ruling requires automatic reversal.

{26} Our conclusion is supported by the interlocutory nature of the district court's decision to grant Defendants' motion for judgment as a matter of law on Plaintiff's unpaid overtime wage claim. At the close of Defendants' case, Plaintiff pointed out to the district court that it had applied an incorrect legal standard given the conflicting evidence presented at trial. The district court agreed that it had erroneously concluded that Defendants were entitled to judgment as a matter of law on Plaintiff's overtime wage claim, but stated that its conclusion would be no different if it were couched as a finding of fact and conclusion of law. Given the course of proceedings and the district court's corrective statement at the end of the bench trial, we conclude that reversal on procedural grounds is not warranted.

{27} We now turn to the merits of Plaintiff's overtime wage claim. We divide our analysis of this issue into two parts: (1) the appropriate definition of "bona fide executive, administrative or professional" under the MWA; and (2) whether the district court's conclusion that Plaintiff was a bona fide executive, administrative or professional employee (and therefore exempt from the MWA's overtime requirement) was supported by substantial evidence.

We Accept the Parties' Stipulation That Department of Labor Regulations Provide the Applicable Definition of Exempt Administrative Employees Under the MWA

{28} The MWA provides that "[a]n employee shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours." Section 50-4-22(D). However, the MWA excludes from its definition of "employee" any person who is employed in a "bona fide executive, administrative or professional capacity." *See* § 50-4-21(C)(2).

{29} The Fair Labor Standards Act (FLSA) contains a similar exemption. *See* 29 U.S.C. § 213(a)(1) (exempting "any employee employed in a bona fide executive, administrative, or professional capacity" from maximum hour requirement). Unlike the MWA, the FLSA includes a provision that delegates to the Federal Department of Labor the authority to define the limits of these terms. *See id.*; *Perez v. Mortg. Bankers Ass'n*, ___ U.S. ___, ___, 135 S. Ct. 1199, 1204 (2015). The parties agree that we should adopt the Department of Labor's regulatory definition of exempt executive, administrative, or professional employees as providing the controlling interpretation of Section 50-4-21(C)(2). The district court adopted the Department of Labor regulations in its own discussion of whether or not Plaintiff was exempt from the MWA's overtime requirements.

{30} Ordinarily, we would not be bound by parties' stipulations as to applicable law. *See Tsiosdia v. Rainaldi*, 1976-NMSC-011, ¶ 10, 89 N.M. 70, 547 P.2d 553 (noting that a court is not bound by stipulations as to the law). However, our Supreme Court in *Valentine v. Bank of Albuquerque*, 1985-NMSC-033, ¶¶ 1, 4, 102 N.M. 489, 697 P.2d 489, has cited Department of Labor regulations in evaluating whether an employee is qualified as an exempt administrative employee.[5] Given the parties' stipulation and *Valentine*'s use of Department of Labor Regulations to resolve a dispute over whether an employee qualifies as an exempt administrative employee, we accept the parties' stipulation that the Department of Labor's regulations defining the MWA's exemption for administrative, executive, and professional employees control our evaluation of Plaintiff's MWA claims.

{31} In this case, the district court found that Plaintiff was an "administrative" employee, and Department of Labor regulations state that an employee is an exempt administrative employee when three requirements are met. First, the employee must be compensated "on a salary or fee basis at a rate of not less than $455 per week . . . exclusive of board, lodging or other facilities"; second, the employee's

[5]There are significant differences between the FLSA and the MWA with respect to delegations of administrative rulemaking authority. Unlike the FLSA, *see* 29 U.S.C. § 213(a)(1), the MWA does not delegate authority to define the scope of the administrative overtime exemption to any executive agency.

"primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers"; finally, the employee's "primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(1)-(3) (2016). With respect to the third requirement, the Department of Labor has stated that "[i]n general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered." 29 C.F.R. § 541.202(a) (2016). Notwithstanding the requirement that an employee exercise independent judgment and discretion with respect to possible courses of conduct, "[a]n employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers." 29 C.F.R. § 541.201(c) (2016).

Applying the Department of Labor's Definition of Exempt Administrative Employees, We Conclude That the District Court's Determination That Plaintiff Qualified as an Exempt Administrative Employee Is Supported by Substantial Evidence

{32} Since the district court found against Plaintiff on the merits of her overtime wage claim, we recite the facts in a light most favorable to the district court's conclusion. *Tartaglia v. Hodges*, 2000-NMCA-080, ¶ 27, 129 N.M. 497, 10 P.3d 176. We hold that the evidence at trial supported the district court's ultimate conclusion that Plaintiff was a bona fide executive, administrative, or professional employee exempt from the MWA's overtime requirement.

{33} The district court based its conclusion on the following findings of fact: (1) Plaintiff's $600 weekly salary was higher than the minimum wage for non-exempt employees under the MWA; (2) Plaintiff's primary duties were related to management or general office operations, and involved the exercise of discretion and independent judgment with respect to matters of significance, including signing contracts with vendors; (3) Plaintiff held herself out as an office manager; (4) Plaintiff dealt with employee discipline and payroll issues; (5) Plaintiff managed patient information, including bill collection, insurance collection and payments.

{34} Plaintiff contends that the evidence at trial "overwhelming[ly]" established that Plaintiff "basically performed clerical work, answered phones, loaded equipment, made phone calls, set appointments, and did routine data entry, [and] whatever tasks [Defendants] instructed [her to perform]." Plaintiff also argues that Plaintiff's job responsibilities did not involve the exercise of discretion with respect to matters of significance.

{35} In *Valentine*, the plaintiff's duties "included . . . working with accounts payable, preparing certain reports and the payroll, supervising personnel activities, and performing various clerical functions relating to the duties above. [The plaintiff] reported directly to her immediate supervisor, a bank officer holding the executive position of vice president and cashier." 1985-NMSC-033, ¶ 3. The trial court found, and our Supreme Court agreed, that these responsibilities made the plaintiff an exempt administrative employee under the MWA. *Id.* ¶¶ 8-11. Our Supreme Court specifically noted that the plaintiff "assisted and reported directly to the vice president and cashier, her duties directly related to management policies, and she was expected to relieve the vice president and cashier of certain daily responsibilities." *Id.* ¶ 8.

{36} Here, Plaintiff argues that because Defendants dictated what tasks Plaintiff was to perform, she did not exercise discretion or independent judgment as part of her job. But *Valentine* made clear that it is not the ultimate result of an employee's job responsibilities that dictates whether an employee is an exempt administrative employee under Section 50-4-21(C)(2); what informs the inquiry is the amount of independence and discretion the employee is afforded in the course of achieving a result. *Valentine*, 1985-NMSC-033, ¶¶ 8-11. Although Defendants exercised final authority over Plaintiff's decisions and assigned Plaintiff's job responsibilities such as executing leases, managing payroll and personnel issues, and supervising the procurement of office supplies and software systems, Plaintiff enjoyed broad discretion and independence in regard to how she fulfilled the responsibilities she was assigned. Like the plaintiff in *Valentine*, Plaintiff's job responsibilities can be broadly characterized as providing assistance to Defendants in the operation of their business. And again like the plaintiff in *Valentine*, the broad discretion and independence that Plaintiff enjoyed with respect to how she provided this assistance furnished a substantial evidentiary basis for the district court to conclude that Plaintiff was an exempt administrative employee under the MWA. Accordingly, we affirm the district court's judgment against Plaintiff on her claim for unpaid overtime under the MWA.

CONCLUSION

{37} The judgment of the district court in Defendants' favor on Plaintiff's MWA claim is affirmed. The district court's dismissal of Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC, is reversed. Its dismissal of Plaintiff's NMHRA claim against Defendant Mann is affirmed.

{38} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
LINDA M. VANZI, Judge

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-013

No. 34,195 (filed October 26, 2016)

IN RE: THE PETITION OF PETER J. HOLZEM, PERSONAL REPRESENTATIVE FOR THE WRONGFUL DEATH ESTATE OF DOUGLAS R. REID, DECEASED,
and
PETER J. HOLZEM, PERSONAL REPRESENTATIVE FOR THE WRONGFUL DEATH ESTATE OF DOUGLAS R. REID, DECEASED and CHRISTAL REID, individually and as Guardian and next friend of DARIAN REID, a Minor,
Plaintiffs-Appellants,
v.
PRESBYTERIAN HEALTHCARE SERVICES and JOSEPH HELAK, D.O.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY
SHERI A. RAPHAELSON, District Judge

JOHN R. POLK
DAVID A. ARCHULETA
Albuquerque, New Mexico
for Appellants

EDWARD RICCO
W. MARK MOWERY
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
Albuquerque, New Mexico
for Appellees

Opinion

M. Monica Zamora, Judge

{1} Peter Holzem, the personal representative of Douglas Reid's estate, and Christal Reid, Douglas Reid's wife (Plaintiffs), appeal an award of summary judgment in favor of Presbyterian Healthcare Services and Dr. Joseph Helak (Defendants). This is the second time this case is before us on appeal. *See Holzem v. Presbyterian Healthcare Servs. (Holzem I)*, 2013-NMCA-100, 311 P.3d 1198. In the first appeal, we held that the district court erred by excluding the opinion testimony of Plaintiffs' only proposed expert witness, and we reversed the district court's order granting summary judgment in favor of Defendants, which was based entirely on the exclusion of Plaintiffs' expert witness. *Id.* ¶¶ 19, 21-22. Upon remand, the district court excluded Plaintiffs' expert witness and granted summary judgment in favor of Defendants a second time.

{2} In this second appeal, Plaintiffs contend that the district court misconstrued and misapplied our decision in *Holzem I*, and they challenge the exclusion of their expert witness and the resulting summary judgment in favor of Defendants. We affirm in part and reverse in part.

I. BACKGROUND

{3} We briefly review the facts that gave rise to the original controversy, which are set forth in detail in *Holzem I*. Plaintiffs' wrongful death action is based on allegations of medical malpractice following the death of Douglas Reid from influenza-related complications. Plaintiffs alleged that Defendants negligently failed to diagnose and treat Mr. Reid's influenza and that Mr. Reid's death could have been prevented, had he been properly diagnosed and treated with the antiviral drug Tamiflu when he was seen in the emergency room.

{4} In his January 8, 2009 deposition, Plaintiffs' medical expert witness, Darwin Palmer M.D., proposed that he was qualified to testify on this topic because he was an infectious disease specialist who taught about and specialized in treating infectious diseases for twenty-nine years at the University of New Mexico School of Medicine. However, Dr. Palmer also stated that: (1) he had not practiced emergency medicine for nearly fifty years; (2) he had never specialized in emergency medicine; (3) he retired in 1995—approximately four years before Tamiflu was available for prescription; (4) he had not reviewed any literature regarding Tamiflu in preparation for his deposition; and (5) he did not plan to refer to medical research, literature, or studies of any kind when he testified at trial. Plaintiffs attempted to amend Dr. Palmer's deposition testimony by submitting a six-page witness correction sheet dated February 20, 2009, and signed by Dr. Palmer; however, Defendants filed a motion to strike the document from the record. The district court granted Defendants' motion.

{5} After extensive discovery, Defendants sought summary judgment and exclusion of Dr. Palmer's opinion testimony. Attached to Plaintiffs' response to Defendants' motion for summary judgment, Plaintiffs submitted two supplementary affidavits from Dr. Palmer. In the first affidavit, dated May 28, 2009 and June 12, 2009, Dr. Palmer attested to his qualifications and opinion about causation in Reid's case.[1] In the second affidavit, labeled "Special Affidavit" and dated June 12, 2009, Dr. Palmer provided new information about his post-retirement medical practice, stating that between 1998 and 2002 he treated "hundreds, if not thousands, of [influenza] patients," and "was able to carefully observe Tamiflu's effectiveness based on the time of its administration from the onset of symptoms."

{6} Defendants moved to strike both affidavits. The motions were not resolved prior to the first appeal. Nonetheless, the district court excluded the testimony of Dr. Palmer, concluding that he was not "qualified to render opinions o[n] the standard of care in the field of emergency medicine, including diagnosis and treatment" and granted summary judgment in favor of Defendants. Plaintiffs appealed.

{7} In the first appeal, this Court determined that the general issue in dispute was the standard of care for treating influenza, and that Dr. Palmer's capacity to provide expertise turned on his experience or education with regard to administering Tamiflu. *Holzem I*, 2013-NMCA-100, ¶¶ 17, 18.

[1]The verification page for the affidavit attached to Plaintiffs' response to Defendants' motion for summary judgment was dated June 12, 2009, and the verification page for the affidavit attached to Plaintiffs' memorandum in support of their motion for summary judgment was dated May 29, 2009. Otherwise, the bodies of the affidavits are identical.

The district court's decision to exclude Dr. Palmer's opinion testimony was based on his lack of specialization in emergency medicine, and did not address whether he was qualified to testify about the standard practice for administering Tamiflu. *Id.* ¶¶ 12, 16. We concluded that the district court abused its discretion by excluding Dr. Palmer's testimony on the narrow basis of his background in emergency medicine, especially in light of evidence indicating that Dr. Palmer was an infectious disease specialist who taught about and treated infectious diseases, including influenza, for twenty-nine years. *Id.* ¶ 17.

{8} We also noted that the district court had not ruled on Defendants' motions to exclude Dr. Palmer's post-deposition affidavits, but did not appear to have considered them as evidence of his qualifications either. *Id.* Because the district court's order granting summary judgment was based entirely on the improper exclusion of Dr. Palmer, it was reversed. *Id.* ¶¶ 17-18. We instructed that "[o]n remand, the district court may resolve the still-pending motions to strike, and the parties may renew or submit any motions, evidentiary or otherwise, they deem to be appropriate in light of that or our ruling." *Id.* ¶ 19. The mandate to reopen the case was filed on February 5, 2014.

{9} While the first appeal was pending, Plaintiffs learned that Dr. Palmer was diagnosed with Alzheimer's disease (Alzheimer's), and was no longer able to testify or to consult on the case. Plaintiffs moved to modify the pretrial order to allow a new expert witness. Plaintiffs provided the district court with documentation in support of their motion, including letters of conservatorship and guardianship for Dr. Palmer, issued on September 28, 2009, and an affidavit of Plaintiffs' counsel concerning his knowledge of Dr. Palmer's condition and Dr. Palmer's inability to testify. Plaintiffs requested that they be allowed to replace Dr. Palmer with a new expert witness who had reviewed the relevant medical records and testimony and was fully prepared to testify. Plaintiffs provided the new expert's curriculum vitae as well as his analysis and conclusions concerning the case.

{10} Defendants renewed their motion for summary judgment and argued that the district court was required to rule on the pending motions to strike Dr. Palmer's affidavits and the summary judgment motion before considering Plaintiffs' request to add the new expert. The district court agreed, concluding that the instructions on remand required the court to "go back in time" and rule on the renewed motions based on the information available at the time the motions were initially filed. The district court entered a minute order stating that Plaintiffs' motion concerning the new expert was premature and continued the motion until after summary judgment was decided. Plaintiffs moved to modify or vacate that minute order. The district court denied the motion, but invited Plaintiffs to file a supplemental response to Defendants' summary judgment motion. Plaintiffs subsequently filed their supplemental response attaching the documentation related to Dr. Palmer's condition as well as the qualifications and evaluation of their new proposed expert.

{11} Without addressing Dr. Palmer's inability to testify or Plaintiffs' request to add a new expert, the district court entered an "amended corrected" order excluding Dr. Palmer's opinion testimony; an order granting Defendants' motion to strike Dr. Palmer's affidavit; an order granting Defendants' motion to strike the "Special Affidavit" of Dr. Darwin Palmer and Dr. Palmer's statement of "Revised Opinions"; and an order granting summary judgment in favor of Defendants. This appeal followed.

II. DISCUSSION

{12} Plaintiffs raise five issues on appeal concerning: (1) the exclusion of Dr. Palmer's opinion testimony, (2) the exclusion of Dr. Palmer's post-deposition affidavits, (3) the denial of supplemental discovery with Dr. Palmer's videotaped trial deposition, (4) summary judgment in favor of Defendants, and (5) judicial bias.

A. The Exclusion of Dr. Palmer's Opinion Testimony

{13} "The testimony of a medical expert is generally required when a physician's standard of care is being challenged in a medical negligence case." *Lopez v. Reddy*, 2005-NMCA-054, ¶ 9, 137 N.M. 554, 113 P.3d 377. The admission or exclusion of a medical expert's testimony is governed by Rule 11-702 NMRA, which provides that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

{14} "In determining whether an expert witness is competent or qualified to testify, the [district] court has wide discretion, and the court's determination of this question will not be disturbed on appeal, unless there has been an abuse of this discretion." *Lopez*, 2005-NMCA-054, ¶ 14 (alterations, internal quotation marks, and citation omitted). In other words, we will not disturb the trial court's ruling "unless it is manifestly wrong or the trial court has applied wrong legal standards in the determination." *Id.* (alteration, internal quotation marks, and citation omitted).

{15} In *Holzem I*, we held that the district court's exclusion of Dr. Palmer's opinion testimony based on his lack of specialization in emergency room medicine was erroneous, arbitrary, and was not supported by the record. *Holzem I*, 2013-NMCA-100, ¶ 17 ("Evidence indicates that Dr. Palmer was an infectious disease specialist who taught about and specialized in treating infectious diseases for twenty-nine years at the University of New Mexico Medical School. The courses he taught to medical students included instruction on the diagnosis and treatment of influenza. Not as a specialist in emergency medicine but as a specialist in infectious disease, Dr. Palmer's background afforded him experience and expertise in diagnosing and treating influenza. The standard for diagnosing and treating influenza is not particular to emergency medicine, and cannot be construed on such a narrow basis.").

{16} On remand, the district court entered an "amended corrected order" excluding Dr. Palmer's opinion testimony as to causation, purportedly for purposes of clarifying its pre-*Holzem I* order excluding the opinion testimony of Dr. Palmer entered on December 28, 2009. The amended corrected order does not modify or change the basis for excluding Dr. Palmer's testimony. The order provides for only one modification, stating: "[t]he [o]rder [e]xcluding the [o]pinion [t]estimony of [Dr.] Palmer . . . filed on December 29, 2010[,] is amended to include the following additional sentence at the end of paragraph 10: *Dr. Palmer may not offer an expert medical opinion as to causation*."

{17} The court's amended corrected order does not modify the basis for excluding Dr. Palmer's opinion testimony, nor does it address whether Dr. Palmer's education and experience would qualify him to provide expertise with regard to Tamiflu. *See Holzem I*, 2013-NMCA-100 ¶¶ 15, 17 (noting that "a non-specialist can testify as to the standards of care owed by a defendant specialist, but only if the non-specialist is

qualified and competent to do so. The mere fact that a medical witness is not a specialist goes to the weight, not to admissibility, of the witness's expert testimony[,]" and holding that "Dr. Palmer's lack of specialization in emergency medicine does not automatically disqualify him as an expert witness. Rather, it goes to the weight a jury could give his testimony if determined otherwise to be admissible" (alterations, internal quotation marks, and citation omitted)).

{18} Defendants argue that the district court, sua sponte, on June 30, 2014, entered the amended corrected version of its pre-appeal order excluding Dr. Palmer's opinions for purposes of clarifying its February 2, 2010, oral ruling. Because Plaintiffs did not provide this Court with an adequate record to review this amended corrected order, Defendants ask us to apply the presumption of correctness. What is bothersome about this argument is that the order before the *Holzem I* court did not include this language added to paragraph 10 and therefore was not a consideration by any of the parties and more importantly this Court. To the extent there are discrepancies between the December 28, 2009 order, the district court's oral clarification, and the amended corrected June 30, 2014 order, the original written order prevails and we need not consider either the oral clarification or the post-appeal written order. *See State v. Lohberger*, 2008-NMSC-033, ¶ 20, 144 N.M. 297, 187 P.3d 162 ("Informal expressions of a court's rulings are not appealable final orders or judgments. [A] trial court's oral announcement of a result is not final, and parties to the case should have no reasonable expectation of its finality."); *Bouldin v. Bruce M. Bernard, Inc.*, 1967-NMSC-155, ¶ 3, 78 N.M. 188, 429 P.2d 647 ("[A]n oral ruling by the trial judge is not a final judgment. It is merely evidence of what the court had decided to do—a decision that the trial court can change at any time before the entry of a final judgment.").

{19} At the time of *Holzem I*, the December 28, 2009 order was what was before this Court. At that time, this Court had no reason to review whether Dr. Palmer could offer an expert opinion on causation. Defendants argue that nevertheless, the record of the February 2, 2010 hearing was before the *Holzem I* court, implying that this Court should have known the district court failed to include language in its order. This Court is not required to search the record to find error to reverse the district court, especially where the error was not raised by either party. *State v. Weber*, 1966-NMSC-164, ¶ 37, 76 N.M. 636, 417 P.2d 444.

{20} We conclude that the district court's continued reliance on Dr. Palmer's lack of specialization in emergency medicine as the basis for exclusion, despite our express rejection of that rationale in *Holzem I*, is an abuse of discretion. *See* 2013-NMCA-100, ¶ 17.

B. The Order Excluding Dr. Palmer's Videotaped Trial Deposition Is the Law of the Case

{21} Plaintiffs initially sought to take a videotaped trial deposition of Dr. Palmer directly after the discovery deposition was taken in January 2009. Defendants objected and the district court ordered that there be "a reasonable opportunity and period of time to prepare cross-examination for any subsequent videotaped trial deposition." On August 13, 2009, Plaintiffs filed a notice that the videotaped trial deposition of Dr. Palmer would take place on August 26, 2009. Defendants moved for a protective order and filed a notice of non-appearance for the deposition. The deposition took place before the district court ruled on the motion for protective order.

{22} Plaintiffs moved to supplement discovery with the videotaped trial deposition testimony. The district court denied the motion since the deposition was taken approximately three months after the close of discovery. The order, which preceded Plaintiffs' first notice of appeal, was not challenged in that appeal. Accordingly, we conclude that the law of the case doctrine applies and we decline to review the order now. *See Varney v. Taylor*, 1968-NMSC-189, ¶ 4, 79 N.M. 652, 448 P.2d 164 ("We have also held that the law of the case doctrine applies not only to questions which are expressly or by necessary implication raised and ruled upon in the prior appeal, but also to questions which might have been but were not raised or presented."); *State v. Brown*, 2003-NMCA-110, ¶ 8, 134 N.M. 356, 76 P.3d 1113 ("Under the doctrine of law of the case, this Court will not now review issues that [the d]efendant could have but did not raise in his first appeal.").

C. Defendants' Motions to Strike Dr. Palmer's Post-Deposition Affidavits and Summary Judgment

{23} In *Holzem I*, we held that summary judgment, based entirely on the exclusion of Dr. Palmer was improper, partially because the district court had not ruled on Defendants' motions to strike Dr. Palmer's post-deposition affidavits. *Id.* ¶ 21. The affidavits created a factual issue with regard to Dr. Palmer's qualifications and his capacity to provide expertise concerning the administration of Tamiflu. *Id.* ¶ 18. We concluded that with the affidavits in the record, the record did not support the exclusion of Dr. Palmer's opinion testimony or summary judgment. *Id.* ¶¶ 18, 21.

{24} One month after the mandate was issued, Plaintiffs filed a motion to modify the pretrial order to allow for a new expert witness to be substituted for Dr Palmer. Plaintiffs' counsel then filed an affidavit informing the district court that he had recently learned Dr. Palmer was suffering from Alzheimer's and that Dr. Palmer was not able to testify or consult with Plaintiffs in this case.[2] As a result, Plaintiffs' counsel had retained an expert to substitute for Dr. Palmer. Defendants opposed the motion to modify the pretrial order.

{25} On remand, Defendants argued that Plaintiffs' motion was premature and that the district court was required to rule on the pending motions to strike Plaintiffs' affidavits and summary judgment before considering the motion to modify the pretrial order. The district court agreed and stated: "I think the Court of Appeals wants me to go back in time to when the motion for summary judgment was filed and just review everything that would have been available at that time." Based on this interpretation, the court granted Defendants' motions to strike Dr. Palmer's affidavits, apparently without considering Plaintiffs' supplemental response to Defendants' motion for summary judgment that the court invited Plaintiffs to submit, and Plaintiffs' motion to add a new expert.

{26} On appeal, Defendants continue to argue that because *Holzem I* identified Dr. Palmer's capacity to provide expertise based on his education and experience regarding Tamiflu as the "decisive issue" in this case, it was appropriate for the district court to decide summary judgment based on that issue alone before considering

[2]Plaintiffs' motion, memorandum in support, and supporting affidavit request that their new medical expert witness be added, included, and/or permitted to replace Dr. Palmer. Given the circumstances underlying their motion, we consider Plaintiffs' motion a request to replace Dr. Palmer.

Plaintiffs' motion for a new expert. We disagree.

{27} There is nothing in the language of *Holzem I* that indicates we intended to limit the district court's consideration of summary judgment to the record as it stood when Defendants' motion for summary judgment was initially filed. Our instructions on remand were:

> [T]he district court may resolve the still-pending motions to strike, and the parties may renew or submit any motions, evidentiary or otherwise, they deem to be appropriate in light of that or our ruling. . . . Plaintiffs may now have the ability to prove those elements of their claim.

Holzem I, 2013-NMCA-100, ¶¶ 19, 21. By inviting Plaintiffs to file a supplemental response to Defendants' motion for summary judgment, the district court appears to have considered the intended application of the remand instructions. Defendants concede that Plaintiffs' motion for an additional expert "was permissible under the broad language of *Holzem I*."

{28} As Defendants point out, our decision in *Holzem I* did not address the specific circumstances presented by Dr. Palmer's disability upon remand. And in light of the changed circumstances, Dr. Palmer's capacity to testify was no longer the decisive issue. However now, Dr. Palmer's ability to testify at all has become an issue. The broad language in *Holzem I* cannot be read to preclude the district court from considering significant changes in the parties' circumstances when determining whether summary judgment was appropriate.

{29} New Mexico courts are cautious in granting summary judgment. *Madrid v. Brinker Rest. Corp.*, 2016-NMSC-003, ¶ 16, 363 P.3d 1197 ("[S]ummary judgment is a drastic remedy to be used with great caution." (internal quotation marks and citation omitted)); *see* Rule 1-056(F) NMRA ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his position, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.").

{30} While the form and substance of the district court's orders were sloppy and unconventional, the controversy surrounding the affidavits has become irrelevant. Circumstances have simply changed. There is no preserved testimony from Dr. Palmer which could be presented at any future trial. Given the new circumstances Plaintiffs' case is now entirely dependent on their new proposed expert. Dr. Palmer and all of the issues surrounding his expertise and potential testimony have become mere historical artifact. As such, there is no need to address the propriety of his affidavits substantively because they will play no role in the case as it proceeds. Accordingly, we conclude that the district court erred in granting summary judgment.

D. Judicial Bias

{31} To the extent that Plaintiffs argue that the district court demonstrated bias against them, we note that Plaintiffs rely on the court's adverse rulings to support their claim. Adverse rulings alone are not sufficient to demonstrate judicial bias. *See State v. Hernandez*, 1993-NMSC-007, ¶ 44, 115 N.M. 6, 846 P.2d 312 ("[B]ias cannot be inferred from an adverse ruling[.]"); *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 425, 96 N.M. 155, 629 P.2d 231 ("Rulings adverse to a party do not necessarily evince a personal bias or prejudice on the part of the judge[.]").

CONCLUSION

{32} For the reasons stated above, we affirm the district court's exclusion of Dr. Palmer's videotaped deposition and reverse the district court's order granting Defendants' summary judgment and remand the case to the district court. Upon remand, the district court is to allow Defendants to engage in discovery limited to Plaintiffs' new expert witness in order to obtain the fullest possible knowledge of his qualifications and proposed opinions. The parties may then proceed with litigation accordingly.

{33} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
RODERICK T. KENNEDY, Judge

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-014

No. 34,759 (filed November 3, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JOHN C. PACHECO,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
JERRY H. RITTER, Jr., District Judge

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

SCOTT FUQUA
FUQUA LAW & POLICY, P.C.
Santa Fe, New Mexico
for Appellee

Opinion

J. Miles Hanisee, Judge

{1} The State appeals from the dismissal of its criminal information charging Defendant with fraud in violation of NMSA 1978, Section 30-16-6(A), (F) (2006). We reverse.

{2} Rule 5-601(B) NMRA provides that "[a]ny defense, objection or request which is capable of determination without a trial on the merits may be raised before trial by motion." In *State v. Foulenfont*, 1995-NMCA-028, 119 N.M. 788, 895 P.2d 1329, we held that a district court may dismiss a criminal information or indictment when guilt turns on a "purely legal issue" and any relevant "factual predicate underlying the charges" is undisputed by the state. *Id.* ¶ 6. In *Foulenfont*, the purely legal issue was whether a fence is a "structure" under our burglary statute, and the state conceded that the only basis for finding the defendant guilty turned on this legal question. *Id.* ¶ 7. Accordingly, we held that the district court properly resolved the legal question without holding a trial. *Id.* ¶ 10.

{3} Here, the offense with which Defendant was charged consists of "intentional misappropriation or taking of anything of value [greater than $20,000] that belongs to another by means of fraudulent conduct, practices or representations." Section 30-16-6(A), (F). The probable cause affidavit attached to the criminal complaint alleges that Defendant contracted with Richard Aguilar to purchase a coffee business in Ruidoso, New Mexico for $43,000 to be paid for with a down payment and in subsequent installments. Defendant paid the down payment, but a few months later stopped making installment payments to Aguilar, thereby breaching the sale contract. Defendant offered to give Aguilar a trailer and any equipment attached to it in exchange for a release of his remaining obligation under the purchase agreement, which Aguilar accepted based on invoices Defendant showed to Aguilar that represented the value of the trailer and the attached equipment to be $43,096. The affidavit states that Defendant admitted altering the invoices to inflate the value of the trailer and the equipment, but maintained that he had done so with Aguilar's consent. A magistrate judge found that this information constituted probable cause that Defendant had committed fraud and issued a warrant for Defendant's arrest.

{4} Relying on Rule 5-601(B) and *Foulenfont*, Defendant filed a motion to dismiss the information. He argued that Aguilar's "prior sworn statements and verified pleadings" in ancillary civil proceedings between Aguilar and Defendant "establish, as a matter of law, [that] Defendant obtained no property as a result of a fraudulent act or inducement . . . and [Aguilar] did not rely on any false representation made by Defendant[.]" After the State's opening statement on the morning of Defendant's bench trial, but before the State presented any evidence, counsel for Defendant renewed his motion to dismiss, once again arguing that the State would not be able to prove the elements of fraud beyond a reasonable doubt. The district court granted the motion, finding that "Defendant, through counsel, asserted sworn or otherwise admissible evidence from a related civil proceeding establish[ing that Aguilar] did not rely on any representations by Defendant and did not suffer pecuniary harm as a matter of law." The district court further reasoned that because the State "could offer no evidence which would create a disputed fact" and "did not dispute the facts put forth by Defendant[,]" dismissal under Rule 5-601(B) was appropriate.

{5} We disagree, but before we can explain our disagreement we must determine whether the State is permitted to appeal the district court's decision. This is because the double jeopardy clause of the Fifth Amendment to the United States Constitution provides that no "person [shall] be subject for the same offense to be twice put in jeopardy of life or limb[.]" This means that "[t]he [s]tate is barred from appealing when a defendant is acquitted" because any further proceedings in the district court after appeal would violate the Double Jeopardy Clause. *State v. Baca*, 2015-NMSC-021, ¶ 21, 352 P.3d 1151 (internal quotation marks and citation omitted). So the question here is whether the district court's decision below amounted to an acquittal.

{6} This question involves a term of art: whether "jeopardy has attached[.]" *State v. Collier*, 2013-NMSC-015, ¶ 13, 301 P.3d 370. The United States Supreme Court has held that jeopardy attaches in a bench trial when the first witness is sworn. *Crist v. Bretz*, 437 U.S. 28, 37 n.15 (1978). New Mexico courts have been a bit less specific, holding that jeopardy attaches in a bench trial "when the court begins to hear evidence." *State v. Angel*, 2002-NMSC-025, ¶ 8, 132 N.M. 501, 51 P.3d 1155. In any event, the animating purpose behind the two standards is the same:

> [T]he [s]tate with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Serfass v. United States, 420 U.S. 377, 388 (1975) (internal quotation marks and

citation omitted); *see State v. Gutierrez*, 2014-NMSC-031, ¶ 19, 333 P.3d 247 (same (internal quotation marks and citation omitted)). Our Supreme Court has recently noted that a defendant who "deliberately choos[es] to seek termination of the proceedings against him before a determination of his guilt or innocence . . . voluntarily reject[s] the Fifth Amendment protection against being twice placed in jeopardy for the same offense." *Baca*, 2015-NMSC-021, ¶ 41 (internal quotation marks and citation omitted). Hence our Supreme Court distinguishes between "termination [of a trial] based on finding the [s]tate's evidence insufficient[,]" which counts as an acquittal, and "procedural dismissal[s] unrelated to the evidence of [the defendant's] guilt[,]" which do not. *Id.* ¶¶ 36, 42.

{7} Here, the district court characterized its order dismissing the information as a finding that "[t]here are no material factual issues in dispute and the [S]tate cannot prove the prima facie element of pecuniary loss beyond a reasonable doubt as a matter of law." But "a judge's own characterization of his procedural dismissal as an acquittal on the merits cannot control a reviewing court's assessment of the true nature of the action." *Id.* ¶ 42. Here, the district court characterized its order as a finding that the State had presented insufficient evidence to obtain a conviction. But the State had yet to present any evidence whatsoever. So under *Serfass* and *Gutierrez*, jeopardy had not attached.

{8} Defendant suggests that "[even] though no witness had yet been sworn, the [d]istrict [c]ourt nevertheless considered uncontested evidence, discussed without objection from the State, in connection with its dismissal." But the district court did not consider evidence; it considered a proffer by defense counsel as to what the evidence at trial would show, and "statements of counsel are not evidence." *State v. Garcia*, 1978-NMCA-109, ¶ 4, 92 N.M. 730, 594 P.2d 1186. The district court would have only been in a position to acquit Defendant after the State had put forward its own evidence; because the district court terminated the case after the State's opening statement and before any witness was sworn, jeopardy had yet to attach. Accordingly, we view the district court's dismissal of the information as a procedural dismissal and not an acquittal. Thus, because double jeopardy had not attached, we will entertain the State's appeal of that dismissal.

{9} The State's argument on appeal is that the district court resolved questions of fact as to the meaning of the release agreement between Defendant and Aguilar, which would be an improper "pretrial attack on the sufficiency of evidence under the guise of a [Rule 5-601] motion." *State v. LaPietra*, 2010-NMCA-009, ¶ 6, 147 N.M. 569, 226 P.3d 668. Defendant, in turn, argues that the "nature of the [trial c]ourt's determination" was a resolution of a purely legal question based on undisputed facts: Aguilar's testimony in a related civil proceeding that the release did not relieve Defendant of his debt under the underlying sale contract and his assertion of a continued security interest in property that was the subject of Defendant and Aguilar's original agreement. But framing the issue as a sufficiency of the evidence problem or a pure question of law does not change the analysis meaningfully either way. What the Court in *Foulenfont* characterized as a "purely legal issue" raised prior to trial—whether a fence is an "other structure" under the burglary statute—can be just as easily characterized as an argument that the state's evidence was insufficient to prove all of the elements of burglary beyond a reasonable doubt. 1995-NMCA-028, ¶¶ 6-7.

{10} Adding to the confusion is *Foulenfont*'s characterization of the issue on appeal from the district court's grant of a Rule 5-601 motion as "whether the district court had authority to dismiss the charges prior to a trial on the merits." *Foulenfont*, 1995-NMCA-028, ¶ 1. But Rule 5-601 itself provides the district court with authority to decide a motion to dismiss when a trial is unnecessary, and a trial is unnecessary when the undisputed facts do not make out the elements of the charged crime. *Foulenfont*, 1995-NMCA-028, ¶ 6. So the question of the district court's authority is the same as the merits of its decision. Focusing on whether the nature of the decision involves a pure question of law, or instead turns on disputed questions of fact begs the underlying question: whether the undisputed facts—whether stipulated to by the State or alleged in the indictment or information—show that the State cannot prove the elements of the charged offense at trial, thereby making a trial on the merits unnecessary. More often than not, the question is whether "the [s]tate could reasonably assert the availability of additional evidence." *State v. Gomez*, 2003-NMSC-012, ¶ 7, 133 N.M. 763, 70 P.3d 753. Framing the analysis this way avoids confusing questions about the district court's "authority" to decide a motion or whether the motion involves a question of fact or a pure question of law. It has the added benefit of tying the inquiry to the text of Rule 5-601(B), which looks to whether a motion is "capable of determination without a trial."

{11} Applying this analysis, we begin by setting out the elements of the fraud charge the State was required to prove beyond a reasonable doubt at trial: Defendant (1) by any words or conduct, made a promise he had no intention of keeping or misrepresented a fact to Aguilar; (2) intended to deceive or cheat Aguilar; (3) because of the promise or representation and Aguilar's reliance on it, Defendant obtained property or money valued in excess of $20,000; (4) the property or money belonged to someone other than Defendant; and (5) the fraud took place in New Mexico. *See* UJI 14-1640 NMRA; *see also* § 30-16-6. Here, the district court found that "[Aguilar had asserted] in civil judicial pleadings and a UCC-1 filed in the property records of Lincoln County [that] he had not relinquished all right, title[,] and interest in the property allegedly obtained by fraud." We understand the district court to have concluded, based on this evidence, that the State could not prove that Aguilar had relied on Defendant's misrepresentations in releasing him from the original purchase agreement.

{12} But the criminal complaint alleged that Aguilar's decision to sign the release was based on Defendant's misrepresentations as to the value of a trailer and attached fixtures. Indeed, the State argued in response to Defendant's motion that it expected Aguilar to testify to that effect at trial. The fact that Aguilar continued to maintain his right to payments under the original purchase agreement in a related civil proceeding is irrelevant to the question of whether Defendant obtained the release itself through his alleged misrepresentation. *See State v. Higgins*, 1988-NMCA-072, ¶ 8, 107 N.M. 617, 762 P.2d 904 ("If a defendant obtains something of value by fraudulent misrepresentations, the fact it is later repaid does not bar prosecution."). All of which is to say that Defendant's motion to dismiss could not be decided without a trial, and the district court's contrary conclusion was in error. Accordingly, the district court's grant of Defendant's motion to dismiss is reversed. The case is remanded for further proceedings.

{13} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
LINDA M. VANZI, Judge

Thank You to

HOLLAND & HART

for its Generous Support of the Civil Legal Clinic!

The First Judicial District Court Access to Justice Committee and the Volunteer Attorney Program would like to thank the attorneys of Holland & Hart for volunteering their time and expertise at its February 3, 2017 Civil Legal Clinic in Santa Fe. The Santa Fe Civil Legal Clinics take place the first Friday of every other month at the First Judicial District Courthouse in the 1st Floor Jury Room from 10 a.m. until 1 p.m. Fourteen individuals received assistance at the February 3 clinic thanks to the dedication of 4 attorneys and one paralegal from Holland & Hart.

Thank you:

Julia Broggi
Mike Feldewert
Jordan Kessler
Larry J. Montaño
Deb Tupler

If you or your firm is interested in sponsoring a clinic, please contact Aja Brooks at ajab@nmlegalaid.org or 505-814-5033.

Classified

Positions

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.

Attorney

Little, Bradley & Nesbitt, PA, is seeking an attorney to handle residential foreclosure cases. Prior foreclosure, real estate title, &/or NM civil litigation experience preferred. Send cover letter, resume, salary requirements, writing sample & references to Karen-b@littlepa.com, fax to 254-4722 or mail to PO Box 3509, Alb 87190.

United States District Court, District of New Mexico Courtroom Deputy, Full-time, ABQ

$43,954 to $78,474 DOQ. Relocation/recruitment bonus available — see full announcement and application at www.nmd.uscourts.gov/employment. Successful applicants subject to FBI & fingerprint checks. EEO Employer.

Experienced Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 33 states, is currently seeking an experienced attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume and salary requirements to Hamilton Hinton at hhinton@cordelllaw.com

Bilingual Associate Attorney

Rebecca Kitson Law in Uptown Albuquerque is seeking a full time, bilingual associate attorney. Candidate must have passion and commitment to advocate for immigrants in all areas of relief. Duties to include but not limited to: drafting appeals/motions, legal research, consultations, case opening, hearings/USCIS interviews, case work. We are an inclusive, supportive office culture that welcomes all to apply. Position available immediately. Must be fluent in Spanish. NM Law License preferred. Experience preferred. Salary DOE, full benefits and fun perks offered. E-mail letter of interest, resume, and writing sample to Rebecca Kitson at rk@rkitsonlaw.com.

Associate Attorney

Associate attorney, with 1-5 years of experience, needed. Firm's practice areas include insurance defense, civil rights defense, and commercial litigation. Preference is attorney licensed in New Mexico and Texas. Will consider applicants only licensed in Texas. Salary DOE. Send cover letter, resume, law school transcript, writing sample, and references to bb@hmm-law.com.

Bilingual Domestic Violence Family Law Attorney and Legal Director

Enlace Comunitario (EC), a social justice non-profit organization in Albuquerque, N.M. works to eliminate domestic violence in the immigrant community and is seeking applications for a Legal Director and a staff attorney. Attorneys in the legal department represent EC clients in domestic relations matters including orders of protection. The legal director must be an experienced and effective attorney, mentor and trainer. The Legal Director is part of the lead¬ership team and will work collaboratively to fur¬ther EC's mission. More information about the positions can be found on EC's web site. http://www.enlacenm.org/. Required: State of New Mexico Bar License or eligible for NM limited license pursuant to NM Rule 15-301.2. Spanish/English bilingual proficiency and committed to social justice. LEGAL DIRECTOR: At least three years of family law practice experience for legal director position. STAFF ATTORNEY: At least one year as a licensed attorney preferably with family law practice experience. Preference will be given to individuals with experience working with domestic violence, immigrant rights and/or social justice issues. Competitive salary and benefits depending on experience. If interested, please send your resume, letter of interest and a recent writing sample to info@enlacenm.org. Closing date: Open until filled.

Associate Attorney

Albuquerque based plaintiff construction defect law firm, is currently seeking an Associate Attorney (must be admitted to NM bar). The ideal candidate should have at least 3 - 5 years litigation experience and superior academic credentials. This position is not open to attorneys with less than 3 years of experience. Construction defect and construction related experience greatly preferred as well as deposition and trial experience. We are looking for a motivated and aggressive individual with strong analytical and judgment skills who is able to work in teams and individually on case assignments, take depositions, coordinate with experts, as well as conduct case evaluation. Please send resume, salary demands and writing sample demonstrating legal reasoning ability to Denise Ochoa at dochoa@kasdancdlaw.com.

Associate Attorney

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

Entry and Mid-Level Prosecutors

Tired of keeping track of your life in 6-minute increments? Are watching reruns of Law & Order the closest you've come to seeing the inside of a courtroom? If you're ready for a change and want a job where you will truly make a difference in your community, where you seek truth and justice, try cases, and hold criminal offenders responsible for their actions, then come join our team. The Twelfth Judicial District Attorney's Office (Otero and Lincoln Counties) has vacancies for entry and mid-level prosecutors. We try more jury trials per capita than nearly every other judicial district in the state. If you're interested in learning more about the position or want to apply, email your resume and a cover letter to John Sugg at 12thDA@da.state.nm.us or mail to 12th Judicial District Attorney's Office, 1000 New York Ave, Room 101, Alamogordo, NM 88310.

Tribal Prosecutor

The position is located at the Pueblo of Isleta. The position presents criminal complaints and prosecutes individuals accused of violating civil and/or criminal laws. Represents the Pueblo of Isleta as plaintiff in actions based on violations of the POI laws, ordinance, resolutions and other legal directives as they apply. Serves as presenting officer in person-at-risk cases. SPECIAL NOTE: For a full description of the position, please visit www.isletapueblo.com. "Career's Section of the homepage. Salary DOE: ($60,677.00 to $74,330.00). Qualified applicants may send their resume, cover letter and application to POI HUMAN RESOURCES, P.O. Box 1270 Isleta, New Mexico 87022, or e-mail to poiemployment@isletapueblo.com, or fax to (505) 869-7579. CLOSING DATE: OPEN UNTIL FILLED. This position is identified as a "High Risk-Public Trust" fiduciary level. Must pass a thorough security background check prior to and during the course of employment with the Pueblo of Isleta. The Pueblo of Isleta is a Drug Free Workplace.

City Attorney- City of Gallup

The City of Gallup is seeking individual with graduation from accredited law school with a possession of a Juris Doctorate degree, Ten (10) years legal experience in a broad range of legal issues including, purchase of goods and services, contracting, labor & employee relations, land use, utilities, and prosecution of criminal offenses. Ability to draft legal documents including ordinances, resolutions, contracts, joint powers agreements. Salary Negotiable ($90-110K) Valid DL. Contact: adavis@gallupnm.gov. Open Until Filled. Phone: (505) 863-1215. FAX: 505-726-2053, www.gallupnm.gov/jobs online application

Executive Director

Non-profit agency providing civil legal services to children and youth seeks to fill executive director position in Albuquerque, NM. Applicant must be motivated to help children and youth improve their circumstances and have a vision of how a legal organization can best assist them. Requirements: experience managing staff and non-profits; financial oversight and planning; at least five (5) years' legal experience in abuse/neglect or family law preferred. Candidates must be licensed in New Mexico or eligible for admission by examination or eligible for reciprocity admission or for a New Mexico legal aid providers limited license (NM Rule 15-301.2). Trial experience. English/Spanish speaker preferred. Excellent writing skills, be organized and detail-oriented, excellent people skills. Excellent references expected. Must be able to think strategically about organization's expansion. Salary commensurate with experience. We are proud to be an equal opportunity employer and are committed to building a culturally diverse workplace. We strongly encourage persons of color, LGBTQ individuals, veterans, persons with disabilities, and persons from other underrepresented groups to apply. Send letter of interest, resume and writing sample to Executivesearch@pegasuslaw.org. No phone calls please.

United States District Court, District of New Mexico, Las Cruces - Term Law Clerks

Two full-time Term Law Clerk positions available, $60,210-$131,833 DOQ. See full announcement and application instructions at www.nmd.uscourts.gov. Successful applicants subject to FBI & fingerprint checks. EEO employer.

Judicial Law Clerk (half-time)

The United States Bankruptcy Court for the District Of New Mexico is seeking a judicial term law clerk for the Hon. David T. Thuma. This is a half-time position (20 hours/week, Wed. afternoon and all day on Thursday and Friday) to end on or about 9/1/2018. The law clerk will work alongside Judge Thuma, his full-time term clerk, and his courtroom deputy to draft opinions and orders, attend trials and hearings, and coordinate the administrative functions of chambers. Salary ranges from $30,184 to $66,088 annually, depending on qualifications. The complete vacancy announcement and application requirements is available at www.nmb.uscourts.gov/employment. Mail required applications to PO Box 546, Albuquerque, NM 87103 or via e-mail to nmbc_hr@nmb.uscourts.gov.

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.

Santa Fe County – Assistant County Attorney

Santa Fe County is seeking qualified individuals to join its team of attorneys. The successful candidate's practice will focus in areas assigned based upon experience, need, and interest. The ideal candidates are those with strong analytical, research, communication, and interpersonal skills, who enjoy working hard in a collaborative, fast-paced environment on diverse and topical issues that directly impact the community in which they live or work. Salary range is from $27.0817 to $40.6226 per hour, depending upon qualifications and budget availability. Applicant must be licensed to practice law in the State of New Mexico and in the New Mexico federal courts and have a minimum of three (3) years of experience practicing law. This position is open until filled, so interested individuals should apply as soon as possible. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

Due Process Hearing Officers

The Public Education Department, Special Education Bureau, is seeking licensed New Mexico attorneys to serve as due process hearing officers for disputes between parents and school districts or charter schools under the Individuals with Disabilities Education Act (IDEA). Applicants must have at least five years of current or prior experience in the active practice of law, preferably with a strong emphasis in administrative law or representation of governmental agencies. Knowledge or experience in special education or disability law is highly desirable, as is experience adjudicating contested cases as a hearing officer, special master, administrative review officer or arbitrator, or as an attorney or advocate appearing before such tribunals. The ability to analyze complex legal issues and express clear legal reasoning in written decisions is required. Residents outside the Albuquerque-Santa Fe areas are invited to participate (for a statewide pool). One-year contracts will be awarded, renewable at the Public Education Department's option in one-year increments for three additional years. The Request for Applications (RFA) is available on the Special Education Bureau website at http://ped.state.nm.us/ped/SEB_index.html. Applications must be submitted by U.S. mail or courier service to the Procurement Manager, Special Education Bureau, by 5:00 p.m. (MT) on May 8, 2017.

Legal Assistant

Small firm looking for legal assistant, full or part time. Bankruptcy experience helpful but not necessary. Must be organized and able to work independently. Good word processing skills required. Good benefits package. Salary DOE. Please send letter of interest and resume to nmattorney192@gmail.com.

Paralegal

The Santa Fe law firm of Katz Herdman MacGillivray & Fullerton PC is seeking a full-time paralegal with relevant experience to assist in all areas of our practice, including real estate, water law, estate planning, zoning, business, employment, construction and related litigation. Please send resumes to fth@santafelawgroup.com. Please state "Paralegal Position" in email 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.

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.

Services

Briefs, Research, Appeals—

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

Nurse Paralegal

Specialist in medical chronologies, related case analysis/research. Accurate, knowledgeable work product. For resume, work samples, references: maryjdaniels68@gmail.com

Marketers that create Powerful Ads

FREE Industry Marketing Assessment https://micdropflix.com/about-us-about-customers/

Miscellaneous

Want To Purchase

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

NMOneSource.com®

OFFICIAL • EXCLUSIVE • ONLINE

Get It Right. Get Official Laws.

GET ON THE SAME PAGE AS THE NEW MEXICO COURTS AND LEGISLATURE.

"**The New Mexico Legislature relies exclusively on the official compilation of laws published by the New Mexico Compilation Commission.** The reasons are clear and convincing. There is only one official compilation of annotated statutes. The Commission goes the extra mile to service lawyers and judges by updating NMOneSource.com with new or amended laws on their effective dates and publishes relevant case annotations by its New Mexico distinguished lawyer editor each month. There is only one official body of appellate case law and court rules, also updated on their effective dates. Other sources may be reputable, but no other source carries the distinguished caliber of the official."

- Raúl E. Burciaga, Director, NM Legislative Council Service

LEARN MORE TODAY!
www.nmcompcomm.us/nmonesourcecom.htm

New Mexico Compilation Commission
The Official Legal Publisher of the State of New Mexico
www.nmcompcomm.us • 505.827.4821 • 866.240.6550