

# BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

August 9, 2017 • Volume 56, No. 32



*Chama Striations*, by Karen Halbert (see page 3)

Purple Sage Gallery

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# 2017 | Annual Meeting— Bench & Bar Conference

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

*Thank you!*



On behalf of President Scotty A. Holloman and the entire Board of Bar Commissioners, the State Bar of New Mexico would like to thank all attendees for a fantastic **2017 Annual Meeting—Bench & Bar Conference!**

We would also like to thank all of our sponsors, exhibitors, Raffle Extravaganza donors and CLE speakers for helping us put together one of our best events yet.

*See you next year!*

Aug. 9-11, 2018  
Hyatt Regency Tamaya Resort & Spa



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## Meetings

### August

9

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

9

**Taxation Section Board**  
11 a.m., teleconference

9

**Animal Law Section Board**  
Noon, State Bar Center

10

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

10

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

11

**Prosecutors Section**  
Noon, State Bar Center

16

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

18

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

18

**Indian Law Section Board**  
Noon, State Bar Center

## Workshops and Legal Clinics

### August

11

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

16

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

23

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

### September

6

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

6

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

8

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

#### About Cover Image and Artist: *Chama Striations*, 11x14, oil on linen/panel

Karen Halbert, a former computer scientist and college professor of mathematics, transforms the beauty and patterns she sees in the numerical universe into the natural world of her paintings. Halbert spent her childhood in the American West and, following in the footsteps of many artists, returned to her roots to capture on canvas the particular quality of the Southwest. It is in Santa Fe that Halbert has found her true home. She can be seen painting plein-air in the fields throughout New Mexico. In her studio, Halbert uses sketches and photographs from her plein-air work to create images full of the emotions she feels while working out-of-doors. She is active in Plein-Air Painters of New Mexico, serving as volunteer website administrator ([www.papnm.org](http://www.papnm.org)). For more of her work, visit [www.karenhalbert.com](http://www.karenhalbert.com).



# Notices

## COURT NEWS

### First Judicial District Court Notice of Division II Pro Tem Assignment

The First Judicial District, Division II announces that Sarah M. Singleton has been appointed by the Chief Justice as judge pro tem for cases assigned to Division II, which assignment will last from Judge Singleton's retirement until a new judge takes office or Nov. 29, 2017, whichever comes first. During this time, Judge Singleton will continue to review proposed orders and motions that are submitted and will generally preside over Division II. Continue to send motion packages, proposed orders and correspondence concerning Division II cases to sfeddiv2proposedtxt@nmcourts.gov. The Division II telephone number will remain 505-455-8160.

### Seventh Judicial District Court Reassignment of Cases Due to Judge Sweazea's Retirement

Due to the retirement of Judge Kevin R. Sweazea, Judge Shannon Murdock is assigned to the cases previously assigned to Judge Sweazea. Pursuant to NMRA 1-088.1, parties who have not yet exercised a peremptory excusal will have until Aug. 23 to excuse the successor judge.

### U.S. District Court, District of New Mexico Reappointment of Incumbent U.S. Magistrate Judge

The current term of office of part-time U.S. Magistrate Judge B. Paul Briones is due to expire on March 20, 2018. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of a magistrate judge in this Court include the following: (1) conducting most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge, and (4) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the Court and should be addressed as follows: U.S. District Court,

## Professionalism Tip

### With respect to the courts and other tribunals:

Before dates for hearings or trials are set, or immediately after dates have been set, I will verify the availability of participants and witnesses, and I will also notify the court (or other tribunal) and opposing counsel of any problems.

CONFIDENTIAL—ATTN: Magistrate Judge Merit Selection Panel, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102. Comments must be received by Sept. 5.

### Retirement of Judge William P. Lynch

Judge William P. Lynch will retire this fall after 22 years of service as a state district judge and federal magistrate judge. Join members of the Court at noon, Aug. 18, in the Hondo Courtroom, on the fourth floor of the U.S. Courthouse, 333 Lomas Blvd. NW, to celebrate his retirement.

## STATE BAR NEWS

### Attorney Support Groups

- Aug. 14, 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#.
- Aug. 21, 7:30 a.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)
- Oct. 2, 5:30 p.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month. Group will not meet in September due to the Labor Day holiday.)

For more information, contact Latisha Frederick at 505-948-5023 or 505-453-9030 or Bill Stratvert, 505-242-6845.

## Business Law Section

### 2017 Business Lawyer of the Year

The Business Law Section has opened nominations for its annual Business Lawyer of the Year award, to be presented on Nov. 15 after the Section's Business Law Institute CLE. Nominees should demonstrate professionalism and integrity, superior legal service, exemplary service to the Section or to business law in general, and service to the public. Self-nominations are welcome. A complete description of

the award and selection criteria are available at [www.nmbar.org/BusinessLaw](http://www.nmbar.org/BusinessLaw). The deadline for nominations is Oct. 2. Send nominations to Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org). Recent recipients include David Buchholz, Leonard Sanchez, John Salazar, Dylan O'Reilly and Susan McCormack.

### Committee on Women and the Legal Profession Professor David J. Stout Honored with Justice Minzner Award

Join the Committee on Women and the Legal Profession in presenting the 2016 Justice Pamela B. Minzner Outstanding Advocacy for Women Award to Professor David Stout for his outstanding advocacy for women, in particular women in the legal profession. The award reception will be held from 5:30–7:30 p.m., Aug. 24, at the Albuquerque Country Club. Hors d'oeuvres will be provided and a cash bar will be available. R.S.V.P.s are appreciated. Contact Co-chairs Quiana Salazar-King at [salazar-king@law.unm.edu](mailto:salazar-king@law.unm.edu) or Laura Castille at [lcastille@cuddymccarthy.com](mailto:lcastille@cuddymccarthy.com).

## Criminal Law Section

### Albuquerque Mayoral Candidate Debate

The Criminal Law Section has partnered with New Mexico in Focus to bring members of the legal community and public a free Albuquerque Mayoral Candidate Debate from 6–8 p.m., Aug. 15, at the State Bar Center in Albuquerque and by live stream. Gene Grant, host of NMiF, Jeff Proctor, justice correspondent for NMiF, and Martha Burk, contributor to NMiF, will moderate the debate. Live stream information will be available at [www.nmbar.org/CriminalLaw](http://www.nmbar.org/CriminalLaw) the day of. Proposed candidate questions, with a focus on criminal justice or other, are being accepted until Aug. 11. To submit a question or for additional information, contact [NMCrimLawSection@gmail.com](mailto:NMCrimLawSection@gmail.com). To learn more about the candidates, visit [www.cabq.gov/voting-elections/candidate-information/2017-mayoral-candidates](http://www.cabq.gov/voting-elections/candidate-information/2017-mayoral-candidates).

## Notice to Attorneys: Electronic Filing Coming to the New Mexico Court of Appeals

Beginning Aug. 21, 2017, electronic filing and service will be mandatory for all new and pending cases in the Court of Appeals through the same Odyssey File and Serve system used in state district courts and New Mexico Supreme Court. Unlike in the district courts, electronic filing and service will be available in the Court of Appeals at no charge. Payment of the \$125 docket fee, however, is still required and cannot be accepted through the File and Serve system at this time. Accordingly, for those cases initiated in the Court of Appeals through the File and Serve system for which a docket fee is due, payment must be made by check made payable to the New Mexico Court of Appeals and received by the Court Clerk's Office no later than five days after the case is accepted for filing.

See Rule 12-307.2(C) NMRA. The Court of Appeals will be offering in-person and online training sessions in August and September for any attorney who is not already registered and familiar with the File and Serve system. Additional details will be posted on the Court of Appeals' website.

## Immigration Law Section Support of N.M. Faith Coalition for Immigrant Justice Fundraiser

The Immigration Law Section invites members of the legal community to support NMFCIJ's major fundraiser benefiting New Mexico's immigrant and refugee families and individuals. The fundraiser will take place from 11 a.m.-2 p.m., Aug. 26, at the Hotel Andaluz in Albuquerque and will have a hosted lunch, cash bar and silent auction. Visit [www.nmfcij-event.org/](http://www.nmfcij-event.org/) to purchase tickets, to view silent auction items, and to learn more about the work of NMFCIJ. Contact [nmfcijfundraiser@gmail.com](mailto:nmfcijfundraiser@gmail.com) for more information.

## Intellectual Property Law Section IP Law Seminar and Reception

Intellectual property and business law attorneys, as well as local businesses and entrepreneurs, are asked to save Oct. 18 for an important event. The U.S. Patent and Trademark Office Dallas Regional Office and the Intellectual Property Law Section are organizing a seminar at the Hyatt hotel in downtown Albuquerque. The program is expected to provide CLE credit for attorneys and facilitate connecting the USPTO regional office with the local business and entrepreneurial community and other local startup resources. A reception and networking event will follow. This is a unique opportunity for our state and we hope to see as many of you there as possible.

## Real Property, Trust and Estate Section Division Meetings Open to Section Membership

To more effectively promote its activities, the Real Property, Trust and Estate Section established two divisions in 2014: the Real Property Division and the Trust and Estate Division. The RPTE Board of Directors overseeing the divisions will meet on the following dates: Real Property Division: noon-1 p.m., Sept. 20, at the State Bar Center and noon-1 p.m., Dec. 6, during the Real Property Institute; Trust and Estate Division: noon-1 p.m., Aug. 16, at the State Bar Center and 8-8:30 a.m., Nov. 16, during the Probate Institute. At the meetings, members will be updated about recent rule changes and brainstorm activities for the remainder of 2017 and beginning of 2018. Meals will be provided during the meetings. R.S.V.P. to Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org). If you cannot attend the meeting but would like to provide suggestions of what you would like to see from the divisions this year, or have questions generally, contact Real Property Division Chair Charles Price at [cprice@cpricelaw.com](mailto:cprice@cpricelaw.com) or Trust and Estate Division Chair Greg MacKenzie at [greg@hurleyfirm.com](mailto:greg@hurleyfirm.com).

## Solo and Small Firm Section Fall Speaker Series Line-up

The Solo and Small Firm Section will again sponsor monthly luncheon presentations on unique law-related subjects and



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[www.nmbar.org/JLAP](http://www.nmbar.org/JLAP)

this fall's schedule opens with Joel Jacobsen, Journal Business Outlook columnist and retired assistant attorney general, will present on current legal-business topics in New Mexico and (inter)nationally on Sept. 12. Following Jacobsen's presentation, Mark Rudd, former UNM associate professor and social activist, will speak about political movements over the last fifty years and the effects (if any) on American and international law on Oct. 17. On Nov. 21, the newly appointed U.S. Attorney will identify special issues that he or she will emphasize his or her tenure. And on Jan. 16, Nancy Hollander, internationally-respected defense attorney, will address constitutional developments in criminal law under the last four presidents, including Guantanamo and terrorism issues. All presentations will take place from noon-1 p.m. at the State Bar Center. Contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org) to R.S.V.P.

## OTHER BARS New Mexico Criminal Defense Lawyers Association Las Cruces Evidence CLE

Get the breakdown on rules of evidence in state and federal court, finding electronic evidence on your own and knowing when to hire an expert and an update on Crawford hearsay and impeachment all at the New Mexico Criminal Defense Lawyers Association's "Evidence: The Latest in How to Find it, Use it, and Admit it" (6.2 G) CLE on Aug. 25 in Las Cruces. Following the CLE, NMCDLA members and their friends and families are invited to our annual Las Cruces membership party and auction. Visit [nmcdla.org](http://nmcdla.org) to join NMCDLA and register for the seminar today.

# 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 July 28, 2017**

## **PUBLISHED OPINIONS**

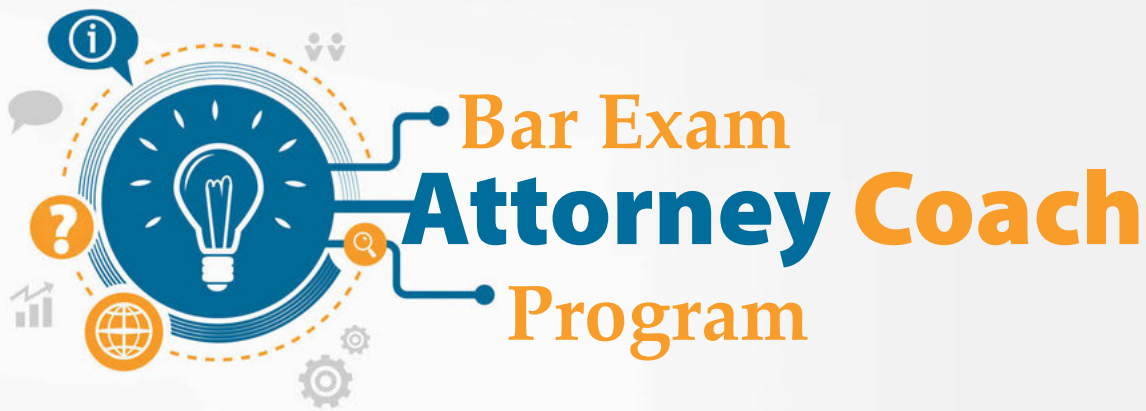
No. 34999	1st Jud Dist Santa Fe CV-13-1939, RENZENBERGER v TAX & REV (affirm)	7/26/2017
No. 35064	5th Jud Dist Lea JQ-10-15, CYFD v DONNA E & HARLEY E (reverse and remand)	7/26/2017
No. 35086	13th Jud Dist Sandoval CV-10-2239, D FOGELSON v E WALLACE (reverse and remand)	7/26/2017
No. 35251	3rd Jud Dist Dona Ana CV-13-1113, A AVALOS v BOARD OF REGENTS (reverse and remand)	7/26/2017
No. 34615	9th Jud Dist Roosevelt CR-11-60, STATE v F LOPEZ (affirm)	7/28/2017
No. 34812	13th Jud Dist Valencia CR-12-36, STATE v C PLATERO (reverse and remand)	7/28/2017

## **UNPUBLISHED OPINIONS**

No. 35180	2nd Jud Dist Bernalillo CR-11-2891, STATE v J TORRES (reverse and remand)	7/24/2017
No. 36161	6th Jud Dist Luna CR-15-5, STATE v A PORRAS (affirm)	7/25/2017
No. 35029	6th Jud Dist Grant CR-15-35, STATE v K SERNA (affirm)	7/26/2017
No. 36208	WCA-15-466, M NAJIBI v HALLIBURTON ENERGY (dismiss)	7/26/2017
No. 36334	12th Jud Dist Otero CR-15-56, STATE v C TOWN (reverse and remand)	7/26/2017
No. 35663	3rd Jud Dist Dona Ana CR-12-287, STATE v O OROPEZA (affirm)	7/27/2017
No. 35825	3rd Jud Dist Dona Ana LR-15-40, STATE v J TORRES (affirm)	7/27/2017
No. 34718	8th Jud Dist Colfax CV-14-34, T SCARBOROUGH v ANGEL FIRE (affirm in part, reverse in part and remand)	7/28/2017
No. 34348	2nd Jud Dist Bernalillo DM-14-2617, G PEREA v R PAULINO (affirm)	7/28/2017
No. 34933	2nd Jud Dist Bernalillo CV-10-8639, JEFFERSON v COTTONWOOD (affirm in part and remand)	7/28/2017
No. 35209	3rd Jud Dist Dona Ana JR-15-161, STATE v NAYELI C (affirm)	7/28/2017
No. 35522	5th Jud Dist Chaves CR-14-268, STATE v R GUAJARDO (affirm)	7/28/2017
No. 36247	11th Jud Dist San Juan CR-15-821, STATE v R GONZALES (affirm)	7/28/2017

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

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



**The State Bar of New Mexico Committee on Diversity in the Legal Profession** would like to thank the volunteer attorneys who participated in the July 2017 Bar Exam Attorney Coach Program. The Committee implemented the program in the fall of 2016 in support of applicants sitting for the UBE in New Mexico. The program is designed to match an applicant with a committed attorney to serve as a resource for the applicant and empower them to succeed on the exam.

**Thank you to the attorneys who volunteered to  
commit their time to support a bar exam applicant!**

Frank Davis  
Ella Joan Fenoglio  
Melanie Fritzsche  
Torri Jacobus  
Robert Johnston  
Christine Jordan  
Damian Lara  
Robert Lucero  
Charles McElwee  
Erin McSherry  
Jacqueline Medina  
Anne Minard

Josett Monette  
Clara Padilla-Silver  
Rodina Cave Parnall  
Jazmine Ruiz  
Stephanie Salazar  
Hon. Frank Sedillo  
Justin Solimon  
Barbara Stephenson  
Heidi Todacheene  
Lauren Truitt  
DeAnza Valencia  
Ashlee Wright





# CONSTITUTION DAY

☞ September 17, 2017 ☛

In the spirit of Constitution Day and to aid in the fulfillment of Public Law 108-447 Sec. 111 Division J - SEC. 111(b), the YLD organizes a public education program that provides participating New Mexico fifth-grade classes with U.S. Constitution booklets to keep and an educational lesson from a licensed New Mexico attorney.

Statewide attorney volunteers are needed for this program! Roughly hour-long educational lessons will take place during the week of Sept. 11–15 at elementary schools across New Mexico.

Please accept this offer to earn pro bono hours and connect with New Mexico's youth. Educator feedback reflects that this is a worthwhile program and an exciting and inspiring experience for students. More than 33,000 New Mexico students have been served during this program's lifetime.

**For more information and to volunteer,  
visit [www.nmbar.org/ConstitutionDay](http://www.nmbar.org/ConstitutionDay)**

*Deadline to participate is Aug. 18.*





# REPORT BY DISCIPLINARY COUNSEL

## DISCIPLINARY QUARTERLY REPORT

Reporting Period: April 1 –June 30, 2017

### Final Decisions

Final Decisions of the NM Supreme Court .....1

*Matter of D. Chipman Venie, Esq.*, 2017-NMSC-018, 395 P.3<sup>rd</sup> 516 (Disciplinary No. 04-2015-720 and 01-2016-737). The New Mexico Supreme Court issued an Opinion on May 11, 2017 regarding their Order disbaring Respondent from the practice of law on January 18, 2017.

### Summary Suspensions

Total number of attorneys summarily suspended .....0

### Administrative Suspensions

Total number of attorneys administratively suspended.....1

*Matter of* ..... (Sealed matter). The New Mexico Supreme Court entered an order administratively suspending Respondent from the practice of law for the failure to cooperate with Disciplinary Counsel. Respondent was reinstated on June 1, 2017.

### Disability Suspensions

Total number of attorneys placed on disability suspension .....1

*Matter of* ..... (Sealed matter) New Mexico Supreme Court entered an order placing Respondent on disability inactive status effective June 12, 2017. Pending disciplinary matters, if any, were stayed until Respondent is eligible for reinstatement.

### Charges Filed

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to represent the client diligently; failing to communicate with the client; charging unreasonable fees/costs; failing to segregate client funds from the lawyer's own property; failing to expedite litigation; engaging in conduct prejudicial to the administration of justice; and failing to keep records required under the Rules of Professional Conduct.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to represent a client diligently; disclosing confidential client information; failing to expedite litigation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; representing a client where the representation was materially limited by Respondent's personal interests; and engaging in conduct that is prejudicial to the administration of justice.

### Petition for Injunctive Relief Filed

Petitions for injunctive relief filed.....2

*Matter of Amy Lovell* (Supreme Court No. S-1-SC-36439). A Petition for Injunctive relief was filed against a non-lawyer under the Rules Governing the Unauthorized Practice of Law.

*Matter of Anthony O. Ramirez* (Supreme Court No. S-1-SC-36507). A Petition for Injunctive relief was filed against a non-lawyer under the Rules Governing the Unauthorized Practice of Law.

### Petitions for Reciprocal Discipline Filed

Petitions for reciprocal discipline filed .....0

### Reinstatement from Probation

Petitions for reinstatement filed .....0

### Formal Reprimands

Total number of attorneys formally reprimanded .....1

*Matter of Daniel M. Salazar, Esq.* (Disciplinary No. 01-2016-733) a Formal Reprimand was issued at the Disciplinary Board meeting of May 19, 2017, for the violation of Rule 16-101, failing to provide competent representation to a client; Rule 16-103, failing to represent a client diligently; Rule 16-104, failing to communicate with a client; Rule 16-116(A), failing to withdraw from representing a client in an orderly fashion; Rule 16-302, failing to expedite litigation; and Rule 16-804(D), engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the *Bar Bulletin* issued June 7, 2017.

### Informal Admonitions

Total number of attorneys admonished .....4

An attorney was informally admonished pursuant to a *Conditional Agreement Admitting the Allegations and Consent to Discipline* for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to keep the client reasonably informed about the status of the matter; failing to expedite litigation consistent with the interests of the client; and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-101, 16-103, 16-104, 16-302, and 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished pursuant to a *Conditional Agreement Admitting the Allegations and Consent to Discipline* for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to keep the client reasonably informed about the status of the matter; charging an unreasonable fee/costs; failing to respond to disciplinary counsel in a pending matter; failing to provide information or cooperation in a disciplinary matter; failing to respond to a lawful demand for information from a disciplinary authority; and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-101, 16-103, 16-104(A)(3) and (4), 16-105, 16-801(B), 16-803(D), and 16-804(A) and (D) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to

make reasonable efforts to expedite litigation consistent with the interests of the client; knowingly disobeying an obligation under the rules of a tribunal; and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-101, 16-103, 16-302, 16-304, and 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to hold the clients' property separate from their own property and failing to have the proper records related to the operation of the IOLTA in violation of Rules 16-115 and 17-204 of the Rules of Professional Conduct.

#### Letters of Caution

Total number of attorneys cautioned .....6

Attorneys were cautioned for the following conduct: (1) failure to communicate (2 letters of caution issued); (2) being deceitful; (3) general incompetence; (4) improper filing/issuing of subpoenas; and (5) general misrepresentation to the court.

#### *Complaints Received*

<b>Allegations.....</b>	<b>Number of Complaints</b>
Trust Account Violations .....	3
Conflict of Interest .....	0
Neglect and/or Incompetence .....	72
Misrepresentation or Fraud .....	18
Relationship with Client or Court .....	28
Fees.....	6
Improper Communications.....	2
Criminal Activity .....	0
Personal Behavior .....	12
Other .....	7
Total number of complaints received .....	148

# Legal Education

## August

- |  |  |   |
|--|--|---|
| <p><b>9 Tricks and Traps of Tenant Improvement Money</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>11 Human Trafficking (2016)</b><br/>3.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>24 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>               |
| <p><b>9 Gross Receipts Tax Fundamentals and Strategies</b><br/>6.0 G<br/>Live Seminar, Albuquerque<br/>NBI, Inc.<br/>www.nbi-sems.com</p>  | <p><b>11 New Mexico Defense Lawyers Association and West Texas TADC Joint Seminar</b><br/>4.5 G, 1.5 EP<br/>Live Seminar, Ruidoso<br/>New Mexico Defense Lawyers Association<br/>www.nmdla.org</p> | <p><b>25 Evidence: The Latest in How to Find It, Use It, and Admit It</b><br/>6.2 G<br/>Live Seminar, Las Cruces<br/>New Mexico Criminal Defense Lawyers Association<br/>www.nmcdla.org</p> |
| <p><b>11 Diversity Issues Ripped from the Headlines (2017)</b><br/>5.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                | <p><b>11 Introduction to New Mexico Money Laundering</b><br/>1.5 G<br/>Live Seminar, Las Cruces<br/>Peter Ossorio<br/>575-522-3112</p>   | <p><b>28 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>               |
| <p><b>11 Attorney vs. Judicial Discipline (2017)</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                 | <p><b>14 Traffic Law</b><br/>1.0 G<br/>Live Seminar, Albuquerque<br/>Davis Miles McGuire Gardner<br/>www.davidmiles.com</p>  | <p><b>29 The Use of “Contingent Workers”—Issues for Employment Lawyers</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                          |
| <p><b>11 New Mexico DWI Cases: From the Initial Stop to Sentencing (2016)</b><br/>2.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>17–18 10th Annual Legal Service Providers Conference</b><br/>10.0 G, 2.0 EP<br/>Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                      | <p><b>31 The Law and Bioethics of Using Animals in Research</b><br/>6.2 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>               |

## September

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| <p><b>8 Practical Succession Planning for Lawyers</b><br/>2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>         | <p><b>8 2016 Mock Meeting of the Ethics Advisory Committee</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>8 Techniques to Avoid and Resolve Deadlocks in Closely Held Companies</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>       |
| <p><b>8 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>8 Add a Little Fiction to Your Legal Writing (2016)</b><br/>2.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>9 Ethical Implications of Section 327 of the Bankruptcy Code</b><br/>2.0 EP<br/>Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |

## September

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| <p><b>13 What Notorious Characters Teach About Confidentiality</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                               | <p><b>18 New Mexico Conference on the Link Between Animal Abuse and Human Violence</b><br/>11.7 G<br/>Live Seminar, Albuquerque<br/>Positive Links<br/>www.thelinknm.com</p>      | <p><b>21 Legal Technology Academy for New Mexico Lawyers (2016)</b><br/>4.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>         |
| <p><b>14 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>              | <p><b>18 Ethical Considerations in Foreclosures</b><br/>1.0 EP<br/>Live Seminar, Albuquerque<br/>Davis Miles McGuire Gardner<br/>www.davismiles.com</p>                           | <p><b>21 Guardianship in New Mexico/The Kinship Guardianship Act (2016)</b><br/>5.5 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>14 Best and Worst Practices Including Ethical Dilemmas in Mediation</b><br/>3.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>19 How to Make Your Client's Estate Plan Survive Bankruptcy</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                     | <p><b>28 32nd Annual Bankruptcy Year in Review (2017)</b><br/>6.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                   |
| <p><b>14 The Ethics of Representing Two Parties in a Transaction</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                              | <p><b>20 Concealed Weapons and Self-Defense</b><br/>1.0 G<br/>Live Seminar, Albuquerque<br/>Davis Miles McGuire Gardner<br/>www.davismiles.com</p>                                | <p><b>28 Transgender Law and Advocacy (2016)</b><br/>4.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                            |
| <p><b>15 28th Annual Appellate Practice Institute</b><br/>6.0 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>           | <p><b>21 Controversial Issues Facing the Legal Profession (2016)</b><br/>5.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>28 Ethics for Government Attorneys</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                       |

## October

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| <p><b>2 Uncovering and Navigating Blind Spots Before They Become Land Mines</b><br/>2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>4 2016 Administrative Law Institute</b><br/>4.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>       | <p><b>6 Ethics, Disqualification and Sanctions in Litigation</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                         |
| <p><b>4 Lawyers' Duties of Fairness and Honesty</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                      | <p><b>4 Deposition Practice in Federal Practice</b><br/>2.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>9 Basic Practical Regulatory Training for the Electric Industry</b><br/>27.0 G<br/>Live Seminar, Albuquerque<br/>Center for Public Utilities NMSU<br/>business.nmsu.edu</p> |



# 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 August 9, 2017**

## PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

*There are no proposed rule changes currently open for comment.*

## RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2017 NMRA:

	Effective Date
<b>Rules of Civil Procedure for the District Courts</b>	
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
<b>Rules of Civil Procedure for the Magistrate Courts</b>	
2-112 Public inspection and sealing of court records	03/31/2017
<b>Rules of Civil Procedure for the Metropolitan Courts</b>	
3-112 Public inspection and sealing of court records	03/31/2017
<b>Civil Forms</b>	
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
<b>Rules of Criminal Procedure for the District Courts</b>	
5-106 Peremptory challenge to a district judge; recusal; procedure for exercising	07/01/2017
5-123 Public inspection and sealing of court records	03/31/2017
5-204 Amendment or dismissal of complaint, information and indictment	07/01/2017
5-401 Pretrial release	07/01/2017
5-401.1 Property bond; unpaid surety	07/01/2017
5-401.2 Surety bonds; justification of compensated sureties	07/01/2017
5-402 Release; during trial, pending sentence, motion for new trial and appeal	07/01/2017
5-403 Revocation or modification of release orders	07/01/2017

5-405 Appeal from orders regarding release or detention	07/01/2017
5-406 Bonds; exoneration; forfeiture	07/01/2017
5-408 Pretrial release by designee	07/01/2017
5-409 Pretrial detention	07/01/2017
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
6-401 Pretrial release	07/01/2017
6-401.1 Property bond; unpaid surety	07/01/2017
6-401.2 Surety bonds; justification of compensated sureties	07/01/2017
6-403 Revocation or modification of release orders	07/01/2017
6-406 Bonds; exoneration; forfeiture	07/01/2017
6-408 Pretrial release by designee	07/01/2017
6-409 Pretrial detention	07/01/2017
6-506 Time of commencement of trial	07/01/2017
6-703 Appeal	07/01/2017

## 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
7-401 Pretrial release	07/01/2017
7-401.1 Property bond; unpaid surety	07/01/2017
7-401.2 Surety bonds; justification of compensated sureties	07/01/2017
7-403 Revocation or modification of release orders	07/01/2017
7-406 Bonds; exoneration; forfeiture	07/01/2017
7-408 Pretrial release by designee	07/01/2017
7-409 Pretrial detention	07/01/2017
7-506 Time of commencement of trial	07/01/2017
7-703 Appeal	07/01/2017

## 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
8-401	Pretrial release	07/01/2017
8-401.1	Property bond; unpaid surety	07/01/2017
8-401.2	Surety bonds; justification of compensated sureties	07/01/2017
8-403	Revocation or modification of release orders	07/01/2017
8-406	Bonds; exoneration; forfeiture	07/01/2017
8-408	Pretrial release by designee	07/01/2017
8-506	Time of commencement of trial	07/01/2017
8-703	Appeal	07/01/2017

## Criminal Forms

9-301A	Pretrial release financial affidavit	07/01/2017
9-302	Order for release on recognizance by designee	07/01/2017
9-303	Order setting conditions of release	07/01/2017
9-303A	Withdrawn	07/01/2017
9-307	Notice of forfeiture and hearing	07/01/2017
9-308	Order setting aside bond forfeiture	07/01/2017
9-309	Judgment of default on bond	07/01/2017
9-310	Withdrawn	07/01/2017
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
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## Rules of Appellate Procedure

12-204	Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction	07/01/2017
12-205	Release pending appeal in criminal matters	07/01/2017
12-307.2	Electronic service and filing of papers	07/01/2017*
12-314	Public inspection and sealing of court records	03/31/2017

## Rules Governing Admission to the Bar

15-301.1	Public employee limited license	08/01/2017
15-301.2	Legal services provider limited law license	08/01/2017

## Rules of Professional Conduct

16-102	Scope of representation and allocation of authority between client and lawyer	08/01/2017
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## Disciplinary Rules

17-202	Registration of attorneys	07/01/2017
17-301	Applicability of rules; application of Rules of Civil Procedure and Rules of Appellate Procedure; service.	07/01/2017

## Rules Governing Review of Judicial Standards Commission Proceedings

27-104	Filing and service	07/01/2017
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To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at <http://nmsupremecourt.nmcourts.gov>. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at <http://www.nmcompcomm.us>.

**Certiorari Denied, April 26, 2017, No. S-1-SC-36385**

From the New Mexico Court of Appeals

**Opinion Number: 2017-NMCA-046**

No. 34,388 (filed March 2, 2017)

STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.WALTER ERNEST BROWN,  
Defendant-Appellee.**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

BRIANA H. ZAMORA, District Judge

HECTOR H. BALDERAS  
Attorney General  
MARIS VEIDEMANIS  
Assistant Attorney General  
Santa Fe, New Mexico  
for AppellantBENNETT J. BAUR  
Chief Public Defender  
MARY BARKET  
Assistant Appellate Defender  
Santa Fe, New Mexico  
for Appellee**Opinion****Timothy L. Garcia, Judge**

{1} The State of New Mexico appeals the dismissal of Defendant Walter Brown's case on the grounds that Defendant's constitutional right to a speedy trial was violated by the forty-two-month delay in the prosecution of his case. We conclude that each of the four *Barker* factors weigh in Defendant's favor. *See Barker v. Wingo*, 407 U.S. 514, 530-32 (1972). Accordingly, we affirm the district court's dismissal.

**BACKGROUND**

{2} Defendant was arrested on May 26, 2011, and charged with the murder of James Moore (Victim), whose death occurred during an incident that took place on May 13, 2011. Defendant, an individual with an intelligence quotient (IQ) of approximately seventy, was asked by his friend, Rebecca Duran (Duran), to accompany her to a home she had been staying at to get her belongings. Defendant, Duran, and a friend arrived at the home to find it locked, and after no one came to the front door the group entered through a sliding glass door in the rear of the house. Once inside, they were confronted by Victim. An altercation ensued, Victim pushed Defendant's friend, and Defendant fatally stabbed Victim once in the heart with a pocket knife.

{3} To avoid a repetitious discussion of the pretrial events, we discuss the events in detail here and refer to them more generally in our speedy trial analysis below. Defendant's case was joined with the cases of three other individuals charged as a result of the stabbing incident. Defendant was indicted and charged with one count of second degree murder, pursuant to NMSA 1978, Section 30-2-1(B) (1994), or the lesser included offense of voluntary manslaughter, pursuant to NMSA 1978, Section 30-2-3(A) (1994), or in the alternative, one count of first degree felony murder, pursuant to Section 30-2-1(A)(2); seven separate counts of conspiracy, pursuant to NMSA 1978, Section 30-28-2 (1979), including numerous alternative theories; one count of aggravated battery, pursuant to NMSA 1978, Section 30-3-5(A), (C) (1969), one count of aggravated burglary, pursuant to NMSA 1978, Section 30-16-4(A) (1963); and two counts of tampering with evidence, pursuant to NMSA 1978, Section 30-22-5 (2003). Defendant's bond was set at \$250,000. Defendant remained in custody for thirty-three months after his arrest until our Supreme Court addressed Defendant's appeal of his pretrial conditions of release. *See State v. Brown*, 2014-NMSC-038, ¶ 1, 338 P.3d 1276.

{4} Defense counsel made his first appearance on June 28, 2011, and made a written demand for speedy trial on behalf of De-

fendant. In December 2011 the presiding judge retired, and his position remained vacant until March 2012. Between April 2, 2012, and April 19, 2012, Defendant and a co-defendant each exercised one peremptory excusal. Trial was set before another district court judge to commence on March 25, 2013.

{5} During the eleven-month period from April 20, 2012 to March 19, 2013, the State asserted that it was "still working on the case some, but not as much." During this period, Defendant made a plea offer. The State took several months to review the plea offer and eventually made a counter-offer. On February 12, 2013, the district court moved the trial to April 29, 2013, to accommodate the joined cases. On March 19, 2013, after plea negotiations stalled, Defendant filed a motion to sever his case from the co-defendants. In response, the State filed a motion to continue the April 29, 2013, trial setting. The State also claimed some confusion and stated that, while it did not oppose the severance motion, it would have retained the March 25, 2013, trial setting had it known of Defendant's intent to sever his case from the co-defendants.

{6} With the April 2013 trial continued, the parties resumed preparations and proceeded to file and address various motions, including Defendant's motion to review his conditions of release. At a hearing in July 2013, defense counsel argued its position regarding the review of Defendant's conditions of release and detailed Defendant's personal situation, including informing the district court that there were two jobs available to Defendant. Defendant also asked the district court to interview or ask questions of pretrial services personnel who apparently supported Defendant's position and were present in court. The district court granted Defendant's motion to sever but denied Defendant's motion to review conditions of release, citing only the "nature of the allegations" as the basis for its denial. *See Brown*, 2014-NMSC-038, ¶¶ 7, 48.

{7} Following the July 15, 2013 hearing, the parties continued their preparations for the upcoming trial. The district court set a new trial date for November 12, 2013. At the November 5, 2013 docket call, Defendant asked for a continuance for two reasons, (1) because defense counsel was unavailable for trial the next week; and (2) defense counsel believed the status of the pending motions indicated the case was not ready to proceed to trial. The State

argued that the motions could be disposed of before the scheduled trial began. The district court granted Defendant's request based on counsel's unavailability.

{8} At a hearing on November 27, 2013, the district court considered the outstanding motions but did not rule on them until March 20, 2014. On December 18, 2013, the district court held a second hearing to review Defendant's pretrial conditions of release. The defense again presented evidence detailing the Defendant's suitability for pretrial release. Again, the court denied any changes to Defendant's pretrial conditions of release based solely on the nature of one of the allegations—a first degree murder charge. Under Rule 12-204 NMRA, Defendant appealed the denial of his motion to amend his conditions of release. On February 19, 2014, our Supreme Court heard Defendant's appeal and ordered that the Defendant be released on nonmonetary conditions pending trial. *See Brown*, 2014-NMSC-038, ¶¶ 11, 55.

{9} At the presentment hearing held on March 20, 2014, the presiding judge appeared confused as to why the hearing had been scheduled and did not seem to remember the issues, arguments, or matters that he took under advisement at the November 27, 2013 hearing. After the presentment hearing, the parties expressed concern regarding the district court judge's ability to continue to preside over the case. The parties filed a joint motion stipulating to the appointment of a new presiding judge. The motion was eventually granted, and a new judge was appointed on July 24, 2014. The former presiding judge later publicly acknowledged his Alzheimer's disease diagnosis.

{10} Also following the March 20, 2014 presentment hearing, Defendant filed a motion to dismiss on speedy trial grounds. The newly appointed presiding judge denied this motion on September 30, 2014. The district court found that, although three of the *Barker* factors weighed in Defendant's favor, Defendant had not shown sufficient prejudice. The district court further recognized that because no transcript was provided from our Supreme Court's hearing on the appeal of Defendant's motion to amend his conditions of release, the district court could not "determine whether the fact of pretrial incarceration itself was actual prejudice."

{11} Our Supreme Court released the *Brown* opinion on November 6, 2014, and one day later, Defendant filed a notice of correction and supplemental authority

alerting the district court to the *Brown* opinion. *See* 2014-NMSC-038. After reviewing Defendant's supplemental pleadings and the *Brown* opinion, the district court granted Defendant's speedy trial motion for dismissal. After a total delay of forty-two months, the order dismissing the case was entered on November 25, 2014. The State filed a timely appeal.

## DISCUSSION

### A. General Principles and Standard of Review

{12} The Sixth Amendment of the United States Constitution, as applied to the states by the Fourteenth Amendment, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" *See State v. Garza*, 2009-NMSC-038, ¶ 10, 146 N.M. 499, 212 P.3d 387 (internal quotation marks and citation omitted). The New Mexico Constitution offers similar protection and provides that "[i]n all criminal prosecutions, the accused shall have the right to . . . a speedy public trial." N.M. Const. art. II, § 14. This right recognizes that "there is a societal interest in bringing an accused to trial" and "[t]he heart of the right . . . is preventing prejudice to the accused." *Garza*, 2009-NMSC-038, ¶ 12.

{13} Our Supreme Court adopted the United States Supreme Court's balancing test articulated in the *Barker* decision. *See Garza*, 2009-NMSC-038, ¶ 13. The United States Supreme Court identified four factors to be weighed by the court in analyzing a defendant's claim: (1) the length of delay in bringing the case to trial, (2) the reasons for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) the actual prejudice to the defendant caused by the delay. *Id.* "Each of these factors is weighed either in favor of or against the [s]tate or the defendant, and then balanced to determine if a defendant's right to a speedy trial was violated." *State v. Spearman*, 2012-NMSC-023, ¶ 17, 283 P.3d 272. "[T]he factors have no talismanic qualities, and none of them are a necessary or sufficient condition to the finding of a violation of the right [to a] speedy trial." *Id.* ¶ 18 (alteration, internal quotation marks, and citation omitted). "Rather they are related factors and must be considered together with such other circumstances as may be relevant." *Id.* (internal quotation marks and citation omitted). In our review of a speedy trial ruling, this Court must "give deference to the district court's factual findings, but we review the weighing and the balancing of the *Barker* factors

de novo." *Spearman*, 2012-NMSC-023, ¶ 19 (alteration, offline internal quotation marks, and citation omitted); *State v. Lujan*, 2015-NMCA-032, ¶ 10, 345 P.3d 1103.

### B. Discussion and Weighing of the Factors

#### 1. Length of Delay

{14} The "length of delay" factor serves a dual purpose when analyzing a speedy trial violation. *See State v. Serros*, 2016-NMSC-008, ¶ 22, 366 P.3d 1121. First, it acts as a threshold triggering mechanism used to determine whether the delay is "presumptively prejudicial" so as to continue with a full speedy trial analysis. *Id.* Second, it is the first independent *Barker* factor that must be addressed to determine whether a defendant's speedy trial rights have been violated. *See Serros*, 2016-NMSC-008, ¶ 22. If the delay crosses the "presumptively prejudicial" threshold, a speedy trial analysis is warranted. *Id.* A delay is presumptively prejudicial if the delay exceeds "[twelve months] for a simple case, [fifteen] months for a case of intermediate complexity, and [eighteen] months for a complex case." *Id.* The parties agreed that this case was complex, and the State also agreed that the delay of forty-two months exceeded the eighteen-month benchmark and triggered a full speedy trial analysis.

{15} Evaluation of the length of delay factor is independent of the remaining three *Barker* factors and may be found in favor of the defendant regardless of the fault of the parties when addressing the reasons for delay. *See Serros*, 2016-NMSC-008, ¶ 26. "A delay that crosses the threshold for presumptive prejudice necessarily weighs in favor of the accused; the only question is, how heavily?" *Id.* As the delay increases, so does the weight of this first factor in favor of the defendant and against the state. *See id.* ¶ 24. "A delay that scarcely crosses the bare minimum needed to trigger judicial examination of the claim is of little help to a defendant claiming a speedy trial violation." *Id.* ¶ 26 (internal quotation marks and citation omitted). "[A]n extraordinary delay . . . weighs heavily in favor of [the] defendant[.]" *Id.*

{16} The district court found that the combination of the forty-two-month delay and the parties' agreement that this was a complex case warranted a finding that this first *Barker* factor weighed in favor of Defendant. However, the district court did not determine how much weight to assign to this first factor. We shall now address the weight to be assigned to the forty-two-month delay as part of our de novo review. *See Spearman*, 2012-NMSC-023, ¶¶ 19, 24.



{17} Defendant's forty-two-month delay—the time period from the date of his arrest in May 2011 to the date of the dismissal in November 2014—extended twenty-four months past the presumptively prejudicial threshold of eighteen months for a complex case. The additional twenty-four-month delay is more than double that of the presumptively prejudicial time for a complex case. Based upon a review of our appellate courts' authorities addressing this issue, we conclude that the delay of forty-two-months weighs heavily in Defendant's favor. *See Serros*, 2016-NMSC-008, ¶ 24 (holding that a fifty-one-month delay in a case that was either complex or of intermediate complexity was "extraordinary, and therefore it weigh[ed] heavily in [the d]efendant's favor"); *see also State v. Taylor*, 2015-NMCA-012, ¶¶ 7, 9, 343 P.3d 199 (holding that a twenty-four-month delay in a simple case weighed heavily against the state); *State v. Vigil-Giron*, 2014-NMCA-069, ¶¶ 19-20, 65, 327 P.3d 1129 (agreeing with the district court's analysis and determination that an additional eighteen-month delay beyond the presumptively prejudicial threshold in a complex case weighed heavily against the state); *State v. Fierro*, 2012-NMCA-054, ¶ 36, 278 P.3d 541 (holding that a fifty-five-month delay in a case of intermediate complexity weighed heavily in the defendant's favor); *State v. Stock*, 2006-NMCA-140, ¶¶ 15, 18, 140 N.M. 676, 147 P.3d 885 (holding that a forty-two-month delay in a simple case weighed heavily in the defendant's favor). *But see State v. Steinmetz*, 2014-NMCA-070, ¶¶ 6, 65, 327 P.3d 1145 (holding that a twenty-eight-month delay beyond the presumptively prejudicial threshold in a case of intermediate complexity only weighed moderately against the state).

## 2. Reasons for Delay

{18} "Closely related to [the] length of delay is the reason the government assigns to justify the delay." *Garza*, 2009-NMSC-038, ¶ 25 (internal quotation marks and citation omitted). These reasons may either lessen or increase the prejudice to the defendant caused by the delay. *Id.* Our courts have recognized three types of delay that may be attributable to the state and one type attributable to the defense. First, "intentional delay" that is a deliberate attempt to delay prosecution of the case in order to hamper the defense. *Id.* ¶ 26. This type of delay weighs heavily against the state. *Id.* Second, is "negligent or administrative delay." *Id.* This type of delay weighs more lightly

against the state, but "it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun." *Id.* (internal quotation marks and citation omitted). Additionally, as the length of the delay increases, this type of delay begins to weigh more heavily against the state. *Id.* Third, are various types of appropriate delay. *Id.* ¶ 27. These types of delay would be justified for "valid reason[s], such as a missing witness," which are neutral and do not weigh against the state. *Id.* The final type of delay is delay caused by the defense and this type of delay weighs against the defendant. *See Serros*, 2016-NMSC-008, ¶ 29. The complicated circumstances of this case require that we analyze each period of delay separately.

### a. May 26, 2011 to December 2011 - Seven Months of Neutral Delay

{19} Both Defendant and the State agree that from May 26, 2011 when Defendant was arrested, until December 2011, the case was proceeding normally toward trial. These seven months, are therefore categorized as appropriate, neutral delay and do not weigh against either party. *See State v. Valencia*, 2010-NMCA-005, ¶ 18, 147 N.M. 432, 224 P.3d 659 ("[P]eriods of time considered 'inevitable' and periods during which the case is moved 'toward trial with customary promptness' are not to be weighed against the [s]tate.").

### b. December 2011 to March 2012 -

#### Three Months in Defendant's Favor

{20} In December 2011 the judge assigned to Defendant's case retired and the position remained vacant until March 2012. Therefore, this period necessarily weighs in favor of Defendant as administrative delay. *See Garza*, 2009-NMSC-038, ¶ 29 (considering the "unavailability of judges" as negligent and weighed slightly in favor of the defendant).

### c. April 2, 2012 to April 19, 2012 -

#### Seventeen Days in the State's Favor

{21} From April 2, 2012 to April 19, 2012, Defendant and a co-defendant excused two assigned judges. Defendant concedes that this seventeen-day period should weigh in favor of the State. Considering Defendant was merely exercising a recognized statutory right to excuse a judge, we weigh this delay slightly in the State's favor. *See Rule 5-106 NMRA.*

### d. April 20, 2012 to March 19, 2013

#### - Eleven Months in Defendant's Favor

{22} From April 20, 2012 to March 19, 2013, the parties were engaged in plea

negotiations and the State conceded it was not working on the case "as much." Despite this, the State argues that this period should not be weighed against them. While plea negotiations generally should not be weighed against either party in a speedy trial analysis, *State v. Maddox*, 2008-NMSC-062, ¶ 24, 145 N.M. 242, 195 P.3d 1254, *abrogated on other grounds by Garza*, 2009-NMSC-038, ¶¶ 46-47, plea negotiations are not an absolute excuse for the delay of a prosecution and "unsuccessful plea negotiations do not constitute a valid reason for suspending the defendant's right to a speedy trial." *Id.* ¶ 25. Here, the State's own admission "that [it] was not working the case[.]" as well as the fact that it took several months to review Defendant's plea offer, despite Defendant's repeated reminders and requests, appear to confirm that the State was not attentively working on Defendant's case. Accordingly, we weigh this period of time slightly in favor of Defendant as neglect or negligent delay. *See State v. Lujan*, 1991-NMCA-067, ¶ 14, 112 N.M. 346, 815 P.2d 642 (holding that plea negotiations prolonged by delays in response by the prosecution "did not constitute a valid reason for suspending the time period with regard to [the] defendant's right to a speedy trial" and weighing this period slightly against the state); *see also State v. Moreno*, 2010-NMCA-044, ¶ 29, 148 N.M. 253, 233 P.3d 782 (holding that the state's repeated failure to schedule witness interviews, despite prodding by the defendant constituted bureaucratic indifference).

### e. March 19, 2013 to July 15, 2013 -

#### Four Months of Neutral Delay

{23} The delay from March 19, 2013 to July 15, 2013, stemmed from miscommunication between the parties regarding the severance of Defendant's case from co-defendants. The State moved to continue Defendant's March 25, 2013 trial setting, believing that the case was to be tried with the co-defendants. However, Defendant had moved to sever on March 19, 2013. Additionally, both the State and Defendant filed substantive motions with the district court that were not ruled on until July 15, 2013. Accordingly, we weigh this time neutrally because of the miscommunications between the parties and the actions taken in an attempt to move the case forward in a customary fashion. *See Garza*, 2009-NMSC-038, ¶ 27 (recognizing that a delay that is justified by a valid reason is appropriate and will be weighed neutrally); *State v. Palacio*, 2008-

NMCA-074, ¶¶ 21, 23, 146 N.M. 594, 212 P.3d 1148 (recognizing that the parties' confusion in an Interstate Agreement on Detainers Act case would be one basis to justify weighing the period of delay neutrally).

**f. July 15, 2013 to November 5, 2013  
- Three and One Half Months of  
Neutral Delay**

{24} This period is also weighed neutrally. Both parties were appropriately preparing for trial. The district court held hearings and ruled on various motions filed by the parties. The State filed a statement of facts, completed its psychological exam of Defendant, and Defendant attempted to convince the State to reform the indictment and filed a motion to exclude the State's psychological exam. The record supports the position that both parties were moving the case forward in a customary manner.

**g. November 5, 2013 to March 20, 2014 - Four and One Half Months  
in the State's Favor**

{25} At the November 5, 2013 docket call, Defendant requested that the November 12, 2013 trial setting be continued. Defendant gave two reasons for the continuance: (1) three pending motions needed to be heard and ruled upon before the trial could begin; and (2) defense counsel would be unavailable due to a scheduling conflict. The State argued that the motions could be handled before the November 12, 2013 trial setting, and that the trial could take place as scheduled. Defendant disagreed. Instead of being disposed of quickly, the district court took the motion under advisement. A ruling on the motion was not issued until March 20, 2014. Trial was continued until March 31, 2014, due to defense counsel's unavailability. Accordingly, we weigh this period of delay slightly in favor of the State.

**h. March 20, 2014 to July 24, 2014 -  
Four Months in Defendant's Favor**

{26} At the March 20, 2014 presentment hearing, both parties developed concern regarding the judge's ability to continue presiding over this case and filed a stipulated joint motion for a new presiding judge. A new judge was assigned to the case on July 24, 2014. The previous judge later resigned from the bench and publicly acknowledged that he received an Alzheimer's diagnosis. We weigh this period slightly against the State as administrative delay due to the unavailability of the presiding judge due to illness and the lack of any progress made by the court until a new judge was assigned.

**i. July 24, 2014 to November 25, 2014  
- Four Months of Neutral Delay**

{27} On August 22, 2014, the new judge held a hearing on Defendant's pending motion to dismiss on speedy trial grounds. An order denying Defendant's motion was entered on September 30, 2014. The district court then made appropriate preparations for trial. However, our Supreme Court issued an opinion on Defendant's appeal of his bond amount and conditions of release on November 6, 2014. *See Brown*, 2014-NMSC-038, ¶ 1. The next day, Defendant filed a supplemental authority for reconsideration of the previous denial of his speedy trial motion. The district court reconsidered Defendant's speedy trial motion and dismissed the case on November 25, 2014. Given that the district court and parties were proceeding with customary promptness during this time, we weigh this period of delay neutrally.

**j. Overall Determination of the  
Reasons for Delay**

{28} We conclude that forty-two months of delay occurred in this case. Approximately five months weigh in favor of the State, approximately eighteen months weigh in favor of Defendant, and approximately nineteen months weigh as neutral delay. The State is the party responsible for the most delay and the amount of delay caused by the State equals the eighteen-month presumptively prejudicial time period. As a result, we concluded that the reasons for delay weigh slightly to moderately in favor of Defendant.

**3. Assertion of the Right**

{29} "[T]he timeliness and vigor with which the right [to a speedy trial] is asserted may be considered as an indication of whether a defendant was denied [the right] to [a] speedy trial over his objection or whether the issue was raised on appeal as [an] afterthought." *Garza*, 2009-NMSC-038, ¶ 32. Accordingly, we consider Defendant's assertion or failure to assert his right to a speedy trial as a factor in determining whether Defendant was deprived of that right. *See id.* ¶ 31. In this consideration, "[the appellate courts] assess the timing of the defendant's assertion and the manner in which the right was asserted." *Id.* ¶ 32. "[W]e accord weight to the 'frequency and force' of the defendant's objections to the delay" and "analyze the defendant's actions with regard to the delay." *Id.* The individual circumstances of each case must be closely analyzed. *Id.* ¶ 33.

{30} In ruling on Defendant's initial motion to dismiss on speedy trial grounds,

the district court found that Defendant "clearly and repeatedly asserted his right to a speedy trial." We agree. Throughout the forty-two-month pretrial process, the district court recognized that Defendant made no fewer than twelve assertions in filed pleadings, and also raised the assertion orally in open court. After his initial demand for speedy trial on June 28, 2011, Defendant made demands for speedy trial on June 4, 2013, and a renewed request on June 18, 2013. He again asserted his speedy trial right in an *ex parte* notice of delay on October 7, 2013. He cited ongoing delay in two motions filed October 28, 2013. On November 4, 2013, Defendant asserted that "the delays had infringed on his speedy trial rights and requested that all further delays be weighed against the State for speedy trial purposes." Defendant also mentioned his speedy trial rights in two response briefs filed on November 15, 2013 and November 21, 2013. He again asserted his right in a motion for a presentment hearing on January 30, 2014, and finally filed his formal motion to dismiss on speedy trial grounds on March 20, 2014. {31} Although the district court recognized Defendant's numerous assertions of his right to a speedy trial, the district court weighed this factor only nominally in his favor, finding that Defendant contributed to the delay. The court referenced Defendant's November 5, 2013 continuance request, and several motions that could have been filed earlier to avoid delay. The court further likened Defendant's conduct to the dilatory acts recognized as "gamesmanship." *See Steinmetz*, 2014-NMCA-070, ¶ 62 (commenting that because the defendant "invoked his right to a speedy trial in words while simultaneously operating in a dilatory manner leads us to conclude that [the d]efendant's assertions of the right were at best nominal and at worst an act of gamesmanship").

{32} We partially disagree with the district court. Defendant's "clear and repeated" assertions throughout the entirety of his case weigh this factor more than nominally in his favor. *See Serros*, 2016-NMSC-008, ¶ 77 (holding that three pro-forma assertions of the right to speedy trial are entitled to some weight in favor of the defendant); *see also Garza*, 2009-NMSC-038, ¶ 34 (holding that a single demand for a speedy trial, "tucked within the waiver of arraignment and not guilty plea," was sufficient in combination with no evidence that the defendant had acquiesced to the delay and weighed this factor slightly in

the defendant's favor). The question shifts to the amount of weight that should be assigned to this factor. Though the district court weakened the weight of Defendant's assertions because Defendant contributed to the delay, we hold that weighing of this factor nominally in Defendant's favor was not appropriate and we do not recognize any dilatory acts of gamesmanship in this record. Because it is not critical to the final outcome in this case, we weigh this factor clearly in Defendant's favor, but not to the point of weighing strongly in his favor.

#### 4. Prejudice

{33} "The 'heart' of the speedy trial right 'is preventing prejudice to the accused.'" *Lujan*, 2015-NMCA-032, ¶ 20 (quoting *Garza*, 2009-NMSC-038, ¶ 12). Prejudice to a defendant during a speedy trial analysis is determined through an investigation into conditions that may arise from lengthy pretrial delays. The right to a speedy trial seeks to "prevent oppressive pretrial incarceration[,] . . . minimize anxiety and concern of the accused[,] . . . and . . . limit the possibility that the defense will be impaired." *Serros*, 2016-NMSC-008, ¶ 84 (internal quotation marks and citation omitted); *Garza*, 2009-NMSC-038, ¶ 35. Generally, the defendant has the burden of proof to show "particularized prejudice." *Serros*, 2016-NMSC-008, ¶ 86 (internal quotation marks and citation omitted). Because "some degree of oppression and anxiety is inherent for every defendant who is jailed awaiting trial," the defendant bears the burden to establish that "the pretrial incarceration or the anxiety suffered [by the defendant] is undue." *Id.* ¶ 89 (alterations, internal quotation marks, and citation omitted). However, "if the length of delay and the reasons for the delay weigh heavily in [the] defendant's favor and [the] defendant has asserted his right and not acquiesced to the delay, then the defendant need not show prejudice for a court to conclude that the defendant's right has been violated." *Id.* ¶ 86 (internal quotation marks and citation omitted). Because this Court has determined that the reasons for the delay factor did not weigh heavily in Defendant's favor, Defendant must establish the prejudice factor in order to show that his right to a speedy trial has been violated. *See id.*

{34} The first interest examined in the prejudice portion of the speedy trial analysis is the oppressive nature of the pretrial incarceration. Whether the pretrial incarceration is oppressive "depends on the length of incarceration, whether

the defendant obtained release prior to trial, and what prejudicial effects the defendant has shown as a result of the incarceration." *Id.* ¶ 89 (internal quotation marks and citation omitted). "It cannot be denied that two-and-one-half years of pretrial incarceration[,] one's life on indefinite hold, waiting for one's trial to commence—is very substantial prejudice, of the precise kind that the [s]peedy [t]rial [c]lause was meant to avoid." *Moreno*, 2010-NMCA-044, ¶ 37 (alteration, internal quotation marks, and citation omitted); *compare Serros*, 2016-NMSC-008, ¶ 90 (holding that pretrial incarceration of over four years is "oppressive on its face"), with *Salandre v. State*, 1991-NMSC-016, ¶ 29, 111 N.M. 422, 806 P.2d 562 (holding that bond restrictions for one month were not oppressive).

{35} Defendant was incarcerated for thirty-three months, starting with his arrest on May 26, 2011, until our Supreme Court ordered his release on nonmonetary bond on February 19, 2014. *See Brown*, 2014-NMSC-038, ¶¶ 2, 55. Our Supreme Court held that the district court failed in its responsibility to follow Rule 5-401 NMRA, providing that the court take into account not only "(1) the nature and circumstances of the offenses charged[, but also] (2) the weight of the evidence against the person[,] (3) the history and characteristics of the person[,] . . . (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release[,] and (5) any other facts tending to indicate the person is likely to appear" at all court proceedings. *Brown*, 2014-NMSC-038, ¶ 39. Our Supreme Court further held that the district court's decision was "arbitrary and capricious and that the [district] court abused its discretion," reasoning that "[b]ail is not pretrial punishment and is not to be set solely on the basis of an accusation of a serious crime." *Id.* ¶¶ 47, 52. A charged offense "does not permit the judge to put a price tag on a person's pretrial liberty," and "[s]etting money bail based on the severity of the crime leads to either release or detention, determined by a defendant's wealth alone." *Id.* ¶ 52.

{36} As thirty-three months of incarceration occurred in this case—more than "two-and-one-half" years, a length of incarceration cited to be "very substantially prejudicial" in *Garza*—we conclude that Defendant was substantially prejudiced by his pre-trial incarceration. 2009-NMSC-038, ¶ 35. Other mitigating factors present-

ed by the State, including that Defendant finished his high school education, did not suffer reported incidents of violence, and did not receive any behavioral misconduct violations while incarcerated do not sufficiently affect the degree of prejudice suffered as a result of Defendant's extended pretrial incarceration. Because Defendant need not prove both undue pretrial incarceration and undue anxiety suffered, but may prove either, a determination of substantial prejudice arising from undue pretrial incarceration is justified in this case. *See Spearman*, 2012-NMSC-023, ¶ 36 ("[W]e weigh this factor in the defendant's favor where the pretrial incarceration or the anxiety suffered is undue." (alteration, internal quotation marks, and citation omitted)).

{37} A speedy trial analysis of prejudice also seeks to "minimize [the] anxiety and concern of the accused." *Serros*, 2016-NMSC-008, ¶ 84 (internal quotation marks and citation omitted); *Garza*, 2009-NMSC-038, ¶ 35. In this case, Defendant lost two jobs during his unlawful incarceration and received only three visits from his family, from whom he had never lived apart, due to financial and travel constraints. After his release from pretrial incarceration, Defendant was not able to secure employment before the case was dismissed. These circumstances would also factor into the level of prejudice suffered by Defendant and support the district court's finding that Defendant suffered prejudice due to his unlawful thirty-three-month period of pretrial incarceration. As a result, we agree that Defendant also established undue anxiety suffered during his thirty-three-months of pretrial incarceration.

{38} The district court denied Defendant's initial speedy trial motion on September 30, 2014, finding that Defendant did not suffer sufficient prejudice as a result of his pretrial incarceration. After the publication of the *Brown* decision by our Supreme Court, the district court reconsidered and granted Defendant's motion to dismiss on speedy trial grounds. The district court did not explain its reallocation of the specific weight and heightened prejudice suffered by Defendant as a result of his undue pretrial incarceration, but determined that this *unlawful* pretrial incarceration weighed more heavily in Defendant's favor than it would have otherwise been weighed if such incarceration had been lawfully imposed. Consistent with our Supreme Court's determination that Defendant's unlawful and arbitrary

bail “put a price tag on [Defendant’s] liberty” and that it should not have been a “pretrial punishment . . . [based] solely on the basis of an accusation of a serious crime[.]” it is equally reasonable for the district court to determine that Defendant’s unlawful pretrial incarceration heightened the prejudice factor and can be weighed more heavily in Defendant’s favor. *Brown*, 2014-NMSC-038, ¶ 52.

{39} The State argues that because our Supreme Court was only able to consider the denial of Defendant’s pretrial release from the time of his appeal, the time that Defendant was *unlawfully* incarcerated was not thirty-three months, but limited to the seven-month period from the time of the district court’s denial of Defendant’s motion until the Supreme Court’s subsequent order of his release. The State asserts that, because seven months is a much shorter time period and “pales in comparison to the possible sentence that Defendant faced on his second degree murder charge[.]” Defendant has not shown prejudice. We disagree.

{40} Our Supreme Court did not recognize that only a portion of Defendant’s pretrial incarceration was undue and violated Rule 5-401, but determined that his entire \$250,000 bond amount was in error and ordered Defendant’s immediate release on nonmonetary conditions. See *Brown*, 2014-NMSC-038, ¶¶ 1, 55. Because Defendant’s thirty-three months of pretrial incarceration already demonstrates a substantial degree of prejudice, any additional prejudicial factors would only add to the degree of prejudice suffered. Therefore, even if we were to accept the State’s position that Defendant’s thirty-three months of illegal pretrial incarceration did not add significantly more prejudice to this analysis, it nevertheless concedes that some heightened level of prejudice oc-

curred. Combining these incarceration factors with the numerous forms of additional anxiety suffered and the illegality of Defendant’s nearly three years of incarceration, the district court was entitled to reconsider its previous speedy trial ruling, and reasonably conclude that Defendant suffered undue prejudice from his illegal thirty-three months of pretrial incarceration. We agree and hold that, under these circumstances, Defendant presented substantial evidence to establish that the prejudice factor weighed in his favor, even more than slightly.

{41} One final aspect of the prejudice factor that must be analyzed is “the possibility that the defense will be impaired.” *Serros*, 2016-NMSC-008, ¶ 84 (internal quotation marks and citation omitted). This aspect of prejudice is considered the *most serious* of the three interests protected by the right to a speedy trial, and protects a defendant’s ability to adequately defend against the charges filed. *Garza*, 2009-NMSC-038, ¶ 36 (emphasis added). Typical problems associated with this interest include the death or disappearance of a witness or the loss of memory by witnesses. *Id.* To show this type of prejudice, Defendant must show “with particularity what exculpatory evidence would have been offered and that the delay caused the evidence’s unavailability.” *Serros*, 2016-NMSC-008, ¶ 85 (alterations, internal quotation marks, and citation omitted); *Garza*, 2009-NMSC-038, ¶ 36.

{42} Defendant asserts that his case was prejudiced because he was unable to interview a “critical” witness due to the State’s inability to make the witness available. Defendant asserts that when he was finally able to interview the witness, the witness had a “faded memory of the event that happened [on May 13, 2011].” However, Defendant failed to assert what

the witness would have testified to had he been interviewed earlier. The district court concluded that “[g]iven the lack of specificity in Defendant’s arguments . . . these assertions are speculative . . . and . . . the delay in interviewing” this witness did not impair the defense. We agree. However, the fact that Defendant’s case was not further prejudiced by the specific details of a witness’s faded memory does not change our overall conclusion that Defendant suffered sufficient prejudice during the forty-two-month delay in this case, thirty-three months of which was illegal pretrial incarceration after the date of his arrest.

### C. Balancing the Four Factors

{43} The length of delay weighs heavily in Defendant’s favor. The assertion of the right weighs in Defendant’s favor but not heavily in his favor. The reasons for the delay weighs slightly to moderately in favor of Defendant. The undue prejudice suffered as a result of the lengthy delay, the specific anxiety, and the illegality of Defendant’s pretrial incarceration all weigh in Defendant’s favor. We agree with the district court that none of the *Barker* factors weigh in favor of the State. Therefore, we conclude that the *Barker* factors weigh sufficiently in Defendant’s favor to establish a violation of his right to a speedy trial and that the district court appropriately dismissed Defendant’s charges on speedy trial grounds.

### CONCLUSION

{44} We affirm the district court’s order dismissing Defendant’s case with prejudice.

{45} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

### WE CONCUR:

M. MONICA ZAMORA, Judge

J. MILES HANISEE, Judge





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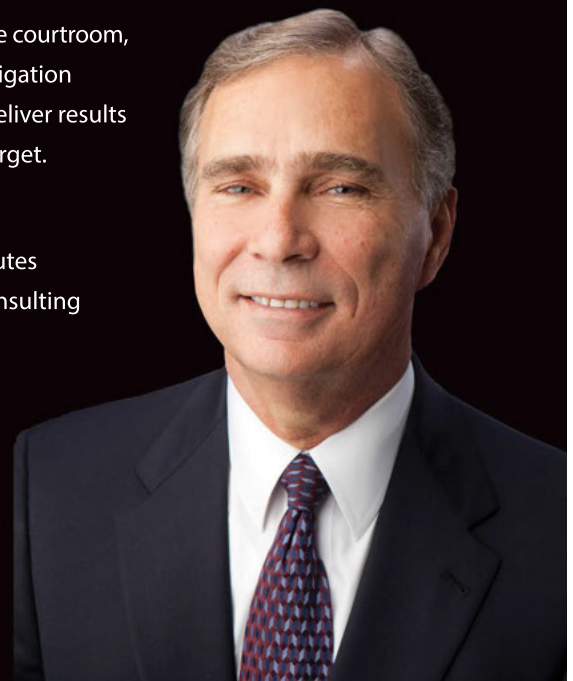
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www.sycamore-associates.com

### A Civilized Approach to Civil Mediation

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

## Classified

### Positions

#### Attorney

Atkinson, Baker & Rodriguez, P.C. seeks attorney with strong academic credentials and 3-8 years civil litigation experience for successful, established complex commercial and tort litigation practice. Excellent benefits. Tremendous opportunity for professional development. Salary D.O.E. All inquiries kept confidential. Send resume and writing sample to Atkinson, Baker & Rodriguez, P.C., Attorney Recruiting, 201 Third Street NW, Suite 1850, Albuquerque, NM 87102.

#### Associate Attorney

Associate Attorney for busy Plaintiff Personal Injury/Medical Malpractice law firm. At least 1 year of civil litigation experience required in both State and Federal Courts. Ability to draft legal documents and perform legal research. Must have strong analytical skills. Self-starter with ability to work independently. Heavy caseload with travel involved. Willing to obtain Navajo Bar admission within first year of employment. Please forward Resume with references to lawapplicant4@gmail.com.

#### Assistant City Attorney Position

City of Albuquerque Assistant City Attorney position available within the Safe City Division of the Legal Department, with a main focus on providing legal advice to the City of Albuquerque and its various departments regarding the Inspection of Public Records Act ("IPRA") requests, and advising on subpoenas issued against the City, its departments, or its employees. Applicant must be admitted to the practice of law in New Mexico, be an active member of the Bar in good standing, and have at least two (2) years of attorney experience in New Mexico. Preferred qualification: knowledge of IPRA, and civil and/or criminal procedure. A successful candidate will have strong communication skills, be able to work within a diverse legal team, and interact daily with other City employees and members of the public. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to the attention of "Safe City IPRA Attorney Application"; c/o Ramona Zamir-Gonzalez; Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Deadline is August 15, 2017.

#### Family Law Associate Attorney

The Law Office of Jill V. Johnson Vigil LLC., a Las Cruces based family law practice, is seeking to add an attorney to our team. Preferably applicants should have 2-3 years experience in family law. All applicants should be highly motivated, able to multi-task and manage a large case load. The Law Office of Jill V. Johnson Vigil LLC. offers a comfortable and friendly work environment with benefits and competitive salary commensurate with your qualifications and experience. Applicants must be in good standing with NM Bar and willing to relocate to Las Cruces. Spanish speaking is preferred, but not required. If you are ready for the next step in your career, please send your cover letter, resume, writing sample, and three references via email to careers@jvjlw.com before August 31, 2017. Please visit us online at www.jvjlw.com.

#### HIDTA- Deputy District Attorney

Immediate opening for HIDTA- Deputy District Attorney in Deming. Salary DOE: between \$50,000 - \$64,000 w/benefits. Please send resume to Francesca Estevez, Sixth Judicial District Attorney: FMartinez-Estevéz@da.state.nm.us Or call 575-388-1941

## **Deputy City Attorney EOE**

### **Department: Administration**

**SUMMARY:** Under limited supervision of the City Attorney, the Deputy City Attorney is responsible for supporting the legal needs of the City of Roswell including providing advice to City Administrators as well as representing the City in litigation and legal matters. Work originates through the ongoing need of City government to enter into contracts, enforce state and federal laws, and defend the City in litigation. Work involves considerable contact with City employees, the court system, and general public and highly complex legal principles and practices. FOR FURTHER INFORMATION AND APPLYING PLEASE VISIT OUR WEBSITE AT: [www.roswell-nm.gov](http://www.roswell-nm.gov) or contact [n.borunda@roswell-nm.gov](mailto:n.borunda@roswell-nm.gov)

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

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

## **Proposals**

The Pueblo of Laguna seeks proposals to have their Public Defender and Prosecutor services assessed prior to September 30, 2017. The work product will include a written and oral report to the Pueblo Council and written professional standards for public defenders and prosecutors. Contractor must conduct an onsite assessment to determine whether standards are being met and recommend corrective actions. The onsite assessment must include courtroom observations, a sampling of criminal court case files, interviews with Laguna Court, Probation, Prosecution and Public Defender personnel, and completing and collecting data from a public survey. The person or team conducting the assessment must have experience working with tribal courts and knowledge of prosecution and defender standards. Proposals with resumes of the assessment team must be sent to: Monica Murray, Court Administrator, Pueblo of Laguna at [mmurray@lagunapueblo-nsn.gov](mailto:mmurray@lagunapueblo-nsn.gov) and received by August 16, 2017.

## **Pueblo of Laguna – Attorney**

The Pueblo of Laguna is seeking applicants for a full time Attorney. Under general direction of Government Affairs Director, serves as an in-house legal advisor, representative, and counselor. Ensures the adherence to applicable laws to protect and enhance tribal sovereignty, to avoid or prevent expensive legal disputes and litigation, and to protect the legal interests of the Pueblo government. Consistently applies the Pueblo's Core Values in support of Workforce Excellence. Maintains confidentiality of all privileged information. For more specific information, including application instructions, go to [www.lagunapueblo-nsn.gov](http://www.lagunapueblo-nsn.gov) and click on Employment Opportunities.

## **Assistant Trial Attorney, Trial Attorney and Senior Trial Attorney**

The Third Judicial District Attorney's Office is accepting applications for an Assistant Trial Attorney, a Trial Attorney, and a Senior Trial Attorney in the Las Cruces Office. Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney up to a minimum of 4 years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Please send interest letter/resume by COB July 28, 2017 to Whitney Safranek, Human Resources Administrator, 845 N Motel Blvd., Suite D, Las Cruces, New Mexico 88007 or [wsafranek@da.state.nm.us](mailto:wsafranek@da.state.nm.us). Further description of each position is listed on our website <http://donaanacountyda.com/>.

## **Associate Attorney**

Well established plaintiff's personal injury law firm in Los Lunas seeks associate attorney with 2-6 years of experience, preferably in personal injury and/or medical malpractice. Will consider new attorney if candidate has previous relevant experience. Competitive salary commensurate with experience. All responses kept strictly confidential. Please send your cover letter, resume and references to Office Manager, PO Box 2416, Los Lunas, NM 87031.

## **Executive Director**

Enlace Comunitario, a domestic violence non-profit organization serving Spanish-speaking immigrants seeks Executive Director. The Director provides leadership, strategic direction, management & oversight of all aspects of the organization. Bilingual Spanish/English reqd. For complete job description see [www.enlacenm.org](http://www.enlacenm.org). Competitive salary and benefits. EOE. To apply, email cover letter and resume to: [info@enlacenm.org](mailto:info@enlacenm.org).

## **Associate Attorney**

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

## **Associate Attorney**

The Albuquerque office of Rothstein Donatelli seeks associate attorney with a passionate interest in criminal defense and Plaintiff's side civil rights litigation. Requires excellent research and writing skills. Compensation commensurate with experience. Please send cover letter, resume and writing samples to: [jmeserve@rothsteinlaw.com](mailto:jmeserve@rothsteinlaw.com)

## **Attorney**

Join our personal injury team! We are seeking an energetic, independent, self-starter who does not need to be micro-managed. The right attorney will want to help people, have an interest in litigation and a positive outlook. Supportive work environment. Spanish speaking a plus. Salary DOE. Benefits. All inquiries kept strictly confidential. Please send resume and/or letter of interest to [staff@lrioslaw.com](mailto:staff@lrioslaw.com) or fax to 1-888-392-5307.

## **Billing Clerk**

Lewis Brisbois Bisgaard & Smith LLP is searching for Billing Clerks to provide clerical support to the billing department, including editing and maintaining pre-bills, updating budgetary information, invoice submission, and other duties related to the submission of monthly billing. Must have a high quality level of customer service, effective communication, professionalism and interpersonal skills as the role requires various interactions with management, attorneys, and other staff, in addition to firm clients, in the midst of a fast-paced, deadline driven environment. Applicants must have a minimum of 5 years in an office environment, with 3 or more years of hands-on clerical experience in law firm environment; strong technology skills, including demonstrated proficiency with Excel. High school diploma required; college level courses in Accounting or Accounting Degree is a plus. Please apply via email to [stephanie.reinhard@lewisbrisbois.com](mailto:stephanie.reinhard@lewisbrisbois.com).

### Legal Assistant I

**JOB TYPE:** Regular; **DEPARTMENT/DIVISION:** County Attorney's Office ; **SALARY:** Range is \$21.64/hr. to \$31.90/hr.; **OPENING DATE:** July 26, 2017; **CLOSING DATE:** August 16, 2017 at 5:00 PM; **ANNOUNCEMENT NUMBER:** 18-08; **Position Summary:** Under general supervision of the County Attorney, performs the functions of a Legal Assistant and independently manages the administrative procedures and processes of the Attorney's office. Maintains confidentiality of all privileged information. For full job details, visit our website at [www.losalamosnm.us](http://www.losalamosnm.us); **How to Apply:** County application is required. Apply at the Human Resources Division, County of Los Alamos, 1000 Central Avenue, Ste. 230, Los Alamos, NM 87544. Applications are available in our office, at [www.losalamosnm.us](http://www.losalamosnm.us) or by calling (505)662-8040. All vacant positions are listed on the above website.

### Litigation Legal Secretary/Paralegal

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

### Paralegal

Albuquerque law firm has an immediate need for a paralegal with 3 to 5 years' experience in all aspects of litigation law. Please submit your resume and references. Starting salary DOE. Benefits include paid parking, health, life, disability and dental insurance, matching 401(K), paid holidays, generous vacation to POB 92860 ABQ, NM 87199 Attn: Box B. All replies kept confidential.

### Legal Assistant

This firm's success is grounded on its progressive and growth oriented philosophy, geographical office locations, and legal expertise, as well as the most modern technology and procedures. You can become a vital player as legal assistant to one of the partners specializing in Civil Litigation Medical Malpractice Defense. You will work as a team with another legal assistant, assisting the four attorneys in the medical malpractice group. Standards are high! Can you step up to the challenge? Ideal candidates will have five or more years of medical malpractice defense experience, strong MS Word and Word Perfect proficiency, and a proven track record. \$50,000 to \$60,000, depending on experience, plus excellent benefits. Only Santa Fe residents will be considered. Please email resumes to: [gromero@hinklelawfirm.com](mailto:gromero@hinklelawfirm.com).

### Electronic Billing

Law firm seeks person experienced in electronic billing. Experience with TABS3 software is preferred. The ideal candidate must be a team player with a positive attitude, exhibit strong communication skills and be extremely detail-oriented. Schedule is Monday thru Friday, 8 am to 5 pm. Starting salary DOE. Benefits include paid parking, health, life, disability and dental insurance, matching 401(K), paid holidays, generous vacation. Please submit your resume and references to POB 92860, ABQ, NM 87199 Attn: Box B.

### Paralegal Wanted

Park & Associates, LLC is seeking a full or part time paralegal, with a minimum of 3 to 5 years of experience. Experience is preferred in general civil practice, including medical malpractice defense, personal injury and civil rights. Candidates should have excellent writing and research skills, and the ability to work independently. A paralegal certificate or degree is preferred. Competitive salary and benefits. All inquiries will be kept confidential. Please submit resume and salary requirements to: [jertsgaard@parklawnm.com](mailto:jertsgaard@parklawnm.com)

### Paralegal & LGL ASST A Perm#18546

**PURPOSE:** The position provides assistance to Office of General Counsel attorneys for the Department of Transportation, Santa Fe New Mexico in practice areas of administrative and government law, employment, labor, garnishments, contracts and torts. The position is responsible for case management and calendaring and will conduct legal research, investigate facts and prepare legal documents as needed. The position will assist in areas of litigation, including but not limited to discovery and hearing preparation. The position has primary responsibility for preparation of wage withholding and garnishment files, pleadings and communications with creditors, debtors and other state and federal agencies. You can apply at the State of New Mexico Personnel Office, <https://www.governmentjobs.com/careers/newmexico>

### Experienced Paralegal for Las Cruces Firm

Las Cruces law firm is seeking a paralegal with 2+ years experience in civil litigation. Candidates should have excellent writing, organization and technology skills, and be able to work well with others and independently in a fast-paced, professional environment. Bilingual is a plus. Background check required. Full time schedule. Competitive salary and benefits, including 401K plan. Please submit resume, cover letter and four work references to: [Stefanie@lawfirmnm.com](mailto:Stefanie@lawfirmnm.com)

### Billing Specialist

Established in 1979, Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois") is a national, full-service law firm with more than 1,125 attorneys and 41 offices in 26 states. We are listed among the prestigious AmLaw 100 and ranked 15th in the Law360 400 list of the nation's largest law firms. As a result of growth and expansion, we are currently searching for Billing Specialists. The Billing Specialist will accurately and efficiently generate, edit, prepare and execute monthly pre-bills and subsequent invoices and appeals for submission to clients. Excellent communication and a high level of professional service to clients, management, attorneys and other staff are required in order to effectively, efficiently and successfully administer monthly billing, and research, respond to, and resolve inquiries or discrepancies regarding billing related issues. The role requires interaction with management, attorneys, and other staff, in addition to firm clients, in the midst of a fast-paced, deadline driven environment. The Billing Specialist must understand and demonstrate expertise in all facets of the electronic billing function, particularly for insurance defense matters which may include split and other complex billing arrangements. Applicants must have 4 or more years hands-on billing experience in a law firm environment, including at least 2 years electronic billing experience; Aderant, Elite, LawTime (or equivalent) legal accounting software experience; strong technology and office skills including demonstrated, advanced proficiency in Excel, Word and Outlook, and ability to create, edit, and present complex data, analyses and ad hoc reports; hands on familiarity with multiple e-billing vendor systems and outside counsel guidelines; eBillingHub experience a plus. High school diploma required; college level courses in Accounting or Accounting Degree is a plus. Please apply via email to [stephanie.reinhard@lewisbrisbois.com](mailto:stephanie.reinhard@lewisbrisbois.com).

## Office Space

### Southwest Style Office For Lease

Huge office (20'x 16'), part of private office suite. Complete with: staff space, conference room, waiting area, and break room. Ample parking for clients. Freeway access. Close to courthouses. Courtyard entrance with mature landscaping. Viga ceilings and adobe walls. \$1,500/month (includes rent, utilities, and grounds maintenance). Contact Carol or Nina at (505) 246-1669.

## Miscellaneous

### Want To Purchase

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



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## JAG OFFICER PROGRAM



THE UNITED STATES MARINE CORPS IS ACTIVELY SEEKING LAW STUDENTS AND BAR CERTIFIED ATTORNEYS TO SERVE AS JUDGE ADVOCATES. AS A JUDGE ADVOCATE IN THE MARINE CORPS, YOU ARE MORE THAN JUST AN ATTORNEY – YOU ARE AN OFFICER OF MARINES. QUALIFYING CANDIDATES ATTEND 10 WEEKS OF TRAINING AT MARINE CORPS OFFICER CANDIDATES SCHOOL IN QUANTICO, VIRGINIA – THE PROVING GROUND FOR MARINE OFFICERS. UPON COMPLETION, THEY ARE COMMISSIONED AS A SECOND LIEUTENANT AND ATTEND FOLLOW-ON MARINE CORPS TRAINING, EVENTUALLY COMPLETING THE NAVAL JUSTICE SCHOOL IN RHODE ISLAND.

AS A JUDGE ADVOCATE, YOU WILL DISTINGUISH YOURSELF AS ONE OF THE 400 ATTORNEYS IN THE MARINE CORPS. YOU WILL PRACTICE A WIDE ARRAY OF LEGAL WORK, TO INCLUDE: CRIMINAL DEFENSE, CRIMINAL PROSECUTION, INTERNATIONAL AND OPERATIONAL LAW. JUDGE ADVOCATES ARE GUARANTEED TO GO STRAIGHT TO THE COURTROOM AFTER COMPLETING ALL PREREQUISITE TRAINING. TO SEE IF YOU QUALIFY, CONTACT YOUR LOCAL OFFICER SELECTION OFFICER TODAY.



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Trish Rose | Branch Manager, Vice President, NMLS # 682578  
780 Juan Tabo NE, Albuquerque, NM 87123 | T (505) 346-4302 |  
[trish.rose@bankofthewest.com](mailto:trish.rose@bankofthewest.com)



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