

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

September 27, 2017 • Volume 56, No. 39



Sandias from the Rio, by Julia Crooks (see page 3)

www.trulyjuliedesigns.com

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Grab your clubs and get your golf team together!

The State Bar Foundation invites you to participate in the 1st Annual Golf Classic Tournament.

All proceeds benefit the New Mexico State Bar Foundation.



For more information, contact Stephanie at
505-797-6007 • swagner@nmbar.org

- ▼ Contests for men and women
- ▼ Networking opportunities
- ▼ Lunch provided
- ▼ Awards dinner to follow tournament

Date: Oct. 16

Where: Tanoan Country Club
10801 Academy Rd NE
Albuquerque, NM 87111

Lunch: noon–1:30 p.m.

Time: 1:30 p.m. shotgun start
Registration opens at noon.

Awards dinner to follow tournament

For registration and more details, visit www.nmbar.org/NmbarDocs/forMembers/GolfClassicSignUp.pdf.



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

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
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From the New Mexico Court of Appeals

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Meetings

September

27
Natural Resources, Energy and Environmental Lawyers Section Board
Noon, teleconference

28
Trial Practice Section Board
Noon, State Bar Center

October

3
Bankruptcy Law Section Board
Noon, U.S. Bankruptcy Court, Albuquerque

4
Employment and Labor Law Section Board
Noon, State Bar Center

10
Appellate Practice Section Board
Noon, teleconference

11
Taxation Section Board
Noon, teleconference

11
Animal Law Section Board
Noon, State Bar Center

11
Children's Law Section Board
Noon, Juvenile Justice Center

12
Public Law Section Board
Noon, Montgomery & Andrews, Santa Fe

Workshops and Legal Clinics

September

27
Consumer Debt/Bankruptcy Workshop
6–9 p.m., State Bar Center, Albuquerque,
505-797-6094

October

4
Civil Legal Clinic
10 a.m.–1 p.m.,
Second Judicial District Court,
Albuquerque, 1-877-266-9861

4
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque,
505-797-6003

6
Civil Legal Clinic
10 a.m.–1 p.m., First Judicial District Court,
Santa Fe, 1-877-266-9861

13
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County
Metropolitan Court, Albuquerque, 505-
841-9817

18
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District
Court, Albuquerque, 1-877-266-9861

About Cover Image and Artist: *Sandias from the Rio*—Inspired by photography of Steven K. Homer (Painted with permission of photographer) by Julia Crooks

Julia Crooks was admitted into the State Bar of New Mexico in October 2013 and was the inaugural law clerk of Justice Barbara J. Vigil of the New Mexico Supreme Court. She also clerked for Judge Michael Vigil of the New Mexico Court of Appeals and is currently an associate attorney at the civil litigation law firm of Atkinson, Baker & Rodriguez, PC. Crooks enjoys painting acrylic on canvas and drawing charcoal portraits. View more of her work at www.trulyjuliedesigns.com.

Notices

COURT NEWS

New Mexico Supreme Court Board of Legal Specialization Comments Solicited

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

Local County—Municipal Government Law
David M. Pato

Appellate Practice
Alice T. Lorenz

Family Law
David Walther

Real Estate Law
Gordon H. Rowe III

Supreme Court Law Library Hours and Information

The Supreme Court Law Library is open to any individual in the legal community or public at large seeking legal information or knowledge. The Library's staff of professional librarians is available to assist visitors. The Library provides free access to Westlaw, Lexis, NM OneSource and HeinOnline on public computers. Search the online catalog at <https://n10045.eos-intl.net/N10045/OPAC/Index.aspx>. Visit the library at the Supreme Court Building, 237 Don Gaspar, Santa Fe NM 87501. Learn more at lawlibrary.nmcourts.gov or by calling 505-827-4850.

Hours of Operation

Monday–Friday 8 a.m.–5 p.m.
Reference and Circulation
Monday–Friday 8 a.m.–4:45 p.m.

First Judicial District Court New Fax Number for Chief Judge Mary Marlowe Sommer

Effective Sept. 5, Chief Judge Mary Marlowe Sommer has a new fax number. The Division VIII fax number is 505-455-8169.

Professionalism Tip

With respect to the public and to other persons involved in the legal system:
I will willingly participate in the disciplinary process.

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 defendant(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.

Twelfth Judicial District Court Notice of Reassignment of Cases

A mass reassignment of all cases previously assigned to the Hon. Jerry H. Ritter, Twelfth Judicial District Judge, Division I, were automatically reassigned to the Hon. Steven Blankinship effective Sept. 11. Pursuant to Rules 1-088.1 and 5-106, NMRA, any party who wants to exercise their right to excuse Judge Blankinship must do so by Oct. 25.

Bernalillo County Metropolitan Court Closure Notice

The Bernalillo County Metropolitan Court will be closed on Oct. 27 for the Court's Annual Employee Conference. Misdemeanor custody arraignments and felony first appearances will not be held that day. The conference is sponsored by the New Mexico Judicial Education Center at the University of New Mexico and paid for by fees collected by state courts.

STATE BAR NEWS

Attorney Support Groups

- Oct. 2, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- Oct. 9, 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#.
- Oct. 16, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)

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

Business Law Section

2017 Business Lawyer of the Year

The Business Law Section has opened nominations for its annual Business Lawyer of the Year award, to be presented on Nov. 15 after the Section's Business Law Institute CLE. Nominees should demonstrate professionalism and integrity, superior legal service, exemplary service to the Section or to business law in general, and service to the public. Self-nominations are welcome. A complete description of the award and selection criteria are available at www.nmbar.org/BusinessLaw. The deadline for nominations is Oct. 2. Send nominations to Breanna Henley at bhenley@nmbar.org. Recent recipients include David Buchholz, Leonard Sanchez, John Salazar, Dylan O'Reilly and Susan McCormack.

Committee on Women and the Legal Profession

Balancing the Scales Documentary Screening

The Committee on Women and the Legal Profession and the Women's Law Caucus invite all members to lunch over a special viewing of *Balancing the Scales*. The documentary delves into the challenges women lawyers have faced historically and

still face today, including the additional hurdles faced by women lawyers of color, and illustrates how U.S. culture has accepted less than full equality for women and how few women lawyers have really broken the glass ceiling. Explore how the intersectionality of gender and race creates additional challenges, and what we as a society can do about it at noon, Sept. 27, at the UNM School of Law. R.S.V.P. with Co-chair Quiana Salazar-King at salazar-king@law.unm.edu. View the trailer by visiting <https://vimeo.com/80957214>. The CWLP and WLC wish to give a special thank you to New Mexico PBS for supplying a copy of the film and permitting this special showing.

Indian Law Section

2017 Indian Law Section Attorney Achievement Award

The Indian Law Section has opened nominations for its annual Attorney Achievement Award which gives the Section an opportunity to recognize the amazing accomplishments of its members. Section membership includes some of the foremost Indian law practitioners in the country who have made important contributions to our profession and to our communities. The nominee for the Award must be a member of the Indian Law Section and the nomination must explain, in one page or less, the nature of the nominee's extraordinary achievements in Indian law and the nominee's contributions to the community. The deadline for nominations is 5 p.m., Oct. 27. The Award will be presented on Nov. 16. Send nominations to Breanna Henley at bhenley@nmbar.org. Visit www.nmbar.org/IndianLaw to view a roster of Section members. Recent recipients include Michael P. Grossman and C. Bryant Rogers.

Intellectual Property Law Section

The U.S. Trademark Office Comes to Albuquerque

Join the Intellectual Property Law Section from 8:45 a.m.-4:45 p.m., Oct. 18, at the Hyatt Regency Hotel in Albuquerque for "The U.S. Trademark Office Comes to Albuquerque" CLE. Lawyers and entrepreneurs alike will find this to be a highly unique opportunity. Attendees will meet and hear from patent examiners, patent trial and appeal board judges, and trademark examiners from the USPTO.

Topics will include the patent examination and trademark registration processes, the administrative trial and appeal process, litigating infringement cases in federal court, and the value intellectual property protection can bring to a startup. Over lunch, the USPTO will present an update on their Dallas regional office and what resources are available to local start-ups and entrepreneurs. The day will end with a panel discussion by local businesses engaged in innovation and economic development followed by a reception. The cost is \$130 for attorneys (5.0 G), \$25 for non-attorneys and free to law students. Register online at www.nmbar.org/cle or call 505-797-6020. Space is limited.

UNM

Law Library Hours Through Dec. 16

Building and Circulation

| | |
|-----------------|----------------|
| Monday–Thursday | 8 a.m.–8 p.m. |
| Friday | 8 a.m.–6 p.m. |
| Saturday | 10 a.m.–6 p.m. |
| Sunday | noon–6 p.m. |

Reference

| | |
|---------------|---------------|
| Monday–Friday | 9 a.m.–6 p.m. |
|---------------|---------------|

Holiday Closures

Nov. 24–25 (Thanksgiving)

OTHER BARS

Albuquerque Lawyers Club Understanding the Anti-donation Clause

Alan Hall and Dick Minzner of the Rodey Law Firm will present "Understanding the Anti-donation Clause" (1.0 G) at the next meeting of the Albuquerque Lawyers Club at 11:30 a.m., Oct. 4, at Seasons Rotisserie and Grill. Lunch will begin at 11:30 a.m. with the CLE to follow. For more information and to register, contact Yasmin Dennig at ydenig@sandia.gov or 505-844-3558.

New Mexico Criminal Defense Lawyers Association Mental Disabilities/Competency CLE

Interested in knowing more about what happens to your client when competency is raised, and what happens at N.M. BHI? Want to get the latest update on linars and working with experts when your client's mental health is a concern? You won't want to miss the New Mexico Criminal Defense Lawyers Association's "Mental Disabilities



New Mexico Lawyers and Judges Assistance Program

Help and support are only a phone call away.

24-Hour Helpline

Attorneys/Law Students

505-228-1948 • 800-860-4914

Judges 888-502-1289

www.nmbar.org/JLAP

and Competency CLE" (5.3 G, 1.0 EP) on Sept. 29 in Las Vegas, N.M. Before the CLE, attendees will get a brief intake tour of the BHI facility. Visit nmcdla.org to join NMCDLA and register for this seminar today.

State Bar of Texas

'Oyez, Oyez, Oh Yay' Program Invitation for N.M. Attorneys to Improve Civics Education

State Bar of Texas Law Related Education has developed resources and programs for elementary, middle and high school students to improve civics education, the administration of justice and to prepare students for responsible citizenship. Civics education is critical to fostering engaged citizens who understand our democracy and the liberties it protects. The State Bar of Texas invites New Mexico attorneys to join the program to ensure students and teachers have the resources they need to fully explore the important role of the judicial system in our country and state. Visit www.texasbar.com/civics/index.html for more information. State Bar President Scotty Holloman has appointed a special committee to further explore this topic. To be appointed to the special committee, contact Kris Becker at kbecker@nmbar.org.

OTHER NEWS

Christian Legal Aid

New Volunteer Training Seminar

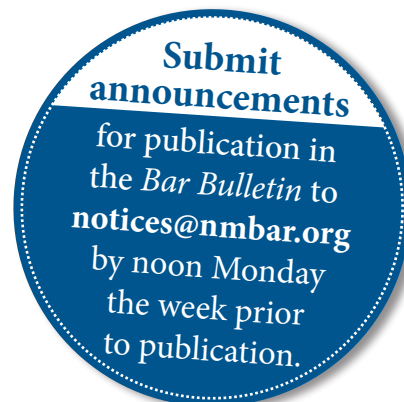
Christian Legal Aid of New Mexico invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. Christian Legal Aid will be hosting a New Volunteer Training Seminar at 11 a.m.–p.m., Oct. 27, at the State Bar Center. Join

them for free lunch, free CLE credits, and training as they learn the basics on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800. christianlegalaids@hotmail.com.

New Mexico Workers' Compensation Administration Notice of Public Hearing

The New Mexico Workers' Compensation Administration will conduct a public

hearing on the adoption of new WCA Rules at 1:30 p.m., Oct. 27, at the WCA, 2410 Centre Avenue S.E., Albuquerque, NM 87106. The proposed rule amendments are available at www.workerscomp.state.nm.us/. Written comments on the changes will be accepted until close of business on Oct. 27. The WCA proposes to repeal and replace Part 4 of Title 11, to implement new rules for the WCA e-filing system and make minor changes to the Health Care Provider and Mediation rules. The fee schedule has been updated as well.



BOARD OF BAR COMMISSIONERS ELECTION NOTICE 2017



View the duties and requirements for Board of Bar Commissioners at www.nmbar.org/NmbarDocs/AboutUs/Governance/BBCElectionNotice-Petition.pdf.

Notice is hereby given that the 2017 election of six commissioners for the State Bar of New Mexico will close at noon, Nov. 30. Nominations to the office of bar commissioner shall be by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice is in the respective district. Members of the State Bar may nominate and sign for more than one candidate. (See the nomination petition at www.nmbar.org/nmbardocs/aboutus/governance/BBCElectionNotice-Petition.pdf). **The following terms will expire Dec. 31, and need to be filled in the upcoming election. All of the positions are three-year terms and run from Jan. 1, 2018–Dec. 31, 2020.**

First Bar Commissioner District

Bernalillo County

Two positions currently held by:

- Aja N. Brooks
- Raynard Struck

Third Bar Commissioner District

Los Alamos, Rio Arriba, Sandoval and Santa Fe counties

Two positions currently held by:

- J. Brent Moore *
- Elizabeth J. Travis

Sixth Bar Commissioner District

Chaves, Eddy, Lea, Lincoln and Otero counties

Two positions currently held by:

- Erinna M. Atkins
- Jared G. Kallunki

*Ineligible to seek re-election

Send nomination petitions to:

Interim Executive Director Richard Spinello
State Bar of New Mexico
PO Box 92860
Albuquerque, NM 87199-2860
rsinello@nmbar.org

Petitions must be received by 5 p.m., Oct. 20

Direct inquiries to 505-797-6038 or kbecker@nmbar.org.

CELEBRATE

PRO BONO

www.celebrateprobono.org

OCTOBER 2017: The American Bar Association has dedicated an entire week in October to the “**National Celebration of Pro Bono.**” In New Mexico, the local Judicial District Court Pro Bono Committees have extended this celebration to span the entire month of October (and parts of September and November). The committees are hosting a number of pro bono events across the state, including free legal fairs, clinics, recognition luncheons, Continuing Legal Education classes and more! To learn more about any of the events below, or to get involved with your local pro bono committee, **please contact Aja Brooks at ajab@nmlegalaid.org or 505-814-5033.** Thank you for your support of pro bono in New Mexico!

1st JUDICIAL DISTRICT:

Free Legal Fair

Oct. 21, 2017 from 10 am–1 pm
Mary Esther Gonzales Senior Center
(1121 Alto St., Santa Fe, NM 87501)

Pro Bono Appreciation Luncheon and CLE

Oct. 23, 2017 from 11 am–1:30 pm
Hilton of Santa Fe
(100 Sandoval St., Santa Fe, NM 87501)
CLE and luncheon details TBA

2nd JUDICIAL DISTRICT:

Law-La-Palooza Free Legal Fair

Oct. 19, 2017 from 3–6 pm
Westside Community Center
(1250 Isleta Blvd SW, Albuquerque, NM 87105)

4th JUDICIAL DISTRICT:

Free Legal Fair and Pro Bono Appreciation Luncheon

Oct. 10, 2017 from 9 am–2 pm
New Mexico Highlands University
(Student Union Building, 800 National Ave. Las Vegas, NM 87701)

5th JUDICIAL DISTRICT (CHAVES):

Free Legal Fair and Pro Bono Appreciation Luncheon

Oct. 6, 2017 from 12 noon–5 pm
Roswell Adult and Senior Center
(807 N. Missouri Ave., Roswell, NM 88201)

5th JUDICIAL DISTRICT (LEA):

Free Legal Fair, Pro Bono Appreciation Luncheon and CLE

Nov. 3, 2017 from 11 am–4 pm
Hobbs City Hall
(200 E. Broadway, Hobbs, NM 88240)
CLE and luncheon details TBA

6th JUDICIAL DISTRICT (LUNA):

Free Legal Fair

Nov. 3, 2017 from 10 am–1 pm
Luna County District Court
(855 S. Platinum, Deming, NM 88030)

8th JUDICIAL DISTRICT:

Pro Bono Appreciation Luncheon and CLE

Oct. 19, 2017 from 11:30 am–3 pm
Taos Country Club
(54 Golf Course Drive, Ranchos de Taos, NM 87557)
CLE and Luncheon details TBA

9th JUDICIAL DISTRICT:

Free Legal Fair and Pro Bono Appreciation Luncheon

Sept. 28, 2017 from 11:30 am–4 pm
The Yam Theater
(219 Main Street, Portales, NM 88130)

11th JUDICIAL DISTRICT (SAN JUAN):

Free Legal Fair

Sept. 22, 2017 from 12 noon–5 pm
San Juan County District Courthouse
(103 S. Oliver, Aztec, NM 87410)

12th JUDICIAL DISTRICT (LINCOLN):

Free Legal Fair

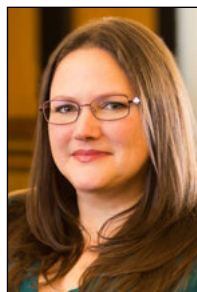
Oct. 28, 2017 from 10 am–2 pm
Ruidoso Community Center
(501 Sudderth Dr., Ruidoso, NM 88345)



Hope Eckert, an attorney, has started Creative Mediations, helping attorneys and individuals creatively resolve civil cases and related issues. Visit www.creativemediations.com to learn more.



Kaitlyn Luck has joined Montgomery & Andrews, PA, as an associate in the firm's Santa Fe office. Luck began her practice following law school in the area of personal injury and insurance litigation. She graduated from Texas State University in 2009 and received her Juris Doctorate from Texas Tech University School of Law in 2013.



Jenica L. Jacobi has joined the Rodey Law Firm. Jacobi's practice focuses on real estate and municipal law. She is experienced in handling local government matters, zoning and development issues, eminent domain, sales and leases of real property, probate, foreclosures and liquor licenses.



Cassandra Malone has joined Brownstein Hyatt Farber Schreck in the firm's litigation department as of counsel and will be based in the firm's Albuquerque office. Malone earned her law degree from the University of New Mexico School of Law, her master's degree at the University of New Mexico and her bachelor's degree at the University of Oklahoma.



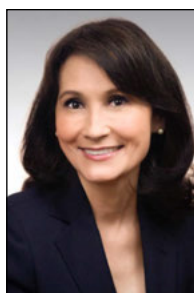
Robert J. Johnston joined the Sutin, Thayer & Browne law firm in Albuquerque on Aug. 14. He practices primarily in business and corporate law and has experience in litigation matters. He earned his bachelor's degree from Eastern New Mexico University and his law degree from University of New Mexico School of Law. He has practiced law in Albuquerque since 2016.



The Checkett Law Firm, PLLC, is pleased to announce that trial attorney **Paul J. Sheston** is now a partner in the firm. Sheston has been with the firm since 2012, and his practice continues to be focused primarily on defending physicians, hospitals, and skilled nursing facilities against medical malpractice, elder abuse and wrongful death claims. Sheston also represents licensed healthcare providers before their respective state boards.



Martha J. Kaser 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.



The University of Toledo College of Law has announced that it is conferring its 2017 Distinguished Alumnus Award on the **Hon. Roderick Kennedy (ret.)**, former judge and chief judge of the New Mexico Court of Appeals. Judge Kennedy graduated from the College of Law in 1980. The award recognizes a UT Law graduate who has achieved professional distinction and recognition in his or her career, and will be conferred on Oct. 6 in Toledo, Ohio. Judge Kennedy also

served New Mexico on the Bernalillo County Metropolitan Court, where he was Presiding Civil and Criminal Judge. He has been a judge by designation at every level of the New Mexico judiciary, and a pro tem judge for the Jicarilla Apache Nation. Licensed to practice in both New Mexico and Colorado, he now consults attorneys on the use of scientific and technical expertise at trial, and appellate law.

Leadership New Mexico is pleased to announce that the following leaders are among the 45 leaders from 19 communities across the state selected to participate in the 2017-2018 Core Program: **Melissa Force** (left), general counsel, Spaceport America, Las Cruces; **Matt Sanchez** (center), general counsel, Jaynes Corporation, Albuquerque; and **Ben Thomas** (right), attorney, Sutin, Thayer & Browne, APC, Albuquerque. This is the twenty-second class of the Leadership New Mexico Core Program. Open to all citizens of the state, Leadership New Mexico's Core Program involves leaders who represent the various geographic regions and communities, from the public, private, government, and non-profit sectors. Leadership New Mexico is a nonpartisan, non-profit 501(c)(3) educational organization directed by a Board of Directors from throughout the state of New Mexico.

Giddens, Gatton & Jacobus, PC

2018 Best Lawyers in America: George “Dave” Giddens

Modrall Sperling Roehl Harris & Sisk

2018 Best Lawyers in America: Jennifer G. Anderson (commercial litigation, litigation-health care), **Martha G. Brown** (commercial litigation, product liability litigation-defendants), **Stuart R. Butzier** (environmental law, litigation—environmental, mining law, natural resources law), **John R. Cooney** (antitrust law, bet-the-company litigation, commercial litigation, energy law, mining law, natural resources law, oil and gas law), **Earl E. DeBrine** (oil and gas law, railroad law), **Donald A. DeCandia** (commercial litigation), **Joan E. Drake** (energy regulatory law), **Timothy L. Fields** (insurance law, railroad law), **Paul M. Fish** (bankruptcy and creditor debtor rights/insolvency and reorganization law, bet-the-company litigation, litigation-bankruptcy, mortgage banking foreclosure law), **Peter Franklin** (public finance law), **Stan N. Harris** (litigation-land use and zoning), **Timothy C. Holm** (commercial litigation, mass tort litigation/class actions—defendants, product liability—defendants, railroad law), **James P. Houghton** (construction law, litigation-construction, real estate law), **Karen L. Kahn** (employee benefits law), **George R. McFall** (education law, employment law—management, litigation—labor and employment), **Margaret Lewis Meister** (commercial transactions/UCC law, corporate law, real estate law), **Arthur D. Melendres** (administrative/regulatory law, education law, municipal law), **Christopher P. Muirhead** (municipal law, public finance law), **Megan T. Muirhead** (mass tort litigation/class actions—defendants), **Brian K. Nichols** (native American law), **Jennifer A. Noya** (employment law—individuals, insurance law, litigation—labor and employment), **Maria O’Brien** (water law), **James M. Parker** (business organizations, closely held companies and family business law, corporate law, employee benefits law, health care law, litigation and controversy—tax, mergers and acquisitions law, tax law, trusts and estates), **Roberta Cooper Ramo** (arbitration, mediation), **Marjorie A. Rogers** (business organizations, closely held companies and family business law, employee benefits law, non-profit/charities law, tax law, trusts and estates), **Ruth M. Schifani** (banking and finance law, commercial finance law, commercial transactions/UCC law, equipment finance law, financial services regulation law, real estate law), **Lynn H. Slade** (energy law, environmental law, native American law, natural resources law, oil and gas law), **Walter E. Stern** (energy law, environmental law, mining law, native American law, natural resources law, oil and gas law), **R. E. Thompson** (commercial litigation, government relations practice, litigation—construction), **Douglas R. Vadnais** (bankruptcy and creditor debtor rights/insolvency and reorganization law, bet-the-company litigation, litigation—bankruptcy, mortgage banking foreclosure law) and **Alex C. Walker** (product liability litigation—defendants).

2018 Best Lawyers in America Lawyers of the Year: Stuart R. Butzier (litigation—environmental), **Earl E. DeBrine** (oil and gas law), **Timothy C. Holm** (mass tort litigation/class actions—defendants), **Jim P. Houghton** (litigation—construction), **Brian K. Nichols** (native American law), **Roberta Cooper Ramo** (mediation), **Ruth M. Schifani** (banking and finance law) and **Walter E. Stern** (energy law)

Pregenzer, Baysinger, Wideman & Sale, PC

2018 Best Lawyers in America: Nell Graham Sale (elder law and trusts/estates)

Rodey, Dickason, Sloan, Akin & Robb, PA

2018 Best Lawyers in America Lawyers of the Year: Rick Beitler (Albuquerque, personal injury—defendants), **David Buchholtz** (Albuquerque, municipal law), **Scott Gordon** (Albuquerque, litigation—labor and employment), **Justin Horwitz** (Albuquerque, public finance law), **W. Mark Mowery** (Santa Fe, mediation), **Theresa Parrish** (Albuquerque, litigation—real estate), **Andrew Schultz** (Albuquerque, corporate law), **Tracy Sprouls** (Albuquerque, corporate law), **Seth Sparks** (Albuquerque, transportation law) and **Charles Vigil** (Albuquerque, professional malpractice law).

Stein & Brockmann, PA

2018 Best Lawyers in America: Jay F. Stein (water law)

Sutin, Thayer & Browne

2018 Best Lawyers in America: Anne P. Browne (real estate law), **Suzanne Wood Bruckner** (tax law), **Maria Montoya Chavez** (family law, family law arbitration, family law mediation), **Eduardo A. Duffy** (securities/capital markets law—corporate law), **Susan M. Hapka** (employment law—management), **Robert G. Heyman** ((Santa Fe office) corporate law securities/capital markets law—public finance law), **Christopher A. Holland** (education law), **Jay D. Rosenblum** (mergers and acquisitions law—corporate law), **Benjamin E. Thomas** (banking and finance law) and **Timothy R. Van Valen** (tax law, litigation and controversy—tax law),

2018 Best Lawyers in America Lawyers of the Year: Suzanne Wood Bruckner (Albuquerque) and **Timothy R. Van Valen** (Albuquerque).

Walker & Associates, PC

2018 Best Lawyers in America: Thomas D. Walker (bankruptcy and creditor debtor rights/insolvency and reorganization law)

Walther Bennett Mayo Honeycutt P.C.

2018 Best Lawyers in America: David Walther, Sarah Bennett and Michael Golden.

Legal Education

September

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|---|--|--|
| <p>28 32nd Annual Bankruptcy Year in Review (2017) 6.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>29 PLSI 50th Anniversary CLE: Evolution of Indian Laws and Indian Lawyers 4.5 G, 2.0 EP Live Seminar, Isleta American Indian Law Center www.ailec-inc.org</p> | <p>29 Ethically Managing Your Law Practice (2016 Ethicspalooza) 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>28 Transgender Law and Advocacy (2016) 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>29 Professional Liability Insurance: What You Need to Know (2015) 3.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>29 Mental Disabilities and Competency 3.5 G, 1.0 EP Live Seminar, Las Vegas, N.M. New Mexico Criminal Defense Lawyers Association www.nmcdla.org</p> |
| <p>28 Ethics for Government Attorneys (2017) 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>29 Deposition Practice in Federal Cases (2016) 2.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | |

October

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|---|---|--|
| <p>2 Uncovering and Navigating Blind Spots Before They Become Land Mines 2.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>4 Deposition Practice in Federal Cases (2016) 2.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>9 Basic Practical Regulatory Training for the Electric Industry 27.0 G Live Seminar, Albuquerque Center for Public Utilities NMSU business.nmsu.edu</p> |
| <p>4 Bankruptcy Law: The New Chapter 13 Plan 3.1 G Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>5 2017 Health Law Symposium 6.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>10 Estate Planning for Second Marriages 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>4 Lawyers' Duties of Fairness and Honesty (Fair or Foul 2016) 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>6 2017 Employment and Labor Law Institute 5.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>12 Complying with the Disciplinary Board Rule 17-204 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>4 2016 Administrative Law Institute 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>6 Ethics, Disqualification and Sanctions in Litigation 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> | <p>12 Human Trafficking (2016) 3.0 G Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| | | <p>12 Contempt of Court: The Case that Forever Changed the Practice of Law (2017 Annual Meeting) 1.5 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |

October

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| <p>13-14 Heartburn Issues: How Not To Commit Malpractice in Military Divorce Relocation Cases Total Possible CLE Credits: 10.0 G, 1.0 EP (plus an optional 1.0 EP) Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>20 Death of Expertise: Skeptical Views of Scientific Evidence 3.5 G, 2.5 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>26 2016 Real Property Institute 4.5 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>18 U.S. Patent and Trademark Office Comes to Albuquerque 5.0 G Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>20 Ethics and Client Money: Trust Funds, Setoffs and Retainers 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> | <p>26 Lessons Learned from the “Trial of The Century” (2017 Annual Meeting) 1.0 G Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>19 Complying with the Disciplinary Board Rule 17-204 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>20 Annual Criminal Law Seminar 10.0 G, 2.0 EP Live Seminar, Ruidoso El Paso Criminal Law Group, Inc. 915-534-6005</p> | <p>27 Craig Othmer Memorial Procurement Code Institute 2.5 G, 1.0 EP Live Seminar, Santa Fe Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>19 Complying with the Disciplinary Board Rule 17-204 1.0 EP Live Seminar, Taos Center for Legal Education of NMSBF www.nmbar.org</p> | <p>24 Network of State and Federal Counsel Conference 7.7 G, 2.0 EP Live Seminar, Santa Fe Davis and Henderson 800-274-7280 x2816</p> | <p>27 Hot Topics in Adult Guardianship Law 4.5 G, 1.5 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>19 New Mexico DWI Cases: From the Initial Stop to Sentencing (2016) 2.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>26 2016 Trial Know-How! (The Reboot) 4.0 G, 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | <p>31 2017 Americans with Disabilities Act Update 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> |
| <p>19 A Little Planning Now, A Lot Less Panic Later – Practical Succession Planning for Lawyers (2017) 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org</p> | | |

November

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| <p>2 Drafting Lease Guarantees 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> | <p>3 Local Tax Court Cases with National Implications Including the Mescalero Apache U.S. Tax Court Decision 1.0 G Live Seminar, Las Cruces Center for Legal Education of NMSBF www.nmbar.org</p> | <p>3 Ethics for Transactional Lawyers 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org</p> |
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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 September 15, 2017

PUBLISHED OPINIONS

| | | | |
|--------------|------------------------|--------|------------|
| A-1-CA-34058 | State v. J Uribe-Vidal | Affirm | 09/14/2017 |
|--------------|------------------------|--------|------------|

UNPUBLISHED OPINIONS

| | | | |
|--------------|----------------------------|----------------|-----------|
| A-1-CA-35815 | T Gonzales v. R Vigil | Dismiss | 9/11/2017 |
| A-1-CA-36061 | C Robinson v. M Brito | Affirm | 9/11/2017 |
| A-1-CA-36076 | M Channon v. Nexstar Media | Affirm/Reverse | 9/11/2017 |
| A-1-CA-36103 | State v. B Lee | Affirm | 9/11/2017 |
| A-1-CA-34774 | State v. M Molina | Reverse/Remand | 9/12/2017 |
| A-1-CA-36302 | S Park v. N Park | Affirm | 9/12/2017 |
| A-1-CA-36117 | T Padilla v. S Reed | Affirm | 9/14/2017 |

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

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

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 September 27, 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 |
|---|--|----------------|
| Rules of Civil Procedure for the District Courts | | |
| 1-079 | Public inspection and sealing of court records | 03/31/2017 |
| 1-131 | Notice of federal restriction on right to possess or receive a firearm or ammunition | 03/31/2017 |
| Rules of Civil Procedure for the Magistrate Courts | | |
| 2-112 | Public inspection and sealing of court records | 03/31/2017 |
| Rules of Civil Procedure for the Metropolitan Courts | | |
| 3-112 | Public inspection and sealing of court records | 03/31/2017 |
| Civil Forms | | |
| 4-940 | Notice of federal restriction on right to possess or receive a firearm or ammunition | 03/31/2017 |
| 4-941 | Petition to restore right to possess or receive a firearm or ammunition | 03/31/2017 |
| Rules of Criminal Procedure for the District Courts | | |
| 5-106 | 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 |
|--------|--|------------|

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 |
|--------|---|------------|

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 for Minimum Continuing Legal Education

| | | |
|--------|--|------------|
| 18-203 | Accreditation; course approval; provider reporting | 08/11/2017 |
|--------|--|------------|

Rules Governing Review of Judicial Standards Commission Proceedings

| | | |
|--------|--------------------|------------|
| 27-104 | Filing and service | 07/01/2017 |
|--------|--------------------|------------|

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

Certiorari Denied, May 31, 2017, No. S-1-SC-36443

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-057

Nos. 34,146, 34,381, 34,875, and 34,876 (consolidated) (filed April 20, 2017)

STATE OF NEW MEXICO,
Plaintiff-Appellee/Cross-Appellant,

v.

LORENZO SALAS,
Defendant-Appellant/Cross-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

JUDITH K. NAKAMURA, District Judge

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
ELIZABETH ASHTON
Assistant Attorney General
Albuquerque, New Mexico
for Appellee

BENNETT J. BAUR
Chief Public Defender
SERGIO J. VISCOLI
Appellate Defender
KATHLEEN T. BALDRIDGE
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

James J. Wechsler, Judge

{1} Defendant Lorenzo Salas appeals from his conviction for battery on a peace officer, contrary to NMSA 1978, Section 30-22-24 (1971). Defendant raises numerous alleged errors arising from his trial, probation revocation hearing, and sentencing as a habitual offender.

{2} As to his trial, Defendant argues that the district court erred by denying his (1) motion to dismiss due to the State's failure to collect potentially exculpatory evidence, (2) request for a mistrial due to alleged witness tampering, (3) request to poll the jury for evidence of juror misconduct, and (4) request for a mistrial due to prosecutorial misconduct. Defendant also argues that (1) the district court issued an impermissible shotgun jury instruction and (2) substantial evidence does not support a finding of guilt as to each element of the charged offense. As to his probation revocation hearing, Defendant argues that the district court violated his procedural due process rights. Finally, as to his habitual offender hearings (sentencing hearings), Defendant argues that the district court erred by conducting a subsequent sentencing hearing (1) in violation of his right to be free from

double jeopardy and (2) in violation of his right to due process. Defendant also argues that (1) he received ineffective assistance of counsel and (2) substantial evidence does not support a finding that he was the person convicted of the prior felonies as alleged in the supplemental criminal information.

{3} The State filed a cross-appeal arguing that the district court erred in finding that the State did not meet its burden to prove that Defendant was the individual identified in the supplemental criminal information at Defendant's initial sentencing hearing. The State did not brief this argument on appeal, and it is, therefore, abandoned. See *State v. White*, 1994-NMCA-084, ¶ 1, 118 N.M. 225, 880 P.2d 322 ("Issues raised at earlier stages of the appeal but not briefed are deemed abandoned.").

{4} For the reasons discussed herein, we conclude that each of Defendant's arguments is without merit. We therefore affirm the district court.

BACKGROUND

{5} On October 24, 2011, Defendant reported to the Bernalillo County Metropolitan Detention Center (MDC) to serve a twenty-four hour remand sentence. During booking, Defendant verbally abused booking technician Jessica Alvarez and

threw a pen at her. The pen struck Alvarez in the chest. Alvarez reported Defendant's conduct to her immediate supervisor and to corrections officer Kevin Woodard. Woodard sought out Defendant in the men's general holding cell (Cell Five). Woodard found Defendant lying on a concrete bench. Defendant rose and approached Woodard in an aggressive manner, which led Woodard to remove Defendant from Cell Five and to place him in a solitary cell (Cell One). During the walk between the cells, Woodard held both Defendant's hands behind his back. Woodard released one of Defendant's hands from his grasp after entering Cell One, at which point Defendant head-butted Woodard in the mouth. The force of the blow chipped one of Woodard's teeth and lacerated his lip. Corrections officers, including Woodard, Christina Garcia, Larry Smith, and Brian Romm, regained control of Defendant and placed him in restraints. Both Defendant and Woodard received medical attention.

{6} MDC personnel filed a report with the Bernalillo County Sheriff's Office (BCSO). Deputy Phillip Gonzales of the BCSO reviewed the report, including the victim statement and photographs attached to the report. Deputy Gonzales then filed a criminal complaint against Defendant for aggravated battery on a peace officer.

{7} Defendant's trial occurred in January 2014. Witnesses for the State included Alvarez, Woodard, Garcia, Romm, and Deputy Gonzales. Defendant testified on his own behalf. The jury found Defendant guilty of battery on a peace officer. The district court sentenced Defendant to eighteen months incarceration but gave him credit for time served and ordered probation for the remaining time. The State filed a supplemental criminal information, alleging that Defendant was a habitual offender under NMSA 1978, Section 31-18-17 (2003), and seeking enhancement of Defendant's sentence.

{8} On December 5, 2014, the district court conducted Defendant's initial sentencing hearing. The State's evidence included "case information pages," which contained inconsistent identifying information about Defendant and certified copies of fingerprint cards from 2004 and 2008 arrests. The evidence did not, however, include a certified copy of Defendant's fingerprint card from the current case. The district court ruled that the State's evidence was not sufficient to prove that Defendant was the person convicted of

the prior felonies as alleged in the supplemental criminal information and denied the State's request for sentencing enhancement.

{9} At Defendant's December 16, 2014 probation violation hearing, the State requested a subsequent sentencing hearing. Defendant objected, arguing that double jeopardy prohibited retrial of his habitual offender status.¹ The district court scheduled concurrent hearings to address Defendant's alleged probation violation and sentencing as a habitual offender for January 20, 2015. The scheduled hearings ultimately occurred on February 11, 2015 and February 18, 2015. The district court ruled that Defendant violated his probation and sentenced him to one hundred forty-five days incarceration. The district court then ruled that Defendant was a habitual offender and enhanced his sentence by four years as required under Section 31-18-17.

{10} Both the State and Defendant appealed issues arising from Defendant's trial, his probation revocation hearing, and his sentencing hearings. This Court consolidated these issues on appeal. In lieu of a comprehensive recitation of every event that occurred during Defendant's trial and subsequent hearings, we discuss events relevant to Defendant's appellate arguments as necessary below.

THE TRIAL

{11} As to his trial, Defendant argues that any of five alleged errors by the district court requires reversal of his conviction. We review four of these alleged errors for abuse of discretion and the fifth for fundamental error. Defendant additionally argues that substantial evidence did not support his conviction. A district court abuses its discretion if its ruling is "clearly against the logic and effect of the facts and circumstances before the court." *State v. Lucero*, 1999-NMCA-102, ¶ 32, 127 N.M. 672, 986 P.2d 468 (internal quotation marks and citation omitted). "Parties alleging fundamental error must demonstrate the existence of circumstances that shock the conscience or implicate a fundamental unfairness within the system that would undermine judicial integrity if left unchecked." *State v. Cunningham*, 2000-NMSC-009, ¶ 21, 128 N.M. 711, 998 P.2d 176 (internal quotation marks and citation omitted).

Lost or Destroyed Evidence

{12} Defendant argues that the district court erred in denying his motion to dismiss due to lost or destroyed evidence. "The denial of a motion to sanction by dismissal or suppression of evidence is reviewed for abuse of discretion." *State v. Duarte*, 2007-NMCA-012, ¶ 3, 140 N.M. 930, 149 P.3d 1027.

{13} Although alternate tests apply under circumstances in which collected evidence is "lost, destroyed, or inadequately preserved," *State v. Ware* articulates the New Mexico test for cases in which the evidence at issue is never collected. 1994-NMSC-091, ¶ 11, 118 N.M. 319, 881 P.2d 679. This test first requires that "the evidence that the [s]tate failed to gather from the crime scene must be material to the defendant's defense." *Id.* ¶ 25. If the evidence is material, the district court must determine whether "the failure to collect the evidence was done in bad faith, [or] in an attempt to prejudice the defendant's case[.]" *Id.* ¶ 26. Such a finding may result in suppression of the evidence. *Id.*

{14} The booking area of MDC is equipped with a video surveillance system, which records with cameras that continuously pan the area. There are no cameras inside either Cell One or Cell Five. Neither MDC personnel nor Deputy Gonzales requested that any potential recording of the incident at issue be reviewed or preserved, and the video surveillance system automatically deleted any relevant recording after six months. Defendant filed a pre-trial motion to dismiss the charge against him due to the State's "destruction of exculpatory evidence." The district court denied the motion, ruling that the State's failure to gather the evidence was not negligent or in bad faith.

{15} Defendant presented no evidence that the surveillance system captured video of either the alleged battery or the immediately preceding interaction. However, even if the surveillance system did capture material evidence, Defendant does not direct this Court to any indication that the failure to collect such evidence was the result of bad faith or an attempt to cause prejudice to Defendant.

{16} Deputy Gonzales testified that his investigation comported with BCSO's standard procedure for incidents at MDC, specifically stating that battery on a peace

officer is not a charge that requires an in-person investigation. Deputy Gonzales received Woodard's written statement and the accompanying photographs. He did not, apparently, contemplate the possibility that MDC withheld exculpatory evidence. Even if Deputy Gonzales should have investigated the possibility that exculpatory video evidence existed, his failure to do so was no more than negligent. *See id.* (describing the failure to collect evidence as grossly negligent if the investigating officer "act[s] directly contrary to standard police investigatory procedure").

{17} "When the failure to gather evidence is merely negligent, an oversight, or done in good faith, sanctions are inappropriate, but the defendant can still examine the prosecution's witnesses about the deficiencies of the investigation and argue the investigation's shortcomings against the standard of reasonable doubt." *Id.* Defendant cross-examined Deputy Gonzales at trial with respect to the substance and quality of his investigation. Given this cross-examination of Deputy Gonzales, the district court's denial of Defendant's motion to dismiss was not "clearly against the logic and effect of the facts and circumstances before the court." *Lucero*, 1999-NMCA-102, ¶ 32 (internal quotation marks and citation omitted).

Witness Tampering

{18} Defendant argues that the district court erred in denying his request for a mistrial due to witness tampering in violation of Rule 11-615 NMRA. "We review the [district] court's denial of a request for a mistrial for abuse of discretion." *Lucero*, 1999-NMCA-102, ¶ 32.

{19} Rule 11-615 provides that, if requested, the "court must order witnesses excluded so that they cannot hear other witnesses' testimony[.]" The purpose of the rule is to "prevent witnesses from tailoring their testimony to the testimony of other witnesses." *State v. Ruiz*, 1995-NMCA-007, ¶ 22, 119 N.M. 515, 892 P.2d 962. However, even assuming that the conduct in the current case implicates Rule 11-615, "the choice of remedy [for a violation of the rule] is within the sound discretion of the [district] court." *State v. Reynolds*, 1990-NMCA-122, ¶ 28, 111 N.M. 263, 804 P.2d 1082.

{20} In *Reynolds*, the defendant alleged that one of the state's witnesses, who had

¹Appellate courts use the terms "retrial," "resentencing," and "relitigate" somewhat interchangeably when referring to subsequent sentencing hearings. We use the term "retrial" because it is the term used by the United States Supreme Court in both *Lockhart v. Nelson*, 488 U.S. 33, 34 (1988), and *Monge v. California*, 524 U.S. 721, 734 (1998).

already testified, discussed the trial with another of the state's witnesses, who had not yet testified. *Id.* ¶ 25. The district court held a hearing on the allegations, denied the defendant's request for a mistrial, and tailored alternate sanctions. *Id.* ¶ 26. This Court affirmed, holding that although a mistrial is a possible remedy for a violation of Rule 11-615, other potential remedies include "striking testimony, citing for contempt, instructing the jury, permitting examination of the witnesses by counsel concerning how their testimony may have been tainted, and permitting argument by counsel." *Reynolds*, 1990-NMCA-122, ¶ 28. {21} Alvarez testified that a secretary employed by the district attorney's office provided her with a copy of Woodard's incident report and that she read portions of the report prior to testifying. She additionally testified that she only read the first three lines of Woodard's report before she stopped reading and that, other than the date of the incident, the report did not serve to refresh her memory of the incident. Defendant requested a mistrial, claiming that Alvarez's reading of Woodard's incident report was akin to communication between witnesses. The district court denied this request.

{22} *Reynolds* provides that cross-examination is a possible remedy for a violation of Rule 11-615. *Reynolds*, 1990-NMCA-122, ¶ 28. The district court gave Defendant an opportunity to cross-examine Alvarez as to the clarity with which she remembered the incident independent of Woodard's report. Defendant does not argue on appeal that cross-examination was an insufficient remedy. As such, the district court's choice of this remedy was not "clearly against the logic and effect of the facts and circumstances before [it.]" *Lucero*, 1999-NMCA-102, ¶ 32 (internal quotation marks and citation omitted).

Jury Misconduct

{23} Defendant argues that the district court erred by denying his request to poll the jury for evidence of misconduct. Although incompletely developed on appeal, we interpret this argument to address the possibility that the jurors discussed the case amongst themselves in violation of the district court's oral instructions. This Court reviews a district court's refusal to voir dire a jury under such circumstances for abuse of discretion. *State v. Case*, 1984-NMSC-012, ¶ 24, 100 N.M. 714, 676 P.2d 241.

{24} "If there is no evidence of probable juror impropriety, the [district] court

does not abuse its discretion by refusing to voir dire the jury." *Id.* Additionally, we presume that jurors adhere to instructions not to prematurely discuss the case among themselves. *Id.* ¶ 23.

{25} The spouse of one of the jurors sat in the gallery during the first two days of trial. On two occasions, references were made to Defendant's incarceration while outside the presence of the jury but in the presence of the juror's spouse. Due to the possibility that the juror's spouse could have imparted prejudicial information to the juror, the district court excused the juror at the end of the second day of trial. The next day, Defendant requested that the judge voir dire the jury, by way of a generic question, as to any potentially prejudicial information relayed by the excused juror. The district court declined this request, stating that addressing the issue with the jury would simply draw attention to the issue. Defendant did not request a mistrial as a result of the district court's ruling.

{26} Defendant neither argues, nor directs this Court to any evidence, that the jury was exposed to extraneous information related to his incarceration during trial. As a result, the district court's ruling was not "clearly against the logic and effect of the facts and circumstances before the court." *Lucero*, 1999-NMCA-102, ¶ 32 (internal quotation marks and citation omitted).

Prosecutorial Misconduct

{27} Defendant argues on appeal that the district court erred in denying his motion for a mistrial on the issue of prosecutorial vouching. "We review the [district] court's denial of a request for a mistrial for abuse of discretion." *Id.* Defendant's brief in chief also requests relief for additional instances of alleged prosecutorial vouching. In accordance with our appellate rules, we address only those instances for which Defendant provides citation to the record in his brief in chief. *See* Rule 12-318(A)(3) NMRA ("The brief in chief of the appellant . . . shall contain citations to the record proper, transcript of proceedings, or exhibits supporting each factual representation[.]"); *State v. Dominguez*, 2014-NMCA-064, ¶ 26, 327 P.3d 1092 (holding that "we will not search the record to find facts to support [a defendant's] argument").

{28} Defendant claims that the district court erred in its treatment of four specific comments made during the State's closing argument. The first two comments were part of a continuous exchange, which occurred as follows:

[The State:] You have testimony from all of the witnesses that this was a fast, out-of-control situation going on. I believe from Officer Woodard, who said that it was happening in a matter of seconds. It's very possible that it was never caught on film It's also possible that it lapsed in that six months. But I assure you there's no government conspiracy to hide it. Because you have the witness testimony. If there had been another witness who provided conflicting testimony, you would have heard that too. Because . . . you were given all of the relevant testimony that the State had to provide to you to prove this case beyond a reasonable doubt.

[Defense Counsel:] Objection, Your Honor. She's vouching for the strength of her case and evidence.

The Court: That's true. Jury, disregard that last remark.

[The State:] You heard every witness that was called in this particular case who had relevant testimony to provide.

[Defense Counsel:] Objection, Your Honor.

The Court: Once again, State.

[The State:] Your Honor, may we approach?

The Court: Sure.

. . . .

[Defense Counsel:] Your Honor, I move for mistrial for prosecutorial misconduct. She is not permitted to vouch for the strength of her case and evaluating and making comment that she has evaluated things that she—they chose all the relevant information to present in this case. She has—

[The State:] They put on a defense. We said that they were given relevant information. They had all of the statements that were permitted to be put on for them, therefore there's nothing impermissible about what I did.

The Court: Do not refer to it as the relevant information, and you put on the information you had and that's fine. It doesn't give rise to a mistrial at this time. So just move on.

{29} The district court agreed that the State's characterization of certain evidence as "relevant" was impermissible and took immediate action to correct the error by issuing a curative instruction after Defendant's first objection. See *State v. Sosa*, 2009-NMSC-056, ¶ 25, 147 N.M. 351, 223 P.3d 348 (holding that "a [district] court can correct any impropriety [in closing argument] by striking statements and offering curative instructions"). It is well-settled that juries are presumed to follow such instructions. *State v. Otto*, 2007-NMSC-012, ¶ 17, 141 N.M. 443, 157 P.3d 8. Defendant did not request similar relief following his second objection but instead requested a mistrial, which was denied. A district court does not err by refusing to give a curative instruction in the absence of such a request. See *State v. Sandoval*, 1975-NMCA-096, ¶ 4, 88 N.M. 267, 539 P.2d 1029 (holding that it is the duty of the complaining party to request a curative instruction). Furthermore, the district court's response to Defendant's second objection implicitly reiterated its previous curative instruction.

{30} District courts "are in the best position to assess the impact of any questionable comment" and, therefore, have "broad discretion in managing closing argument." *Sosa*, 2009-NMSC-056, ¶ 25. Given the corrective action taken, the district court's denial of Defendant's request for a mistrial was not "clearly against the logic and effect of the facts and circumstances before the court." *Lucero*, 1999-NMCA-102, ¶ 32 (internal quotation marks and citation omitted).

{31} The next two comments centered on the credibility of witness testimony. Although Defendant did not request a mistrial or additional curative instructions with respect to either comment, he argues on appeal that the district court's failure to grant such relief sua sponte deprived him of a fair trial.

{32} While discussing Defendant's theory of the case, the State argued that "Defendant is trying to merge the story, but he can't because his testimony today is made out of whole cloth." Such comments are not impermissible, as long as they are not expressed as personal opinion or intended to incite prejudice toward a defendant. *Dominguez*, 2014-NMCA-064, ¶ 23. "Where a case essentially revolves around which of two conflicting stories is true, a party may reasonably infer, and thus argue, that the other side is lying." *Id.* ¶ 25 (internal quotation marks and citation omitted). Defendant testified

that Woodard's injury may have resulted from unintentional contact. The State's comment during closing argument merely questioned the credibility of Defendant's testimony in light of other evidence. Even had he objected at trial, such a comment would not entitle Defendant to a mistrial or curative instruction.

{33} While discussing Alvarez's testimony, the State argued that "Defendant placed a lot of weight on the fact that [she] couldn't remember details. I would proffer to you that she had a good recollection. She testified credibly, and she told you that." Defendant objected, and the district court sustained the objection, stating that "[t]he jurors get to . . . determine the credibility of each witness." However, Defendant did not request a mistrial or curative instruction in response to this comment. In the absence of such a request, or a demonstration that prejudice resulted, the district court's response to Defendant's objection was sufficient to cure the error. See *In re Crystal L.*, 2002-NMCA-063, ¶ 19, 132 N.M. 349, 48 P.3d 87 (finding the appellant was not entitled to relief on appeal when the district court sustained the appellant's objection to improper comments during closing argument, but the appellant did not request additional relief at trial and failed to demonstrate prejudice on appeal).

{34} The district court did not abuse its discretion in denying Defendant's request for a mistrial or err in its treatment of any of the specific comments raised on appeal. Defendant is not entitled to his requested relief.

Shotgun Jury Instruction

{35} Defendant argues that the district court issued an impermissible shotgun jury instruction. Defendant did not preserve this argument for appeal. We therefore review for fundamental error only. See *State v. Barber*, 2004-NMSC-019, ¶ 8, 135 N.M. 621, 92 P.3d 633 (holding that appellate courts review unpreserved questions for fundamental error); see also *Cunningham*, 2000-NMSC-009, ¶ 21 (describing the burden placed on parties alleging fundamental error).

{36} The use of a shotgun jury instruction is prohibited due to the "potentially coercive effect it has on holdout jurors to abandon their convictions to arrive at a verdict with the majority." *State v. Laney*, 2003-NMCA-144, ¶ 52, 134 N.M. 648, 81 P.3d 591. In *State v. Rickerson*, our Supreme Court outlined three factors that determine whether communication between the district court and the

jury related to the jury's deliberations is coercive. 1981-NMSC-036, ¶ 4, 95 N.M. 666, 625 P.2d 1183. These factors are "(a) whether any additional instruction or instructions . . . were given[,] (b) whether the court failed to caution a jury not to surrender honest convictions, thus pressuring holdout jurors to conform, and (c) whether the court established time limits on further deliberations with the threat of a mistrial." *Id.* Although *Rickerson* reviewed the propriety of an inquiry by the district court into the numerical division of the jury—a circumstance not at issue here—the circumstances of this case justify application of the same multi-factor test. In applying the *Rickerson* test, we consider both the district court's actions and the circumstances under which such actions arose. *Laney*, 2003-NMCA-144, ¶ 56.

{37} The jury received the case on Friday at approximately 4:00 p.m. At 5:10 p.m., the district court called the jury to the courtroom to discuss its progress toward a verdict and to relay logistical concerns with allowing deliberations to continue. The district court instructed the jury that it could deliberate for twenty more minutes and, if it did not reach a verdict, deliberations would resume on the following Monday. The jury returned a verdict within the allotted time.

{38} Defendant argues that the prospect of returning on Monday could have a coercive effect on the jurors. Under the circumstances of this case, we cannot agree. The temporal limitation established by the district court applied only to that particular day and arose from logistical concerns, rather than deliberative ones. The district court expressly stated:

I don't mean to rush you, and I'm not telling you to come back with a verdict, I just need a point where I have to say enough is enough and you need to . . . come back on Monday. I don't want a quick verdict. I don't mean to rush you. You can have all the time you need on Monday[.]

While we recognize that the average juror might be disinclined to return to jury service following the weekend, the district court's conduct in no way "pressur[ed] holdout jurors to conform" or "established time limits on further deliberations with the threat of a mistrial." *Rickerson*, 1981-NMSC-036, ¶ 4. In the absence of such coercion, Defendant has not suffered "fundamental unfairness" requiring reversal. *Cunningham*, 2000-NMSC-009, ¶ 21.

Sufficiency of the Evidence

{39} Finally, Defendant argues that substantial evidence does not support a finding that Woodard was a peace officer as defined by statute. “The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). Appellate courts “view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *Id.* (internal quotation marks and citation omitted).

{40} Section 30-22-24 prohibits battery upon a peace officer. A corrections officer, or “jailer,” is a peace officer under the statute. *See State v. Rhea*, 1980-NMSC-033, ¶ 5, 94 N.M. 168, 608 P.2d 144 (“We hold that the Legislature did not exclude jailers from its definition of peace officers. A jailer is an officer in the public domain, charged with the duty to maintain public order.”).

{41} Woodard testified that he was a corrections officer employed by MDC. Woodard’s testimony is substantial evidence that he is a peace officer under the statute. Defendant’s argument is not well-taken.

PROBATION REVOCATION HEARING

{42} Defendant argues that the district court violated his procedural due process rights by admitting drug test results in violation of protocol established in *State v. Sanchez*, 2001-NMCA-060, ¶ 17, 130 N.M. 602, 28 P.3d 1143. This Court reviews due process claims de novo. *State v. Gutierrez*, 2015-NMCA-082, ¶ 23, 355 P.3d 93. However, Defendant did not preserve this argument for appeal. We therefore review for fundamental error only. *See Barber*, 2004-NMSC-019, ¶ 8 (holding that appellate courts review unpreserved questions for fundamental error); *see also Cunningham*, 2000-NMSC-009, ¶ 21 (describing the burden placed on parties alleging fundamental error).

{43} *Sanchez* established that defendants are entitled to minimum due process rights in probation revocation hearings. 2001-NMCA-060, ¶ 13. In cases involving a positive drug test, the defendant must receive a copy of the relevant laboratory test at least five days prior to the hearing. *Id.* ¶ 17.

{44} The State filed a notice of compliance with the *Sanchez* protocol on January 5,

2015. Defendant does not direct this Court to any evidence indicating that he did not receive this notice and the associated litigation packet or that the State otherwise violated the *Sanchez* protocol. *See Dominguez*, 2014-NMCA-064, ¶ 26 (“[W]e will not search the record to find facts to support [a defendant’s] argument.”). Under these circumstances, Defendant has not suffered “fundamental unfairness” requiring reversal. *Cunningham*, 2000-NMSC-009, ¶ 21.

SENTENCING HEARINGS

{45} With respect to his sentencing hearings, Defendant argues that any of four alleged errors by the district court requires reversal of his sentencing enhancement. We address these arguments in turn.

Double Jeopardy

{46} Defendant argues that the district court violated double jeopardy by subjecting him to retrial after ruling that the State’s evidence was not sufficient to prove that he was the person convicted of the prior felonies as alleged in the supplemental criminal information. Questions related to double jeopardy protections are reviewed de novo and may be raised for the first time on appeal. *State v. Lopez*, 2008-NMCA-002, ¶ 12, 143 N.M. 274, 175 P.3d 942.

{47} The State cites various cases, including *State v. Linam*, 1979-NMSC-004, 93 N.M. 307, 600 P.2d 253; *State v. Aragon*, 1993-NMSC-054, 116 N.M. 267, 861 P.2d 948; and *State v. Freed*, 1996-NMCA-044, 121 N.M. 569, 915 P.2d 325, for the general principle that double jeopardy protections do not apply to habitual offender proceedings. We agree that “double jeopardy [protections] generally [do] not apply in . . . habitual offender proceedings” because the proceedings do not have “the hallmarks of a trial of guilt or innocence[.]” *Aragon*, 1993-NMSC-054, ¶¶ 11, 13.

{48} However, in the only New Mexico case to address Defendant’s specific argument, our Supreme Court indicated that double jeopardy prohibits retrial after a ruling that the state’s evidence was not sufficient to prove that the defendant was the person convicted of the prior felonies as alleged in the supplemental criminal information. *Koonsman v. State*, 1993-NMSC-052, ¶ 7 n.2, 116 N.M. 112, 860 P.2d 754. In *Koonsman*, the defendant was convicted of a third degree felony in 1990. *Id.* ¶ 2. The state submitted a supplemental criminal information that alleged that the defendant had five prior felony convictions: two from 1960, two from 1966, and

one from 1978. *Id.* The district court ruled that the defendant was the same person named in the 1966 and 1978 convictions but that “there was not sufficient evidence of identity for the two 1960 convictions.” *Id.* It sentenced the defendant as a habitual offender with three prior convictions. *Id.* The defendant appealed his sentencing enhancement, arguing that the sequencing of the crimes and convictions resulted in only two qualifying offenses under the statute. *Id.* ¶ 3. Our Supreme Court agreed and ruled that the defendant’s conviction could only be enhanced by two prior convictions—in part because of the sequencing issue raised by the defendant and in part “because the [s]tate failed to prove that [the defendant] was the same defendant as the person named in the two 1960 convictions.” *Id.* ¶ 7. It expanded upon its ruling in a footnote, stating:

Although the court may re-sentence [the defendant] as a[] habitual offender with two prior convictions, . . . the [s]tate may not attempt to relitigate whether [the defendant] was indeed the person named in the 1960 convictions. A hearing already has been held on that issue and the [s]tate failed to provide sufficient evidence of [the defendant’s] identity.

Id. ¶ 7 n.2 (citations omitted). Because neither party argued for retrial of the 1960 convictions, the footnote appears to be dictum. *See Kent Nowlin Constr. Co. v. Gutierrez*, 1982-NMSC-123, ¶ 8, 99 N.M. 389, 658 P.2d 1116 (“Dictum is unnecessary to the holding of a case and therefore is not binding as a rule of law.”). Supreme Court dicta, however, has persuasive value. *See State v. Johnson*, 2001-NMSC-001, ¶ 16, 130 N.M. 6, 15 P.3d 1233 (holding that lower courts should give adequate deference to Supreme Court dicta). In Defendant’s initial sentencing hearing, the State failed to introduce a certified copy of his fingerprint card from the current case, leading the district court to rule that the State’s evidence was not sufficient to prove that Defendant was the person convicted of the prior felonies as alleged in the supplemental criminal information. However, to the extent that *Koonsman* suggests that the failure to introduce sufficient evidence of a defendant’s identity in a habitual offender proceeding prohibits retrial, its persuasive value is negated by subsequent United States Supreme Court case law.

{49} In 1988, the United States Supreme Court decided *Lockhart v. Nelson*. *Lockhart* interpreted Arkansas's habitual offender statute, which imposes sentencing enhancements following a fifth felony conviction. 488 U.S. at 34-35. The defendant was convicted of burglary, and the state introduced evidence of four prior felony convictions at his sentencing hearing. *Id.* at 36. The defendant testified that the governor had pardoned one of his prior convictions. *Id.* Despite this testimony, the jury concluded that the state proved that the defendant had four prior felony convictions and imposed an enhanced sentence. *Id.*

{50} The defendant petitioned for a writ of habeas corpus, alleging that his sentence was invalid due to the alleged pardon. *Id.* at 37. The United States District Court ordered an investigation, which verified the defendant's claim. *Id.* The court declared the enhancement invalid and subsequently ruled that double jeopardy prohibited retrial of the defendant's habitual offender status. *Id.* When the state moved to retry the defendant as a habitual offender, the defendant responded that double jeopardy prohibited retrial. *Id.* The Eighth Circuit affirmed, holding that "the pardoned conviction was not admissible under state law, and that without it, the state has failed to provide sufficient evidence to sustain the enhanced sentence." *Id.* (alterations, internal quotation marks, and citation omitted). The United States Supreme Court granted certiorari and reversed the Eighth Circuit. *Id.* In considering whether substantial evidence supported the jury's finding, it held that "where the evidence offered by the [s]tate and admitted by the trial court—whether erroneously or not—would have been sufficient to sustain a guilty verdict, the Double Jeopardy Clause does not preclude retrial." *Id.* at 34. *Lockhart* left open the issue of whether the state's complete failure to introduce sufficient evidence would preclude retrial of a defendant's habitual offender status.

{51} The United States Supreme Court revisited the issue in *Monge v. California*. *Monge* interpreted California's "three-strikes" law, which subjects defendants to sentencing enhancement if they have at least one previous conviction for a "serious felony." 524 U.S. at 724. At the defendant's "three-strikes" hearing, the state alleged that his qualifying conviction was for assault with a deadly weapon—specifically, a stick. *Id.* at 725. The state did not, however, offer any substantive evidence that the

defendant "personally used a dangerous or deadly weapon during the assault" as required to qualify as a "serious felony." *Id.* at 724-25. Despite this evidentiary deficiency, the trial court enhanced the defendant's sentence under the "three-strikes" law. *Id.* at 725.

{52} The California Court of Appeal concluded that insufficient evidence supported the sentencing enhancement and that double jeopardy prohibited retrial. *Id.* at 725-26. The California Supreme Court reversed, and the United States Supreme Court granted certiorari. *Id.* at 726-27. It first outlined the historical rationale underlying double jeopardy protections, stating that double jeopardy "protects against successive prosecutions for the same offense after acquittal or conviction and against multiple criminal punishments for the same offense." *Id.* at 727-28. Then, turning to sentencing proceedings, it held:

Sentencing decisions favorable to the defendant . . . cannot generally be analogized to an acquittal. We have held that where an appeals court overturns a conviction on the ground that the prosecution proffered insufficient evidence of guilt, that finding is comparable to an acquittal, and the Double Jeopardy Clause precludes a second trial. *Where a similar failure of proof occurs in a sentencing proceeding, however, the analogy is inapt.* The pronouncement of sentence simply does not have the qualities of constitutional finality that attend an acquittal.

Id. at 729 (emphasis added) (internal quotation marks and citations omitted). By holding that insufficient evidence is never a bar to the retrial of a defendant's status as a habitual offender, *Monge* resolved the issue left open in *Lockhart*. Compare *Bowman v. State*, 552 A.2d 1303, 1310 (Md. 1989) (holding, post-*Lockhart*, that insufficient evidence prohibits retrial in a habitual offender proceeding), with *Scott v. State*, 148 A.3d 72, 83-84 (Md. Ct. Spec. App. 2016) (departing from *Bowman* and holding, post-*Monge*, that insufficient evidence does not prohibit retrial in a habitual offender proceeding). Defendant does not argue that the New Mexico Constitution offers greater protection than the Federal Constitution. See *State v. Armendariz-Nunez*, 2012-NMCA-041, ¶ 5, 276 P.3d 963 ("Where [a state constitutional] provision has never before been addressed under our

interstitial analysis, trial counsel . . . must argue that the state constitutional provision should provide greater protection [than its federal counterpart.]"). *Monge* therefore is the relevant precedent, and the district court did not err in allowing the retrial of Defendant's habitual offender status.

Due Process Violation

{53} Defendant also argues that the district court violated his due process rights by allowing the State to proceed with a subsequent sentencing hearing without proper notice. This Court reviews due process claims de novo. *Gutierrez*, 2015-NMCA-082, ¶ 23. However, Defendant did not preserve this argument for appeal. We therefore review for fundamental error only. See *Barber*, 2004-NMSC-019, ¶ 8 (holding that appellate courts review unpreserved questions for fundamental error); see also *Cunningham*, 2000-NMSC-009, ¶ 21 (describing the burden placed on parties alleging fundamental error).

{54} In order to subject a defendant to a statutory sentencing enhancement, due process requires that the defendant "be given notice that enhancement of sentence is sought by a pleading filed by the [s]tate and an opportunity to be heard before an increased penalty can be imposed." *State v. Santillanes*, 1981-NMSC-064, ¶ 5, 96 N.M. 477, 632 P.2d 354 (citing *State v. Rhodes*, 1966-NMSC-064, ¶ 11, 76 N.M. 177, 413 P.2d 214). This standard applies to various statutory sentencing enhancement schemes. See, e.g., *Caristo v. Sullivan*, 1991-NMSC-088, ¶¶ 41-44, 112 N.M. 623, 818 P.2d 401 (applying the *Rhodes* due process analysis to a sentencing enhancement predicated upon a finding of aggravating circumstances).

{55} In *State v. Godoy*, the state sought to enhance the defendant's sentence pursuant to Section 31-18-17. *Godoy*, 2012-NMCA-084, ¶¶ 20-21, 284 P.3d 410. On appeal, the defendant claimed that the state's failure to "make a prima facie showing of his past convictions" constituted a due process violation because he "had no fair opportunity . . . to review and rebut the evidence of those past convictions." *Id.* ¶ 20. This Court summarized the notice provided to the defendant as follows:

[The d]efendant was convicted on November 4, 2009. Eight days later, the [s]tate filed supplemental information alleging that [the d]efendant was a habitual offender subject to sentence enhancement. The document

alleged previous convictions in Florida, Texas, and New Mexico. Four days later, the [s]tate served notice of its intent to seek an enhanced sentence[.]

Id. ¶ 24. In light of the procedural steps taken by the state, we concluded that it “provid[ed] adequate notice” to the defendant. *Id.* ¶ 25.

{56} In the present case, Defendant was convicted on January 10, 2014. Four days later, the State filed a supplemental criminal information alleging that Defendant was a habitual offender subject to sentence enhancement. The supplemental criminal information alleged numerous previous felony convictions in the state of New Mexico. On February 10, 2014, the State requested a special setting for the purpose of conducting a habitual offender hearing. The State’s request certified service to defense counsel on the same day.

{57} We have no doubt that these procedural steps constitute adequate notice under *Godoy* and other relevant cases. Our inquiry does not, however, end here. At Defendant’s initial sentencing hearing, the district court denied the state’s request for sentencing enhancement. The State then orally moved for a subsequent sentencing hearing but did not file a new supplemental criminal information. On December 16, 2014, Defendant filed a motion opposing retrial of his habitual offender status. In his motion, Defendant specifically noted that the district court scheduled (1) a probation violation hearing and (2) a sentencing hearing for January 20, 2015.

{58} Although the record proper does not clearly indicate the procedural steps taken to schedule these hearings, based upon the content of his December 16, 2014 motion, Defendant had actual notice that his probation violation and sentencing hearings were originally scheduled for January 20, 2015. See *Pollock v. Ramirez*, 1994-NMCA-011, ¶ 24, 117 N.M. 187, 870 P.2d 149 (“‘Actual notice’ refers to information that was communicated directly to or received by a party.”). Had Defendant properly preserved this issue at trial, our analysis might differ. However, because Defendant had actual notice that his probation violation and sentencing hearings were scheduled concurrently, this scheduling

did not deprive him of “an opportunity to be heard before an increased penalty can be imposed.” *Santillanes*, 1981-NMSC-064, ¶ 5. Additionally, Defendant does not direct this Court to any case law indicating that the State must file a new supplemental criminal information following a denied request in a habitual offender hearing. See *Godoy*, 2012-NMCA-084, ¶ 5 (“Where a party cites no authority to support an argument, we may assume no such authority exists.”). Under these circumstances, Defendant has not suffered “fundamental unfairness” requiring reversal. *Cunningham*, 2000-NMSC-009, ¶ 21.

Ineffective Assistance of Counsel

{59} Defendant additionally argues that his trial counsel provided ineffective assistance of counsel by failing to object to the district court’s concurrent scheduling of his probation violation and sentencing hearings. We disagree.

{60} “To establish ineffective assistance of counsel, a defendant must show: (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced the defense.” *State v. Paredes*, 2004-NMSC-036, ¶ 13, 136 N.M. 533, 101 P.3d 799 (internal quotation marks and citation omitted). The absence of prejudice is sufficient to dispose of an ineffective assistance of counsel claim. See *State v. Martinez*, 2007-NMCA-160, ¶ 19, 143 N.M. 96, 173 P.3d 18 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, we need not consider whether counsel’s performance was deficient.”).

{61} Defendant neither specifically argues, nor provides record support for the proposition, that trial counsel’s failure to object to the concurrent scheduling of his probation violation and sentencing hearings caused him prejudice. See *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (“We will not search the record for facts, arguments, and rulings in order to support generalized arguments.”). Defendant, therefore, has not met his burden of proof to establish ineffective assistance of counsel.

Sufficiency of the Evidence

{62} Finally, Defendant argues that the State’s evidence was not sufficient to prove that Defendant was the person convicted

of the prior felonies as alleged in the supplemental criminal information. Again, we disagree.

{63} “We review the sufficiency of the evidence presented in habitual offender proceedings under a substantial evidence standard of review.” *State v. Bailey*, 2008-NMCA-084, ¶ 23, 144 N.M. 279, 186 P.3d 908. “Substantial evidence is that which is acceptable to a reasonable mind as adequate support for a conclusion.” *State v. Sanchez*, 2001-NMCA-109, ¶ 14, 131 N.M. 355, 36 P.3d 446. Appellate courts “review the evidence in the light most favorable to the [s]tate, resolving all conflicts and indulging all permissible inferences to uphold [the] verdict[.]” *Id.* (internal quotation marks and citation omitted).

{64} The district court admitted certified copies of three fingerprint cards, which corresponded to arrests in 2004, 2008, and 2011, and contained Defendant’s name, birth date, and social security number. The State’s expert witness testified that the fingerprints on each certified card came from the same person. The district court also admitted certified copies of judgment and sentencing documents, which indicated that Defendant had qualifying convictions, and took judicial notice of Defendant’s 2014 conviction. In light of the admitted evidence, the district court ruled that Defendant had three qualifying convictions and was subject to sentencing as a habitual offender.

{65} Defendant introduced no evidence to contradict the State’s allegation that he was the individual identified in the supplemental criminal information. Drawing all inferences in favor of the ruling, the admitted evidence is sufficient to support a finding that Defendant is a habitual offender under Section 31-18-17.

CONCLUSION

{66} Having concluded that Defendant’s arguments are without merit, we affirm.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge
M. MONICA ZAMORA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-058

No. 35,472 (filed April 21, 2017)

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
WILLIAM C., JR.,
Respondent-Appellant,
and
IN THE MATTER OF SKYLA C.,
Child.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY

JOHN F. DAVIS, District Judge

CHARLES E. NEELLEY
Chief Children's Court Attorney
Santa Fe, New Mexico
KELLY P. O'NEILL
Children's Court Attorney
CHILDREN, YOUTH & FAMILIES
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Albuquerque, New Mexico
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Opinion

Jonathan B. Sutin, Judge

{1} William C. (Father) appeals from an order terminating his parental rights to his daughter, Skyla C. (Child). After the district court denied the Children, Youth and Families Department's (the Department) first motion to terminate Father's parental rights to Child, a second hearing on a second motion to terminate his parental rights was held. After the second hearing, the court granted the Department's motion and terminated Father's parental rights. On appeal, Father argues that: (1) the district court erred in allowing evidence at the second termination hearing regarding events that occurred prior to the first termination hearing, and (2) there was insufficient evidence to terminate his rights. We hold that the district court did not err in hearing evidence that preceded the first termination hearing and that there was sufficient evidence to terminate Father's rights. We therefore affirm.

BACKGROUND

{2} The Department, which had taken custody of Child on September 26, 2013,

filed a neglect petition against Father and Child's mother, Allisha V. (Mother), on September 30, 2013. Child and Child's half-brother, who is not Father's biological son and who is not the subject of this appeal, were removed from the home due to concerns about Mother's and Father's alleged substance abuse, domestic violence, and mental health concerns. After both entered pleas of no contest, judgment was entered against Mother and Father that they neglected Child, pursuant to NMSA 1978, Section 32A-4-2(E)(2) (2009, amended 2016) (current version at Section 32A-4-2(F)(2)), and on February 20, 2014, the district court adopted a treatment plan. {3} On April 6, 2015, the Department filed its first motion for termination of parental rights as to both parents. After the Department filed its motion, Mother relinquished her rights in Child. The hearing on the motion was set for June 11, 2015. However, prior to the hearing the Department filed an unopposed motion to vacate and reset the hearing because a necessary witness was unavailable that day. The court did not reset the hearing, and the motion for termination of parental rights was heard on June 11, 2015. At the conclusion of that

hearing, the court denied the Department's motion, but ordered that custody of Child was to remain with the Department. The Department filed its second motion to terminate Father's parental rights in Child on October 16, 2015, and the hearing on that motion was set for December 10, 2015.

{4} At the beginning of the second termination hearing, the district court took judicial notice of the no contest plea entered into by Father in February 2014. Also, counsel for Father moved to clarify the scope of the inquiry, arguing that the "*Benjamin O.* cases" indicated that the court should only look at what had happened since the last hearing, i.e., June 11, 2015 to December 10, 2015, and should not consider what happened prior to the last hearing. The court ruled that the Department could present evidence regarding events that preceded that earlier termination of parental rights hearing and could also present any new information concerning what had occurred since the first hearing.

{5} The first witness to testify was Edward Alvarez, who worked for Superior Drug Testing in Las Cruces, New Mexico. Mr. Alvarez testified that Father was referred by the Department on July 8, 2015. According to Mr. Alvarez, it was decided that Father's case worker, Ana Dominguez, would initially make contact with Father to describe the drug-testing procedure and then Father would contact Mr. Alvarez to discuss specifics and any questions. Father initially went to Superior Drug Testing on July 27, 2015, but Mr. Alvarez was not present and no testing was performed. Mr. Alvarez's first interaction with Father was on October 12, 2015, when Father arrived at the office. Father did not call Superior Drug Testing between July 27 and October 12. During Father's October 12 visit, he refused to have a hair follicle test performed. Father next came to the office on October 20, 2015, and a hair follicle test was performed. Father came into the office on October 23, 2015, but no testing was performed. The last time Mr. Alvarez heard from Father was on October 26, 2015. Mr. Alvarez reaffirmed that his understanding was that Ms. Dominguez would initially explain the process for calling in, but he was unsure if Father had in fact been informed of the procedure on July 27, 2015.

{6} Anthony DeCorte, a licensed independent social worker and clinical therapist/supervisor at Nava Counseling Services (Nava) in Las Cruces, testified that the

Department referred Father for substance abuse and mental health assessments to Nava on June 18, 2015. Father initially missed substance abuse assessments on July 9, 2015 and July 30, 2015, and he missed mental health assessments on November 13, 2015 and November 23, 2015. Mr. DeCorte eventually saw Father on November 30, 2015. Although Father never completed a substance abuse assessment, part of Father's mental health assessment evaluated his substance abuse issues. Mr. DeCorte diagnosed Father as having panic disorder, cannabis-use disorder, and stimulant-use disorder and recommended that Father participate in individual therapy, an anger management treatment group, and substance abuse treatment. He informed Father of those recommendations, Father was "open" to them, but to Mr. DeCorte's knowledge services had not started. He noted that Father's diagnoses would not necessarily prevent a person from being able to parent a child, as long as treatment was being received.

{7} Wade C., Father's brother, testified that Child had been living with him since August 2015 and that he was willing to adopt her. He stated that Child needs consistency, structure, and counseling for her anxiety, depression, and learning disabilities. He had contact with Father maybe once every two months, and he was unaware of where Father was living or whether Father had a job. He expressed concerns about Child's needs and did not believe Father could meet those needs. He indicated that Father had a visit with Child several weeks before the hearing and had missed a visit the week before the hearing. Wade C. testified that Child exhibited depression after missing that visit with Father and that Child's depression and anxiety minimizes "when there is a consistent period of no contact" with Father. He testified that he has two other children and that they relate to Child like siblings.

{8} Leslie Peterson was Father's permanency planning case worker from October 2014 to May 2015. Ms. Peterson referred Father for therapy at Mesilla Valley Hospital in Las Cruces and for urinalyses. She also referred Father to La Frontera in Las Cruces to assist him in dealing with his addictions. She reported that Father was inconsistent in attending therapy, and she spoke with Father sporadically. In November 2014 Father was "on track," had electrical contracting work, and was living in a home with roommates. After

that Father was inconsistent, and by January 2015 Father was living at a church office. Father told Ms. Peterson that he missed the therapy sessions because he was busy or because of conflicts with his job requirements. While she had the case, Ms. Peterson did not see Father make any progress toward alleviating the causes and conditions that brought Child into the Department's custody.

{9} Dr. Marc Caplan, a licensed psychologist, testified that, pursuant to the Department's referral, he conducted a psychological evaluation of Father in November 2014. In addition to a clinical interview, Father was administered a battery of tests. Father was cooperative but did not offer many details and complained he was not feeling well the day of the assessment. The tests administered to Father showed that Father functioned at a "borderline to low average range of intelligence," had difficulty communicating verbally, and struggled with "organizing his thoughts." Father seemed to struggle with "expansive mood[s]," and there were indications of psychotic and disorganized thinking that may have corresponded "to what [Father] reported as earlier diagnoses of anxiety disorder and possibly schizophrenic disorder." Although Father did not show any positive signs of schizophrenia during the evaluation, Dr. Caplan did note some minor indications of the negative signs of schizophrenia, i.e., affect and organization of thinking issues. Based on tests related to child abuse potential and parenting stress index, Father showed rigidity and presented with distress and depression, which Dr. Caplan stated were "likely to contribute to making parenting more difficult." Dr. Caplan noted that Father perceives Child as demanding, which can be overwhelming for Father. Father had a general sense of how to approach limit-setting and boundary-setting with Child but tends to be inconsistent. Father admitted to regular use of marijuana to calm him, and Dr. Caplan indicated that Father could struggle to care for Child if not engaged in treatment and ongoing parent training. Dr. Caplan diagnosed Father with an "unspecified schizophrenic-spectrum disorder." Father indicated to Dr. Caplan that he was not in treatment at the time of the evaluation. Dr. Caplan emphasized that Father's elevated score on the child abuse potential does not necessarily show that he has or will abuse a child, but merely indicated that he looks like a population that is known to have abused. Father self-

reported irritability and hostility, and Dr. Caplan indicated that those responses could impact a child in an adverse manner. Dr. Caplan acknowledged that treatment possibly could be effective for Father, but expressed concern that Father was inclined to "externalize responsibility," meaning that Father felt that the problems he was experiencing were everyone else's fault.

{10} Jeromy Brazfield testified that he was the investigations supervisor in this case in September 2013. Mr. Brazfield participated in a family centered meeting in 2013 at which point Child was placed on a forty-eight-hour hold. At the time of the family centered meeting, Father was involved in vocational rehabilitation services. Although the investigator on the case instructed that a release should be obtained from Father to secure additional services, the Department had difficulty getting signed releases from Father. Mr. Brazfield supervised at least two drug tests administered to Father and recalled that visits were to be set up with Child and Father.

{11} Misty Castillo, a permanency planning case worker supervisor, testified that Child came into the Department's custody in September 2013 due to concerns about Mother's and Father's alleged substance abuse, domestic violence, and concerns about mental health. Ms. Castillo began supervising the case in June 2014. She testified that referrals were made to service providers in Albuquerque, New Mexico, and in Las Cruces. Father was referred to La Frontera in Las Cruces for individual counseling, substance abuse group sessions, a psychiatric evaluation, and a referral was also made for a psychological evaluation. He was also referred to Superior Drug Testing for random drug screens.

{12} In the summer of 2014, Child was placed with her paternal grandparents and supervised visits were to occur once a week. Ms. Castillo did not receive any records regarding drug tests from Superior Drug Testing but was aware that Father had called in on one occasion. Father reported to the Department that he was living in different places at the time, including with a roommate in a converted garage, in his car, and in a church office. To Ms. Castillo's knowledge, Father did not have a steady job in 2014, although he did report having some electrical work. Father reported to Ms. Castillo that he was receiving treatment but she was unable to confirm that. In an attempt to confirm Father's reports,

the Department reached out to La Frontera a number of times but was unable to reach them due to La Frontera's transition and ultimate closure. Ms. Castillo testified that the Department was looking for progress on sobriety, mental health, as well as stable housing and employment, but she did not see that Father made any progress while she was involved in the case. Ms. Castillo did not believe Father could safely parent Child at the time of the hearing.

{13} Ms. Dominguez, one of Father's case workers, testified that she was assigned to Father's case in June 2015. Ms. Dominguez discussed Father's treatment plan with him face-to-face in July 2015, at which time Father indicated he was already aware of the plan. Ms. Dominguez made a substance abuse referral to Nava in June 2015 and followed up with them approximately six times to monitor Father's progress. Father was informed of the referral in June or July 2015 and was informed that Nava was going to see him for substance abuse, domestic violence, and mental health. Ms. Dominguez informed Father that Nava would be calling, and then later, when Father did not receive a call, he was told to call Nava. Father completed his assessment with Nava on November 30, 2015. Per the treatment plan, Father signed releases when asked by Ms. Dominguez and provided names to the Department "for relative placement." Ms. Dominguez discussed random drug testing with Father, and he provided one sample for a hair follicle test and one sample for a urinalysis test. Ms. Dominguez inspected the office where Father was living and noted that there was no second bedroom where Child could stay, and it was not an appropriate living space for Child. Father indicated to Ms. Dominguez that he was looking for an apartment that would be appropriate for Child, but Ms. Dominguez testified that he was still living in the office at the end of October 2015. To Ms. Dominguez's knowledge, Father had not completed any domestic violence program.

{14} As to visitation, which was also part of the treatment plan, Father initially had visits with Child through Father's parents. However, in August 2015, after a family centered meeting that Father missed, Child was moved to Wade C.'s home and a referral was made to Family Youth, Inc. (FYI) to assist with supervised visitation. Father was told to contact FYI to fill out an intake form for visitation. Father contacted FYI in November 2015, and to Ms. Dominguez's knowledge, he attended one visit and

missed one visit. When Ms. Dominguez first took over the case in June 2015, she had regular contact with Father. However, it became difficult to reach Father beginning in the middle of July/August 2015. In the months of August through November 2015, she was only able to speak with Father once a month. Ms. Dominguez did not believe Father was able to meet Child's needs at the time of the hearing. He had not alleviated the causes and conditions that brought Child into custody, nor would he be able to in the foreseeable future.

{15} Father was the final witness to testify. Father testified that he secured housing and that he had been living there for the past two and a half months. Father performs electrical work for his landlords, their family, and also for his father. Father testified that he had approximately five Department case workers over the course of the case and that he had difficulty with the treatment plan because of his unpredictable work schedule. He testified that he sees a psychiatrist once every three months, and he is prescribed medication. He also stated that he has received a variety of mental health diagnoses. Father also testified that, in August 2014, he was hit by a drunk driver and suffered a back injury and that he informed Ms. Dominguez of that injury. Father stated that he was misinformed about the family centered meeting in August 2015, and he felt "left in the dark." Father testified that he attended a parenting class, as well as individual and group therapy at La Frontera in 2014. Father expressed that he loved Child and would do what it took to work on his mental health issues. He requested that he be permitted to attend "rehab" and then be allowed a month, after completing rehab, to show that he could meet Child's needs. On cross-examination, Father admitted to having been arrested and charged in El Paso, Texas in September 2015 for drug paraphernalia.

{16} The district court entered findings of fact and conclusions of law on January 28, 2016, concluding in relevant part that Father had not alleviated the causes and conditions that brought Child into custody and that the causes and conditions were unlikely to change in the foreseeable future despite reasonable efforts by the Department to assist Father. An order terminating Father's parental rights was filed on February 10, 2016, and this appeal followed.

DISCUSSION

{17} On appeal, Father makes two arguments: (1) that the district court erred in

not limiting the evidence to events that occurred after the first termination of parental rights hearing, and (2) that there was insufficient evidence Father had not alleviated the causes and conditions that led to Child being taken into custody by the Department or that he would not do so in the foreseeable future. We address each argument in turn.

I. Limitation on Evidence

{18} Father argues that under the reasoning of *State ex rel. Children, Youth & Families Department v. Benjamin O.* (*Benjamin O. I.*), 2007-NMCA-070, 141 N.M. 692, 160 P.3d 601, the district court erred in failing to limit evidence at the second hearing to events that occurred after the first hearing. To the extent our analysis requires interpretation of the Abuse and Neglect Act, NMSA 1978, §§ 32A-4-1 to -34 (1993, as amended through 2016), our review is de novo. *Benjamin O. I.*, 2007-NMCA-070, ¶ 24. Before addressing the parties' specific arguments regarding any limitation on the evidence in this case, we find it useful to give a brief history of the *Benjamin O.* cases, including the 2007 case upon which Father relies.

{19} The first case in the *Benjamin O.* saga, *State ex rel. Children, Youth & Families Department v. Shawna C.*, 2005-NMCA-066, 137 N.M. 687, 114 P.3d 367, dealt with the district court's adjudication that the mother and the father abused and neglected their daughter. *Id.* ¶ 1. In *Shawna C.*, this Court reversed the adjudication of abuse or neglect as to the father, noting that "[e]vidence of [the f]ather's somewhat aged criminal history, his anger, his mental health issues as diagnosed by the psychologist, and the fact that he 'permitted' [his mother] to care for [the c]hild while [his mother] ingested drugs, while not reflecting exemplary behavior, does not support anything more than a vague inference of future harm." *Id.* ¶ 22. However, while the parents' appeal as to the adjudication was pending, the district court continued to monitor the case, and the Department ultimately filed a motion to terminate the parental rights of both parents. *Id.* ¶¶ 7-12; see *Benjamin O. I.*, 2007-NMCA-070, ¶ 1.

{20} The parties learned of this Court's opinion in *Shawna C.* on the last day of the hearing on the Department's motion to terminate parental rights as to the mother and the father, and upon learning of that opinion, the district court ordered the hearing continued and asked that briefs be submitted by the parties on the issues raised by the opinion in *Shawna C.*

Benjamin O. I, 2007-NMCA-070, ¶¶ 13, 14. After considering both parties' arguments regarding the district court's role post-*Shawna C.*, the court ruled that it had jurisdiction to hear the motion to terminate and granted the Department's request to conduct further investigation with respect to the father and to reopen the termination hearing if necessary. *Benjamin O. I*, 2007-NMCA-070, ¶¶ 14-18. Less than two months after the adjudication was reversed, the Department filed supplemental allegations regarding the father in support of its motion to terminate his parental rights, and after the Department presented additional evidence, the father's rights were terminated. *Id.* ¶¶ 19-22. That termination was appealed and resulted in this Court's opinion in *Benjamin O. I*, 2007-NMCA-070.

{21} In *Benjamin O. I*, we stated that the issue presented was "what happens after an adjudication of abuse or neglect is reversed during termination of parental rights proceedings." *Id.* ¶ 23. In analyzing the father's arguments on appeal, we held that "[w]hile we do not disagree with [the f]ather's assertion that the district court may not rely on an adjudication of abuse or neglect that has been reversed on substantive grounds," we were not convinced that the district court so relied, and we specifically noted that the father's rights could still be terminated based on his current inability to care for the child. *Id.* ¶ 33. Although we held that the father's rights could ultimately be terminated, we reversed the district court's order terminating his parental rights and remanded the case due to a lack of specific findings by the district court. *Id.* ¶¶ 33, 47-48.

{22} Approximately one year after we issued our opinion in *Benjamin O. I* and remanded the case, the Department filed an amended motion to terminate the father's parental rights. *State ex rel. Children, Youth & Families Dep't v. Benjamin O. (Benjamin O. II)*, 2009-NMCA-039, ¶¶ 7, 10, 146 N.M. 60, 206 P.3d 171. "The motion realleged the original allegations and the 2005 supplemental allegations[,] . . . [and] new allegations of abandonment or presumptive abandonment." *Id.* ¶ 10. After a three-day hearing on the motion, the district court entered extensive findings of fact and conclusions of law and entered a judgment terminating the father's parental rights. *Id.* That termination was appealed and resulted in our opinion in *Benjamin O. II*, 2009-NMCA-039, in which "we conclude[d] that clear and convincing

evidence supported the district court's determination that [the f]ather abandoned [the c]hild and that the district court complied with the requirements of *Benjamin O. I*." *Benjamin O. II*, 2009-NMCA-039, ¶ 42.

{23} In the present case, Father argues that our statement in *Benjamin O. I* that the Department could seek termination by bringing "new or current allegations of abuse, neglect, or abandonment to the district court's attention" means that termination can only be pursued based on facts that occurred after the district court's denial of the first motion to terminate. 2007-NMCA-070, ¶ 39. Father argues that, because the court in this case denied the Department's first motion to terminate due to a lack of clear and convincing evidence that the statutory requirements for termination had been satisfied, the Department was limited to presenting evidence of abuse or neglect after the district court's June 2015 denial of the Department's motion. Father argues that it was unfair to hold past conduct against him, and the focus should have been on Father's situation since June 2015.

{24} The Department responds that the facts in *Benjamin O. I* are not analogous to the present case and thus the district court did not err in allowing testimony regarding events that occurred prior to the first termination hearing. According to the Department, the issue before this Court in *Benjamin O. I* was "what steps the district court and [the Department] should take following the appellate reversal on substantive grounds of a prior adjudication of abuse and neglect while [the Department] is in the process of attempting to terminate a parent's parental rights." *Id.* ¶ 1. The Department argues that in this case, Father stipulated at the adjudicatory hearing that Child was neglected and does not challenge the finding of neglect on appeal. The Department notes that its first attempt to terminate Father's parental rights was unsuccessful because it did not present evidence regarding its efforts to assist Father, and thus the court could not determine whether its efforts were reasonable. The Department argues that the fact the first motion was denied does not make all preceding evidence irrelevant. Finally, the Department asserts that even if it was required to limit the evidence presented at the second termination hearing to events that occurred after the first termination hearing, the judgment is still supported by substantial evidence, noting Father's

ongoing substance abuse and mental health issues, lack of participation in the process, inconsistent contact with the Department, and minimal visitation with Child.

{25} We hold that to the extent *Benjamin O. I* limits the Department's ability to present prior evidence when an adjudication is overturned on appeal, it does not apply here because this case does not deal with a reversed adjudication. None of the *Benjamin O.* cases stand for the proposition that when a motion for termination of parental rights is denied, all evidence preceding that denial must be ignored in future attempts to terminate parental rights. To ignore all preceding evidence when there is no dispute as to the adjudication of abuse or neglect, which could include a parent's history of compliance, information about the causes and conditions that led to the child being taken into custody, attempts to alleviate those causes and conditions, etc., would be to limit the district court's access to information that is needed to appropriately assess whether a parent's parental rights should be terminated. We decline to extend *Benjamin O. I* because doing so would force courts to make important decisions based on information that is incomplete or without needed context.

{26} Because *Benjamin O. I* is not applicable and because we see no value in extending its application to this case, we conclude that the district court did not err in allowing the Department to present evidence of events preceding the first hearing on the first motion to terminate parental rights.

II. Sufficiency of the Evidence

{27} "The standard of proof in cases involving the termination of parental rights is clear and convincing evidence." *State ex rel. Children, Youth & Families Dep't v. Vanessa C.*, 2000-NMCA-025, ¶ 24, 128 N.M. 701, 997 P.2d 833. "Clear and convincing evidence" is defined as evidence that "instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact[-]finder's mind is left with an abiding conviction that the evidence is true." *In re Termination of Parental Rights of Eventyr J.*, 1995-NMCA-087, ¶ 2, 120 N.M. 463, 902 P.2d 1066 (internal quotation marks and citation omitted). We "view the evidence in the light most favorable to the prevailing party, and . . . determine therefrom if the mind of the fact[-]finder could properly have reached an abiding conviction as to the truth of the fact or facts found." *State ex rel. Children, Youth & Families Dep't v.*

Michelle B., 2001-NMCA-071, ¶ 12, 130 N.M. 781, 32 P.3d 790 (internal quotation marks and citation omitted).

{28} In this case, the district court terminated Father's parental rights pursuant to Section 32A-4-28(B)(2), which provides for termination when:

the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child.

{29} Father does not dispute that Child was a neglected child; however, Father argues on appeal that there was insufficient evidence that he had not alleviated the causes and conditions that led to Child being taken into custody or that he would not do so in the foreseeable future despite reasonable efforts by the Department. Specifically, he contends that he made efforts to comply with his treatment plan and was progressing and that the Department failed to make reasonable efforts to assist him with his treatment plan by not obtaining a clear assessment of his mental health. Father points to testimony that there were many different Department workers assigned to his case, that La Frontera closed, and that there was confusion about what he was required to do with various referrals. He also asserts that he was confused about the visitation process and attributes his inconsistency to the car collision that he was in and to his work schedule. He argues that despite his struggles with the treatment plan, he attended two assessments, participated in two drug tests, was set up for visitation, had obtained housing, and participated in some classes and therapy at La Frontera prior to its closure. Father also argues that the Department did not make reasonable efforts to assist him because he did not receive a clear assessment of his mental health diagnoses. He asserts that because

Dr. Caplan's and Mr. DeCorte's diagnoses were different, he never received accurate and definitive diagnoses and did not receive appropriate treatment.

{30} The Department responds that the fact Dr. Caplan's and Mr. DeCorte's assessments differed does not mean that they were inaccurate or that the Department's efforts to assist Father were unreasonable. The Department notes that the assessments occurred a year apart, and the circumstances surrounding each evaluation were different. The Department also highlights a number of efforts to assist Father, including its numerous, appropriate referrals to assist Father in addressing his issues, its attempts to maintain contact with Father, and its efforts to give Father an opportunity to regularly visit with Child. The Department then disputes Father's position that clear and convincing evidence did not support the district court's finding that Father had not alleviated the causes and conditions of neglect or would be unable to in the foreseeable future. In support of its argument, the Department notes that Father had made little to no progress, did not consistently participate in counseling, did not maintain contact despite efforts by the Department, and did not show how his work schedule prevented him from participating in treatment. The Department also argues that the evidence Father construes as showing effort instead shows that Father made no effort to timely follow through with recommendations. The Department states that Father had not started therapy and group sessions, had only participated in two drug tests over a six-month period, only made minimal effort to visit with Child, and, in fact, had missed a visit just one week prior to the termination hearing. The Department highlights the fact that Child had been in custody for over two years by the time of the second termination hearing and argues that it is reasonable to infer that he would not be able to address his substance abuse and mental health issues in the foreseeable future.

{31} We hold that there was sufficient evidence for the district court to conclude that Father had not alleviated the causes and conditions that led to Child being

taken into custody and that he would not do so in the foreseeable future, despite reasonable efforts by the Department to assist Father. As noted by the Department, Father was not consistent in attending treatment or counseling services despite numerous referrals and the fact that both Dr. Caplan and Mr. DeCorte indicated that services were needed. Father missed two substance abuse assessments and only completed a mental health assessment less than two weeks prior to the second termination hearing. Father's participation in drug screenings was inconsistent, and he attributed his lack of participation to his schedule. Father waited two months to fill out the intake paperwork with FYI to begin supervised visitation with Child once she was moved to her uncle's residence, and although Father testified that he had recently secured housing, the court found that he did not have stable housing as required by his treatment plan, and the Department had not confirmed nor conducted a home visit of that residence. Father was inconsistent in his contact with the Department, even though he was ordered to maintain contact as part of his treatment plan.

{32} Although Father attempts to bolster his position by highlighting evidence that he believes shows some progress, our standard of review requires us to view the evidence in the light most favorable to the prevailing party and determine whether the clear and convincing evidence standard was met, "not whether the trial court could have reached a different conclusion." *State ex rel. Children, Youth & Families Dep't v. Patricia H.*, 2002-NMCA-061, ¶ 31, 132 N.M. 299, 47 P.3d 859. Given that standard and the evidence presented in this case, we conclude that the evidence supported termination of Father's parental rights in Child.

CONCLUSION

{33} For the reasons set forth in this opinion, we affirm.

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

JONATHAN B. SUTIN, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

HENRY M. BOHNHOFF, Judge



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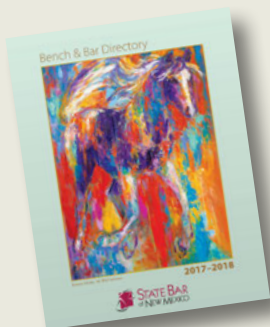
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SAVE THE DATE

Please join the
**Eighth Judicial District Pro Bono Committee
and Volunteer Attorney Program**

for a Luncheon and CLE Opportunity

Thursday, October 19, 2017 at the Taos Country Club

Lunch from 11:30 AM – 1 PM, CLEs from 1 – 3 PM

Come and meet with the Judges to discuss local court issues, new mediation and self-help programs, and learn about opportunities for attorneys to participate in pro bono activities with the Court.

Following the luncheon, two (2) complimentary 1 hour Continuing Legal Education sessions will be offered:

- 1 – 2 PM: Expanding ADR in Civil & Domestic Relations Litigation, presented by Chief Judge Jeff McElroy (8th Judicial District Court); John Hughes, Esq.; David Levin, Esq.; and Barbara Kazen, Esq. (1 Gen. Credit)
- 2 – 3 PM: Complying with the Disciplinary Board Rule 17-204, presented by Jane Gagne, Esq. through the Center for Legal Education. (1 E/P Credit)

Please contact **Lauren Felts-Salazar** at taodlmf@nmcourts.gov by October 16, 2017 if you would like to attend the Luncheon and/or "Expanding ADR" CLE.

Please contact the **Center for Legal Education** at (505)797-6020 if you would like to attend "Complying with the Disciplinary Board Rule 17-204" CLE.



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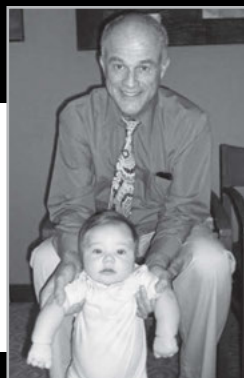
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Classified

Positions

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.

Senior Trial Attorney

Senior 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 Socorro County (Socorro). Must be admitted to the New Mexico State Bar and be willing to relocate within 6 months of hire. Salary range: \$59,802 - \$74,753. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Attorney

The Albuquerque office of Lewis, Brisbois, Bisgaard & Smith LLP is seeking a high energy attorney with a minimum of two years of litigation defense experience to join our General Liability Practice Group. Applicants must have exceptional writing skills and experience analyzing files, researching and briefing, and taking and defending depositions. In addition to two years of litigation defense experience, successful candidates must have credentials from an ABA approved law school, and must currently be licensed to practice in NM. This is a great opportunity to work in a collegial local office of a national firm. Please submit a cover letter, resume with salary history, and two writing samples via email to stephanie.reinhard@lewisbrisbois.com.

Assistant U.S. Attorney - 3 positions

The U.S. Attorney's Office for the District of New Mexico is recruiting for an Assistant U.S. Attorney (AUSA) in the Albuquerque office. The attorney selected will be working in the Organized Crime Drug Enforcement Task Force Section. The attorney selected will handle prosecutions of a wide variety of federal offenses, with an emphasis on the prosecution of narcotics crimes. Prosecutions of narcotics offenses include enforcement of Title 21 and cases involving organizations responsible for the trafficking of heroin, marijuana, cocaine, methamphetamine and other controlled substances. Qualifications: Applicants must possess a J.D. degree, be an active member, in good standing, of a bar (any jurisdiction), and have at least three (3) years post-J.D. experience. Preferred Qualifications: Hiring preference will be given to applicants with prior felony trial experience and those that have demonstrated the ability to handle complex cases from the initial investigative stage through trial. Salary Information: AUSA pay is administratively determined based, in part, on the number years of professional attorney experience. The range of pay for this position is \$52,329 - \$136,874 plus locality pay. The complete vacancy announcement may be viewed at <https://www.justice.gov/usao/career-center>, or at <http://www.usajobs.gov/> (USA Jobs), all applicants must apply through USA Jobs or email their resume to USANM.HR@usdoj.gov.

The U.S. Attorney's Office for the District of New Mexico is recruiting for an Assistant U.S. Attorney (AUSA) in the Albuquerque office. The attorney selected will be working in the Indian Country Crimes Section. The attorney selected will handle prosecutions of a wide variety of federal offenses, with an emphasis on the prosecution of Indian Country crimes. Qualifications: Applicants must possess a J.D. degree, be an active member, in good standing, of a bar (any jurisdiction), and have at least one (1) year post-J.D. experience. Preferred Qualifications: Hiring preference will be given to applicants with prior felony trial experience and those that have demonstrated the ability to handle complex cases from the initial investigative stage through trial. Salary Information: AUSA pay is administratively determined based, in part, on the number years of professional attorney experience. The range of pay for this position is \$52,329 - \$136,874 plus locality pay. The complete vacancy announcement may be viewed at <https://www.justice.gov/usao/career-center>, or at <http://www.usajobs.gov/> (USA Jobs), all applicants must apply through USA Jobs or email their resume to USANM.HR@usdoj.gov.

The U.S. Attorney's Office for the District of New Mexico is recruiting for an Assistant U.S. Attorney (AUSA) in the Las Cruces office. The attorney selected will be working in the Criminal Division and will handle prosecutions of a wide variety of federal offenses. Qualifications: Applicants must possess a J.D. degree, be an

active member, in good standing, of a bar (any jurisdiction), and have at least one (1) year post-J.D. experience. Preferred Qualifications: Hiring preference will be given to applicants with prior felony trial experience and those that have demonstrated the ability to handle complex cases from the initial investigative stage through trial. Salary Information: AUSA pay is administratively determined based, in part, on the number years of professional attorney experience. The range of pay for this position is \$52,329 - \$136,874 plus locality pay. The complete vacancy announcement may be viewed at <https://www.justice.gov/usao/career-center>, or at <http://www.usajobs.gov/> (USA Jobs), all applicants must apply through USA Jobs or email their resume to USANM.HR@usdoj.gov.

Associate Attorney

Holt Mynatt Martínez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking two associate attorneys with 1-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pre-trial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Prefer attorney licensed in New Mexico and Texas but will consider applicants only licensed in Texas. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to bb@hmm-law.com.

Part and Full Time Attorneys

Part and Full Time Attorneys, licensed and in good standing in NM. Minimum of 3-5 years of experience, preferably in Family Law and Civil Litigation, and must possess strong court room, client relations, and computer skills. Excellent compensation and a comfortable, team-oriented working environment with flexible hours. Priority is to fill position at the Santa Fe location, but openings available in Albuquerque. Support staff manages client acquisitions and administration, leaving our attorneys to do what they do best. Please send resume and cover letter to ac@lightninglegal.biz. All inquiries are maintained as confidential.

Associate University Counsel

This position is within UNM's Office of University Counsel. The Office of University Counsel is seeking an experienced attorney to provide legal counsel to the institution covering broad range of higher education and other legal issues. Areas of practice will include research, intellectual property and technology transfer, trademarks, IT agreements, and providing training to University departments and personnel as needed. This position will report to the University Counsel and will entail working with all areas of the University, including mid-level and senior university officials as well as faculty/academic leaders. Prior experience representing public institutions with educational and/or research missions is highly preferred. Candidates must be able to work in a fast-paced environment where advice and counsel leads to client-oriented solutions. This position requires interaction with a variety of University constituents and the successful candidate will demonstrate an ability to build relationships and inspire confidence. The University of New Mexico is committed to hiring and retaining a diverse workforce. We are an Equal Opportunity Employer, making decisions without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, veteran status, disability, or any other protected class. TO APPLY: For complete information including closing dates, minimum requirements, and instructions on how to apply for this or any UNM position please visit our website at <http://UNMJobs.unm.edu>, or call (505) 277-6947, or visit our HR Service Center at 1700 Lomas NE, Suite 1400, Albuquerque, NM 87131. EEO/AA

Legal Director

The American Civil Liberties Union (ACLU) of New Mexico seeks an enterprising Legal Director to lead its litigation and legal advocacy program. The ACLU of New Mexico pursues impact litigation and legal advocacy in order to defend and expand the civil rights guaranteed by our federal and state constitutions, including criminal justice, police practices, First Amendment rights, reproductive freedom, LGBTQ rights, and immigrants' rights. For the full position announcement and how to apply: <https://www.aclu-nm.org/en/jobs/legal-director> Position is open until filled, preference given to applications received by October 15, 2017.

Associate Attorney

McGinn, Carpenter, Montoya & Love, P.A. seeks an associate attorney with excellent brief-writing and discovery management skills. Please send a resume and writing sample to MCMLAdmin@mcginnlaw.com. All inquiries will be kept confidential.

Attorney Position

Attorney position available with uptown law firm that strongly emphasizes a strong work/life balance for its employees. General civil practice with primary focus on domestic relations. 2+ years' experience preferred. Excellent benefits including health, dental, life, disability, and 401(k). Partnership track opportunities available. Salary DOE. Send resume and salary requirements to bryanf@wolfandfoxpc.com.

Staff Attorney-Public Benefits

New Mexico Center on Law and Poverty (www.nmpovertylaw.org) seeks full-time staff attorney for our Public Benefits Team to enhance our work with low income New Mexicans to address hunger and secure fundamental fairness in the administration of the public safety net. Required: Law degree and license; minimum three years of civil litigation experience; excellent research, writing, and legal advocacy skills; 'no-stone-unturned' thoroughness and persistence; leadership; ability to be articulate and forceful in the face of powerful opposition; commitment to economic and racial justice in alignment with the mission of the NM Center on Law & Poverty. Preferred: experience with advocacy seeking systemic fairness in the administration of government benefit programs or in related institutional contexts; experience working with diverse community groups and other allies; familiarity with poverty law; Spanish fluency. Varied, challenging, rewarding work. Good non-profit salary. Excellent benefits. Balanced work schedule. Apply in confidence by emailing a resume and a cover letter describing your interests in social justice to veronica@nmpovertylaw.org. Please put your name in the subject line. EEOE. People with disabilities, people of color, former recipients of public assistance, or people who have grown up in poverty are especially encouraged to apply.

Staff Attorney – Litigation

The Albuquerque office of Brownstein Hyatt Farber Schreck is seeking a staff attorney to join our commercial litigation team. Candidates should have a proven track record in legal research and drafting of pleadings, memos, and briefs. Excellent academic performance, strong writing and analytical skills, interpersonal skills and the ability to work in a team environment required. Qualified candidates should submit a cover letter, resume and transcript to Jamie Olberding, Director of Attorney Recruiting and Integration, at jolberding@bhfs.com. EOE

Assistant City Attorney Position

City of Albuquerque Assistant City Attorney position is available within the Municipal Affairs Division of the Legal Department for an attorney with 5+ years of experience in representing local governmental entities or state agencies. The position will be responsible for providing legal advice and counsel to assigned City departments and boards, including representation before state and federal courts and at administrative hearings. Strong writing skills and ability to multi-task required. Salary will be based upon experience. Please submit resume to attention of "Municipal Affairs Division Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Application deadline is October 10, 2017.

Associate Attorney Positions

Bleus & Associates, LLC is presently seeking to fill (2) two Associate Attorney Positions for its new Albuquerque Office near Jefferson Office Park. (1) Senior Associate with 10+ years of experience and (1) Junior Associate with 0-9 years' experience sought. Candidates should possess Civil Litigation/Personal Injury experience and a great desire to zealously advocate for Plaintiffs. Trial experience preferred. Salary D.O.E. Please submit Resume's to paralegal2.bleuslaw@gmail.com. All inquiries shall remain confidential.

Attorney

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 range: \$50,000 - \$69,122. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Associate Attorney

Chapman & Priest seeks an associate attorney with 1-5 years or more experience for its rapidly growing litigation practice. Must have excellent research, writing, oral advocacy and multi-tasking skills. We offer excellent benefits and growth opportunity. All inquiries kept confidential. Please send resume, writing sample and salary requirements to Tonnie@cclawnm.com.

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Personal Injury Paralegal

Law Offices of Samuel Kane, LLC is seeking a fulltime personal injury paralegal with at least six years of experience. Must be able to do liens, subrogations, draft responses for disclosures, and trial preparation. Candidates should have excellent writing and research skills, and the ability to work independently. Please submit a resume and salary requirements to sam_kane@yahoo.com or call Jessica at 575-636-0302.

Senior Operations Manager

This position is within UNM's Office of University Counsel. The Office of University Counsel is seeking an organized, detail-oriented individual with experience in the legal field to manage department operations. This position, under direct supervision of the University Counsel, must oversee administrative aspects of the office including strategic planning for the office, budgeting and financial planning; developing and implementing office protocols; supervising administrative staff; management of personnel matters; and basic IT support, including case management software. The University of New Mexico is committed to hiring and retaining a diverse workforce. We are an Equal Opportunity Employer, making decisions without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, veteran status, disability, or any other protected class. TO APPLY: For complete information including closing dates, minimum requirements, and instructions on how to apply for this or any UNM position please visit our website at <http://UNMJobs.unm.edu>, or call (505) 277-6947, or visit our HR Service Center at 1700 Lomas NE, Suite 1400, Albuquerque, NM 87131. EEO/AA

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Decedent: Edmundo (Edmund) Luis Trujillo; Place of Residence: Rio Rancho, NM; Date of Death: 1/23/2017; Age: 79 years. If located, please contact Jeff Romero, Attorney at Law, (505) 244-0274.

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

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