

# BAR BULLETIN

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*Cottonwood Cloaking—Dry Brush,*  
by Robert A. Martin (see page 3)

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## Firm Profile



# WELCOME TO OUR NEW ASSOCIATES



Kimberly Knox



Ian Bearden

Modrall Sperling is pleased to announce that Kimberly Knox and Ian Bearden have joined our firm's Albuquerque office.

Kimberly, a graduate of American University's Washington College of Law, joins our Litigation Department, where her interests lie in antritrust, white collar defense, employment and complex litigation. She was in practice with Baker & Miller before becoming Global Legal Counsel and Litigation Coordinator for Tokai Rika, an auto parts manufacturer headquartered in Japan.

As a member of the firm's Transactions Department, Ian focuses his practice on state and federal tax matters, including estate and succession planning, corporate tax, mergers and acquisitions, New Mexico gross receipts tax, and executive compensation. He is a graduate of the University of New Mexico School of Law, where he clerked for the New Mexico Tax and Revenue Department. Ian received his LLM in Tax from the University of Florida Levin College of Law.

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## Meetings

### August

23

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

25

**Immigration Law Section Board**  
Noon, teleconference

28

**Committee on Diversity in the Legal Profession**  
Noon, State Bar Center

31

**Trial Practice Section Board**  
Noon, State Bar Center

### September

5

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

5

**Bankruptcy Law Section Board**  
Noon, U.S. Bankruptcy Court

6

**Employment and Labor Law Section Board**  
Noon, State Bar Center

8

**Prosecutors Section Board**  
Noon, State Bar Center

12

**Appellate Practice Section Board**  
Noon, teleconference

## Workshops and Legal Clinics

### August

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

20

**Common Legal Issues for Senior Citizens Workshop**  
10–11:15 a.m., Bonine Dallas Senior Center,  
Farmington, 1-800-876-6657

20

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

**About Cover Image and Artist:** Robert A. Martin began photographing at 8 years old and continues into his eighth decade, enjoying a wide variety of subjects. Martin was a member of the State Bar, practicing from 1967–2002. He enjoys traveling extensively. View more of his work online at <https://www.flickr.com/photos/94779902@N00/>.

# 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. The 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](mailto:sfeddiv2proposedtxt@nmcourts.gov). The Division II telephone number will remain 505-455-8160.

### Second Judicial District Court Exhibit Destruction Notice

Pursuant to 1.21.2.617 Functional Records Retention and Disposition Schedules-Exhibits), the Second Judicial District Court will destroy Domestic (DM/DV) exhibits filed with the Court for cases for the years of 1993 to the end of 2012, including but not limited to cases which have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through Sept. 29. Parties with cases with exhibits should verify exhibit information with the Special Services Division, at 505-841-6717 from 10 a.m.-2 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel of record for the plaintiff(s) and defendant's exhibits will be released to counsel of record for defendants(s) by Order of the Court. All exhibits will be released IN THEIR ENTIRETY. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

### 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.

## Professionalism Tip

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

I will be punctual for court hearings, conferences and depositions.

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

## STATE BAR NEWS

### Attorney Support Groups

- Sept. 11, 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#.
- Sept. 18, 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.

### 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).

### Entrepreneurs in Community Lawyering Fall Incubator Boot Camp Open to Solo Practitioners

Entrepreneurs in Community Lawyering, the State Bar's new legal incubator program, will host its third Boot Camp Oct. 17-20 at the State Bar Center. The Boot Camp is a condensed and intense introduction to the basics of setting up and managing a solo law practice. It also offers a learning opportunity for new lawyers not in ECL, who are starting or considering starting a solo practice. The Boot Camp covers a wide range of business topics and practice management issues. The State Bar invites up to 10 members to join ECL's participating attorneys for the October 2017 Boot Camp, on a first-come, first-serve basis. CLE credit is not offered but materials will be provided to each participant. View the curriculum at [www.nmbar.org/ECL](http://www.nmbar.org/ECL). For more information or to enroll contact Stormy Ralstin at 505-797-6053 or Ruth Pregoner at 505-797-6077.

### 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



## 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.

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

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 IP 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—as in never been done before—opportunity for our state and we hope to see as many of you there as possible.

## Paralegal Division Half-Day Mixed Bag CLE—Open to Paralegals and Attorneys

The Paralegal Division presents a "Half-Day Mixed Bag" CLE program (3.0 G), from 9 a.m.–noon, Sept. 23, at the State Bar Center. The CLE is open to paralegals

and attorneys. The cost is \$35 for Paralegal Division members, \$50 for non-member paralegals and \$55 for attorneys. Topics include Pre-Adjudication Animal Welfare (P.A.W.) Court, third party sexual harassment and the attorney/paralegal relationship. Contact Christina Babcock at [cbabcock1@cnm.edu](mailto:cbabcock1@cnm.edu).

## RFP for Audit and Tax Services Deadline: Sept. 1

The State Bar of New Mexico and New Mexico State Bar Foundation are seeking proposals from qualified CPA firms to provide financial statement audit and tax preparation services for the two organizations. The term sought is an annual engagement starting with the fiscal year ended Dec. 31, 2017, with up to five annual renewal options (FY 2018–2022). The complete request for proposal can be found on the State Bar's website at [www.nmbar.org](http://www.nmbar.org) by selecting the "Financial Information" option from the "About Us" menu. The deadline for submission of proposals is 4 p.m. MST, Friday, Sept. 1, 2017.

## UNM Law Library Hours

### Building & Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.
<i>Reference</i>	
Monday–Friday	9 a.m.–6 p.m.



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

## OTHER BARS

### Albuquerque Lawyers' Club New Luncheon Speaker Season Kicks off with Judge Nan Nash

The Albuquerque Lawyers' Club, the oldest lawyers group in Albuquerque, announces the beginning of its 2017-2018 season. The Club meets for nine lunch sessions, which feature compelling speakers addressing issues important to the law, New Mexico culture and issues of the day. Past speakers have included Sam Donaldson, Mayor Richard Berry, best-selling author Lee Maynard, and Captain David Iglesias. Membership dues for the year are \$250 and include all nine lunches. The lunch meetings are held at Seasons Restaurant on the first Wednesday of each month, at noon, September through May. Non-members are also welcome to our lunches. The cost for each lunch for non-members is \$30 in advance or \$35 on the day of. The first meeting will be held on Sept. 6 and will feature Judge Nan Nash, chief judge of the Second Judicial District Court. Judge Nash will discuss the court's recent role in advancing justice through system reform and reflect on this role when its efforts may run counter to the public's perception of justice. Judge Nash will be introduced by Chief Judge Linda Vanzi of the New Mexico Court of Appeals. For more information, contact Yasmin Dennig at [ydenning@Sandia.gov](mailto:ydenning@Sandia.gov).

## 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.

### **New Mexico Defense Lawyers Association 2017 Award Winners**

The New Mexico Defense Lawyers Association is pleased to announce that W. Mark Mowery has been selected as the 2017 Outstanding Civil Defense Lawyer of the Year and Justin D. Goodman as the 2017 Young Lawyer of the Year. The awards

will be presented at the NMDLA Annual Meeting Awards Luncheon on Sept. 29 at the Hotel Chaco, Albuquerque. For reservation information, see [www.nmdla.org](http://www.nmdla.org) or call 505-797-6021.

### **Oliver Seth American Inn of Court 2017 Meeting Season**

The Oliver Seth American Inn of Court meets on the third Wednesday of the month from September to May. The meetings always address a pertinent topic and conclude with dinner. Lawyers who reside/practice in Northern New Mexico and want to enhance skills and meet some pretty good lawyers should send a letter of interest to: Honorable Paul J. Kelly Jr., U.S. Court of Appeals, Tenth Circuit, Post Office Box 10113, Santa Fe, New Mexico 87504-6113.

### **OTHER NEWS New Mexico Workers' Compensation Administration New Judge Reassignment**

Effective Aug. 28, all pending and administratively closed cases before the New Mexico Workers' Compensation Administration previously assigned to Judge David Skinner will be reassigned to newly appointed Judge Tony Couture. Parties who have not yet exercised their right to challenge or excuse will have 10 days from Aug. 28 to challenge or excuse Judge Couture pursuant to N.M.A.C. Rule 11.4.4.13. Questions about case assignments should be directed to WCA Clerk of the Court Heather Jordan at 505-841-6028.

## **eNews**

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Contact Marcia Ulibarri,  
at 505-797-6058 or email [mulibbarri@nmbar.org](mailto:mulibbarri@nmbar.org)

# A MESSAGE FROM YOUR State Bar Executive Director

Dear members and friends:

It is with a heavy heart that I author this message announcing my retirement as Executive Director of the State Bar of New Mexico, effective Aug. 11, 2017. After 14 years of service, it is time to step aside and leave the State Bar in the hands of new leadership.

For the past several years, I have struggled with back and spine problems. I have had three spinal surgeries and have come to the conclusion that my physical ailments leave me no alternative but to relinquish the position I have loved to someone capable of doing the job the way I believe it should be done. I have enjoyed my time working with the amazing members of the Board of Bar Commissioners, serving 15 presidents. I currently boast that the State Bar has the best professional staff I have seen in my 19 years of State Bar service. For that, I am grateful.

The State Bar has experienced many challenges and accomplishments since 2003. At that time, a lot of hard work needed to be done to improve the organization—structurally, financially as well as the State Bar's reputation with the Courts, members, the public and staff. The BBC and staff have worked diligently to build continuity and stability in the organization. We are all proud of several specific achievements.

The Client Protection Fund was reestablished when New Mexico was the only state in the nation without a fund, and has won national recognition. The State Bar was instrumental in assisting the Supreme Court in creating the Access to Justice Commission. Pro Hac Vice applications became part of the Bar's charge, generating significant funds for legal service providers. In 2011, the Judges and Lawyers Assistance Program became full-time to assist judges and lawyers with mental and substance abuse problems.

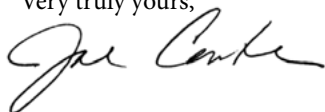
Under Court order, the Bar administers the mandatory mentorship program for new lawyers, and the required course on ethics, Indian law and real property for all seeking licensure in New Mexico. The State Bar has created an incubator program to help train lawyers to be successful sole practitioners and provide reduced fee services for low income clients.

These are but a few of the accomplishments made over the past years. I do not and could not take credit for these programs and services. It has been a tremendous team effort of the BBC and staff, working largely with the Supreme Court.

I have thoroughly enjoyed my time as your executive director, especially the friends and relationships that have developed over the years. I've found New Mexico lawyers to be a special group of people and a close-knit community of women and men who work for the betterment of the profession and service to the public. The State Bar is a better organization for the work that you do, particularly the volunteers who devote time and talent to the BBC, sections, committees and divisions and the many pro bono opportunities available. I appreciate being a part of your efforts.

I'm planning my next move as "retired," and would love to hear from you. My personal email is joeconte817@gmail.com, and my cell will remain 505-350-5820. I wish you all the best.

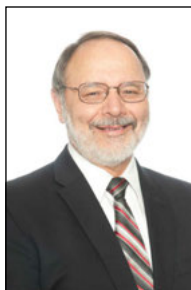
Very truly yours,



Joseph Conte



**Gina T. Constant** has been elected to the board of directors of the Lawyer-Pilots Bar Association, an international non-profit bar association that promotes aviation law and safety. Constant, of Romero & Constant PC, practices in the areas of aviation, litigation and intellectual property law.



**Thomas Montoya** was named 2017 AV Preeminent Attorney by Martindale-Hubbell. The Preeminent designation is the highest possible rating standard signifying the greatest level of excellence for legal knowledge, communication skills and ethical standards.



**Virginia R. Dugan** was named 2017 AV Preeminent Attorney by Martindale-Hubbell. The Preeminent designation is the highest possible rating standard signifying the greatest level of excellence for legal knowledge, communication skills and ethical standards.



**Hon. John Romero Jr.** of the Second Judicial District Court, Children's Court Division in Albuquerque will become president of the National Council of Juvenile and Family Court Judges in July 2018. He will be the first president representing New Mexico in the organization's 81 years.

The Pegasus Legal Services for Children Board of Directors announced **Bette Fleishman** will be the incoming executive director. Fleishman succeeds Liz McGrath, a co-founder of the 15-year old organization. Fleishman served as Pegasus managing attorney prior to her promotion. She brings years of leadership experience in the nonprofit sector, including previous success as an executive director.

#### Atkinson & Kelsey, PA

*Best Lawyers in America:* **Virginia R. Dugan** (family law) and **Jon A. Feder** (family law).

#### Brownstein Hyatt Farber Schreck

*Best Lawyers in America:* **Eric Burris**

#### Holland & Hart

*Best Lawyers in America:* **Bradford C. Berge** (litigation-environmental, natural resources law, personal injury litigation-defendants, product liability litigation-defendants) and **Michael H. Feldewert** (natural resources law, oil and gas law).

#### Lewis Roca Rothgerber Christie LLP

*Best Lawyers in America:* **Jeffrey H. Albright** (administrative/regulatory law, communications law, environmental law, litigation-environmental), **Ross L. Crown** (construction law, government contracts) and **Dennis Jontz** (commercial litigation, corporate law, litigation-real estate, real estate law).



Atkinson & Kelsey, PA, welcomes **Lucy Sinkular** to its team of family law attorneys. Sinkular will specialize in divorce and family law and, because of her extensive background in military matters, she will focus on military divorce and family matters.

#### Modrall Sperling Roehl Harris & Sisk

*Benchmark Litigation's Top 250 Women in Litigation:* **Jennifer G. Anderson**

#### Rodey, Dickason, Sloan, Akin & Robb PA

*Best Lawyers in America:* **Mark Adams, Leslie McCarthy Apodaca, Sandra Beerle, Rick Beitler, Perry Bendicksen III, Jose Blanton, Brian Brack, Michael Brescia, David Buchholtz, David Bunting, John (Jack) Burton, Denise Chanez, Jeffrey Croasdell, Jocelyn Drennan, Nelson Franse, Kurt Gilbert, Catherine Goldberg, Scott Gordon, Alan Hall, Bruce Hall, Justin Horwitz, Michael Kaemper, Paul Koller, Jeffrey Lowry, Dick Minzner, Donald Monnheimer, Michael Morgan, W. Mark Mowery, Sunny Nixon, Lisa Ortega, Theresa Parrish, John Patterson, Charles (Kip) Purcell, Edward Ricco, Brenda Saiz, John P. Salazar, Andrew Schultz, Charles Seibert, Ellen Skrak, Seth Sparks, Tracy Sprouls, Robert St. John, Thomas Stahl and Charles Vigil**



# Legal Education

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## August

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|--|--|---|
| <p>24    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                    | <p>25    <b>Annual Guardianship Symposium</b><br/>4.5 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>New Mexico Guardianship<br/>Association<br/><a href="http://www.nmgaresourcecenter.org">www.nmgaresourcecenter.org</a></p> | <p>29    <b>The Use of “Contingent Workers”—Issues for Employment Lawyers</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>            |
| <p>25    <b>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<br/>Lawyers Association<br/><a href="http://www.nmcdla.org">www.nmcdla.org</a></p> | <p>28    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>          | <p>31    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |

## September

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|--|---|--|
| <p>8    <b>Practical Succession Planning for Lawyers</b><br/>2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>         | <p>9    <b>Ethical Implications of Section 327 of the Bankruptcy Code</b><br/>1.0 EP<br/>Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                     | <p>15    <b>28th Annual Appellate Practice Institute</b><br/>6.0 G, 1.0 EP<br/>Live Webcast/Live Seminar,<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |
| <p>8    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p>13    <b>What Notorious Characters Teach About Confidentiality</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                      | <p>18    <b>Ethical Considerations in Foreclosures</b><br/>1.0 EP<br/>Live Seminar, Albuquerque<br/>Davis Miles McGuire Gardner<br/><a href="http://www.davismiles.com">www.davismiles.com</a></p>                         |
| <p>8    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>         | <p>14    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                     | <p>18    <b>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/><a href="http://www.thelinknm.com">www.thelinknm.com</a></p>     |
| <p>8    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>           | <p>14    <b>Best and Worst Practices Including Ethical Dilemmas in Mediation (2016)</b><br/>3.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p>18    <b>Ethical Considerations in Foreclosures</b><br/>1.0 EP<br/>Live Seminar, Albuquerque<br/>Davis Miles McGuire Gardner<br/><a href="http://www.davismiles.com">www.davismiles.com</a></p>                         |
| <p>8    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>      | <p>14    <b>The Ethics of Representing Two Parties in a Transaction</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                     | <p>19    <b>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/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                        |

## September

20	<b>Concealed Weapons and Self-Defense</b> 1.0 G Live Seminar, Albuquerque Davis Miles McGuire Gardner www.davismiles.com	22	<b>2017 Tax Symposium</b> 6.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	28	<b>Ethics for Government Attorneys</b> 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
21	<b>Controversial Issues Facing the Legal Profession (2016)</b> 5.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	23	<b>How Jurors View Mistakes and Conflicts</b> 1.5 EP Live Seminar, Santa Fe Attorneys Liability Assurance Society www.alas.com	29	<b>Evolution of Indian Laws and Indian Lawyers</b> 4.5 G, 2.0 EP Live Seminar, Isleta American Indian Law Center www.ailec-inc.org
21	<b>Legal Technology Academy for New Mexico Lawyers (2016)</b> 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	23	<b>Half-Day Mixed Bag CLE</b> 3.0 G Live Seminar, Albuquerque State Bar of New Mexico Paralegal Division 505-203-9057	29	<b>Professional Liability Insurance: What You Need to Know (2015)</b> 3.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
21	<b>Guardianship in New Mexico/The Kinship Guardianship Act (2016)</b> 5.5 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	28	<b>32nd Annual Bankruptcy Year in Review (2017)</b> 6.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	29	<b>Deposition Practice in Federal Cases (2016)</b> 2.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
21	<b>Structured Settlements in Claims Negotiations</b> 1.0 G Live Seminar, Albuquerque National Structured Settlements Trade Association 202-289-4004	28	<b>Transgender Law and Advocacy (2016)</b> 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	29	<b>Ethically Managing Your Law Practice (2016 Ethicspalooza)</b> 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

## October

2	<b>Uncovering and Navigating Blind Spots Before They Become Land Mines</b> 2.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	4	<b>Lawyers' Duties of Fairness and Honesty (Fair or Foul 2016)</b> 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	5	<b>2017 Health Law Symposium</b> 6.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
4	<b>Bankruptcy Law: The New Chapter 13 Plan</b> 3.1 G Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	4	<b>2016 Administrative Law Institute</b> 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	6	<b>2017 Employment and Labor Law Insitute</b> 5.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
		4	<b>Deposition Practice in Federal Practice (2016)</b> 2.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org		

# Opinions

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

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

**Effective August 11, 2017**

## **PUBLISHED OPINIONS**

No. 35286	6th Jud Dist Grant CV-13-171, L KREUTZER v ALDO LEOPOLD HIGH SCHOOL (affirm)	8/7/2017
No. 34855	3rd Jud Dist Dona Ana CR-14-528, STATE v A ALVAREZ (affirm in part, reverse in part and remand)	8/8/2017
No. 35769	2nd Jud Dist Bernalillo CV-12-6141, K OAKEY v DOCTOR ON CALL (reverse)	8/10/2017

## **UNPUBLISHED OPINIONS**

No. 35603	6th Jud Dist Grant SA-15-1, SAMUEL O ADOPTION PETITION v CYFD (reverse and remand)	8/7/2017
No. 34181	3rd Jud Dist Dona Ana CR-14-105, STATE v C BENAVIDEZ (affirm)	8/8/2017
No. 36142	WCA-12-126, C BAKER v ENDEAVOR SERVICES (affirm)	8/8/2017
No. 36272	WCA-12-126, C BAKER v ENDEAVOR SERVICES (affirm)	8/8/2017
No. 36288	3rd Jud Dist Dona Ana CV-16-2430, DONA ANA v COMMUNICATION WORK (affirm)	8/8/2017
No. 36303	5th Jud Dist Chaves DM-10-104, T WULF v L WULF (affirm)	8/8/2017
No. 34663	5th Jud Dist Eddy JR-14-131, STATE v STEVEN A (affirm)	8/10/2017
No. 34745	5th Jud Dist Eddy JR-14-131, STATE v STEVEN A (affirm)	8/10/2017
No. 36242	WCA-11-61410, D AGUILAR v US COTTON (dismiss)	8/10/2017
No. 35469	11th Jud Dist McKinley CR-14-86, STATE v F MARIANO (affirm)	8/11/2017
No. 35892	3rd Jud Dist Dona Ana CV-15-403, AMERICAN REDI MIX v R JUAREZ (affirm)	8/11/2017
No. 35921	2nd Jud Dist Bernalillo LR-15-53, STATE v J TERWILLIGER (affirm)	8/11/2017

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

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

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

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## CLERK'S CERTIFICATE OF NAME CHANGE

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# 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 23, 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*
12-307.2	Electronic service and filing of papers	08/21/2017*
12-314	Public inspection and sealing of court records	03/31/2017

\*The rule adopted effective July 1, 2017, implemented mandatory electronic filing for cases in the Supreme Court. The rule adopted effective August 21, 2017, implements mandatory electronic filing in the Court of Appeals.

## Rules Governing Admission to the Bar

15-104	Application	08/04/2017
15-105	Application fees	08/04/2017
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>.

From the New Mexico Supreme Court

**Opinion Number: 2017-NMSC-021**

No. S-1-SC-35974 (filed June 19, 2017)

BRUCE THOMPSON, as Guardian ad Litem for A.O., J.P., and G.G., Minor Children,  
Plaintiff-Respondent,  
v.  
CITY OF ALBUQUERQUE, RAY SCHULTZ, former Chief of Police of the City of  
Albuquerque, and KEVIN SANCHEZ, City of Albuquerque Police Officer,  
Defendants-Petitioners.

**ORIGINAL PROCEEDING ON CERTIORARI**

DENISE BARELA SHEPHERD, District Judge

JESSICA M. HERNANDEZ  
City Attorney  
STEPHANIE M. GRIFFIN  
CITY OF ALBUQUERQUE  
Albuquerque, NM  
for Petitioners

SHANNON L. KENNEDY  
JOSEPH P. KENNEDY  
ADAM C. FLORES  
KENNEDY, KENNEDY, & IVES, LLC  
Albuquerque, New Mexico  
for Respondent

**Opinion**

**Edward L. Chávez, Justice**

{1} May the minor children of a parent whom they allege was wrongfully shot and killed by a law enforcement officer (1) sue for loss of consortium damages under the New Mexico Tort Claims Act (TCA), NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015), and (2) bring their lawsuit even if the parent's estate did not sue for wrongful death damages? We answer "yes" to both questions for the following reasons. First, Section 41-4-12 of the TCA waives a law enforcement officer's sovereign immunity from liability for personal injury and bodily injury damages resulting from battery, and loss of consortium damages may be characterized as either personal or bodily injury damages. Second, loss of consortium damages result from the wrongful injury or death of someone who was in a sufficiently close relationship to the loss of consortium claimant, and such damages belong to the loss of consortium claimant and not to the injured person or the decedent's estate.

**BACKGROUND**

{2} The background to our analysis is comprised of the well-pled facts in Plaintiffs' complaint, which we accept as truthful for purposes of reviewing the district court's ruling on Defendants' motion to dismiss. *Callahan v. N.M. Fed'n of Teachers-TVI*,

2006-NMSC-010, ¶ 4, 139 N.M. 201, 131 P.3d 51.

{3} On March 29, 2010, Albuquerque Police Department officers received information regarding a suspected stolen vehicle located in a commercial parking lot. Several officers then arrived at the scene and surrounded the suspected stolen vehicle with their unmarked police vehicles. Mickey Owings parked next to the suspected stolen vehicle. A passenger exited Owings's vehicle and approached the suspected stolen vehicle.

{4} The APD officers then positioned one of the unmarked police vehicles behind Owings's vehicle as Officer Sanchez approached Owings's vehicle on foot. Owings backed his vehicle into the unmarked police vehicle that was preventing him from leaving. Officer Sanchez drew his gun and pointed it at Owings as he continued to approach Owings's car. Owings drove away once Officer Sanchez began shooting at his car. Ultimately, Officer Sanchez shot and killed Owings during this encounter.

{5} Plaintiffs are Owings's surviving minor children who sued Defendants for loss of consortium damages under Section 41-4-12. Plaintiffs allege that Defendants' acts and omissions caused the wrongful death of their father, and as a result they will be "forced to grow up without the companionship, guidance, love, enjoyment, and support of their father . . ." The district court granted Defendants' Rule 1-012(B)(6) NMRA motion to dismiss, concluding that the TCA did

not waive law enforcement officers' sovereign immunity for a loss of consortium claim. The Court of Appeals reversed, *Thompson v. City of Albuquerque*, 2017-NMCA-002, ¶ 11, 386 P.3d 1015, and we affirm the Court of Appeals.

**DISCUSSION**

{6} "Generally, the Tort Claims Act provides governmental entities and public employees acting in their official capacities with immunity from tort suits unless the [TCA] sets out a specific waiver of that immunity." *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep't*, 1996-NMSC-021, ¶ 6, 121 N.M. 646, 916 P.2d 1313. Section 41-4-12 provides that law enforcement officers' immunity is waived for:

liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.

We review the dismissal of Plaintiffs' claim for loss of consortium damages under Rule 1-012(B)(6) *de novo*. See *Fitzjerrell v. City of Gallup ex rel. Gallup Police Dep't*, 2003-NMCA-125, ¶ 8, 134 N.M. 492, 79 P.3d 836 (noting that whether a motion to dismiss was properly granted is a question of law).

**Loss of consortium is a claim for damages deriving from a tort upon another, but which may be brought as an independent claim for damages to a sufficiently close relationship**

{7} Defendants argue that there is no waiver of sovereign immunity for loss of consortium under Section 41-4-12 because loss of consortium is not specifically enumerated in the statute, and therefore a waiver would be contrary to "the public policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the [TCA] and in accordance with the principles established in that act." Section 41-4-2(A). The structure of Section 41-4-12 persuades us otherwise.

{8} The plain language of Section 41-4-12 first presents the types of injury for which a law enforcement officer's immunity may be waived. *Id.* The types of injury enumerated include personal and bodily injury. *Id.* Loss of consortium fits squarely within personal

injury as an element of such damages. See UJI 13-1810A NMRA (listing loss of consortium within the category of personal injury damages). Loss of consortium is a type of personal injury damage because “[d]amages for consortium are damages for the plaintiff’s emotional distress” due to the harm to a sufficiently close relationship. *Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-039, ¶ 26, 126 N.M. 263, 968 P.2d 774; see also *Weinstein*, 1996-NMSC-021, ¶ 26 (holding that emotional distress is a type of personal injury). Courts have recognized that “[d]amages for emotional distress . . . may be recoverable as damages for personal injury resulting from one of the enumerated acts.” *Romero v. Otero*, 678 F. Supp. 1535, 1540 (D. N.M. 1987) (internal quotation marks omitted). Other courts have also found that loss of consortium is a damage resulting from bodily injury upon another. *Brenneman v. Bd. of Regents of the Univ. of N.M.*, 2004-NMCA-003, ¶ 19, 135 N.M. 68, 84 P.3d 685. Whether loss of consortium is labeled as personal or bodily injury, it is indisputably contemplated by the language of Section 41-4-12.

{9} Section 41-4-12 also delineates the torts for which a law enforcement officer’s immunity may be waived. *Id.* The enumerated torts include battery, from which Plaintiffs allege their claim for loss of consortium damages arises in this case. In this regard, Plaintiffs’ claim for loss of consortium damages derives from a tort enumerated under Section 41-4-12. See *Williams v. Bd. of Regents of the Univ. of N.M.*, No. CIV 13-0479 JB/WPL, 2014 WL 4351533, at \*11 n.8 (D. N.M. Aug. 18, 2014) (“Loss of consortium can be asserted against New Mexico government actors, despite that it is not specifically mentioned in the [TCA], provided that the underlying tort—the one that caused direct physical injury—itsself triggers an immunity waiver . . .” (citation omitted)). Loss of consortium damages are derivative in nature because they arise from a physical injury upon another person. See *Romero v. Byers*, 1994-NMSC-031, ¶ 8, 117 N.M. 422, 872 P.2d 840 (“Loss of consortium is simply the emotional distress suffered by one spouse who loses the normal company of his or her mate when the mate is physically injured due to the tortious conduct of another.”). Therefore, both the injury and the tort from which the children’s claim for loss of consortium damages derive are specifically enumerated under Section 41-4-12.

{10} The Court of Appeals has correctly recognized that immunity may be waived for loss of consortium damages as a claim deriving from an enumerated tort under

the TCA. In *Wachocki v. Bernalillo County Sheriff’s Department (Wachocki I)*, the Court of Appeals analyzed a wrongful death claim under Section 41-4-12 and a derivative claim for loss of consortium damages. 2010-NMCA-021, ¶¶ 1-2, 147 N.M. 720, 228 P.3d 504, *aff’d*, *Wachocki v. Bernalillo Cty. Sheriff’s Dep’t (Wachocki II)*, 2011-NMSC-039, ¶¶ 1, 12-14, 150 N.M. 650, 265 P.3d 701. The Court of Appeals held that Section 41-4-12 waived immunity for the wrongful death claim, *Wachocki I*, 2010-NMCA-021, ¶ 1, but regarding the loss of consortium claim, the claimant, who was the decedent’s sibling, could not recover because he had failed to prove the foreseeability of harm to a sufficiently close relationship with the decedent. *Id.* ¶¶ 54-57. {11} Defendants argue that *Wachocki I* did not expressly hold that damages for loss of consortium may be recovered under Section 41-4-12. The fact that the *Wachocki I* Court analyzed the merits of the claim for loss of consortium damages *after* it determined there was a waiver for the tort claim from which the damages derived leads us to conclude otherwise. The Court of Appeals began its analysis on loss of consortium damages by stating that “damages for loss of consortium may be recovered under the Section 41-4-2(A) waiver of sovereign immunity.” *Wachocki I*, 2010-NMCA-021, ¶ 50 (citing *Brenneman*, 2004-NMCA-003, ¶ 19). Section 41-4-2(A) is a general provision explaining the policy reasons behind the TCA. The same is true of Section 41-4-2(B), which states that “[l]iability . . . under the [TCA] shall be based upon the traditional tort concepts of duty and the reasonably prudent person’s standard of care in the performance of that duty.” Due to its general applicability, Section 41-4-2 pertains to individual sections of the TCA, including Section 41-4-12. See *Torres ex rel. Estate of Torres v. State*, 1995-NMSC-025, ¶ 11, 119 N.M. 609, 894 P.2d 386 (observing that a waiver of immunity under Section 41-4-2(B) applied to an action for wrongful death by battery caused by law enforcement officers brought under Section 41-4-12). Therefore, the *Wachocki I* Court’s statement that damages for loss of consortium may be recovered under the general provision, Section 41-4-2, applies to Section 41-4-12. Similarly, when construing *Wachocki I* on appeal, this Court analyzed the merits of the claim for loss of consortium damages when we could have simply declared that there was no waiver of immunity under Section 41-4-12. *Wachocki II*, 2011-NMSC-039, ¶ 4. {12} *Brenneman*, to which *Wachocki I* cited, also supports our conclusion that immunity is waived for loss of consortium dam-

ages under Section 41-4-12. See *Brenneman*, 2004-NMCA-003, ¶ 1. The *Brenneman* Court concluded that immunity was waived for a claim for loss of consortium damages in the context of Sections 41-4-9 and -10, 2004-NMCA-003, ¶ 6, but it also made several statements regarding waiver of immunity for loss of consortium damages as they pertain to the TCA as a whole. See *id.* ¶ 1 (“We hold that loss of consortium damages are permissible under the [TCA]’s provisions for damages resulting from bodily injury.”); ¶¶ 10, 19 (“[W]e believe that loss of consortium is exactly the type of damage based upon the traditional tort concepts of duty that the Legislature intended to include under the applicable waivers of sovereign immunity in the [TCA].” (internal quotation marks omitted)).

{13} Defendants seek to distinguish *Wachocki I* and *Brenneman* on the basis that in those cases, the Court of Appeals analyzed claims for loss of consortium damages arising from negligence and not an intentional tort. We are not persuaded because other courts have also recognized that loss of consortium damages may result from intentional torts. See *McGrath v. Nassau Health Care Corp.*, 217 F. Supp. 2d 319, 335 (E.D. N.Y. 2002) (“Assault and battery claims may sustain derivative loss of consortium claims.”). In *McGrath*, a public employee brought a lawsuit against her governmental employer and supervisor alleging assault and battery, among other claims, while the employee’s husband asserted a loss of consortium claim deriving from the physical injury upon his wife. *Id.* at 322, 335. The court declined to dismiss the underlying intentional tort claims because the plaintiffs had pled sufficient facts to support them, and the loss of consortium claim was also not dismissed because it was adequately supported by the intentional tort claims. *Id.* at 333-34; see also *Pahle v. Colebrookdale Twp.*, 227 F. Supp. 2d 361, 376 (E.D. Pa. 2002) (recognizing that an assault and battery on a husband by a police officer, if proven, indubitably forms the basis for a loss of consortium claim by the wife). Furthermore, waiving immunity for loss of consortium damages resulting from negligent conduct necessarily implies that there also is waiver of damages resulting from intentional conduct. It would be illogical to forego waiving immunity for intentional conduct when waiver for negligence is permitted, particularly since Section 41-4-12 waives immunity for a wider range of tortious conduct committed by law enforcement officers than any other classification of public employee. Compare §§ 41-4-5, 41-4-6, 41-4-7,



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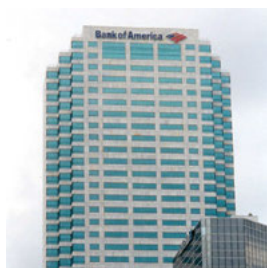


## ABOUT OUR FIRM

As a full-service law firm, MANEY | GORDON | ZELLER, P.A. is proud to provide high-quality legal service to those who are in need of immigration help. It is our mission to practice law while adhering to the following principles and beliefs:

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- That we are indebted to our staff and maintain a commitment to enhancing the quality of the lives of our employees on both professional and personal levels;
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- That we value growth and expansion of the firm;
- That we shall endeavor to fulfill our commitments with enthusiasm and fun;
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- That maintaining fidelity to professional ethics and integrity as officers of the court is essential.
- That true advocacy on behalf of our clients can require transcending convention;
- That true advocacy on behalf of our clients can require the courage to serve through difficulty and even defeat;
- That true advocacy on behalf of our clients is reward unto itself

## OUR OFFICES



MGZ is a national firm, with offices throughout the state of Florida, as well as in Texas, New Mexico, and Pennsylvania. As such, we are well situated to help our clients obtain the high-quality legal service that they truly deserve - no matter where they are geographically located. In Florida, we have offices in Tampa, Clearwater, Bradenton, Orlando, Naples, Dade City, and Sarasota. MGZ headquarters are located in beautiful downtown Tampa, on the thirty-first floor of the Bank of America Plaza, with breathtaking views of Tampa Bay. Our Texas office is located in the border city of El Paso, in close proximity to Ciudad Juarez, and on the same street as the U.S. Citizenship and Immigration Services (USCIS) El Paso field office.

Our New Mexico office is centrally located in Albuquerque, the most populous city in the state. New Mexico is also a U.S.-Mexico border state, making it a top state in the U.S. for Mexican immigration along with California, Arizona and Texas. More than half of the immigrant population in the state of New Mexico originates from Mexico. Our law firm provides exceptional legal representation to clients in Albuquerque, throughout Bernalillo County and the rest of New Mexico so that they can obtain visas, successfully complete naturalization, avoid deportation and other common immigration needs.

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## ALBUQUERQUE OFFICE



MANEY | GORDON | ZELLER opened its offices in Albuquerque, NM, in April 2006, when the firm took over the immigration law offices of Melvin D. Baron, an established immigration law practice of 35+ years. The firm later added the law offices of John W. Lawit, Esq., Caterina S. Kretz, Esq., and Christina Rosado, Esq.

Today, MANEY | GORDON | ZELLER serves the New Mexico immigrant community with four immigration attorneys and 12 support staff from its offices in Albuquerque location at 2305 Renard Place SE, Suite 110, Albuquerque, NM 87106.

The firm engages in all aspects of U.S. Immigration & Nationality law, including, but not limited to business immigration, I-9 workplace enforcement and compliance, family immigration, removal defense, appeals to the Administrative Appeals Office, the Board of Immigration Appeals, the Board of Alien Labor Certification Appeals, and federal court appeals.



The Albuquerque immigration practice of MANEY | GORDON | ZELLER is managed by attorney **Caterina S. Kretz**. Ms. Kretz was born in Caracas, Venezuela and raised in New York City. Both of Caterina's parents were immigrants. Her mother immigrated from Columbia while her father's family immigrated from Italy to the United States when he was a young boy. Both of Caterina's parents obtained their citizenship before Caterina was born. Growing up with two immigrant parents has given Caterina a very unique perspective on what our clients may be going through in their immigration journey. This is a perspective that many immigration attorneys do not possess. While growing up, Caterina would actually help translate for her parents from Spanish to English until her father mastered English.

Ms. Kretz earned her law degree from Toledo College of Law. Caterina was admitted to the New Mexico State Bar in 1994. She is also a member of the American Immigration Lawyers Association (AILA). Caterina has served as an immigration consultant for both the Mexican Consulate in Albuquerque, New Mexico and Catholic Charities in Albuquerque, New Mexico. Caterina speaks fluent English and Spanish.

Prior to joining MANEY | GORDON | ZELLER, Caterina was a staff attorney for the Albuquerque Border City project from 1996 to 1997. This organization fought for the rights of low income and disadvantaged immigrants as well as her extensive work with violence against women act (VAWA). In 1997 Caterina opened her own law practice "Kretz Law Firm" to help immigrants with their immigration needs. Ms. Kretz joined MANEY | GORDON | ZELLER in 2014.





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Visa Prep Pro is an online service providing simulated US visa interviews, as well as case specific interview counseling. All interviews and counseling are conducted by former US Department of State Consular Officers. Whether you are a tourist, student, investor, businessperson, or future permanent resident, Visa Prep Pro is a smart, cost-effective way to prepare for your consular interview and maximize your chance of success. Although it is not a legal service, it helps foreign nationals facing interviews feel more confident during the nerve-racking interview process.

Information about the service is available at: <https://www.visapreponline.com/>

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MGZ offers regular citizenship classes to prepare immigrants for their naturalization interviews. These classes are offered in both English and Spanish and cover Civics topics that are tested during the interview. The classes are not limited to MGZ clients and open to all who wish to attend.

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### **Richard Henry Maney:**

Richard Henry Maney is the founder and managing attorney of MANEY | GORDON | ZELLER, P.A. For more than 38 years, he has practiced in the field of Immigration and Naturalization, Personal Injury and Wrongful Death, Civil Litigation and Products Liability law.

He received his Bachelor of Science degree in Business Administration from the University of Florida in 1972. In 1974, he received his Juris Doctor from the University of Florida College of Law. Mr. Maney is a member of the Florida Bar Association and is Board Certified in the field of Immigration and Naturalization Law. He is also a member of the American Trial Lawyers Association and the Florida Academy of Trial Lawyers. He also serves as a mentor for other attorneys through the American Immigration Lawyers Association.

In 1983, Richard Maney authored the U.S. Immigration Law Investor and Business Visa Guide, which has been distributed worldwide through the commercial section of the U.S. Consulates abroad. He has also published the Amnesty Guide (1987); the Treaty Investor Visa Guide (1989); the Student Visa Guide (1992); the Immigrant Story (2015); and The Visa Guide (1995) (2000 2<sup>nd</sup> Edition) (2003 3<sup>rd</sup> Edition) (2017 4<sup>th</sup> Edition). He is also a contributing author to the Florida Bar CLE, Immigration Law and Practice in Florida (1987).



### **Jeffrey Gordon:**

Jeffrey "Jack" Gordon is a highly skilled trial attorney who has been profiled among the *TopLawyers*® in the Bay Area by *Tampa Bay Magazine* and has twice been selected a Leading Attorney of the Southeastern

United States in *Forbes* magazine. He has been selected for inclusion among Florida's *Legal Elite* and recognized as one of the *Top 100 SuperLawyers*® in the state of Florida, and one of the *Top 50 SuperLawyers*® of Tampa Bay.

In 2016 and 2017, Mr. Gordon was named the #1 Medical Malpractice Lawyer by his peers in *Tampa Magazine*. In 2017, Mr. Gordon earned National Board Certification as an expert in Medical Malpractice law by the American Board of Professional Liability Attorneys. He is 1 of merely 17 lawyers in the State of Florida to have achieved this distinction.

Four times Board Certified in Civil Trial Law by The Florida Bar, Mr. Gordon is also certified by The National Board of Trial Advocacy as an expert in both Civil Trial Law and Civil Pre-trial Litigation. He is AV® rated *Preeminent* by *Martindale-Hubbell*.

Mr. Gordon concentrates his practice in representing individuals who have been injured, and families of relatives who have been killed, as a result of medical malpractice, motor vehicle negligence, and defective products.



### **Christian G.A. Zeller:**

Christian G. A. Zeller, Managing Partner with MANEY | GORDON | ZELLER, P.A., has over 10 years of experience and is individually AV rated, by Martindale Hubbell, the highest rating an attorney can obtain in the areas of legal ability and ethical standards. Mr. Zeller is Board Certified by the Florida Bar in Immigration & Nationality Law, and practices exclusively in the areas of U.S. Immigration & Nationality Law and related International Law. Additionally, Mr. Zeller is an English Solicitor licensed to practice law in England & Wales.

Mr. Zeller offers expert representation in the areas of immigration solutions for businesses, worksite enforcement and compliance, all visa categories, consular processing, family immigration, removal defense, appeals, and immigration-related federal court litigation.

Mr. Zeller has authored numerous articles on immigration law and international law topics for publication and he is a frequent speaker at bar associations, universities, and private sector interest groups.

### **Attorneys:**

Supporting the MGZ Partners are a staff of twenty-five Associate Attorneys, ten Of Counsel Attorneys, and a full complement of certified paralegals, legal assistants and office staff.

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41-4-9, & 41-4-10 (waiving immunity for negligence of public employees) with § 41-4-12 (waiving immunity for conduct premised on negligence, according to *Wachocki I*, in addition to assault, battery, and false imprisonment, among other torts). Accordingly, we hold that immunity is waived for claims of loss of consortium damages deriving from an enumerated tort under Section 41-4-12.

{14} Defendants next contend that even if loss of consortium damages derive from the underlying battery, any lawsuit for such damages must be brought along with the underlying battery claim. We agree that a plaintiff who sues for loss of consortium damages must prove—as an element of loss of consortium damages—that the alleged tortfeasor caused the wrongful injury or death of someone who was in a sufficiently close relationship to the plaintiff, resulting in harm to the relationship. However, this does not mean that the loss of consortium claim must always be brought with the underlying tort claim, or that actual recovery for the underlying tort is a prerequisite for the recovery of loss of consortium damages. See *Archer v. Roadrunner Trucking, Inc.*, 1997-NMSC-003, ¶ 13, 122 N.M. 703, 930 P.2d 1155 (stating that while loss of consortium claimants may recover only if the physically injured person has a cause of action for his or her injuries, actual recovery for the underlying tort is not required in order to recover loss of consortium damages); *Turpie v. Sw. Cardiology Assocs., P.A.*, 1998-NMCA-042, ¶ 7, 124 N.M. 787, 955 P.2d 716 (“[T]he defendant must be at least potentially liable to the injured [person] before it can be liable to the [claimant] seeking loss of consortium damages.”).

{15} For our purposes in reviewing whether Plaintiffs are entitled to bring their claim as a matter of law, and not whether they may actually recover on their claim (which we were not asked to decide), Plaintiffs need only have pled sufficient facts to notify Defendants about the complaint’s general premise. See *Petty v. Bank of N.M. Holding Co.*, 1990-NMSC-021, ¶ 7, 109 N.M. 524, 787 P.2d 443 (“Under our rules of notice pleading, it is sufficient that defendants be given only a fair idea of the nature of the claim asserted against them sufficient to apprise them of the general basis of the claim; specific evidentiary detail is not required at this stage of the pleadings.”) (internal quotation marks and citation omitted)). Plaintiffs sufficiently pled the underlying battery claim from which their claim for loss of consortium damages arose by alleging that Defendants caused the deadly shooting of Owings, which

resulted in the minor children losing their relationship with their father.

{16} Defendants also argue that the minor children did not suffer a direct injury because it was only their father who suffered a deadly battery, not the children, and therefore their claim is merely a bystander claim for which there is no waiver under Section 41-4-12. See *Weinstein*, 1996-NMSC-021, ¶¶ 24-26 (concluding that the parents of a battery victim could not bring a separate cause of action for the tort of negligent infliction of emotional distress because “their claim [was] akin to a bystander claim” for which there is no waiver of immunity under Section 41-4-12). Although claims for loss of consortium damages derive from injury to another, the claimant has also suffered a direct injury for which he or she may seek recovery separately from the underlying tort. The *Weinstein* Court itself stated that there is a direct claim for personal injury for which there is an enumerated waiver under Section 41-4-12. *Weinstein*, 1996-NMSC-021, ¶ 26. The direct injury alleged by a loss of consortium claimant is one to a relational interest with another who was physically injured. *Lozoya v. Sanchez*, 2003-NMSC-009, ¶ 20, 133 N.M. 579, 66 P.3d 948, *abrogated on other grounds by Heath v. La Mariana Apartments*, 2008-NMSC-017, 143 N.M. 657, 180 P.3d 664; *Archer*, 1997-NMSC-003, ¶ 11. Plaintiffs’ claim for loss of consortium damages alleges a direct injury to their relational interest with their father as a result of the battery upon him. In this regard, Plaintiffs are not merely “indirect or incidental victims.” Cf. *Lucero v. Salazar*, 1994-NMCA-066, ¶ 12, 117 N.M. 803, 877 P.2d 1106 (“We thus construe the language of Section 41-4-2(A) as evincing a legislative intent not to waive immunity for injuries to indirect or incidental victims of tortious acts committed by government employees.”).

{17} A derivative claim for loss of consortium damages need not be brought along with the underlying tort claim because loss of consortium claimants suffer a direct injury separate from the physical injury to another. *State Farm Mut. Auto. Ins. Co. v. Luebbbers*, 2005-NMCA-112, ¶ 37, 138 N.M. 289, 119 P.3d 169. In *Luebbbers*, the Court of Appeals explicitly held that a minor child could pursue a claim for loss of consortium damages separate from an underlying wrongful death claim. *Id.* Defendants assert that *Luebbbers* cannot be applied here because that case analyzed a claim for loss of consortium damages against a private party, not a government entity, under Section 41-4-12 or any other section of the TCA. However, once there is

a waiver of immunity under the TCA, the state is treated the same way as any other defendant for purposes of that claim. See § 41-4-2(B) (“Liability for acts or omissions under the [TCA] shall be based upon the traditional tort concepts of duty and the reasonably prudent person’s standard of care in the performance of that duty.”); *Encinias v. Whitener Law Firm, P.A.*, 2013-NMSC-045, ¶ 15, 310 P.3d 611 (“In enacting the TCA, the Legislature expressed an intent to waive the state’s immunity in situations that would subject a private party to liability under our common law.” (citing § 41-4-2(B))). Since we have concluded that there is waiver of immunity for Plaintiffs’ claim of loss of consortium damages as deriving from the underlying battery upon Owings, the state may be treated like any private party, and therefore the *Luebbbers* holding that claims for loss of consortium damages are independent is applicable here.

{18} Our recognition that claims for loss of consortium damages are independent is not unprecedented. As this area of law has expanded, this Court has increasingly allowed plaintiffs with differing relationships to the physically injured person to bring independent claims for loss of consortium damages that are separate from the underlying tort claim. See *Fernandez*, 1998-NMSC-039, ¶ 32 (affirming dismissal of the plaintiff’s underlying tort claim, but holding that the plaintiff could nevertheless pursue her claim for loss of consortium damages); *Byers*, 1994-NMSC-031, ¶ 10 (concluding that “[j]ust as a spouse’s pain and suffering is separate property,” so too the spouse’s recovery for the “emotional suffering due to the loss of consortium is separate property” (citations omitted)). We hold that Plaintiffs in this case may bring the claim for loss of consortium damages independent of the underlying battery claim.

#### CONCLUSION

{19} Because Section 41-4-12 of the TCA waives immunity for claims of loss of consortium damages arising from a battery, we hold that Plaintiffs’ claim is permissible. We therefore affirm the Court of Appeals’s opinion and remand to the district court for proceedings consistent with this opinion.

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

**EDWARD L. CHÁVEZ, Justice**

#### WE CONCUR:

**JUDITH K. NAKAMURA,**

**Chief Justice**

**PETRA JIMENEZ MAES, Justice**

**CHARLES W. DANIELS, Justice**

**BARBARA J. VIGIL, Justice**

From the New Mexico Court of Appeals

**Opinion Number: 2017-NMCA-048**

No. 34,814 (filed March 20, 2017)

STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
ZACHERY E. LINDSEY,  
Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

ANGIE K. SCHNEIDER, District Judge

HECTOR H. BALDERAS  
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BENNETT J. BAUR  
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SERGIO J. VISCOLI  
Appellate Defender  
Albuquerque, New Mexico  
for Appellee

**Opinion**

**J. Miles Hanisee, Judge**

{1} Defendant Zachery Lindsey was convicted of two fourth-degree felonies—shoplifting and conspiracy to commit shoplifting—and sentenced as a habitual offender under NMSA 1978, Section 31-18-17(A) (2003), based on his prior conviction for residential burglary. The district court imposed a five-year sentence of imprisonment, which included two mandatory one-year habitual offender enhancements. The court then suspended the sentence in its entirety, finding substantial and compelling reasons to do so, and placed Defendant on probation.

{2} The State’s appeal requires that we address a statute that has yet to be exactly scrutinized by our appellate courts. To do so, and to ascertain whether the district court erred in suspending the portion of Defendant’s sentence earned by virtue of his status as a habitual offender, we must interpret the phrase “substantial and compelling reasons” as contained in Section 31-18-17(A). We affirm Defendant’s sentence.

**BACKGROUND**

{3} In October 2013 Defendant pled no contest to residential burglary, a third-degree felony, and larceny, a fourth-degree felony, offenses committed in November 2012 when Defendant was nineteen years

old. For those offenses, Defendant received a conditional discharge, contingent upon his successful completion of five years’ probation and repayment of up to \$1,417 in restitution.

{4} In November 2014 while still on probation, Defendant was apprehended as he ran from a Wal-Mart store in Alamogordo, New Mexico. He was indicted for (1) shoplifting (over \$500) and (2) conspiracy to commit shoplifting (over \$500), both of which are fourth-degree felonies. Defendant again pled no contest to the charges.

{5} At sentencing, the prosecutor stated that he was “at a loss as to what to do” regarding Defendant, acknowledging Defendant’s youth but also stating that Defendant “has done poorly on probation” and “is a young person that appears to be on the road to not a good position in life.” The prosecutor suggested that the court “send [Defendant] to [a] diagnostic [center], perhaps as a stop-gap measure, an in-between measure.” Defense counsel asked that Defendant’s sentence be suspended for “compelling reasons,” including Defendant’s youth and that Defendant was by then performing well on probation, paying restitution for his prior offense, gainfully employed, and expecting a child. Undecided, the district judge continued the sentencing proceedings in order to hear from Defendant’s probation officer, Wolf Fielenbach.

{6} At the follow-up hearing, the State reiterated its request for a sixty-day diagnostic commitment. Defense counsel continued to argue for a suspended sentence. Mr. Fielenbach testified that Defendant had done “very well on probation until” he re-offended, but that after spending a couple of weeks in prison Defendant’s probation was reinstated, “mainly for the reason that he can pay off his restitution.” Mr. Fielenbach explained that Defendant had been “on and off of jobs,” making restitution payments difficult, but that Defendant was employed and “doing well” since being back on probation. He also elevated Defendant’s probationary status to “high risk,” meaning that he checked on Defendant once or twice a month and that he usually found Defendant “working in his dad’s shop in the evenings.” Mr. Fielenbach concluded: “I think he’s on the right track.” Defendant’s father and wife also testified on Defendant’s behalf, describing Defendant’s demonstrated commitment to his new employment and family and requesting an outcome that would allow Defendant to “continue on the path that he’s on.”

{7} In final remarks, the prosecutor argued that Section 31-18-17(A) does not permit a mandatory habitual offender sentence to be suspended “merely” because (1) Defendant resumed restitution payments, (2) Defendant was a married father-to-be, and (3) Defendant was employed. He argued that those attributes are “not defined” as substantial and could not justify imposition of a suspended sentence “in the interest of justice.” The prosecutor added that “restitution was the order of another court” and therefore “not something that we can consider now because it’s not substantial and compelling.” He stated that he was “not necessarily disagreeing with any of it. It’s just not substantial and compelling.”

{8} The district court—in accordance with NMSA 1978, Section 31-18-15(A)(13) (2007) and Section 31-18-17(A)—sentenced Defendant to eighteen months for each of the counts on which he was found guilty, adding the one-year enhancements for each of the counts because of his habitual offender status. But the district court found that justice would not be served by Defendant’s imprisonment, observing that Defendant had already served fifty-three days of pre-sentence confinement. Therefore, the district court suspended Defendant’s entire sentence—including the habitual offender time—and instead

placed him on probation “based on the fact that [Defendant is] doing well” and “complying with [the] terms and conditions of probation.” Acknowledging the State’s argument that Defendant was already required to comply with the terms and conditions of his probation for past violations, the district court nonetheless ruled that “justice is better served by getting [Defendant] on probation and having [Defendant] do what [he’s] supposed to do as a requirement of [his] probation” in both the present and past cases. In addition to imposing terms of probation such as random urinalysis, drug and alcohol screening, and prohibiting alcohol consumption, the district court ordered that Defendant attend a “circle of security class” at Children in Need of Services (CHINS), which the court described as “not just a parenting class” but a “wonderful program,” a “life-skills course” that could “really benefit [Defendant].” In its written judgment, the district court stated that “[j]ustice will not be served by [requiring that Defendant serve] the [h]abitual [o]ffender enhancement[s] for the prior nonviolent felony conviction. Defendant is capable of supervision at this time and is doing well on probation in CR-2013-15 as reported by his probation officer, Wolf Fielenbac[h].”

{9} From this judgment, the State appealed.

#### DISCUSSION

{10} Our inquiry is two-fold. First, what does the term “substantial and compelling reasons” mean as contained in Section 31-18-17(A)? Second, did the district court abuse its discretion in this instance by suspending the entirety of Defendant’s sentence, including the two one-year habitual offender enhancements under that statute?

#### STATUTORY INTERPRETATION

{11} Section 31-18-17(A) provides that:

A person convicted of a noncapital felony . . . who has incurred one prior felony conviction . . . or conditional discharge . . . is a habitual offender and his basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence

of imprisonment and that there are *substantial and compelling reasons*, stated on the record, for departing from the sentence imposed pursuant to this subsection.

(Emphasis added.) Regarding whether “substantial and compelling reasons, stated on the record” support the district court’s suspension of Defendant’s sentence, and particularly the one-year mandatory sentencing enhancements for his being a habitual offender, the State urges us to adopt a restrictive definition of “substantial and compelling” employed in the state of Michigan. See *People v. Babcock*, 666 N.W.2d 231, 237 (Mich. 2003) (defining “substantial and compelling” as “an objective and verifiable reason that keenly or irresistibly grabs our attention; is of considerable worth in deciding the length of a sentence; and exists only in exceptional cases” (internal quotation marks and citation omitted)). The State thus maintains that the reasons stated by the district court are deficient, and that employing such a definition would clarify the district court’s failure. Defendant, on the other hand, contends that statutory construction is unnecessary and makes no argument with respect to how we should interpret the term “substantial and compelling.” Instead, Defendant argues simply that barring an abuse of the district court’s discretion, we should affirm. We address this issue in the next section but agree with the State that construction of the phrase “substantial and compelling” is warranted. We nonetheless decline to adopt the State’s proffered definition, concluding it to be inconsistent with our Legislature’s intent.

{12} “Statutory interpretation is an issue of law, which we review de novo.” *State v. Duhon*, 2005-NMCA-120, ¶ 10, 138 N.M. 466, 122 P.3d 50. “The primary goal in interpreting a statute is to give effect to the Legislature’s intent.” *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. “We begin the search for legislative intent by looking first to the words chosen by the Legislature and the plain meaning of the Legislature’s language.” *Id.* (internal quotation marks and citation omitted). “When a term is not defined in a statute, we must construe it, giving those words their ordinary meaning absent clear and express legislative intention to the contrary.” *State v. Tsosie*, 2011-NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34 (internal quotation marks and citation omitted). “The application of the plain meaning rule does not, however,

end with a formalistic and mechanistic interpretation of statutory language.” *Davis*, 2003-NMSC-022, ¶ 6. “The legislative history of the statute, including historical amendments, and whether it is part of a more comprehensive act, is instructive when searching for the spirit and reason the Legislature utilized in enacting the statute[.]” *Id.* (citation omitted); see also *State v. Gutierrez*, 2007-NMSC-033, ¶ 31, 142 N.M. 1, 162 P.3d 156 (explaining that courts may also be guided by a statute’s legislative purpose when construing the statute).

{13} We begin by noting that the Legislature opted to use two words—“substantial” and “compelling”—and used these coordinate adjectives in the conjunctive, thus “indicating the Legislature recognized a difference between the two terms.” *Gutierrez*, 2007-NMSC-033, ¶ 30. We must therefore construe each term so as not to render the other mere surplusage. See *Am. Fed’n of State, Cty. & Mun. Emps. (AFSCME) v. City of Albuquerque*, 2013-NMCA-063, ¶ 5, 304 P.3d 443 (“Statutes must also be construed so that no part of the statute is rendered surplusage or superfluous[.]” (internal quotation marks and citation omitted)).

#### The Term “Substantial”

{14} As a starting point for interpreting undefined terms contained in a statute, “[o]ur courts often use dictionary definitions to ascertain the ordinary meaning of words that form the basis of statutory construction inquiries.” *State v. Chavez*, 2016-NMCA-016, ¶ 8, 365 P.3d 61, *cert. granted*, 2016-NMCERT-001, 370 P.3d 474. The term “substantial” has many definitions, most of which tend to fall into one of two categories: qualitative or quantitative. Qualitative definitions focus on the existential characteristic of the thing being described, i.e., whether it is real or not. See *Black’s Law Dictionary* 1656 (10th ed. 2014) (defining “substantial” as “[r]eal and not imaginary; having actual, not fictitious, existence” as illustrated by the phrase “a substantial case on the merits”); *The Random House Dictionary of the English Language* 1418 (unabridged ed. 1971) (defining “substantial” as “of real worth, value, or effect” as illustrated by the phrase “substantial reasons” and providing “immaterial” and “ethereal” as antonyms of “substantial”). By contrast, quantitative definitions of “substantial” are concerned with expressions of amounts and sizes of the things being described. See *Black’s Law Dictionary* 1656 (defining “substantial” as “[c]onsiderable in amount

or value; large in volume or number” as in “substantial support and care”); *Random House Dictionary* 1418 (defining “substantial” as “of ample or considerable amount, quantity, size, etc.” as in “a substantial sum of money”). What all of these definitions—whether qualitative or quantitative—reveal is that “substantial” is an inherently subjective term, one that is innately inexact.

{15} Other jurisdictions agree. See *UtiliCorp United, Inc. v. United States*, 21 Cl. Ct. 453, 466-67 (Cl. Ct. 1990) (explaining that because “substantial is a subjective term, . . . [a]sking this Court to draw a bright line between substantial and significant or between substantial and essential is an unrealistic and illogical request[.]” and observing that “[i]f the regulations had been intended to be interpreted as narrowly and restrictively as suggested . . . then it seems a definition of the word ‘substantial’ would have also been provided”); *City of Spokane Valley v. Dirks*, No. 33140-III, 2015 WL 6395654 at \*4, 19-20, 190 Wash. App. 1041, \_\_\_ P.3d \_\_\_ (describing “substantial” as a “subjective term[.]” making a perfunctory reference to a dictionary definition of “substantial” as meaning “being largely but not wholly that which is specified[.]” and rejecting a constitutional vagueness challenge to a city zoning ordinance’s adult establishment regulations that defined “adult arcade establishment” as meaning a commercial premises where showing adult movies is a “substantial part of the premises activity” (internal quotation marks and citation omitted)). While the State points to the Michigan case and its use of expressions such as “keenly or irresistibly grab our attention[.]” “considerable worth[.]” and “exists only in exceptional cases[.]” we conclude that our law is less amenable to restrictive interpretation.<sup>1</sup> *Babcock*, 666 N.W.2d at 237 (internal quotation marks and citation omitted).

{16} New Mexico courts have only defined the term “substantial” in one case based on a definition contained in our Rules of Professional Conduct. See *Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 20, 292 P.3d 466. In that case, our Supreme Court explained that within the

context of Rule 16-110(C) NMRA—which contains an exception that allows a law firm to represent a person in a matter where a newly associated lawyer is disqualified from representation so long as that lawyer did not have a “substantial role” in the matter—“[s]ubstantial means to a degree or extent that denotes a material matter of clear and weighty importance.” *Mercer, LLC*, 2013-NMSC-002, ¶ 20 (alterations, internal quotation marks, and citation omitted). We conclude that the Legislature’s expression of the degree to which reasons must exist to forego imposition of an otherwise mandatory sentence—by use of the term “substantial”—is consistent with the definition from *Mercer*. For us to require something of greater specificity would concoct exactitude for a term that inherently lacks it. It is not our role to improve upon or worsen (depending upon one’s perspective) the legislative expressions that litigants disagree with or challenge. See *Aeda v. Aeda*, 2013-NMCA-095, ¶ 11, 310 P.3d 646 (explaining that “[u]nless a statute violates the Constitution, we will not question the wisdom, policy, or justness of legislation enacted by our Legislature” (alteration, internal quotation marks, and citation omitted)). So here, we conclude only that a district court’s justification for permitting a defendant to avoid—at least immediately—an otherwise mandatory sentence of imprisonment must be weighty, and not ethereal, in order to be “substantial.” The fact that Defendant has attained stable employment, is paying restitution, is again complying with the terms of his probation, and has demonstrated the existence of a supportive family and his commitment to it collectively bears the capacity to signal on appeal that the district court was within its discretion to find that “substantial” reasons—i.e., material matters of clear and weighty importance—justified suspension of that portion of Defendant’s sentence required by virtue of his habitual offender status. To reiterate, we see no reason to constrain the district court with an overly-specific threshold showing in an instance where the Legislature chose a term that did not do so, and therefore decline to adopt the

State’s proffered definition. See *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599 (noting that “[t]he court will not read into a statute . . . language which is not there, particularly if it makes sense as written” (internal quotation marks and citation omitted)),

### The Term “Compelling”

{17} In addition to “substantial,” the Legislature required that the district court’s reasons also be “compelling,” so we next address the proper construction of that term as well. As with defining “substantial,” the challengingly subjective nature of the word “compelling” renders somewhat futile our effort to apply common dictionary definitions. That is because whichever such definition we might select would still require subjective, case-by-case, fact-specific analysis due to the subjective qualifiers in available definitions. See *Random House Dictionary* 300 (defining “compelling” as “requiring acute admiration, attention or respect”); see also *Fields*, 528 N.W.2d at 179 (relying on *Webster’s New World Dictionary Third College Edition* to define “compelling” as “irresistibly or keenly interesting, attractive, etc.; captivating” (internal quotation marks omitted)). In our view, whether reasons are “compelling” depends upon the overall facts of a given case, including the particular criminal behavior the prosecution is designed to address, the history of a given defendant’s efforts to comply with what is required of him or her in a law-abiding society, and the court’s considerations of the factors in the defendant’s life that lend themselves to a possibility of successful rehabilitation in a non-incarcerative environment. In other words, because there can be no formulaic expression of how a district court is to undertake such quintessentially factual determinations, appellate courts should steer well away from excessive supervision. But cf. *State v. Seigling*, No. 34,620, 2017 WL 361661, 2017-NMCA-035, \_\_\_ P.3d \_\_\_ (applying our Supreme Court’s precedent to require district courts to consider imposition of lesser sanctions prior to more extreme measures when addressing state failures to comply with the district court’s local case management rule).

<sup>1</sup>Indeed, *Babcock* relied on the definition of “substantial and compelling” adopted by the Michigan Supreme Court in *People v. Fields*, 528 N.W.2d 176, 179 (Mich. 1995), noting that the term had “acquired a peculiar . . . meaning” in Michigan law. *Babcock*, 666 N.W.2d at 237 (emphasis added). In *Fields*, the Michigan Supreme Court reviewed the legislative history of Michigan’s controlled substances sentencing statute, including an amendment in 1988 that included the addition of a section that “allowed a trial judge to deviate from minimum sentences set out in the statute if there were substantial and compelling reasons to do so.” 528 N.W.2d at 178. The *Fields* Court explained that “[t]he words ‘substantial and compelling’ caused almost immediate conflict in the lower courts[.]” and therefore set forth to define the term in order to resolve the conflict. *Id.* No such conflict exists in our case law.

{18} Our holding thus declines to excessively restrict by degree the primary decisional autonomy vested in district courts regarding the suspendability of mandatory sentences under Section 31-18-17(A). We are also informed by Section 31-18-17(A)'s legislative history, and particularly what we can infer from the Legislature's amendment of Section 31-18-17. Prior to 2002, a district court had no discretion to suspend or defer a habitual offender sentence under Section 31-18-17. *See State v. Arrington*, 1993-NMCA-055, ¶ 7, 115 N.M. 559, 855 P.2d 133 ("We agree with the [s]tate that the one-year sentence for habitual offenders is indeed mandatory . . . and that the sentence may not be suspended or deferred."). However, in 2002 the Legislature amended Subsection (B) for the very purpose of granting district courts discretion to suspend or defer otherwise mandatory sentences of imprisonment. *See* H.B. 26, 45th Leg., 2nd Sess. (N.M. 2002), available at <http://www.nmlegis.gov/Sessions/02%20Regular/bills/house/HB0026.pdf> (proposed 2002 Amendment). The Legislature replaced the then-existing language—"and the sentence imposed by this subsection shall not be suspended or deferred"—with the current provision that grants district courts discretion, albeit not limitless, to suspend sentences when substantial and compelling reasons exist to do so.<sup>2</sup> *See* 2002 N.M. Laws, ch. 7, § 1(A). Because the Legislature has the power to grant or withhold discretion regarding criminal sentencing to district courts, we must assume that where discretion has been granted, the Legislature intended to allow district court judges to exercise that discretion. *See State v. Frawley*, 2007-NMSC-057, ¶ 6, 143 N.M. 7, 172 P.3d 144 (explaining that "the prescription of the mode of punishment is pre-eminently a rightful subject of legislation" (alterations, internal quotation marks, and citation omitted)); *Bybee v. City of Albuquerque*, 1995-NMCA-061, ¶ 11, 120 N.M. 17, 896 P.2d 1164 ("[W]e presume that the Legislature knows the law and acts rationally.").

{19} The 2002 Amendment, while evincing the Legislature's acknowledgment that imposing a mandatory prison sentence on a second-time non-violent offender may not be in the interest of justice, did not

grant district courts unfettered discretion to suspend a habitual offender's sentence. Rather, it opted to "regulate or restrict the circumstances in which courts may suspend sentences," as our Supreme Court has acknowledged is properly within the Legislature's purview. *State v. Mabry*, 1981-NMSC-067, ¶ 18, 96 N.M. 317, 630 P.2d 269. The Legislature restricted district courts' discretion to suspend or defer a sentence to a limited set of cases, specifically those where the defendant has no more than one prior conviction and where both the instant and prior convictions are for non-violent felony offenses. And in instances where district courts were authorized to suspend mandatory habitual offender enhancements, the Legislature regulated district courts by requiring them to articulate a factual rationale, supported by "substantial and compelling reasons," as to just why justice would not be served by a sentence of imprisonment. Yet the State would now have us effectively impose additional restrictions that would diminish further the circumstances under which a district court may suspend a habitual offender's sentence, namely "only in exceptional cases." *See Babcock*, 666 N.W.2d at 237 (internal quotation marks and citation omitted). Because we assume that "[t]he Legislature knows how to include language in a statute if it so desires[.]" *State v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 (internal quotation marks and citation omitted), we conclude that had the Legislature intended to limit a district court's discretion under Section 31-18-17(A) to only "exceptional cases," it would have included language to that effect. *See Greenwood*, 2012-NMCA-017, ¶ 38; *State v. Marshall*, 2004-NMCA-104, ¶ 8, 136 N.M. 240, 96 P.3d 801 ("[W]e do not read language into a statute, especially where the statute makes sense as written.").

{20} We hold that Section 31-18-17(A) grants district courts standard sentencing discretion that is limited only by the legislatively-imposed requirements contained in the statute. We further hold that the requirement to state "substantial and compelling reasons" for suspending a sentence should be understood by its plain meaning and is not intended to limit district courts to so act in only "exceptional cases."

### Abuse of Discretion

{21} The State, relying on three distinguishable Florida cases involving downward departure sentences rather than a habitual offender enhancement, argues that the district court's reasons for suspending Defendant's sentence were not "substantial and compelling" and thus the district court abused its discretion, and erred, when it suspended the habitual offender sentence. We disagree.

{22} "Sentencing is reviewed for an abuse of discretion." *State v. Vasquez*, 2010-NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d 438. "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the [district] court abused its discretion by its ruling unless we can characterize [the ruling] as clearly untenable or not justified by reason." *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citations omitted). In the context of sentencing, we afford district courts broad latitude in imposing sentences within the restrictions adopted by the Legislature. *See State v. Lavone*, 2011-NMCA-084, ¶ 9, 150 N.M. 473, 261 P.3d 1105 (explaining that "a district court must consider many factors when it makes a sentencing determination, and the court is given broad discretion to fashion a sentence appropriate to the offense and the offender" (internal quotation marks and citation omitted)); *State v. Clah*, 1997-NMCA-091, ¶ 19, 124 N.M. 6, 946 P.2d 210 (explaining that "[w]ithin the limitations of the provision prescribing the punishment for a particular offense, the [district] court has discretion to structure the sentence to best fit the defendant and the crime"). New Mexico courts have long recognized that "[r]ead in their entirety, the sentencing statutes evidence a legislative intent that the [district] court have a wide variety of options by which to sentence." *State v. Sinyard*, 1983-NMCA-150, ¶ 7, 100 N.M. 694, 675 P.2d 426. District courts are granted such broad discretion by the Legislature "because there are so many intangible and imponderable factors entering into such a decision." *State v. Serrano*, 1966-NMSC-166, ¶ 12, 76 N.M. 655, 417 P.2d 795 (internal quotation marks

<sup>2</sup>While the original amendment proposed to include this grant of discretion in each of the statute's subsections, including in cases where a defendant had two or more prior felony convictions, the final version adopted by the Legislature maintained the mandatory enhancement for anyone with more than one prior felony conviction. *Compare* H.B. 26, 45th Leg., 2nd Sess. (N.M. 2002), available at <https://www.nmlegis.gov/Sessions/02%20Regular/bills/house/HB0026JCS.pdf> with 2002 N.M. Laws, ch. 7, § 1, available at <https://www.nmlegis.gov/Sessions/02%20Regular/FinalVersions/house/H0026.pdf>.

and citation omitted). As our Supreme Court has explained, “[t]hese matters, which are to be considered in connection with the prior record of the accused, are of such nature that the problem of probation must of necessity rest within the discretion of the judge who hears the case.” *Id.* (quoting *Utah v. Sibert*, 310 P.2d 388, 393 (Utah 1957) (internal quotation marks omitted)). In other words, sentencing decisions involve myriad factors and should be left to the sound discretion of trial judges who are in the best position to assess and weigh whether justice will be served by a sentence of imprisonment or probation.

{23} Here, the record indicates that the district court relied heavily on the recommendation of Defendant’s probation officer, Mr. Fielenbach, in reaching its decision to suspend Defendant’s sentence. He testified that Defendant “has been doing well” and was “on the right track.” He also explained that Defendant had obtained steady employment, which would enable Defendant to pay restitution per the terms of Defendant’s prior probation, and that he was checking on Defendant regularly. The district court’s judgment included the finding that “Defendant is capable of supervision . . . as reported by his probation officer, Wolf Fielenbac[h].”

{24} Additionally, the district court explained at the hearing that suspending Defendant’s sentence was warranted because “justice is better served by getting [Defendant] on probation and having [Defendant] do what [he is] supposed to do as a requirement of [his] probation.” The record makes clear that the ongoing payment of restitution by Defendant was the specific term of probation with which both Mr. Fielenbach and the district court were particularly satisfied. Thus we understand the district court’s suspension of Defendant’s sentence to be a recognition of two important considerations: (1) the purpose and benefits of probation, see *State v. Baca*, 1977-NMCA-030, ¶ 10, 90 N.M. 280, 562 P.2d 841 (explaining that probation serves the general purposes of

“education and rehabilitation. Probation assumes the best interests of the public and the offender will be served [and that] the offender can be rehabilitated without serving the suspended jail sentence”); and (2) the primacy and importance of our state’s policy regarding paying restitution. See NMSA 1978, § 31-17-1(A) (2005) (“It is the policy of this state that restitution be made by each violator of the Criminal Code . . . to the victims of his criminal activities . . . This section shall be interpreted and administered to effectuate this policy.”); Section 31-17-1(H) (“Failure of the defendant to comply . . . with the plan of restitution . . . may constitute a violation of the conditions of probation or parole[.]” (Emphasis added.)); see also *State v. Lucero*, 1999-NMCA-102, ¶ 51, 127 N.M. 672, 986 P.2d 468 (“Requiring victim restitution is declarative of public policy to make whole the victim of the crime to the extent possible.” (alteration, internal quotation marks, and citation omitted)). We cannot say that the district court abused its discretion in determining that such considerations were “substantial and compelling” and supported suspending the mandatory habitual offender portion of Defendant’s sentence.

{25} We decline to adopt a seldom-attainable standard where to do what is expected (i.e., comply with the terms of probation) would rarely be enough. To do so would be to remove the possibility of reward for that which should be incentivized. Here, it is telling that the State itself expressed hesitation and uncertainty regarding imposition of the mandatory prison sentence in this case. It was the State that proposed sending Defendant to the diagnostic center for sixty days “as a stop-gap measure, an in-between measure,” as the prosecutor described it. However, Section 31-18-17(A) does not, in fact, provide district courts with the option of a diagnostic commitment as does NMSA 1978, Section 31-20-3 (1985). When even the State thought it justified to sentence Defendant in a way that avoided mandatory, immediate imprisonment, we can hardly see how

the district court’s concurrence on that point can be characterized as an abuse of discretion.

{26} As this Court has previously explained, “[j]udicial discretion is a discretion guided by law, caution, and prudence; it is an equitable determination of what is just and proper under the circumstances.” *State v. Madrigal*, 1973-NMCA-116, ¶ 33, 85 N.M. 496, 513 P.2d 1278 (omission, internal quotation marks, and citations omitted). “It is not a mere whim or caprice, but an honest attempt, the exercise of power and duty, to see that justice is done.” *Id.* (omission, internal quotation marks, and citation omitted). We conclude that the district court in this case properly considered myriad factors and made an honest attempt to see that justice is done under the particular circumstances of this case. We do not mean to say that the capability of a defendant to pay restitution is, alone, always a sufficient reason to suspend a habitual offender sentence. Or that compliance with probation, stable employment, and expectant parenthood—either individually or when aggregated—necessarily constitute “substantial and compelling reasons” for suspending a sentence in every case. However, given the facts of this case, we cannot say that the district court’s decision to suspend Defendant’s habitual offender sentence was “clearly untenable or not justified by reason.” *Rojo*, 1999-NMSC-001, ¶ 41 (internal quotation marks and citations omitted).

#### CONCLUSION

{27} Because the district court complied with the requirements of Section 31-18-17(A) and did not abuse its discretion in determining that there were substantial and compelling reasons for suspending Defendant’s sentence, we affirm.

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

**J. MILES HANISEE, Judge**

#### WE CONCUR:

**JAMES J. WECHSLER, Judge**

**M. MONICA ZAMORA, Judge**





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### Thank You to the **RODEY LAW FIRM**

*for its Generous Support of the Civil Legal Clinic!*

The Second Judicial District Pro Bono Committee and the Volunteer Attorney Program would like to thank the attorneys of the Rodey Law Firm for volunteering their time and expertise at the May 3, 2017 Civil Legal Clinic. The Clinic is held on the first Wednesday of every month at the Second Judicial District Courthouse in the 3rd floor conference room from 10 a.m. until 1 p.m. Thirty-eight individuals received assistance at the May 3rd clinic thanks to the dedication of seven attorneys and three staff members from the Rodey Firm, and one attorney who assists with the clinic on a regular basis. Thank you:

**Rodey Law Firm:**

Michael Brescia  
Denise Chanez  
Valerie Denton  
Marie Muniz  
Cathy Nolen

Lisa Ortega  
Theresa Parrish  
Charles K. Purcell  
Debora Ramirez  
Adrian Salazar

**Clinic Attorney:**

Bill Burgett

If you or your firm is interested in volunteering to host a clinic,  
please contact Aja Brooks at [ajab@nmlegalaid.org](mailto:ajab@nmlegalaid.org) or 505-814-5033.



## MADISON, MROZ, STEINMAN & DEKLEVA, P.A.

We are pleased to announce

### Dustin D. Dempsey

has joined the Firm as an Associate



Mr. Dempsey earned his bachelor's degree in Political Science from Texas Tech University in 2010 and his Doctor of Jurisprudence in 2014 from Texas Tech's School of Law.

*We welcome him to our practice.*

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## ALBUQUERQUE LAW-LA-PALOOZA

*Help us address the needs of  
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The Second Judicial District Pro Bono Committee  
is hosting *Law-La-Palooza*, a free legal fair,  
on **Thursday, August 24, 2017 from 3:00 pm-6:00 pm**  
at the **Raymond G. Sanchez Community Center**,  
9800 4<sup>th</sup> St. NW, Albuquerque, NM 87114.

\*first-come, first-served\* interpreters will be available\*

*We are looking for attorneys who practice in the following areas to give consults:*

Divorce	Public Benefits	Immigration
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If you would like to volunteer, please register at:  
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**Positions****Attorney**

The Pantex Plant in Amarillo, TX is looking for an Attorney with well-developed counseling, investigative, and negotiation skills who has at least five years of experience representing employers in private practice or in a corporate law department as labor and employment counsel. Candidates must possess strong interpersonal, writing, and verbal skills, the ability to manage simultaneous projects under deadline, and flexibility to learn new areas of law. Candidates must be licensed to practice law in at least one state and must be admitted, or able to be admitted, to the Texas bar. For more information on the position please visit [www.pantex.com](http://www.pantex.com), Careers, Current Opportunities and reference Req #17-0227. Pantex is an equal opportunity employer.

**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**

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)

**Assistant City Attorney**

The City of Alamogordo is recruiting for an Assistant City Attorney to prosecute violations of City ordinances in municipal court and provide legal advice and research for the Mayor, City Manager, City Commission, and other City departments as directed by the City Attorney. Please see the City website at [ci.alamogordo.nm.us](http://ci.alamogordo.nm.us) for the full job description, position requirements and to submit an application or call 575-439-4399 for more information. Recruitment is open until filled. First review of applicants will be August 21, 2017. Salary \$58,212. - \$75,000. DOQ.

**Associate**

Civil defense firm seeks associate with minimum three (3) years' experience in civil litigation or a judicial clerkship. Applicant must have strong research and writing skills. Courtroom and trial experience preferred. Competitive salary and benefits. Inquiries will be kept confidential. Please forward letter of interest and resume to Robles, Rael & Anaya, P.C. 500 Marquette NW, Suite 700 Albuquerque, NM 87102 or email to [info@roblesrael.com](mailto:info@roblesrael.com).

**Lawyer Supervisor**

The Public Education Department, Special Education Bureau, is seeking a Lawyer Supervisor in Santa Fe to provide general supervision of the Office of General Counsel (OGC) staff responsible for formal dispute resolution (due process hearings and formal complaints) and alternative dispute resolution (mediation and facilitation) under the Individuals with Disabilities Education Act (IDEA) and State Rules. This position will also serve as legal counsel for the Special Education Bureau. Minimum qualifications are a Juris Doctorate from an accredited school of law and five (5) years of experience in the practice of law. Knowledge of special education law is desirable but not required. Applicants must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for a limited practice license, which requires graduation from an accredited school of law, licensure in good standing in another state and sitting for the next eligible New Mexico State Bar exam. Applicants must hold and maintain a valid New Mexico driver's license. Applications for this position (PED #21366) must be submitted online to the State Personnel Office at <http://www.spo.state.nm.us>. Deadline for applications is 11:59 p.m. on September 16, 2017.

### Senior Trial Attorney, Albuquerque (Full time)

The Office of the Second Judicial District Attorney (Office), an Equal Employment Opportunity (EEO) employer is seeking an applicant for an "At Will" (not covered) Senior Trial Attorney position for the Office's Major Crimes Division. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. The Senior Trial Attorney will be responsible for prosecuting first and second degree felonies for the Office. The position will also be required to draft legal documents; work effectively with other agencies, defense counsel, the judiciary, victims and the public; screen cases, lead or assist trial teams; supervise or mentor other attorneys and staff; and perform other duties as assigned; This is an advanced level of position of the attorney series and must have comprehensive and current knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; The candidate must be a licensed attorney to practice law in New Mexico or be entered on admission on motion or limited license, plus a minimum of seven (7) years as a practicing attorney in criminal law or five (5) years as a prosecuting attorney. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. This advertisement will remain open until filled. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a Disability. Please send resumes to: Office of the Second Judicial District Attorney, Attn: Carla Martinez, Chief Administrative Officer E-mail: [cmartinez@da2nd.state.nm.us](mailto:cmartinez@da2nd.state.nm.us); Lomas Blvd NW Albuquerque, NM 87102

### County Attorney

Otero County is seeking an in-house counsel, legal advisor to the Board of County Commissioners and County Manager. Five years legal experience, with public sector experience preferred. Licensed by the NM State Bar. Visit [www.co.otero.nm.us](http://www.co.otero.nm.us) for complete job description, salary information and information on applying.

### Trial Attorney

Trial Attorney wanted for immediate employment with the Ninth Judicial District Attorney's Office, which includes Curry and Roosevelt counties. Employment will be based primarily in Curry County (Clovis). Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Email resume, cover letter, and references to: Steve North, [snorth@da.state.nm.us](mailto:snorth@da.state.nm.us).

### 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.

### Litigation Paralegal

Keller & Keller, LLC is a fast-paced, growing personal injury law firm located in downtown Albuquerque. We are seeking an experienced litigation paralegal to join our team. This is a full-time position with hours 8AM-5PM, Monday-Friday. You will be working with a motivated team of attorneys and paralegals. This is a great opportunity to work for injured clients in a great workplace environment. Be prepared to hit the ground running. If you are bilingual, that is a plus. Job duties include: client contact; contact with opposing counsel, e-filing in both State and Federal Court; assisting in answering written discovery; calendaring; and other duties as assigned. We are looking for self-motivated, detail oriented individuals to fill this role. Generous benefit package including 401k. Salary is negotiable. If you are interested in this litigation paralegal position, please submit your resume via email [adrianar@2keller.com](mailto:adrianar@2keller.com) and [michaeld@2keller.com](mailto:michaeld@2keller.com)

### Paralegal / Legal Secretary

Otero County is looking for highly responsible person to give administrative support to the County Attorney. Three years experience and a certificate in paralegal studies preferred. Visit [www.co.otero.nm.us](http://www.co.otero.nm.us) for complete job description, salary information and information on applying.

### Paralegal

Kemp Smith LLP has an immediate opening for a paralegal in their Las Cruces office. Visit [www.kempsmith.com](http://www.kempsmith.com) to view the job description and to apply. EEOE

### Trial Attorney

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

## Positions Wanted

### Legal Assistant for Hire

PI, Ins. Def., CV Litigation, WC, Transcription, Odyssey-CM/ECF, Prepare/Answer Discovery, Med. Rec. Repts, Notary. MS Office, Calendar, Hard-Working, Attn to detail, Strong work ethic. In ABQ or RR only. Please email me for resume, salary requirements at 'legalassistantforhire2017@gmail.com.'

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