

BAR BULLETIN

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Bubbles of the Dead, by Don Johnson Jr. (see page 3)

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WELCOME TO OUR NEW ASSOCIATES



Jennifer Kittleson



Dominic Martinez

Modrall Sperling is pleased to announce that Jennifer Kittleson and Dominic Martinez have joined our firm's Albuquerque office.

As a member of the firm's Litigation Department, Jennifer's legal interests include torts/personal injury and employment. She is a graduate of UNM School of Law, where she served as a legal writing tutor and a member of the editorial staff of the *New Mexico Law Review*. Prior to joining Modrall Sperling, Jennifer was an extern with New Mexico Department of Workforce Solutions, working on matters concerning employment termination and unemployment benefits.

Dominic, with a degree in Economics from Harvard College, earned his J.D. from UNM School of Law, where he worked as a clinical law student in the Business and Tax Clinic. He interned at The Raben Group in Washington, D.C., a firm that provides lobbying and political consulting services for progressive non-profits. Dominic joins Modrall Sperling's Litigation Department, working in torts/personal injury and employment law.

PROBLEM SOLVING. GAME CHANGING.



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

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Meetings

October

25
Natural Resources, Energy and Environmental Law Section
 Noon, teleconference

26
ADR Steering Committee
 11:30 a.m., teleconference

26
Trial Practice Section
 Noon, State Bar Center

27
Immigration Law Section
 Noon, teleconference

November

1
Employment and Labor Law Section Board
 Noon, State Bar Center

3
Criminal Law Section Board
 Noon, Kelley & Boone, Albuquerque

6
Bankruptcy Law Section,
 Noon, U.S. Bankruptcy Court

7
Appellate Practice Section Board
 Noon, teleconference

7
Health Law Section Board
 9 a.m., teleconference

8
Taxation Section
 11 a.m., teleconference

Workshops and Legal Clinics

October

25
Consumer Debt/Bankruptcy Workshop
 6–9 p.m., State Bar Center, Albuquerque,
 505-797-6094

November

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

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

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

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

16
Common Legal Issues for Senior Citizens Workshop
 10–11:15 a.m., Chaves County J.O.Y. Center,
 Roswell, 1-800-876-6657

17
Common Legal Issues for Senior Citizens Workshop
 10–11:15 a.m., First Judicial District Court
 Jury Room, Santa Fe, 1-800-876-6657

About Cover Image and Artist: Lieutenant Commander Don Johnson Jr. is an attorney at Johnson Family Law PC in Albuquerque. His work has focused on New Mexico cultural events and his law practice. "Bubbles of the Dead" is a painting of two sisters blowing bubbles during the Marigold Parade on Isleta Boulevard. This painting will be displayed at the New Mexico State Fair and the South Broadway Cultural Center for its annual Day of the Dead show. For more art and information, email donjohnsonesq@gmail.com.

Notices

COURT NEWS

New Mexico Supreme Court Commission on Access to Justice

Commission Meeting

The next meeting of the Commission on Access to Justice is noon–4 p.m., Nov. 3 at the State Bar Center. Interested parties from the private bar and the public are welcome to attend. Further information about the Commission is available at Access to Justice at www.nmcourts.gov.

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.

New Mexico Court of Appeals Retirement Party for Robert Rambo

The New Mexico Court of Appeals invites members of the legal community to attend a retirement celebration for Robert Rambo, Court of Appeals mediator. The celebration will be at 4 p.m., Nov. 1, Court of Appeals Pamela Minzner Law Center, 2211 Tucker Avenue NE, Albuquerque, NM 87106.

First Judicial District Court Mass Reassignment

Effective Nov. 1 a mass reassignment of all Division II cases previously assigned to Judge Sarah M. Singleton except cases:

1. D101CV200300668
2. D101CV201300014
3. D101CV201302328
4. D101CV201400793
5. D101CV201402535
6. D101CV201501232
7. D101CV201600290

Professionalism Tip

Judge's Preamble

As a judge, I will strive to ensure that judicial proceedings are fair, efficient and conducive to the ascertainment of the truth. In order to carry out that responsibility, I will comply with the letter and spirit of the Code of Judicial Conduct, and I will ensure that judicial proceedings are conducted with fitting dignity and decorum.

8. D101CV201600603

9. D101CV201602176

10. D101CV201700176

will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. Hon. Gregory S. Shaffer has been appointed to fill the vacancy in Division II of the First Judicial District. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Nov. 15 to challenge or excuse Judge Gregory S. Shaffer pursuant to Rule 1-088.1.

Eleventh Judicial District Court

Judicial Vacancy

A vacancy on the Eleventh Judicial District Court will exist as of Jan. 2, 2018 due to the retirement of Hon. Sandra Price effective Jan. 1, 2018. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the Court. Alfred Mathewson, chair of the Eleventh Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>. The deadline for applications is 5 p.m., Jan. 10, 2018. Applications received after that time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Eleventh Judicial District Court Judicial Nominating Commission will meet beginning at 9 a.m. on Jan. 25, 2018, to interview applicants in Farmington. The Commission meeting is open to the public and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

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 Bonding Window New Hours

Effective Sept. 30, Bernalillo County Metropolitan Court's bonding window is open from 7 a.m.–10:30 p.m. Monday through Sunday. Bonds during "graveyard" hours are no longer accepted.

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

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

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

ADR Committee ADR Institute Pre-Show

Contained within the Japanese martial art of "Aikido is *Atemi*"—a strike used to

unbalance or distract. This ADR Institute Pre-Show workshop will explore the concept of verbal *Atemi* through stories taken from the conflict resolution text, "Sweet Fruit from the Bitter Tree: 61 Stories of Creative & Compassionate Ways out of Conflict" by Mark Andreas. Join Aikido black belt and conflict resolver Stephen Kotev as he explores how to apply verbal *Atemi* to high-conflict situations at 6 p.m., Nov. 2, at the State Bar Center. Kotev and Laura Bassein will discuss the Association for Conflict Resolution's ADR Safety Planning-Recommended Guidance and relevant case scenarios, ethical issues and skill building interactions for practitioners across the spectrum of ADR practice on Nov. 3 at the ADR Institute. Attendance is free at the ADR Institute Pre-Show. Visit www.nmbar.org/CLE to register for the ADR Institute.

Board of Bar Commissioners New Mexico Access to Justice Commission

The Board of Bar Commissioners will make two appointments to the New Mexico Access to Justice Commission for three-year terms. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico wishing to serve on the Commission should send a letter of interest and brief resume by Nov. 17 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

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. Gross and C. Bryant Rogers.

Call for Donations: First Annual Indian Law Section Silent Auction

The Indian Law Section seeks donations for the First Annual Silent Auction to be held in conjunction with the Section's Annual CLE, "The Duty to Consult with Tribal Governments: Law, Practice and Best Practices" and Annual Meeting on Nov. 2 at the State Bar Center. Artwork or photography, jewelry, gift certificates for a business, restaurant or spa service, and more are accepted. Donations are tax deductible as provided by law and donors will be recognized on the Section's website. The Silent Auction will benefit the Section's Bar Preparation Scholarship Fund, which assists law school graduates in their efforts to prepare for and take the New Mexico Bar Exam. To donate, contact Delilah Tenorio in Albuquerque at dmt@stetsonlaw.com or Kathryn S. Becker in Santa Fe at Kathryn.becker@state.nm.us.

Natural Resources, Energy and Environmental Law Section

Nominations Open for 2017 Lawyer of the Year Award

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 15. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. More detailed criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations are due by Oct. 27 to Breanna Henley, bhenley@nmbar.org.

Senior Lawyers Division Annual Meeting of Membership

The Senior Lawyers Division invites Division members to its annual meeting of membership to be held at 4 p.m., Nov. 14, at the State Bar Center. Members of the SLD include members of the State Bar of New Mexico in good standing who are fifty-five (55) years of age or older and who



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have practiced law for twenty-five (25) years or more. During the annual meeting of membership, members will have the opportunity to meet with members of the SLD Board of Directors and learn more about the activities of the Division. The meeting will last an hour and attendees are welcome to stay for the Attorney Memorial Scholarship Reception following the annual meeting.

Attorney Memorial Scholarship Reception

Three UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The reception will be held from 5:30-7:30 p.m., Nov. 14, at the State Bar Center. All State Bar members, UNM School of Law faculty, staff, and students and family and colleagues of the deceased are welcome to attend. A list of attorneys being honored can be found at www.nmbar.org/SLD under "Attorney Memorial Scholarship." Contact Breanna Henley at bhenley@nmbar.org to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.

Young Lawyers Division Lunch with Judges in Santa Fe

Join the YLD, Judge Sylvia F. LaMar, Judge Henry M. Bohnhoff and retired Judge Sarah M. Singleton for lunch from 11:30 a.m.-1 p.m., Nov. 3, at Montgomery & Andrews Santa Fe, located at 325 Paseo De Peralta in Santa Fe. The YLD Lunch with Judges program is designed to allow YLD members to meet with local judges in an informal setting, ask questions of the

judges and receive advice relating to their career paths in the legal profession. Space is limited to 10 YLD members. R.S.V.P. to Region 2 Director Kaitlyn Luck at luck.kaitlyn@gmail.com. Lunch will be provided.

UNM SCHOOL OF LAW

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.
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Holiday Closures

Nov. 24–25 (Thanksgiving)

Sen. Dennis Chavez Endowed Lectureship to Discuss Struggle for Civil Rights and Social Justice

U.S. Sen. Dennis Chavez, one of New Mexico's most influential U.S. senators during the mid-20th century, was a pivotal and early advocate of civil rights legislation. The 2017 U.S. Senator Dennis Chavez Endowed Lectureship will honor his legacy on Oct. 26 at the UNM School of Law. Pre-lecture refreshments will be served from 4:45–5:30 p.m. The welcome, lecture and Q & A is from 5:30–6:45 p.m. Parking is free in the Law School "L" lot after 4 p.m. Former Dean and Professor of Law Kevin Washburn will provide introductory remarks about the distinguished Lecturer, the Chief Judge M. Christina Armijo and Sen. Chavez. Chief Judge Armijo will present "The Legacy of Senator Dennis Chavez: Choices, Challenges and Consequences, and His Courage and Resolve in Safeguarding the Rights of Individuals" (1.0 EP). Register online at lawschool.unm.edu/alumni/events/chavez-registration.html.

UNM Alumni Las Cruces Meet and Greet with NMHBA

UNM Law Deans Alfred Mathewson and Sergio Pareja and the New Mexico Hispanic Bar Association cordially invite members of the State Bar to attend a reception for Las Cruces area alumni and friends. The meet and greet event will be 5–7 p.m., Oct. 27, at Salud de Mesilla, 1800 Avenida de Mesilla, Las Cruces, NM 88005. To R.S.V.P., visit goto.unm.edu/cruces.

OTHER BARS

Albuquerque Bar Association Raise a Glass: Honoring the Women of the Bar

Join the Albuquerque Bar Association for the 2017 Raise a Glass Wine Pairing. Enjoy food and conversation as the Albuquerque legal community gathers to honor the female presidents of the Albuquerque Bar Association. Spread across the venue, four courses of pairings are thoughtfully curated to accentuate the notes in the wine and create a social atmosphere. Guests will have the chance to walk away with an enticing bottle for their enjoyment from the wine pull. The event is at 6 p.m., Nov. 11, at the Hyatt Regency Albuquerque. Individual tickets, tables and sponsorships are available. R.S.V.P. by Oct. 27 to 505-842-1151 or tbeckmann@abqbar.org.

Albuquerque Lawyers Club Monthly Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its November lunch meeting. Dick Minzner will present "State Government—Expectation and Reality." The lunch meeting will be held at noon, Nov. 1, at Seasons Restaurant, 2031 Mountain Road NW, Albuquerque. For more information, email ydenning@Sandia.gov or call 505-844-3558.

New Mexico Criminal Defense Lawyers Association The Notorious DWI Seminar

From Birchfield to field sobriety testing to use of science and experts, the New Mexico Criminal Defense Lawyers Association presents "The Notorious DWI Seminar" (6.0 G) on Oct. 27 in Albuquerque. The program will feature experienced attorneys and a segment by retired New Mexico Court of Appeals Judge Roderick Kennedy. This advanced CLE is packed with the latest information for lawyers' DWI practice. Visit nmcdla.org to join NMCDLA and register for this seminar.

New Mexico Women's Bar Association Pathways to the Legislature

The New Mexico Women's Bar Association announces its upcoming presentation, Pathways to the Legislature. This event, co-sponsored by the Committee on Women and the Legal Profession, will be held from 11:30 a.m.-1:30 p.m., Oct.

26, at the State Bar Center. The event will begin with a Party Panel, featuring Ryan Cangioli (chair, Republican Party of New Mexico), Richard Ellenberg (chair, Democratic Party of New Mexico) and Ashley Sanderson (Emerge New Mexico). The Party Panel will discuss what your party wants you to know about running for election, working in the legislature, how to get involved in running for office, and election law, including ballot requirements, fundraising rules, PACs, election day monitoring, and recount litigation. The event will continue with the Female Attorney Legislator Panel, featuring Rep. Sarah Maestas-Barnes (R-Bernalillo-15), Rep. Georgene Louis (D-Bernalillo-26), Rep. Cathrynn Brown (R-Eddy-55), and Rep. Deborah Armstrong (D-Bernalillo-17). The Legislator Panel will discuss ethical issues faced by legislators (e.g., conflicts of interests, lobbyists, etc.) and how to balance a career, running for election, and being a legislator with family obligations. Lunch will be provided at no cost. Approval for 1 hour of CLE credit is pending. R.S.V.P. to nmwb1990@gmail.com with your contact information and bar number.

OTHER NEWS

Center for Civic Values Requesting Judges for Gene Franchini High School Mock Trial

Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. Mock Trial qualifiers will be held Feb. 16–17, 2018, at the Bernalillo County Metropolitan Court in Albuquerque. CCV needs volunteers for judges (opportunities exist for sitting judges and non-judges). Learn more and register at www.civicvalues.org.

V. Sue Cleveland High School Seeks Attorney Coach

V. Sue Cleveland High School in Rio Rancho seeks an attorney coach to help with its mock trial team. For more information, contact Kristen Leeds,

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*Fourth Annual
Senior Lawyers Division*
ATTORNEY MEMORIAL
SCHOLARSHIP PRESENTATION
AND RECEPTION

Tuesday, Nov. 14 • 5:30-7:30 p.m.
State Bar Center



Four UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The Senior Lawyers Division invites all State Bar members and UNM School of law faculty, staff and students to attend.

A list of attorneys being honored can be found at www.nmbar.org/SLD under "Attorney Memorial Scholarship." Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P., to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.

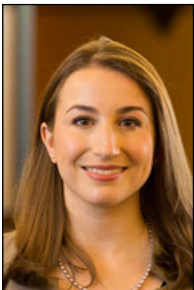




Sutin, Thayer & Browne welcomes **Tina Muscarella Gooch** to its litigation practice. Gooch earned her undergraduate degree in international relations at the University of San Diego and her law degree at the University of New Mexico School of Law. Recently, she was named a Southwest Super Lawyers Rising Star for 2017.



Pregenger, Baysinger, Wideman & Sale, PC announces the opening of a second office in Santa Fe and the addition of **Daniel J. Monte**. Monte will be practicing out of the Santa Fe office, focusing primarily on estate planning, trust administration, probate, fiduciary services and elder law. The firm is excited to better serve and support our clients and families throughout New Mexico.

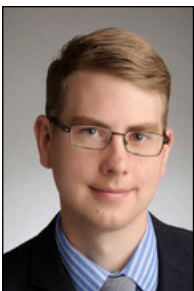


Paola Jaime Saenz (left) and **Patrick A. Coronel** (right) have joined the Rodey Law Firm. Saenz is an associate in Rodey's Albuquerque office. She practices in the litigation department, where she is a member of the complex

and commercial litigation group. Saenz received her law degree from the University of New Mexico School of Law. Coronel is also an associate in Rodey's Albuquerque office. He practices in the litigation department with the health law and products and general liability practice groups. Coronel received his law degree from the University of New Mexico School of Law.



On Sept. 26, **John Greacen** received the Ernest C. Friesen Award of Excellence in recognition of his vision, leadership and sustained commitment to the achievement of excellence in the administration of justice. The award was presented by the Justice Management Institute and presented at the annual conference of the National Association of Presiding Judges and Court Executive Officers held this year in Scottsdale, Ariz.



Montgomery and Andrews, PA, congratulates Kaleb Brooks on his recent Bar Exam passage and announces that he has joined the firm, concentrating on general civil litigation matters. Brooks graduated from Regis University, *summa cum laude*, with a B.A. in Economics and Politics in 2012, received his M.A. in Communication Studies from the University of Denver in 2014, and his Juris Doctorate from Indiana University in 2017.



Jennifer Kittleson (left) and **Dominic Martinez** (right) joined Modrall Sperling in the firm's Albuquerque office. Both Kittleson and Martinez are graduates of the UNM School of Law class of 2017. As a member of the firm's litigation department,

Kittleson focuses her practice on tort/personal injury and employment law, including employment discrimination and wrongful termination. She graduated from UNM School of Law *summa cum laude*, where she served as a legal writing tutor and a member of the editorial staff of the *New Mexico Law Review*. Martinez, with a degree in Economics from Harvard College, earned his J.D. from UNM School of Law, where he worked as a clinical law student in the Business and Tax Clinic.

Dominic Martinez Awarded the Daniels Diploma



Dominic Martinez celebrated receiving his award with (l-r) Randi McGinn, New Mexico Supreme Court Justice Charles Daniels and Dean Sergio Pareja. Photo courtesy of UNM School of Law.

Dominic Martinez, Modrall Sperling associate and 2017 graduate of the University of New Mexico School of Law, has been awarded the Daniels Diploma, the law school's top academic award. The Daniels Diploma is named after former UNM professor Justice Charles W. Daniels of the New Mexico Supreme Court. The diploma is generally awarded to graduates who are first in their class, just as Justice Daniels was first in his class when he graduated from UNM School of Law. "I was first inspired by Justice Daniels when I was in high school. I met him when he volunteered his time to help my mock trial team," said Martinez. "Seven years later, it is an honor to receive an award in his name. Thank you to everyone who helped me along the way."

Brant & Hunt Attorneys

2018 Best Lawyers in America Lawyer of the Year:

Jack Brant (Albuquerque, legal malpractice law—defendants)

Butt Thornton & Baehr PC

2018 Best Lawyers in America: **Neil R. Blake** (medical malpractice law: defendants), **Michael P. Clemens** (insurance law, litigation: insurance), **Monica R. Garcia** (product liability litigation: defendants), **Alfred L. Green Jr.** (mass tort litigation/class actions: defendants, product liability litigation: defendants), **James H. Johansen** (insurance law, professional malpractice law: defendants), **Agnes Fuentevilla Padilla** (employment law—management) and **S. Carolyn Ramos** (product liability litigation: defendants, transportation law).

Sutin, Thayer & Browne

Benchmark Litigation Highly Recommended Law Firm in New Mexico

Benchmark Litigation Local Stars: **Andrew J. Simons** and **Benjamin E. Thomas**

Benchmark Litigation: **Mariposa Padilla Sivage** and **Justin R. Sawyer**

In Memoriam

Kirsten Josephson Anderson, 73, of Albuquerque, died at Presbyterian hospital July 1 due to complications from a short illness. Daughter of Vernal and Glenna Esplin Josephson, Anderson was born in Boston, Mass., on Sept. 20, 1943, while her father was a physicist at the MIT Rad Lab working on radar development. After WWII, the family, including older sister Sandra, moved to Los Alamos, where sister Marni was born. There they had a brief taste of ranch life, building a home on land near La Puebla, before the final family move to Palos Verdes Estates, Calif., where twins Luli and Lovisa were born. While in California, Anderson attended Narbonne High School and received her bachelor's degree from Pomona College. She then moved to Albuquerque for graduate studies in anthropology at UNM. After receiving a law degree from UNM, she alternated years in private practice with two stints as a prosecutor for the District Attorney's office, retiring as a Deputy DA (Crimes Against Children). Anderson was the ultimate life-long learner. Innately skeptical of any facts or topics she had not personally and thoroughly researched herself, she was a continual wide-ranging knowledge seeker and omnivorous, rigorous reader. At her death, she was registered to attend a roster of OASIS, OSHER, and UNM continuing education classes. She was a long time Great Books participant and a devoted, active member of the Holmes book group. She had recently begun tutoring children and was looking forward to foreign travels, the Woman Tours Route 66 biking expedition, and many upcoming musical performances. As an accomplished pianist, Anderson enjoyed playing and socializing with her 4-hands piano group. She was an avid and generous supporter of the arts, especially the Santa Fe Opera and other local classical music organizations. As a long time participant at the Sunday Chatter/Cabaret musical events (formerly, Church of Beethoven), she was honored to be invited recently to join the Chatter "Albuquerque board. Every year, Kris celebrated her various, interesting, cherished friends with an annual holiday open house. Preparations for next year's gathering were already well in hand. Anderson was preceded in death by her parents; son Douglas Vern Anderson; grandson Cameron Anderson; former husband Donald E. Becker; and sister Marni J. Harang. She is survived by son, Jason Erik Anderson; sisters, Sandra Aregian, Luli Josephson, and Lovisa Josephson (Sean Casey); and dear grandchildren including Doug's children, Kaitlyn and Garrick Anderson, and Jason's children, Dadge and Paige Anderson. Survived also by her devoted kitty companions, Buffy and Callie.

Deborah DePalo, age 61, beloved wife, mother and accomplished attorney, passed away on July 14. DePalo was a kind and generous person who always considered the impact on other people of her actions and decisions. A graduate of DePaul Law School, DePalo practiced law in five different states, the last of which was New Mexico, where she served 25 years in the Office of the District Attorney, rising to the position of chief deputy before retiring. DePalo also served her country for five years as an officer in the U.S. Army Judge Advocate General Corps, reaching the rank of Major while earning three Army Commendation Medals and the Military Parachutist Badge. She is survived by William DePalo, her husband of 34 years; son, Brian; daughter, Katherine; grandson, Gavin; stepsons, Lee and Chris; step-grandchildren, Kyle and Sarah; and her dearest friend, Penny.

Clare Clement Koogler, 91, born in Hillsboro, was a longtime resident of New Mexico, died at home on June 25. He was preceded in death by his wife of 63 years, Elise Koogler. Clement and is survived by his children, John C. of Brookeland, Texas, William C. of Tucson, Ariz., Elyse Ann Cullum of Parks, Ariz.; seven grandchildren, and 15 great-grandchildren as well as other loving family members and friends. Clement graduated from UNM and received a Juris Doctor degree. He was a well-respected by New Mexico attorneys and judges.

Shane A. Henderson, age 45, of Albuquerque, passed away Aug. 21. He was born on Jan. 24, 1972, and was a lifelong resident of Albuquerque. Henderson graduated from Highland High School in 1990 and went on to receive a B.S. in Economics from New Mexico State University and a J.D. from the University of New Mexico School of Law. He served as an assistant trial attorney for the State of New Mexico Seventh Judicial District Attorney's Office. Henderson was preceded in death by his mother, Ruth M. Henderson; and father, James ("Jim") E. Henderson. He is survived by his sister and brother-in-law, Erika and Brian Cost; and his nephew, James "Jim" Cost, all of Chicago, IL.

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director, Center for Civic Values and Gene Franchini New Mexico High School Mock Trial Program, at 505-764-9417 or kristen@Civicvalues.org.

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., 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. christianlegalaid@hotmail.com.

New Mexico Superintendent of Insurance Healthcare Road Show

New Mexico's Superintendent of Insurance and beWellnm invite the legal community to attend an in-depth discussion of changes to the health insurance marketplace for the 2018 plan year. These events will feature presentations by representatives of the Superintendent of Insurance, beWellnm, and insurance carriers offering coverage on the beWellnm marketplace. Presentations will include a preview of a new plan comparison tool and provider search tool. To view the complete schedule and to R.S.V.P. go to www.bitly.com/osirsvp or call 1-833-ToBeWell today to reserve your spot.

Trojan Horse Method Women-only Training in Albuquerque

The Trojan Horse Method training is coming to Albuquerque for its first women-only event on Nov. 2-5 at Hotel Parq Central. Trojan Horse's mission is to train, mentor and assist trial lawyers as they commit to the process of becoming winning trial lawyers. The method takes attendees out of their comfort zone in order to aid the development of the highest level of skills required to obtain justice. Attendees will learn how to discover the emotional core of their case and transport

CELEBRATE

PRO BONO

www.celebrateprobono.org

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!

3rd JUDICIAL DISTRICT:

Free Legal Fair

Oct. 27, 2017 from 10 am – 1 pm
Third Judicial District Court
(201 W. Picacho Avenue, Las Cruces, NM 88005)

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)

12th JUDICIAL DISTRICT (LINCOLN):

Free Legal Fair

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

juries into the truth—not the manufactured truth—by the insurance carriers and prosecutors. Visit <https://events.bizzabo.com/thm47> for more information and to register.

State of New Mexico Workers' Compensation Administration Notice of Destruction of Records

In accordance with NMAC 11.4.4.9 (Q)-Forms, Filing and Hearing Procedures: Return of Records—the New Mexico Workers' Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2011, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE, Albuquerque, NM, 87106 and can be picked up until Nov. 30. For further information, contact the Workers' Compensation Administration at 505-841-6028 or 1-800-255-7965 and ask for Heather Jordan, clerk of the court. Exhibits and depositions not claimed by the specified date will be destroyed.

ADDRESS CHANGES

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court

Web: supremecourt.nmcourts.gov
Email: attorneyinfochange@nmcourts.gov
Fax: 505-827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar

Web: www.nmbar.org
Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199

Legal Education

October

- 25 **Drafting Contract Remedies**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org
- 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
- 26 **2016 Real Property Institute**
4.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org
- 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
- 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
- 27 **Fall Elder Law Institute—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
- 27 **The Notorious DWI Seminar**
6.0 G
Live Seminar
Albuquerque
New Mexico Criminal Defense Lawyers Association
info@nmccla.org
- 27 **Volunteer Training**
4.3 G
Live Seminar, Albuquerque
Christian Legal Aid
www.nmchristianlegalaid.com
- 28 **Overview of Real ID, Name Changes and Birth Certificates**
1.0 G
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5033
- 31 **2017 Americans with Disabilities Act Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

November

- 2 **Drafting Lease Guarantees**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org
- 2 **The Duty to Consult with Tribal Governments: Law, Practice and Best Practices**
2.3 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org
- 2 **Annual Seminar**
3.5 G
Live Seminar, Santa Fe
Santa Fe Estate Planning Council
505-988-4776
- 2 **Foundational Workshop - THM 47**
26.4 G
Live Seminar, Albuquerque
Trojan Horse LLC
307-851-3980
- 2 **USFN Member Education Retreat**
3.0 G, 1.5 EP
Live Seminar, Santa Fe
USFN America’s Mortgage Banking Attorneys
www.usfn.org
- 3 **2017 ADR Institute Is Your Dispute Resolution Safe?—Issues to Consider in Meditation and Other ADR Processes**
4.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org
- 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
- 3 **Ethics for Transactional Lawyers**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org
- 3 **Get Smart About Open Government Laws**
6.0 G
Live Seminar, Albuquerque
New Mexico Foundation for Open Government
505-220-2820
- 7 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Live Webcast/Live Seminar
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org
- 7 **28th Annual Appellate Practice Institute (2017)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

November

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|--|--|---|
| <p>7 Moderated Q & A – Lessons Learned from the “Trial of the Century” Relevant to the Rule-of-Law Issues of Today (2017 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 2017 Business Law Institute
4.5 G, 1.5 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Copy That! Copyright Topics Across Diverse Fields (2016)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>7 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> | <p>16 2017 Probate Institute
6.3 G, 1.0 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Estate Planning, Current Developments and Hot Topics
1.0 G
Live Seminar, Albuquerque
Bessemer Trust
713-803-2843</p> |
| <p>7 Drugs in the Workplace (2016)
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 2016 Ethics, Confidentiality and the Attorney-Client Privilege Update
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Complying with the Disciplinary Board Rule 17-204
1.0 EP
Live Webcast/Live Seminar
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 Litigation and Argument Writing in the Smartphone Age
5.0 G, 1.0 EP
Live Webcast/Live Seminar
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Sports and Entertainment Law
5.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Black Lawyers Association
www.newmexicoblacklawyersassociation.org/</p> | <p>28 Attorney vs. Judicial Discipline (2017)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 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 2017 Tax Symposium
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Federal and State Tax Updates (2017 Tax Symposium)
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Thriving or Surviving? Strategies for Well-being and Ethical Practice
2.0 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 3rd Annual Symposium on Diversity and Inclusion—Diversity Issues Ripped From the Headlines (2017)
5.0 G 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 2017 Employment and Labor Law Institute
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Essentials of Music Copyright Law with Ethics
5.0 G, 1.0 EP
Live Seminar, Albuquerque
Rock N Roll Law
www.rocknrolllaw.com</p> | <p>27 Attorney vs. Judicial Discipline (2017)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 2017 Family Law Institute (Day 1)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| | <p>27 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 New Mexico Liquor Law for 2017 and Beyond
3.5 G
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

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 October 13, 2017

PUBLISHED OPINIONS

A-1-CA-35903	CYFD v. Michael H	Affirm	10/11/2017
A-1-CA-34597	State v. B Adamo	Affirm	10/12/2017

UNPUBLISHED OPINIONS

A-1-CA-36230	State v. A Orosco	Affirm	10/10/2017
A-1-CA-34928	State v. J Yazzie	Affirm	10/12/2017
A-1-CA-35620	State v. R Dunn	Affirm	10/12/2017
A-1-CA-35919	State v. V Medina	Affirm	10/12/2017
A-1-CA-36008	CYFD v. Oscar P	Affirm	10/13/2017

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

Dated Oct. 6, 2017

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

Shavon Mere Ayala

Ayala PC
4700 Lincoln Road NE #122
Albuquerque, NM 87109
505-681-1765
shavon@ayalapc.com

Caroline Bass

N.M. Human Services
Department-CSED
1920 Fifth Street
Santa Fe, NM 87505
505-920-2192
caroline.bass2@state.nm.us

Dana M. Beyal

Office of the Second Judicial
District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102
505-222-1382
505-241-1382 (fax)
dbeyal@da2nd.state.nm.us

Douglas H. M. Carver

New Mexico Sentencing
Commission
MSCO2-1625 ISR
1915 Las Lomas Road NE
(87106)
Albuquerque, NM 87131
505-508-8959
dhmcarver@unm.edu

Peter M. Cubra

4004 Carlisle Blvd. NE, Suite O
Albuquerque, NM 87107
505-361-2140
505-312-7757 (fax)
pcubra@qwestoffice.net

Nicholas G. DeRosa

U.S. District Court for the
District of New Mexico
333 Lomas Blvd. NW, Suite 640
Albuquerque, NM 87102
505-348-2332
nickgderosa@gmail.com

Lindsay Drennan

Thompson, Coe, Cousins
& Irons, LLP
700 N. Pearl Street, 25th Floor
Dallas, TX 75201
214-880-2500
ldrennan@thompsoncoe.com

Paul A. Hanna

McNally & Hanna, LLC
PO Box 2245
500 N. Main Street, Suite 706
(88201)
Roswell, NM 88202
575-755-4000
paul.a.hanna@outlook.com

Joseph Michael Hoffman

9606 E. Nido Avenue
Mesa, AZ 85209
480-699-4379
jhoffman@stratmanlawfirm.
com

Peter James Horan

2405 High Desert Circle NE
Rio Rancho, NM 87144
505-261-6157
peterhoranfamilylaw@gmail.
com

Michael P. Jasso

MPJ Law Firm LLC
4101 Paseo del Norte NE
Albuquerque, NM 87113
505-263-2820
866-458-0652 (fax)
michael@mpjlawfirm.com

LeeAnne M. Kane

Squaxin Island Tribe Legal
Department
3711 S.E. Old Olympic
Highway
Shelton, WA 98584
360-432-1771
lkane@squaxin.us

Jeffrey M. Kendall

Atkins Nuclear Secured
545 Oak Ridge Turnpike
Oak Ridge, TN 37830
865-483-8247
jeff.kendall@atkinsglobalns.com

Cathy Dawn Kennard

Social Security Administration
201 Third Street NW, Suite 400
Albuquerque, NM 87102
866-964-1298
866-580-1211 (fax)
cathy.kennard@ssa.gov

Alice P. Kilborn

Fortney & Scott, LLC
1750 K Street NW, Suite 325
Washington, DC 20006
202-689-1200
202-689-1209 (fax)
akilborn@fortneyscott.com

Charles C. Kretke

Office of the County Attorney
700 S. Silver Street
Deming, NM 88030
575-546-0494
575-544-4293 (fax)
charles_kretke@
lunacountynm.us

Hon. William Patrick Lynch (ret.)

PO Box 67525
Albuquerque, NM 87193
505-225-7847
wlynchadr@gmail.com

Carlos E. Martinez

Law Offices of
Carlos E. Martinez, LLC
PO Box 16642
Albuquerque, NM 87191
505-221-6155
carlosemartinezllc@gmail.com

Maryl M. McNally

McNally & Hanna, LLC
PO Box 2245
500 N. Main Street, Suite 706
(88201)
Roswell, NM 88202
575-755-4000
marylmcnally@outlook.com

Lisa Jean Mobley

Office of Disability
Adjudication and Review
Social Security
Administration
333 Las Vegas Blvd. South,
Suite 4452
Las Vegas, NV 89101
888-397-5623 Ext. 29207
lisamobley.law@gmail.com

Eric D. Norvell

Eric D. Norvell, Attorney, PA
2292 Faraday Avenue, Suite 70
Carlsbad, CA 92008
760-452-0808
760-454-3802 (fax)
enorvell@norvellfirm.com

Christopher Neal Orton

Machol & Johannes
4209 Montgomery Blvd. NE
Albuquerque, NM 87109
505-217-2850
866-857-7527 (fax)
christopher.orton@mjfirm.com

Faith Lesley Kalman Reyes

Verdi & Ogletree PLLC
1325 G Street NW, Suite 500
Washington, DC 20005
505-660-0749
202-449-7701 (fax)
freyes@verdiogletree.com

Hon. Jerry H. Ritter Jr.

U.S. Magistrate Judge
U.S. District Court for the
District of New Mexico
333 Lomas Blvd. NW, Suite 620
Albuquerque, NM 87102
505-348-2300
505-348-2305 (fax)

Jazmine Janet Ruiz

Montgomery & Andrews, PA
100 Sun Avenue NE, Suite 410
Albuquerque, NM 87109
505-884-4200
jruiz@montand.com

Sam P. Ruyle

Katz Herdman MacGillivray
& Fullerton PC
123 E. Marcy Street, Suite 200
Santa Fe, NM 87501
505-946-2819
spr@santafelawgroup.com

Maria M. Siemel

Legacy Law Firm
4801 Lang Avenue NE,
Suite 110
Albuquerque, NM 87109
505-288-5100
mms@mylegacylawfirm.com

Sarah Steadman
UNM School of Law
1117 Stanford Drive NE
Albuquerque, NM 87106
505-277-5265
steadman@law.unm.edu

Michael L. Timm Jr.
U.S. District Court for the
District of New Mexico
333 Lomas Blvd. NW,
Suite 620
Albuquerque, NM 87102
505-348-2300
michael_timm@cnmcourt.
fed.us

Bette R. Knapp Velarde
Velarde Law Office
HC 74 Box 5
Regina, NM 87046
575-289-0032
505-248-0261 (fax)
bettevelarde@gmail.com

Leia Viscarra
Law Access New Mexico
PO Box 36539
Albuquerque, NM 87176
505-217-1675
505-944-7168 (fax)
leia@lawaccess.org

Jeremy M. Worley
The Injury and Disability Law
Center, LLC
614 N. Main Street
Roswell, NM 88201
575-208-1630
575-537-1303 (fax)
jeremy@idlawcenter.com

Joshua Truett Worley
The Injury and Disability Law
Center, LLC
614 N. Main Street
Roswell, NM 88201
575-208-1632
575-537-1302 (fax)
josh@idlawcenter.com

Michael Alarid Jr.
The Alarid Law Firm, PC
300 Central Avenue SW,
Suite 2200 East
Albuquerque, NM 87102
505-242-6255
505-212-2262 (fax)
alaridmichael@yahoo.com

John J. Britt
5116 Chisholm View Drive
Fort Worth, TX 76123
505-400-8003

Camille Cordova
The Alarid Law Firm, PC
300 Central Avenue SW, Suite
2200 East
Albuquerque, NM 87102
505-242-6255
505-212-2262 (fax)
camille_cordova@yahoo.com

M. Michelle Cortez
Cortez & Hoskovec, LLC
6121 Indian School Road NE,
Suite 203
Albuquerque, NM 87110
505-247-1726
505-248-0214 (fax)
michelle@cortezhoskovec.com

Gary D. Eisenberg
Betzer, Roybal & Eisenberg, PC
8801 Horizon Blvd. NE,
Suite 340
Albuquerque, NM 87113
505-797-0105
505-797-0170 (fax)
geisenberg@betzerlaw.com

LaDonna L. Giron
2611 Crimson Clover
Los Lunas, NM 87031
gironlawoffice@gmail.com

Jeff Grandjean
Grandjean Law Firm, LLC
PO Box 4350
500 N. Main Street, Suite 814
(88201)
Roswell, NM 88202
575-622-1988
575-622-1042 (fax)
jeff@grandjeanlawfirm.com

William Ervin Hoskovec
Cortez & Hoskovec, LLC
6121 Indian School Road NE,
Suite 203
Albuquerque, NM 87110
505-247-1726
505-248-0214 (fax)
william@cortezhoskovec.com

Thomas E. Lilley
Thomas E. Lilley, PC
330 N. Main Street
Roswell, NM 88201
575-625-2340
575-625-1331 (fax)
lilleylawoffice@dfn.com

Benjamin C. Roybal
Betzer, Roybal & Eisenberg, PC
8801 Horizon Blvd. NE,
Suite 340
Albuquerque, NM 87113
505-797-0105
505-797-0170 (fax)
broybal@betzerlaw.com

Tyr Loranger
Loranger Law, LLC
PO Box 1A
La Madera, NM 87539
505-316-1714
lorangerlawoffice@gmail.com

**CLERK'S CERTIFICATE
OF ADMISSION**

On October 10, 2017:
Gregory D. Abel
Parnall Law Firm, LLC
PO Box 8009
2025 San Pedro Drive NE
(87110)
Albuquerque, NM 87198
505-268-6500
505-268-8708 (fax)
greg@parnalllaw.com

On October 10, 2017:
Christopher Charles Benoit
The Law Office of
Lynn Coyle, PLLC
2515 N. Stanton Street
El Paso, TX 79902
915-532-5544
915-532-5566 (fax)
chris@coylefirm.com

On October 10, 2017:
Maria C. Caballero
Wilner & O'Reilly
675 E. 2100 S., Suite 300
Salt Lake City, UT 84106
801-594-9999
801-903-9211 (fax)
maria@wilneroreilly.com

On October 10, 2017:
Wesley Enns
Genus Law Group
500 Marquette Avenue NW,
Suite 1200
Albuquerque, NM 87102
505-835-6950
505-212-1256 (fax)
wenns@genuslawgrp.com

On October 10, 2017:
Michael John Holt
Hennessy & Roach, PC
103 Mission Ridge Road
Corrales, NM 87048
217-381-7441
holtmj808@aol.com

On October 10, 2017:
Jason Lawrence Mendoza
4148 N. Dania Court
Litchfield Park, AZ 85340
623-326-1993
jay85340@gmail.com

**CLERK'S CERTIFICATE OF
INDEFINITE SUSPENSION
FROM MEMBERSHIP
IN THE STATE BAR OF
NEW MEXICO**

Effective **February 15, 2017**:
Elena Moreno Hansen
La Morena Law, LLC
225 E. Idaho Avenue, Suite 27
Las Cruces, New Mexico 88005
575-932-8335
505-274-7783 (fax)
elena@lamorenalaw.com

**CLERK'S CERTIFICATE OF
NAME CHANGE**

As of October 13, 2017:
**Chiara Tattiana
Kinahan f/k/a Chiara
Tattiana Goluskin**
Rose L. Brand & Associates, PC
7430 Washington Street NE
Albuquerque, NM 87109
505-833-3036
505-833-3040 (fax)
tattiana.goluskin@roselbrand.
com

As of October 12, 2017:
**Erika Stoll f/k/a
Erika Lorraine Friis Baylor**
N.M. Children, Youth and
Families Department
1031 Lambertson Place NE
Albuquerque, NM 87107
505-469-5263
505-841-6524 (fax)
erika.baylor@state.nm.us

**CLERK'S CERTIFICATE OF
RESIGNATION PURSUANT
TO RULE 17-209 NMRA**

Effective October 10, 2017:
Sharon Pomeranz
Law Office of Sharon
Pomeranz
15A Cibola Circle
Santa Fe, New Mexico 87505
and
143 Pine Street
Santa Fe, New Mexico 87501
505-469-5051
sharonesantafe@gmail.com

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 October 25, 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
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Rules of Appellate Procedure

12-204	Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction	07/01/2017
12-205	Release pending appeal in criminal matters	07/01/2017
12-307.2	Electronic service and filing of papers	07/01/2017*
12-307.2	Electronic service and filing of papers	08/21/2017*
12-314	Public inspection and sealing of court records	03/31/2017

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

Rules Governing Admission to the Bar

15-104	Application	08/04/2017
15-105	Application fees	08/04/2017
15-301.1	Public employee limited license	08/01/2017
15-301.2	Legal services provider limited law license	08/01/2017

Rules of Professional Conduct

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

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

Rules for Minimum Continuing Legal Education

18-203	Accreditation; course approval; provider reporting	09/11/2017
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Rules Governing Review of Judicial Standards Commission Proceedings

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

From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-026

No. S-1-SC-35148 (filed August 17, 2017)

EL CASTILLO RETIREMENT RESIDENCIES,
Petitioner-Respondent,

v.

DOMINGO MARTINEZ, ASSESSOR, SANTA FE COUNTY,
Respondent-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI

BARBARA J. VIGIL, District Judge

BRIDGET JACOBER
Santa Fe, New Mexico
for Petitioner

CAROL A. CLIFFORD
JERRY TODD WERTHEIM
JONES, SNEAD, WERTHEIM &
CLIFFORD, P.A.
Santa Fe, New Mexico
for Respondent

GARY D. EISENBERG
BETZER, ROYBAL & EISENBERG, P.C.
Albuquerque, New Mexico
for Amicus Curiae
New Mexico Health Care Association

Opinion

Charles W. Daniels, Justice

{1} Article VIII, Section 1(A) of the New Mexico Constitution sets forth a general mandate that all property of the same class must be taxed in an “equal and uniform” manner, while Section 3 exempts from taxation property that is, among other exempt categories, “used for . . . charitable purposes.” In 2008, the New Mexico Legislature created a new tax exemption for a continuing care community defined under the Continuing Care Act, NMSA 1978, §§ 24-17-1 to -18 (1985, as amended through 2010), that “donates or renders gratuitously a portion of its services or facilities” and “uses all funds remaining after payment of its . . . expenses of operation . . . to further its charitable purpose, including the maintenance, improvement or expansion of its facilities,” among other qualifications. NMSA 1978, § 7-36-7(B)(1)(d) (2008); *see* § 24-17-3(B)-(C) (defining “community” and “continuing care”).

{2} Respondent El Castillo Retirement Residences is a self-sustaining retirement and continuing care community, funded

entirely by admission and monthly fees paid by residents who have met El Castillo’s requirements for sufficient financial resources, including a minimum net worth, and have satisfied specific health criteria. It does not accept residents who are Medicare-dependent, Medicaid-dependent, or charity-dependent or any residents who cannot afford to buy their way into the community. It neither donates any significant services or property to charitable causes nor uses its property primarily and substantially for a charitable purpose. While we agree with the Court of Appeals that El Castillo does not use its property for charitable purposes and is therefore not exempt from the constitutional requirement of equal taxation, we write to clarify that Section 7-36-7(B)(1)(d) must be read in harmony with controlling constitutional requirements. Accordingly, we hold that El Castillo is not entitled to property-tax exemptions under either Section 7-36-7(B)(1)(d) or Article VIII, Section 3 of the New Mexico Constitution because El Castillo does not use its property primarily for substantial public benefit furthering charitable purposes.

I. BACKGROUND

{3} El Castillo Retirement Residences, located in Santa Fe County, provides graduated levels of care to its accepted residents, all of whom must pay an entry fee upon admission and monthly fees thereafter in return for living quarters, the use of shared facilities, access to coordinated social and recreational activities, and the assurance that El Castillo will provide any level of care that accepted residents may need as they age.

{4} El Castillo is funded primarily by resident fees calculated at the time of admission and based on each resident’s life expectancy and projected level of required care. Fees are calculated to cover all of the operating costs of the facility and to provide additional reserves that can be drawn on to make up deficits. It is possible that particular residents will outlive their predicted life spans or require more expensive medical care than anticipated so that the fees they pay would not be enough to cover the entire cost of their lifetime care. Other residents may live fewer years than expected, and the entry fee and monthly fees they pay to El Castillo will exceed the total cost of their lifetime care.

{5} To minimize the facility’s exposure to financial risk from this flat-fee arrangement, prospective residents must meet physical, mental, and financial requirements to be accepted for admission. El Castillo does not accept applicants who depend solely on Medicare or Medicaid, individuals whose net worth is less than \$300,000 independent of social security benefits, or those whose health issues likely will require a high level of care.

{6} El Castillo’s property was valued at \$9,860,000 for 2009 property-tax purposes by the petitioner, the Santa Fe County Assessor. After receiving the notice of valuation, El Castillo filed a claim for exemption of property used for charitable purposes under Article VIII, Section 3 of the New Mexico Constitution and Section 7-36-7(B)(1)(d) of the New Mexico Property Tax Code. The Assessor denied the claim because “El Castillo’s donation of services or facilities is minimal.” The Assessor acknowledged that the Legislature did not textually set forth a minimum level of charitable donation in Section 7-36-7(B)(1)(d) but concluded that “because the constitutional grant of exemption requires primary and substantial charitable use of the property, so must the statute.”

{7} El Castillo protested the Assessor's denial to the Santa Fe County Valuation Protests Board. The Board upheld the Assessor's denial of the property-tax exemption after finding that El Castillo had not "donate[d] or render[ed] gratuitously a portion of its services or facilities" as the terms of Section 7-36-7(B)(1)(d) require. The Board did not purport to address the constitutional issue separately because El Castillo did not argue for an exemption under Article VIII, Section 3 separate from the statutory grounds, and the parties agreed that the Board did not have jurisdiction to address the "constitutional issue with regard to the statute itself."

{8} El Castillo appealed the Board's decision to the district court pursuant to the district court's appellate jurisdiction. El Castillo asked the district court to review the Board's decision which denied the exemption on statutory grounds. El Castillo argued that the Board's decision "was not supported by substantial evidence and was reached in an arbitrary and capricious manner." Additionally, El Castillo asked the district court to exercise its original jurisdiction and decide whether El Castillo was exempt from property valuation under Article VIII, Section 3 of the New Mexico Constitution.

{9} El Castillo argued that by enacting Section 7-36-7(B)(1)(d) the Legislature had made a policy decision within its purview, giving "new depth and meaning to Article VIII, Section 3" in "acknowledg[ing] the great public benefit provided by nonprofit continuing care retirement communities" and by "helping assure [their] financial viability," noting that the exemption is available to such communities that meet the other requirements of Section 7-36-7(B)(1)(d) "so long as a portion of services and facilities are donated or rendered gratuitously." In addition, El Castillo argued that satisfaction of the statutory claim necessarily satisfied the constitutional claim in "alleviating a burden on the government by sustaining its members to a significant degree, certainly far more than the tax burden that it is seeking to relieve itself of."

{10} The district court did not exercise its appellate jurisdiction over the Board's decision interpreting Section 7-36-7(B)(1)(d) but instead exercised its original jurisdiction over both El Castillo's statutory and constitutional claims. Without addressing any of the Board's findings of fact, the district court issued new findings of fact which contradicted the findings of the Board. The district court concluded

that Article VIII, Section 3 was not self-executing and that by enacting Section 7-36-7(B)(1)(d), the Legislature had "spelled out how the constitutional provision 'used for charitable purposes' is to be interpreted." Consequently the district court declined to "read into the statute a requirement that El Castillo render a 'primary or substantial' public benefit" and held that, by meeting the plain language requirements of Section 7-36-7(B)(1)(d), El Castillo had also fulfilled the charitable use requirements for tax exemption under Article VIII, Section 3 of the New Mexico Constitution.

{11} The Santa Fe County Assessor appealed the district court's decision to the Court of Appeals as an appeal of right pursuant to Rule 12-201 NMRA and Rule 12-202 NMRA. *El Castillo Ret. Residences v. Martinez*, 2015-NMCA-041, ¶ 7, 346 P.3d 1164. The Assessor argued that an appeal of right was the proper procedure because the district court utilized only its original jurisdiction and not its appellate jurisdiction when making its determination.

{12} The Court of Appeals determined it only had jurisdiction to review whether El Castillo met the constitutional requirements for the tax exemption, not whether El Castillo was entitled to a tax exemption under the statute. It held that the notice of appeal and docketing statement "were sufficient to perfect the appeal of the constitutional issue . . . [but that] the Assessor failed to file a petition for writ of certiorari to perfect his appeal as to the statutory issue first decided by the Protest Board and reviewed by the district court in its appellate jurisdiction." *Id.* ¶ 8.

{13} The Court of Appeals reversed the district court's conclusion that El Castillo was constitutionally exempt from property taxation and held that "El Castillo did not directly and immediately use its property primarily and substantially for a charitable purpose recognized under Article VIII, Section 3 of the New Mexico Constitution because it does not confer a substantial benefit of real worth and importance to an indefinite class of persons who are members of the general public." *El Castillo*, 2015-NMCA-041, ¶¶ 44-45. Because the Court of Appeals refused jurisdiction to review whether El Castillo was eligible for tax exemption under the statute, it did not discuss the relationship between Article VIII, Section 3 and Section 7-36-7(B)(1)(d) or specify whether its reversal of the district court on constitutional grounds

left intact the district court's ruling that El Castillo was entitled to exemption under the statute. *See El Castillo*, 2015-NMCA-041 ¶ 12.

{14} We granted certiorari to consider the constitutional and statutory provisions that govern permissible exemptions from equal taxation of real property in New Mexico and to clarify the subject matter appropriate for appellate review in circumstances such as these.

II. DISCUSSION

{15} Article VIII, Section 3 of the New Mexico Constitution provides no specifics in its exemption of "all property used for . . . charitable purposes" from property taxation. The Legislature, which previously had recognized in Section 7-36-7(B)(1) that taxes may not be imposed on "property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws," added Subsection (B)(1)(d) in a 2008 amendment, providing that

this includes property that is operated either as a community to which the Continuing Care Act . . . applies or as a facility licensed by the department of health to operate as a nursing facility, a skilled nursing facility, an adult residential care facility, an intermediate care facility or an intermediate care facility for the developmentally disabled; and is owned by a charitable nursing, retirement or long-term care organization that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) donates or renders gratuitously a portion of its services or facilities; and 3) uses all funds remaining after payment of its usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, to further its charitable purpose, including the maintenance, improvement or expansion of its facilities.

The statute provides no guidelines for determining what level of charitable donations will satisfy the requirement of donating or rendering gratuitously "a portion of its services or facilities." *Id.*

{16} El Castillo asserts that it is entitled to be exempt from taxation because it has met the terms of the statute but does not challenge the Court of Appeals holding that it is not exempt under Article VIII, Section 3 of the New Mexico Constitution. The Assessor argues that El Castillo's failure to meet the requirements of Article VIII, Section 3 necessarily means that Section 7-36-7(B)(1)(d) cannot be constitutionally applied to grant El Castillo an exemption. For the reasons that follow, we agree with the Assessor.

A. The Assessor Has Standing to Challenge the Constitutionality of Section 7-36-7(B)(1)(d) as It Applies to El Castillo

{17} As a preliminary matter, El Castillo challenges the Assessor's standing to raise the constitutionality of Section 7-36-7(B)(1)(d), relying on *State ex rel. Overton v. N.M. State Tax Comm'n*, 1969-NMSC-140, ¶¶ 8, 19-20, 81 N.M. 28, 462 P.2d 613. Although El Castillo raises the issue for the first time in this Court, "the lack of [standing] is a potential jurisdictional defect, which may not be waived and may be raised at any stage of the proceedings." *Gunaji v. Macias*, 2001-NMSC-028, ¶ 20, 130 N.M. 734, 31 P.3d 1008 (internal quotation marks and citations omitted). "[S]tanding in our courts is not derived from the state constitution, and is not jurisdictional" unless the cause of action is created by statute. *Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 11, 369 P.3d 1046 (internal quotation marks and citation omitted). Nevertheless, "as a matter of judicial policy if not of jurisdictional necessity, our courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court's authority to decide the merits of a case." *Id.* ¶ 13 (internal quotation marks and citation omitted).

{18} In *Overton*, this Court held that a county assessor did not have standing to bring a declaratory judgment action challenging the constitutionality of a tax-exemption statute because no justiciable controversy was present. See 1969-NMSC-140, ¶¶ 1, 9, 19. *Overton* is not applicable to the standing analysis in this case because asking this Court to decide the constitutionality of Section 7-36-7(B)(1)(d) as it applies to El Castillo is not a request for a declaratory judgment. Here, a justiciable controversy exists with regard to El Castillo's claim of entitlement to a tax exemption. This is not a theoretical question, and the Assessor does have an

interest in the outcome. See NMSA 1978, § 7-36-2(A) (1995) ("The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes."); NMSA 1978, § 7-38-17(G) (2011) ("A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection."). When El Castillo filed the appeal from the Board's decision, the district court properly joined the Assessor as an appellee. There is no party more appropriate than the Assessor to appeal the decision of the district court. {19} We conclude that the Assessor has standing to bring before the appellate courts the statutory and constitutional issues relating to whether El Castillo is entitled to an exemption from real property taxation.

B. Both the District Court and the Court of Appeals Erred in Their Exercise of Appellate Jurisdiction

{20} It is incumbent on this Court to address the jurisdictional errors which occurred in the exercise of appellate jurisdiction in both the district court and the Court of Appeals. Jurisdictional questions are questions of law which this Court reviews de novo. *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300. "A jurisdictional defect may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court" *Armijo v. Save 'N Gain*, 1989-NMCA-014, ¶ 4, 108 N.M. 281, 771 P.2d 989; see Rule 12-216(B) NMRA.

1. The District Court Erred When It Did Not Exercise Its Appellate Jurisdiction over the Board's Determination

{21} The Legislature conferred power in the district court to review, as a court of first appeal, a final decision of the Board. See NMSA 1978, § 7-38-28(A) (2015); NMSA 1978, § 39-3-1.1 (1999). When acting in its appellate role, the district court may reverse an agency decision if it determines that "(1) the agency acted fraudulently, arbitrarily, or capriciously; (2) the final decision was not supported by substantial evidence; or (3) the agency did not act in accordance with law." Section 39-3-1.1(D). The district court, in

its appellate capacity, "is limited in the same manner as any other appellate body . . . and must defer to the agency's factual determinations if supported by substantial evidence." *N.M. Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, ¶ 5, 133 N.M. 362, 62 P.3d 1244.

{22} In addition to its appellate jurisdiction, the district court has "original jurisdiction in all matters and causes not excepted in this constitution." N.M. Const. art. VI, § 13. The district court is a court of general jurisdiction and has the authority to consider all matters not exclusive to other courts, including constitutional claims in the first instance. *Maso v. N.M. Tax'n & Revenue Dep't*, 2004-NMCA-025, ¶ 14, 135 N.M. 152, 85 P.3d 276 ("[T]he district court has the authority to consider constitutional claims in the first instance").

{23} A "district court can simultaneously exercise its appellate and original jurisdiction." *Id.* ¶ 17. On appeal to a district court of claims first considered by an agency, where the appeal also asserts constitutional and other claims in the district court that were beyond the scope of the agency's adjudicative authority, "the district court should consider each claim according to its appropriate standard of review and maintain the distinction between the court's appellate and original jurisdiction in rendering its decision." *Id.*

{24} The district court should have exercised its appellate jurisdiction over the Board's determination regarding the applicability of Section 7-36-7(B)(1)(d) to El Castillo and reviewed whether the Board's decision was arbitrary and capricious, unsupported by substantial evidence, or otherwise contrary to law as required under Section 39-3-1.1(D). Exercising its original jurisdiction over the statutory claim and issuing new findings of fact which contradicted the findings of the Board was error. In issuing new findings of fact, the district court acted outside its proper appellate jurisdiction. See, e.g., *Cadena v. Bernalillo Cty. Bd. of Cty. Comm'rs*, 2006-NMCA-036, ¶ 3, 139 N.M. 300, 131 P.3d 687 (concluding that "the district court acted outside of its capacity as an appellate court by engaging in fact-finding"); *VanderVossen v. City of Espanola*, 2001-NMCA-016, ¶ 26, 130 N.M. 287, 24 P.3d 319 ("[T]he district court exercising appellate jurisdiction under Section 39-1-1.1[] is not a fact-determining body."); *Hahn v. Cty. Assessor for Bernalillo Cty. (In re Miller)*, 1975-NMCA-116, ¶ 52, 88 N.M. 492, 542 P.2d 1182 ("If there is substantial

evidence in the record to support a decision of a county valuation protests board, [an appellate court is] bound thereby.”), *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142. Had the district court reviewed the Board’s determination under the proper standard of review, it is likely the district court’s determination would have been different.

2. The Court of Appeals Erred When It Refused Jurisdiction to Review the Constitutionality of the Section 7-36-7(B)(1)(d) Exemption as Applied to El Castillo

{25} In addition to the district court’s jurisdictional error, the Court of Appeals erred when it reviewed the constitutional question apart from the statutory question. The Court of Appeals took the position that it did “not have jurisdiction to review the question of whether El Castillo is entitled to a charitable property-tax exemption under Section 7-36-7(B).” *El Castillo*, 2015-NMCA-041, ¶ 12. This determination by the Court of Appeals improperly disregards the relationship between the New Mexico Constitution and the statutes enacted by the Legislature. A statute must be interpreted and applied in harmony with constitutionally imposed limitations. See NMSA 1978, § 12-2A-18(A)(3) (1997) (“A statute or rule is construed . . . [to] avoid an unconstitutional . . . result.”); *Wells v. Cty. of Valencia*, 1982-NMSC-048, ¶ 11, 98 N.M. 3, 644 P.2d 517 (“[T]he Legislature is presumed to have enacted the statute within the bounds of the constitution, and, to that end, we must so construe the statute.”). The constitutional and statutory claims as argued by the parties, considered and decided by the district court, and raised on appeal to the Court of Appeals were intertwined and inseparable. The Court of Appeals erred when it did not decide whether El Castillo could be exempt from property taxation under Section 7-36-7(B)(1)(d) despite its constitutional ineligibility for exemption. Accordingly, we granted certiorari to address this issue.

C. Legislation Granting Tax Exemptions Must Be Interpreted in Light of Restrictions Set Forth in Article VIII of the New Mexico Constitution

{26} Whether Section 7-36-7(B)(1)(d) can grant a tax exemption to El Castillo raises issues of constitutional interpretation that we review de novo. *Pinghua Zhao v. Montoya*, 2014-NMSC-025, ¶ 11, 329 P.3d 676. “The Legislature’s inherent

authority and discretion to exercise the State’s power of taxation is plenary ‘except in so far as limited by the Constitution.’” *Id.* ¶ 14 (citation omitted).

“[S]tate constitutions are not grants of power to the legislative, to the executive and to the judiciary, but are limitations on the powers of each. No branch of the state may add to, nor detract from its clear mandate. It is a function of the judiciary when its jurisdiction is properly invoked to measure the acts of the executive and the legislative branch solely by the yardstick of the constitution.”

State ex rel. Clark v. Johnson, 1995-NMSC-048, ¶ 20, 120 N.M. 562, 904 P.2d 11 (citation omitted).

{27} We presume that enactments of the Legislature are within constitutional boundaries, and we “give effect to the legislative intent unless it clearly appears to be in conflict with the Constitution.” *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, ¶ 11, 306 P.3d 457 (internal quotation marks and citation omitted). “[I]t is the particular domain of the legislature, as the voice of the people, to make public policy.” *Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176 (alteration in original) (internal quotation marks and citation omitted).

{28} *El Castillo* relies heavily on *La Vida Llena v. Montoya*, 2013-NMCA-048, ¶¶ 5-6, 20, 299 P.3d 456, for the proposition that constitutional standards have no bearing on the application of Section 7-36-7(B)(1)(d). In *La Vida Llena* the Court of Appeals looked only at the facial text of Section 7-36-7(B)(1)(d) to reach its holding that the statutory requirement that the facility “donates or renders gratuitously a portion of its facilities or services” imposed no threshold on the amount of the donation. *Id.* ¶ 1. The Court of Appeals did not consider whether Section 7-36-7(B)(1)(d) was limited by Article VIII or whether the facility in question would have qualified for exemption under that constitutional limitation. Because we hold that Section 7-36-7(B)(1)(d) must be read in light of Article VIII, Section 3 of the New Mexico Constitution, we overrule *La Vida Llena* to the extent that it may be read to indicate otherwise.

{29} New Mexico law is clear in concluding that Article VIII, Section 3 is self-executing and does not require statutory enactment. See *CAVU Co. v. Martinez*,

2014-NMSC-029, ¶ 15, 332 P.3d 287 (“Unlike most constitutional exemptions, [Article VIII, Section 3] does not merely define a field of exemption, within which the legislative power may operate from time to time at its discretion. It is affirmative and self-executing. It creates exemptions. It invests citizens with constitutional rights, which administrative officers or Legislature may not impair, and which courts must protect.” (quoting *Temple Lodge No. 6, A.F. & A.M. v. Tierney*, 1933-NMSC-013, ¶ 29, 37 N.M. 178, 20 P.2d 280)). Article VIII, Section 3 operates as a limit on the Legislature’s power to redefine categories of property which will be exempt from taxation. See *Clark*, 1995-NMSC-048, ¶ 20; see also *Dillard v. N.M. Tax Comm’n*, 1948-NMSC-069, ¶¶ 5-9, 53 N.M. 12, 201 P.2d 345 (interpreting Article VIII, Sections 1, 3, and 5 and concluding that “[t]he property of the wife of a soldier or sailor is not exempt from taxation, nor can the legislature enact a statute that will have that effect without [a constitutional] amendment authorizing it”); *Sims v. Vosburg*, 1939-NMSC-026, ¶ 4, 43 N.M. 255, 91 P.2d 434 (relying on Article VIII, Sections 1, 3, and 5 in stating that “[a]ll tangible property in New Mexico is subject to taxation in proportion to value, and should be taxed, unless specifically exempted by the constitution or by its authority”); *State ex rel. Att’y Gen. v. State Tax Comm’n*, 1936-NMSC-029, ¶ 8, 40 N.M. 299, 58 P.2d 1204 (“By the terms of section 3 of article 8, certain specific property is exempt from taxation, and by section 5 thereof the Legislature is authorized to exempt from taxation certain other specific property; and no other property is or can be exempted. The Constitution, in effect, classes tangible property into that exempt from taxation, that which may be exempted, and that which must be taxed.”); *Albuquerque Alumnae Ass’n of Kappa Kappa Gamma Fraternity v. Tierney*, 1933-NMSC-011, ¶¶ 3, 9-10, 26, 37 N.M. 156, 20 P.2d 267 (rejecting a statute-based claim of tax exemption for a college sorority property and holding that “the Constitution makers intended to cover the whole field of exemption,” that “[Article VIII,] Section 3 is affirmative and self-executing,” that “[i]t creates exemptions,” and that “[t]here is a strong presumption against an intent to permit the Legislature to create others”).

{30} The people always have the power to amend constitutional restrictions by expressly and lawfully doing so. For example,

New Mexico voters have amended Article VIII, Section 3 to give a supermajority of the Legislature the limited authority to exempt personal property from taxation. See, e.g., 1972 N.M. Laws, Constitutional Amendment 2, at 703-04 (proposing the 1972 constitutional amendment to Article VIII, Section 3 that granted the Legislature authority to exempt personal property by statute upon passage by a three-fourths majority vote of all members). But no constitutional authority has been granted for the Legislature to exempt real property by statute. Consequently, Section 7-36-7(B) (1)(d) may not be interpreted or applied to grant exemptions that are not authorized by Article VIII, Section 3.

D. El Castillo Does Not Qualify for Tax Exemption Under Article VIII, Section 3 or Section 7-36-7(B)(1)(d) Because Its Property Does Not Create Substantial Public Benefit Through Primary Use That Furthers a Constitutionally Authorized Exempt Purpose

{31} Controlling New Mexico precedent has consistently interpreted Article VIII, Section 3 to exempt only property that creates substantial public benefit through use that directly, immediately, primarily, and substantially furthers its exempt purpose. See, e.g., *CAVU*, 2014-NMSC-029, ¶¶ 21-23, 29-30 (applying this framework in analyzing whether use of a property furthers exempt purposes). This is not a mechanical test of eligibility for exemption but instead requires a flexible inquiry allowing fact-specific determinations informed by history and policy considerations. *Id.* ¶¶ 13, 20. Accordingly, the interpretation of these limits may vary depending upon the particular property and use at issue. See, e.g., *Pecos River Open Spaces, Inc. v. Cty. of San Miguel*, 2013-NMCA-029, ¶¶ 22-25, ___ P.3d ___ (allowing an exemption for vacant, undeveloped, and unimproved land when it provided substantial public benefit in its idle state and where such use furthered its charitable purpose of conservation); *Georgia O’Keeffe Museum v. Cty. of Santa Fe*, 2003-NMCA-003, ¶ 56, 133 N.M. 297, 62 P.3d 754 (interpreting the requirement of direct and immediate use for educational purposes broadly to permit consideration of the intrinsic educational value of a museum and of off-site educational programs and activities closely related to the museum collection).

{32} Despite the flexible nature of our analysis, “[t]he exemption granted [to] educational and charitable institutions

proceeds upon the theory of the public good accomplished by them and the peculiar benefits derived by the public in general from their conduct.” *Pecos River Open Spaces*, 2013-NMCA-029, ¶ 9 (internal quotation marks and citation omitted). The rationale for exemption depends upon an “implicit quid pro quo between the State and an exempt organization.” *CAVU*, 2014-NMSC-029, ¶ 30. “Property which is exempt from taxation does not share in the burden [of paying for the cost of government]. Therefore, in exchange for its exempt status, [the use of] such property must confer a substitute substantial benefit on the public.” *Id.* (quoting *NRA Special Contribution Fund v. Bd. of Cty. Comm’rs*, 1978-NMCA-096, ¶ 38, 92 N.M. 541, 591 P.2d 672). A substantial public benefit is “[a] benefit of real worth and importance to an indefinite class of persons who are a part of the public.” *NRA*, 1978-NMCA-096, ¶ 45.

{33} Applying these standards, the Court of Appeals correctly determined that El Castillo’s use of its property did not create any substantial public benefit. See *El Castillo*, 2015-NMCA-041, ¶¶ 30-32, 44. A facility that cares for the elderly might be entitled to a charitable use exemption if, in doing so, it benefits the general public. See *Ret. Ranch, Inc. v. Curry Cty. Valuation Protest Bd.*, 1976-NMCA-010, ¶¶ 6, 9-10, 89 N.M. 42, 546 P.2d 1199 (allowing exemption based on charitable use where a facility cared for an aged “sick and largely indigent” population dependent on Medicare and Medicaid). But El Castillo is a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for El Castillo. These residents collectively pay for all the services El Castillo provides, and if the care they need eventually exhausts the resources provided by particular residents’ admission and monthly fees, any additional care they receive is paid for by the surplus fees collected from other residents. While El Castillo claims it has not yet forced relocation of a resident for inability to pay monthly fees, the express contractual language gives El Castillo the sole discretion to terminate the resident agreement for that reason.

{34} A self-sustaining community does not qualify as a charity merely because it does not profit from its enterprise. See *Mountain View Homes, Inc. v. State Tax Comm’n*, 1967-NMSC-092, ¶ 15, 77 N.M. 649, 427 P.2d 13 (holding that a nonprofit

housing development built for low and moderate income workers was not charitable because the “tenants [were] required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project”). Even the possibility that El Castillo will subsidize some residents is not charitable when those subsidies are paid for by the fees collected from residents who did not require subsidization. In a business-economics sense, El Castillo functions as a nonprofit provider of long-term care insurance, and like any insurance company it may pay out more to a particular individual than that person has paid in. But just as with private health or disability or other insurance that avoids dependence on public assistance for the policyholders or beneficiaries, providing for its own paying participants cannot be characterized as charitable.

{35} Other jurisdictions have likewise concluded that continuing care retirement facilities with similar admission requirements and financial structures are ineligible for a charitable purpose tax exemption. See, e.g., *Cape Ret. Cmty., Inc. v. Kuehle*, 798 S.W.2d 201, 202-04 (Mo. Ct. App. 1990) (holding that a nonprofit, life care, retirement, housing, and nursing facility admitting only those with financial resources sufficient to meet the facility costs was not entitled to exemption from property taxation despite assuming obligations for residents who became insolvent, reasoning that “[i]t is not enough that Cape Retirement regularly underwrites some of the costs of qualified residents and agrees to fully support selected residents if such residents suffer financial reverses because its retirement home is not equally available to both rich and poor” and therefore “is not operated to benefit society generally” as required of a charity); *Presbyterian Homes of Synod of N.J. v. Div. of Tax Appeals*, 261 A.2d 143, 149-50 (N.J. 1970) (holding that a nonprofit continuing care retirement community in which residents paid for services received did not qualify for the charitable purpose tax exemption based on several “persuasive factors” including its contractual right to terminate a resident agreement for inability to pay); *Christian Home for the Aged, Inc. v. Tenn. Assessment Appeals Comm’n*, 790 S.W.2d 288, 292-93 (Tenn. Ct. App. 1990) (holding that a retirement community admitting only individuals meeting financial and physical requirements was not

eligible for the charitable use tax exemption because, “though the benefits of the [community] are significant, only those who are financially and physically well off can receive them [while those less healthy and wealthy are not benefited”].

{36} Under the facts presented in this record, El Castillo does not provide any benefit to an indefinite class of persons who are members of the general public. We hold that it cannot be entitled to exemption from taxation under Section

7-36-7(B)(1)(d) simply by being a continuing care facility without also creating a substantial public benefit that would entitle it to exemption from equal taxation as authorized by Article VIII, Section 3 of the New Mexico Constitution.

III. CONCLUSION

{37} We hold that El Castillo is not entitled to property-tax exemptions under either Section 7-36-7(B)(1)(d) or Article VIII, Section 3 of the New Mexico Constitution. We reverse the district court

and remand for entry of a judgment in conformity with this opinion.

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

CHARLES W. DANIELS, Justice

WE CONCUR:

JUDITH K. NAKAMURA,

Chief Justice

PETRA JIMENEZ MAES, Justice

EDWARD L. CHÁVEZ, Justice

KAREN L. TOWNSEND, Judge,

sitting by designation

From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-027

No. S-1-SC-36062 (filed August 24, 2017)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.

JESUS M. CASTRO,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

FERNANDO R. MACIAS, District Judge

HECTOR H. BALDERAS
Attorney General
MAHA KHOURY
Assistant Attorney General
Santa Fe, New Mexico
for Petitioner

MARGARET STRICKLAND
MCGRAW & STRICKLAND, L.L.C.
Las Cruces, New Mexico
for Respondent

Opinion

Edward L. Chávez, Justice

{1} Defendant Jesus Castro was charged with two counts of criminal sexual penetration. Defendant had two trials; the first resulted in a mistrial, and thirty-two months later, after the second trial, a jury convicted him of one count of forced penile penetration. The delay was due to multiple continuances, attorney motions to withdraw from the case, the mistrial, and fifteen months during which the case was stagnant. We are mainly concerned with the thirty-two months it took to retry Defendant because his first trial occurred almost eleven months after his arraignment, which is within the speedy trial time frame for a simple case.

{2} Despite the delay in setting his retrial, neither Defendant nor his attorney, Jonathan Huerta, asserted Defendant's right to a speedy trial before his conviction. Four and one-half months after Defendant's conviction, his new attorney filed a post-trial motion to dismiss with the district court based on speedy trial grounds. The motion alleged that Defendant failed to assert his right earlier due to ineffective assistance of counsel.

{3} The district court denied Defendant's motion to dismiss. On appeal, the Court of Appeals remanded the case back to the district court, instructing it to hold an evidentiary hearing to determine whether

there was ineffective assistance of counsel, particularly regarding Huerta's failure to assert Defendant's right to a speedy trial. *State v. Castro*, 2016-NMCA-085, ¶ 53, 381 P.3d 694. In addition, if the district court found that Huerta's assistance was constitutionally ineffective, the Court of Appeals instructed it to reassess whether Defendant's right to a speedy trial had been violated. *Id.*

{4} The State filed a petition for writ of certiorari with this Court, *State v. Castro*, 2017-NMCERT-___ (No. S-1-SC-36062, Aug. 26, 2016), asking us to determine whether "the mere failure to file a demand for a speedy trial establish[es] a prima facie case of ineffective assistance of counsel." In answering this question, we necessarily analyze (1) whether Defendant's right to a speedy trial was violated, and if not, (2) whether he has proved a prima facie case of ineffective assistance of counsel.

{5} We hold that on the record before us, Defendant's right to a speedy trial was not violated and Defendant did not make a prima facie showing of ineffective assistance of counsel because Huerta may have strategically withheld a demand for a speedy trial if it would benefit Defendant's case. Accordingly, we reverse the Court of Appeals without prejudice to a habeas corpus petition, which Defendant may bring to resolve whether Huerta provided ineffective assistance of counsel for failing to assert Defendant's speedy trial right, in

addition to any other allegations of ineffective assistance of counsel.

I. BACKGROUND

{6} Defendant's arrest arose out of an encounter between him and the victim at Desert Aire Water Company in Chaparral, New Mexico, where they both worked. On February 2, 2009, the victim and Defendant were both at work. The victim testified that the following events then occurred. Defendant was already at work when she arrived; she greeted him and sat down at her computer. Defendant asked the victim for help with his computer, and she went over to him. As the victim stood next to Defendant, he grabbed her by the waist and pulled her toward him, causing her to fall on top of him. She was able to get up after she fell on Defendant, but as she walked away, Defendant grabbed her and sat her back on the chair. Defendant then placed his hands on the victim's legs and attempted to lift her skirt. She continuously told Defendant "no," but he persisted. She tried to get up, but Defendant pushed her down again, and then pushed her against a counter. Defendant lifted the victim's skirt again and tried to move her underwear to the side as she tried to get away. Defendant then digitally penetrated the victim. Subsequently, Defendant penetrated her with his penis and ejaculated on the mat in front of them.

{7} Defendant was arrested on February 6, 2009 and charged with two counts of criminal sexual penetration for the digital and penile penetration of the victim. He posted bond and was released on the same day as his arrest, and remained out of custody with few restrictions throughout the pendency of his case.

{8} Defendant's first trial was almost eleven months after his arraignment, which ultimately resulted in a mistrial. Thirty-two months after his first trial, Defendant was tried again. Defendant's second jury acquitted on Count 1, forced digital penetration, and convicted on Count 2, forced penile penetration.

II. DISCUSSION

{9} The Court of Appeals conflated two separate, complex analyses in its opinion. The Court began its analysis by characterizing the case as "a unique appellate circumstance where Defendant's assertion of a constitutional violation of his right to a speedy trial is interrelated and potentially dependent upon his constitutional claim of ineffective assistance of counsel." *Castro*, 2016-NMCA-085, ¶ 1. In merging the speedy trial and ineffective assistance

of counsel analyses, the Court relied on its interpretation of *State v. Serros*, 2016-NMSC-008, 366 P.3d 1121 and *State v. Stock*, 2006-NMCA-140, 140 N.M. 676, 147 P.3d 885, which considered attorney neglect in analyzing the *Barker v. Wingo*, 407 U.S. 514 (1972) speedy trial factors. *Castro*, 2016-NMCA-085, ¶¶ 22-26, 28, 31-34, 53. *Stock* and *Serros* are distinguishable, and therefore the Court of Appeals's reliance on those cases is misplaced.

{10} In *Stock*, the Court of Appeals analyzed a defendant's right to a speedy trial in terms of his attorney's neglect, which caused "unreasonable and unnecessary" delays. 2006-NMCA-140, ¶ 21. The Court characterized the delay of three and one-half years as "particularly egregious" because the defendant "ha[d] the intellectual capacity of a twelve-year-old," which raised concern about his ability to comprehend and assert his right to a speedy trial. *Id.* ¶¶ 18, 30. Furthermore, the defendant suffered severe prejudice because he was harassed and assaulted numerous times while he was incarcerated during his "lengthy pretrial incarceration." *Id.* ¶¶ 18, 36. In considering the defendant's circumstances, the Court reasoned that it would be unfair to attribute the delays to the defendant when they were caused by his attorney. *Id.* ¶ 22.

{11} In *Serros*, this Court adopted the *Stock* reasoning and considered attorney neglect in a speedy trial analysis where the defendant was similarly subjected to a lengthy delay and undue prejudice. In *Serros*, the defendant suffered extreme prejudice due to the length and nature of his incarceration, which extended over four years. 2016-NMSC-008, ¶ 1. While he was incarcerated, the defendant was segregated, physically and verbally abused, and because of the nature of his charges, was held in protective custody. *Id.* ¶ 88. The defendant spent most of his days alone in a cell and did not have the opportunities available to the other inmates within the jail's general population, namely recreational time. *Id.* He was given less than an hour a day to address his personal needs, such as bathing and communicating with his attorney and family. *Id.* The defendant never stood trial; instead, his case was dismissed only after the district court heard his motion to dismiss on speedy trial grounds over four years after his arrest. *Id.* ¶ 7.

{12} Neither *Stock* nor *Serros* is applicable here because the prejudice suffered by the defendants in those cases was substantial,

and it was necessary to consider attorney neglect when a *Barker* factor would otherwise weigh against the defendant. See *Serros*, 2016-NMSC-008, ¶ 21 ("[W]e note that the circumstances of this case are extreme. . . . [The d]efendant was held without a trial for over four years and three months under segregated circumstances. These circumstances necessarily color our entire analysis."); *Stock*, 2006-NMCA-140, ¶ 1 (concluding that under the egregious facts of the case, it was reasonable to consider attorney neglect when analyzing whether a defendant's right to a speedy trial was violated). In fact, this Court in *Serros* specifically limited the adoption of *Stock*'s reasoning, in taking into account attorney neglect within speedy trial analyses, to cases where "the delay is extraordinary and the defendant is held in custody." *Serros*, 2016-NMSC-008, ¶ 43. Here, Defendant was not incarcerated, and he maintained his job during the delay in trying his case. His prejudice, if any, is not comparable to that of the defendants in *Stock* and *Serros*.

{13} Furthermore, Defendant is not "effectively blameless." *Serros*, 2016-NMSC-008, ¶ 42. The *Stock* defendant's mental capacity affected his ability to assert his right to a speedy trial, and the *Serros* defendant adamantly and continuously asserted his right; therefore, both were blameless, and it would be unfair to hold them accountable for the delays caused by their attorneys. *Serros*, 2016-NMSC-008, ¶ 45; *Stock*, 2006-NMCA-140, ¶ 30. That is not the situation here. There is no showing that Defendant requested a speedy trial or that any continuances to which Huerta agreed were contrary to Defendant's wishes and should not be weighed against him. To the contrary, Defendant admits that he did not ask for a speedy trial solely because he "did not want to make [Huerta] angry."

{14} This is not an extreme case where the prejudice is palpable, and it is necessary to consider attorney neglect when analyzing whether the right to a speedy trial was violated. Therefore, the *Stock* and *Serros* analysis does not apply. Accordingly, we analyze the speedy trial and ineffective assistance of counsel issues separately. We first address whether on the record before us Defendant's Sixth Amendment right to a speedy trial was violated, and then whether Defendant has established a prima facie case of ineffective assistance of counsel.

A. Defendant's Right to a Speedy Trial Was Not Violated

{15} In a criminal prosecution, the accused is constitutionally entitled to a

speedy trial. U.S. Const. amend. VI; N.M. Const. art. II, § 14. The right to a speedy trial is unique in that it balances two separate interests: (1) preventing prejudice to the accused, and (2) protecting societal interests in bringing the accused to trial. *State v. Garza*, 2009-NMSC-038, ¶ 12, 146 N.M. 499, 212 P.3d 387.

{16} In reviewing the district court's ruling that Defendant's right to a speedy trial was not violated, we weigh and balance de novo the four factors presented by the United States Supreme Court in *Barker* and adopted by New Mexico courts: "(1) [the] length of delay [in bringing the case to trial], (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) [the] prejudice to the defendant." *State v. Spearman*, 2012-NMSC-023, ¶¶ 17, 19, 283 P.3d 272 (quoting *Barker*, 407 U.S. at 530). We weigh the conduct of both the State and Defendant. *Barker*, 407 U.S. at 530.

{17} Because we agree with the district court's analysis of Defendant's right to a speedy trial, we incorporate that analysis and articulate several points to further address Defendant's concerns. We now turn to the specific circumstances surrounding each factor.

1. The length of the delay is presumptively prejudicial and weighs against the State

{18} The first factor "has a dual function: it acts as a triggering mechanism for considering the four *Barker* factors if the delay crosses the threshold of being presumptively prejudicial, and it is an independent factor to consider in evaluating whether a speedy trial violation has occurred." *State v. Samora*, 2016-NMSC-031, ¶ 10, 387 P.3d 230 (internal quotation marks and citation omitted).

{19} Defendant was arrested on February 6, 2009 and indicted by a grand jury on May 28, 2009. Importantly, Defendant waived extradition from Texas and was arraigned in New Mexico on June 15, 2009, which first caused Defendant to come within the purview of the State to begin the prosecutorial process. The case went to trial on April 7, 2010, which resulted in a hung jury, and the district court subsequently declared a mistrial.

{20} While the district court did not make any findings about the complexity of the case, we conclude that the case is simple because the State was able to try Defendant one day less than eleven months after he was arraigned. *Garza*, 2009-NMSC-038, ¶ 48 ("[W]e adopt one

year as a benchmark for determining when a simple case may become presumptively prejudicial.”). In this respect, the State prosecuted Defendant within the constitutionally prescribed time for a simple case. Therefore, we do not consider the time period from Defendant’s arraignment to his first trial in calculating the length of delay.

{21} The delay that is particularly disturbing is the thirty-two months from the mistrial on April 7, 2010 to the second trial on December 5, 2012, when Defendant was ultimately convicted. To begin the analysis, the speedy trial clock does not begin to run anew—that is, the court does not have another twelve months to schedule a simple case for retrial. Ordinarily the court should schedule the retrial as soon as its docket permits unless the parties justifiably require additional pre-retrial discovery or motions practice. There is no question that the delay in retrying Defendant was extraordinary and weighs heavily in favor of Defendant. *Id.* ¶ 24 (“[T]he greater the delay the more heavily it will potentially weigh against the State.”). Accordingly, we agree with the district court that the length of delay is presumptively prejudicial.

2. The reasons for the delay weigh slightly against the State

{22} “Closely related to length of delay is the reason the government assigns to justify the delay.” *Barker*, 407 U.S. at 531. There are three types of delay that may be attributed to the State and are weighed against it in varying ways. *Serros*, 2016-NMSC-008, ¶ 29. The first are “deliberate attempt[s] to delay the trial in order to hamper the defense[, which] should be weighted heavily against the government.” *Barker*, 407 U.S. at 531. The second are neutral delays, including “negligence or overcrowded courts [that] should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” *Id.* Finally, there are “appropriate” delays for which there is “a valid reason, such as a missing witness.” *Id.*

{23} We agree with the district court that the period of delay in which the case languished with virtually no activity for fifteen months from December 2010 to February 2012 weighs against the State. However, absent any evidence to the contrary, this is negligent delay, which is a neutral reason and weighs only slightly against the State.

{24} The remaining seventeen months of delay are either justified or attributable to Defendant. During this time the State requested continuances for valid reasons, including a key witness’s unavailability and the need for further time to complete discovery. The delay was also caused by Defendant’s acquiescence to the State’s requests for continuances and his own failure to obtain legal representation throughout the pendency of his case. In balancing the delay attributable to the State against the remaining months that are justified and ascribed to Defendant, we hold that this factor as a whole weighs only slightly against the State.

3. Defendant failed to assert his right to a speedy trial

{25} In analyzing whether Defendant asserted his right to a speedy trial, we “accord weight to the frequency and force of the defendant’s objections to the delay . . . [and] also analyze the defendant’s actions with regard to the delay.” *Garza*, 2009-NMSC-038, ¶ 32 (internal quotation marks and citation omitted).

{26} Defendant failed to assert his right to a speedy trial until four and one-half months after he was convicted. The district court therefore found that Defendant’s assertion of the right was neither frequent nor forceful. We agree and hold that this factor weighs against Defendant.

4. Defendant did not suffer undue prejudice

{27} In analyzing the final *Barker* factor, we recognize that the criminal process inevitably causes anxiety for defendants, but we focus only on undue prejudice. *State v. Coffin*, 1999-NMSC-038, ¶ 68, 128 N.M. 192, 991 P.2d 477. Three interests are protected by the right to a speedy trial: “prevent[ing] oppressive pretrial incarceration; . . . minimiz[ing] anxiety and concern of the accused; and . . . limit[ing] the possibility that the defense will be impaired.” *Id.* (quoting *Barker*, 407 U.S. at 532). None of these interests were in peril in this case.

{28} Defendant was not incarcerated throughout the pendency of his case, he was able to maintain the same job, and he received support from his employer, even though the employer also employed the victim. Furthermore, in arguing that his defense was impaired, he failed to establish that the result of his retrial would have been different if there had been no delay.

{29} One assertion of prejudice on which the Court of Appeals focused was Defendant’s relocation to Chaparral, New

Mexico. *Castro*, 2016-NMCA-085, ¶¶ 42-43. We are not persuaded by this assertion of prejudice because the record shows that Defendant voluntarily moved to Chaparral for work, and since then he has had an “established home, family, and job” there. He lived in New Mexico on his own volition and not because of any limitations on his freedom.

{30} We also note that Defendant’s failure to assert his right to a speedy trial indicates the minimal prejudice which he suffered since “[t]he more serious the deprivation, the more likely a defendant is to complain.” *Barker*, 407 U.S. at 531. Additionally, Defendant may not have wanted a speedy trial. Defendant faced immigration consequences as a result of the criminal proceedings against him, and therefore one plausible strategic reason for not aggressively pursuing his speedy trial right was the delay of immigration consequences. *Id.* at 534-35 (accounting for benefits to the defendant’s case in waiting to be tried after his accomplice). The first jury trial ended in a hung jury with six jurors voting to find Defendant guilty of the charges. Considering the results of the first trial, would Defendant have frequently and forcefully asserted his right to a speedy retrial had he known a conviction would result in his deportation? Although Defendant alleges that Huerta did not counsel him about potential immigration consequences, the record does not contain any evidence that Defendant would have frequently and forcefully asserted his right to a speedy trial had he known that a conviction would result in his deportation.

{31} Accordingly, on the record before us, Defendant failed to demonstrate undue prejudice beyond the usual anxiety and stress of the criminal process. There was no “actual and articulable deprivation” of Defendant’s right to a speedy trial. *Garza*, 2009-NMSC-038, ¶ 12. We hold that this factor weighs against Defendant.

5. Balance of the *Barker* factors

{32} “To find a speedy trial violation [where Defendant has failed to show] actual prejudice, . . . the three other *Barker* factors [must] weigh heavily against the State.” *Samora*, 2016-NMSC-031, ¶ 23. While the delay of thirty-two months in retrying Defendant’s case is presumptively prejudicial and weighs heavily against the State, the reasons for delay weigh only slightly against the State and Defendant failed to assert his right to a speedy trial, thereby causing that factor to weigh against him. Therefore, we hold that

Defendant's right to a speedy trial was not violated.

B. There Is No Prima Facie Showing of Ineffective Assistance of Counsel

{33} In reviewing Defendant's argument that Huerta's failure to raise the speedy trial right was ineffective assistance of counsel, the Court of Appeals decided to remand the issue to the district court, instructing it to conduct an evidentiary hearing. *Castro*, 2016-NMCA-085, ¶ 53. We disagree with this analysis.

{34} "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 (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Defendant's assertion of this issue on appeal requires a detailed review of the record.

{35} The district court did not consider the claim of ineffective assistance of counsel, and instead focused only on the grounds for a speedy trial. Therefore, the only evidence in the record pertaining to this claim is Defendant's affidavit filed with the district court describing Huerta's

conduct and assertions that such conduct constituted ineffective assistance of counsel. Defendant also devoted a substantial part of his answer brief to discussing every instance in which Huerta's actions could have constituted ineffective assistance of counsel. However, we do not have Huerta's response to these contentions because he was not a party to this matter.

{36} Because there are insufficient facts in the record, Defendant's argument of ineffective assistance of counsel "is more properly brought through a habeas corpus petition, although an appellate court may remand a case for an evidentiary hearing if the defendant makes a prima facie case of ineffective assistance." *State v. Roybal*, 2002-NMSC-027, ¶ 19, 132 N.M. 657, 54 P.3d 61.

{37} The Court of Appeals erroneously remanded this case to the district court for an evidentiary hearing. "[A] prima facie case is not made when a plausible, rational strategy or tactic can explain the conduct of defense counsel." *Paredes*, 2004-NMSC-036, ¶ 22 (internal quotation marks and citation omitted). Because Defendant's prejudice was minimal, it is plausible that Huerta failed to raise Defendant's right to

a speedy trial either in accordance with a trial strategy or to delay Defendant's possible deportation. "Delay is not an uncommon defense tactic." *Barker*, 407 U.S. at 521. We therefore conclude that Defendant has not made a prima facie case for ineffective assistance of counsel, and the proper avenue to bring this claim is a petition for habeas corpus under Rule 5-802 NMRA.

III. CONCLUSION

{38} For the foregoing reasons, we reverse the Court of Appeals and affirm the district court's denial of Defendant's motion to dismiss based on speedy trial grounds. Our holding does not preclude Defendant from filing a petition for a claim of ineffective assistance of counsel.

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

EDWARD L. CHÁVEZ, Justice

WE CONCUR:

JUDITH K. NAKAMURA,

Chief Justice

PETRA JIMENEZ MAES, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice



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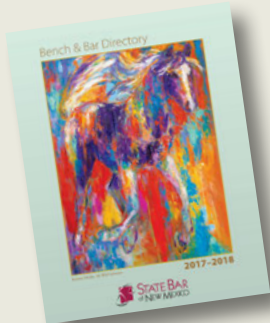
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We are pleased to announce

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has joined the Firm as an Associate



Ms. Jones earned her bachelor's degrees in Psychology in 2008 and Philosophy in 2009 from University of New Mexico and her Doctor of Jurisprudence in 2014 from Temple University Beasley School of Law.

We welcome her to our practice.

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Positions

Attorney IV Position

NM Department of Public Safety seeks full time licensed attorney with minimum of five years' experience to work in the Office of General Counsel at DPS headquarters in Santa Fe. This attorney will represent the Department in administrative and district court hearings, mediations, and arbitrations; provide legal opinions and recommendations to DPS personnel based on legal research and analysis; and may participate in the NM legislative session. The attorney will review, draft, and edit agency policies, rules, and conduct rulemakings. Employment and litigation experience is preferred. Must be a mature, hardworking team player. The State of New Mexico hires without regard to race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability or state or local law. Reasonable accommodations provided to known disabilities of individuals in compliance with the Americans with Disabilities Act. Salary range \$50,898-\$88,525 DOE. Further information and application requirements online at www.spo.state.nm.us, position #48406.

Associate Attorney

The Sanders Law Firm in Roswell, NM is seeking a New Mexico licensed associate attorney interested in practicing in the areas of general civil litigation and family law with an emphasis in family law in our Roswell, NM office. Please send your cover letter, resume, law school transcript, writing sample and references to amh@sbcw.com. All inquiries will be kept confidential.

Personal Injury Associate

Established ABQ plaintiff personal injury firm has immediate opening for associate with 2+ yrs. litigation experience. Must have excellent communication, organizational, and customer services skills. Good pay, benefits and profit sharing. Send confidential response to POB 92860, ABQ, NM 87199. Attention Box A

Associate Attorney

Maynes, Bradford, Shippis and Sheffel, LLP seeks an associate attorney with 2-5 years of experience to join our Durango, CO office's Indian law practice. We offer an interesting and diverse practice, a competitive salary, and a collegial working environment. Candidates with a Navajo bar license strongly preferred. Please send resume and writing sample to: ssingley@mbssllp.com

Letters of Interest for Legislative Session Analysts

The New Mexico House of Representatives is seeking letters of interest from attorneys who are interested in serving as policy or committee analysts to legislative committees and leadership offices during the legislative session. Analyst positions are full time in Santa Fe during the 2018 legislative session from January 16, 2018 through February 15, 2018. Please send a letter of interest and resume to Joseph.Martinez@nmlegis.gov.

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office is currently seeking immediate resumes for one (1) Senior Trial Attorney. This position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence. Persons who are in good standing with another state bar or those with New Mexico criminal law experience are welcome to apply. Salaries are negotiable based on experience. Submit letter of interest and resume to Paula Pakkala, District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to Ppakkala@da.state.nm.us by 5:00 p.m. November 10, 2017.

State Bar Seeks Executive Director

The State Bar of New Mexico seeks an Executive Director to serve as CEO of a 9,000+ membership organization and the New Mexico State Bar Foundation, a separate non-profit organization. Responsibilities include management of a \$4.3 million budget, assisting a 22-member governing board, and management of a 34-member staff and operations. Seeking candidates with strong leadership and management experience; excellent interpersonal communication and collaborative skills; strong organizational abilities; and financial and budgetary knowledge. Educational requirements: Bachelor's Degree required; additional management training preferred. Applications will be kept confidential. To apply, submit a cover letter and résumé to State Bar of New Mexico, c/o Charles J. Vigil, Rodey Law Firm, cvigil@rodey.com by October 27, 2017. EOE. View the full job description at <https://www.nmbar.org/EDJobDescription0817>.

New Mexico State University Accepting Proposals

New Mexico State University (NMSU) is accepting proposals to perform various types of legal services. NMSU requires a wide variety of legal services in many different fields of law; respondents may select specific fields of law in which the respondent is interested in accepting assignments. Register with NMSU's Online Bidding System at <https://NMSU.ionwave.net> to obtain a copy of this RFP and to submit a proposal. Proposal Invitation: 201702058 - C Legal Services. Proposal Due Date & Time: 11/03/17 @ 2:00 PM (MST)

Senior Trial Attorney Assistant Trial Attorney

The 13th Judicial District Attorney's Office is accepting resumes for experienced Senior/Mid-level Trial Attorney's. This position requires a minimum of five years of experience as a prosecutor; and it requires handling complex felony litigation. Salary is commensurate with experience. Send resumes to Krissy Saavedra, Program Specialist, P.O. Box 1750, Bernalillo, NM 87004, or via E-Mail to: ksaavedra@da.state.nm.us. Deadline for submission of resumes: Open until filled.

Assistant County Attorney

Dona Ana County is seeking an Assistant County Attorney who will perform internal counseling duties such as draft ordinances, review contracts, consult in matters of potential liability, attend public meeting and hearings on behalf of the Board of County Commissioners, County Manager, elected officials, department directors, and other appointed boards and commissions and defends and/or represents the county in limited litigation matters. The full job description and application procedures can be found at <https://careers-donaanacounty.icims.com>

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office is currently seeking immediate resumes for one (1) Assistant Trial Attorney. Position is ideal for persons who recently took the bar exam. Persons who are in good standing with another state bar or those with New Mexico criminal law experience are welcome to apply. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Salary is negotiable based on experience. Submit letter of interest and resume to Paula Pakkala, District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to Ppakkala@da.state.nm.us by 5:00 p.m. November 10, 2017.

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.

Assistant City Attorney Position

City of Albuquerque Legal Department Assistant City Attorney position available within the Employment/Labor Law Section of the Litigation Division with desired experience in civil litigation, handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking an attorney with an interest in defending employment and labor law matters within a positive team environment. Salary will be based upon experience. Please submit resume to the attention of "Litigation-Emp. Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant, P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov, no later than Friday, October 27, 2017.

City of Albuquerque – Contract Attorney

The City of Albuquerque is seeking an attorney to serve as a special prosecutor in Metropolitan Court for Traffic Arraignments on Mondays, Tuesdays, and Wednesdays. The special prosecutor will serve as a contractor, and is not an employee of the City of Albuquerque. Applicant must be admitted to the practice of law by the New Mexico Supreme Court and be an active member of the Bar in good standing. Spanish language skills are preferred, but not required. A successful candidate will have strong communication skills and interact daily with the public. Please submit resume to the attention of "Traffic Arraignment Attorney Application"; c/o Angela Aragon, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov, no later than Tuesday, November 7, 2017.

Assistant City Attorney Position

City of Albuquerque Legal Department Assistant City Attorney position available within the Litigation Division with desired experience in civil litigation, handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking an attorney with an interest in defending civil rights, personal injury, and premises liability cases within a positive team environment. Salary will be based upon experience. Please submit resume to the attention of "Litigation Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant, P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov, no later than Friday, October 27, 2017.

Taos County County Attorney

Taos County seeks a County Attorney with a strong desire to live and work in the unique community of Taos, New Mexico. As an integral part of county government, the successful candidate will be an active participant in the important issues to this historic, multi-cultural, artistic and recreational community. Candidates must be graduates of an American Bar Association accredited law school and have a New Mexico law license. The ideal candidate should possess experience in litigation and local government legal issues. County government faces a wide range of challenging legal issues that require strong analytical, courtroom and diplomatic skills complimented by a good measure of common sense. Salary range is dependent on experience and qualifications. This position offers a benefit package consisting of medical and dental insurance, paid vacation, sick leave and retirement. Taos County is an equal opportunity employer. To view the complete job description please visit the Taos County website, www.taoscounty.org, and click on "Departments", then "Human Resources" and then "Job Opportunities," or contact the Human Resources Department at 575-737-6309. Applicants should submit a letter of interest, resume and three professional letters of reference to Renee Weber, Human Resources Director, as a hard copy to 105 Albright Street, Suite J., Taos, NM 87571, or as a PDF email attachment to renee.weber@taoscounty.org. Interested candidates should submit all information by 5:00pm November 17, 2017.

Associate Attorney

Vigil Law Firm, P.A., an established Albuquerque law firm, is seeking an Associate Attorney with strong writing and critical thinking skills for work in Med Mal and Catastrophic Injury Plaintiffs' practice. Recent graduates and attorneys with up to 5 years of experience are encouraged to apply. Please email cover letter, resume, 2-3 references, and a writing sample to jobs@zlaws.com.

Bilingual Associate Attorney (Uptown Albuquerque)

Rebecca Kitson Law is growing! We are adding a full time, bilingual associate attorney position. Candidate must have passion and commitment to advocate for immigrants in all areas of relief. We are an inclusive, supportive office culture that welcomes all to apply. Position available immediately. Must be fluent in Spanish. Law License from any state accepted but New Mexico preferred. Experience preferred. Salary DOE, full benefits and fun perks offered. Please send letter of interest, resume, and writing sample to lp@rkitsonlaw.com. You will only be contacted if you are being considered for the position. Please note that incomplete applications will not be considered.

Hearing Officer or Judge Pro Tempore Services

The Thirteenth Judicial District Court is requesting proposals (RFP) #2018-0002-1 for Hearing Officer or Judge Pro Tempore Services in Cibola County. This is the first amendment to RFP 2018-0002. The full RFP can be found at: <https://thirteenth-districtcourt.nmcourts.gov> This RFP was initially issued on August 25, 2017, and the amendment issued on September 20, 2017. The deadline for submissions is October 25, 2017 at noon (12:00 pm) MST. Offerors who submitted proposals under RFP 2018-0002 need not resubmit to be considered under this amendment. All questions should be directed to Karl Reifsteck at berdkwr@nmcourts.gov or by calling 505-865-2404.

Just passed the Bar?

We have an entry-level attorney position available in Las Vegas, New Mexico. Excellent opportunity to gain valuable experience in the courtroom and with a great team of attorneys. Requirements include J.D. and current license to practice law in New Mexico. Please forward your letter of interest and resumé to Richard D. Flores, District Attorney, P.O. Box 2025, Las Vegas, New Mexico 87701; or via e-mail: rflores@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

Paralegal Wanted

Albuquerque Law Firm seeking a full time paralegal, with a minimum of 3 to 5 years of experience. Experience is preferred in general civil practice, including medical malpractice defense, personal injury and civil rights. Candidates should have excellent writing and research skills, and the ability to work independently. A paralegal certificate or degree is preferred. Competitive salary and benefits. All inquiries will be kept confidential. Submit resume to: jertsgaard@parklawnm.com

Communications Assistant

The State Bar of New Mexico seeks a FT Communications Assistant to assist with writing and design tasks. Successful applicants will have excellent writing skills as demonstrated in application materials and experience with Adobe InDesign or a proven history of learning new software and programs. Proficiency with Microsoft Word, Excel, and Outlook is required. Ideal candidates will have strong copyediting skills, experience with uniform writing styles (AP), and familiarity with Adobe InDesign. Email cover letter, resume, and 2 writing samples to hr@nmbar.org. Full description at www.nmbar.org/Nmstatebar/About_Us/Career_Center.aspx. EOE.

Legal Secretary/Assistant

Well established civil litigation firm seeking Legal Secretary/Assistant with minimum 3- 5 years' experience, including knowledge of local court rules and filing procedures. Excellent clerical, organizational, computer & word processing skills required. Fast-paced, friendly environment. Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to: e_info@abrfirm.com

Paralegal

The Rodey Law Firm is accepting resumes for a business department paralegal position in its Albuquerque Office. Must have a minimum of five years hands-on transactional paralegal work experience. Applicants must possess the ability to manage a transaction, including forming entities, maintaining a transaction calendar, preparation of publications, notices and other requested transaction documents and conducting closings. Requires attention to detail and ability to manage multiple deadlines. Needs to be a self-starter, willing to take initiative and work as a member of a team. Firm offers congenial work environment, competitive compensation and excellent benefit package. Please send resume to hr@rodey.com or mail to Human Resources Manager, PO Box 1888, Albuquerque, NM 87103.

Litigation Paralegal

Butt Thornton & Baehr PC has an opening for an experienced litigation Paralegal (5+ years). Must be well organized, and have the ability to work independently. Excellent typing/word processing skills required. Generous benefit package. Salary DOE. Please send letter of interest and resume to, gejohnson@btblaw.com

Nurse Paralegal Wanted

Albuquerque Law Firm seeking a full time nurse paralegal, with a minimum of 5 years of experience. Experience is preferred in general civil practice, including medical malpractice defense, personal injury and civil rights. Candidates should have excellent writing and research skills, the familiarity to read and summarize medical records, draft and answer discovery, complete deposition prep and the ability to work independently. Prior nursing experience along with paralegal certificate or degree is preferred. Competitive salary and benefits. All inquiries will be kept confidential. Submit resume to: jertsgaard@parklawnm.com

Positions Wanted

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Would like to work for a PI Atty., or Ins. Def. in ABQ or RR only. CV Litigation exp., WC exp., Odyssey-CM/ECF, Prepare/Answer Discovery, Med. Rec. Repts/ Follow up/ Organization, MS Office exp., Calendaring exp. Hard-Working, Loyal, Dedicated. Strong work ethic. Empathetic. Enjoys continuous learning. Please email me for resume & references, at 'legalassistantforhire2017@gmail.com.'

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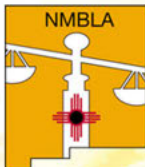
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