

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

December 13, 2017 • Volume 56, No. 50



Community Confined, by Norma Alonzo

ARTWORKinternational, INC.

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The ADAMS+CROW LAW FIRM is thrilled to celebrate the one-year anniversary of Alana De Young and the arrival of Ann McCollum to our firm.



Photo credit: Robert Johnston

The ADAMS+CROW LAW FIRM has more than 35 years of experience in the legal and insurance industry. The firm's civil litigation practice includes commercial business and contract disputes; employment and education law matters; mergers and acquisitions; construction cases; insurance coverage disputes; reinsurance industry disputes; mining and oil rig accidents; professional negligence issues; and all manner of tort issues. The firm has significant experience in federal/state district and appellate courts as well as numerous administrative tribunals. On August 2, 1017, Ms. Adams was named as one of 2017's Top 250 Women in Litigation by Benchmark Litigation.

Ms. De Young's general civil litigation practice includes representing clients in federal and state courts in employment law, personal injury, insurance defense, education law, and business and commercial disputes. She is highly involved with the New Mexico State Bar Employment and Labor Law Section, having served on the Board of Directors for several years and currently serving as the Chair-Elect. As a native New Mexican and fluent Spanish-speaker, Ms. De Young proudly provides pro bono legal services to low-income New Mexicans in partnership with a local non-profit immigrant rights organization and also represents *pro se* litigants with the District of New Mexico's Civil Pro Bono Panel.

Ms. McCollum's practice includes education law, employment law, and tort law in federal and state courts. She is an experienced risk management consultant focusing on international travel and experiential programming in schools and youth development programs around the country and is developing a local practice in recreation law. Her practice is also informed by a 20+ year career as an independent school and outdoor educator. She continues to be a regular speaker and presenter at national education, risk management, and camp conferences.

ADAMS+CROW LAW FIRM is also proud to have Jennifer Nutley as a part of our practice. Prior to joining Arlyn in 2014, Ms. Nutley worked in public health policy research and criminal litigation. Since joining Mr. Crow, she has gained copious experience in civil litigation. Focusing her efforts largely on research and writing, she has had the unique opportunity to develop a deeper knowledge of subjects affecting business and employment contract disputes as well as personal injury and premise liability claims.

ADAMS+CROW LAW FIRM counts itself a firm of great fortune to have on its team the following: Ridha Anwar, Brian Forde, Christine James, Tommy Miller, Julie Rael, Anita Suazo, and Madison Whitsell.

All attorneys are licensed to practice law in New Mexico, with experience in all levels of State Court, the U.S. District Court for the District of New Mexico and the Tenth Circuit Court of Appeals.

5051 Journal Center Blvd. NE, Suite 320
Albuquerque, NM 87109-5907
Office: 505-582-2819
Fax: 505-212-0439
Website: www.AdamsCrowLaw.com
Email: sam@adamscrow.com
Email: arlyn@adamscrow.com
Email: alana@adamscrow.com
Email: ann@adamscrow.com
Email: jennifer@adamscrow.com





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Interim Executive Director Richard Spinello
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505-797-6087 • notices@nmbar.org
Graphic Designer Julie Schwartz
jschwartz@nmbar.org
Account Executive Marcia C. Ulibarri
505-797-6058 • mulibbarri@nmbar.org
Digital Print Center
Manager Brian Sanchez
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The *Bar Bulletin* (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
address@nmbar.org • www.nmbar.org

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Meetings

December

13

Taxation Section Board

11 a.m., teleconference

14

Business Law Section Board

4 p.m., teleconference

15

Family Law Section Board

9 a.m., teleconference

Workshops and Legal Clinics

December

20

Family Law Clinic

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

About Cover Image and Artist: Norma Alonzo has always taken her painting life seriously, albeit privately. An extraordinarily accomplished artist, she has been painting for over 25 years. Beginning as a landscape painter, she quickly transitioned to an immersion in all genres to experiment and learn. Through her paintings, Alonzo examines our place, metaphysically and functionally, in the midst of today's fast-paced world. Her work has most recently been featured in the International Museum of Art, Arts International 2017 in El Paso, Texas. Learn more about Alonzo and view her work at www.artworkinternational.com.

Notices

COURT NEWS

Supreme Court Law Library Hours and Information

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

Hours of Operation

Monday–Friday 8 a.m.–5 p.m.

Reference and Circulation

Monday–Friday 8 a.m.–4:45 p.m.

First Judicial District Court Investiture Ceremony for Judge Gregory S. Shaffer

Members of the State Bar are cordially invited to attend the investiture ceremony and reception for Judge Gregory S. Shaffer, First Judicial District Court, Division II, at 5 p.m., Dec. 15, at the Judge Steve Herrera Judicial Complex, 225 Montezuma Ave., Santa Fe. A reception will immediately follow at Hotel St. Francis, 210 Don Gaspar Ave., Santa Fe. R.S.V.P. for the reception to Jessica Cooper at 505-690-6291 or keepjudgeshaffer@comcast.net. Attending justices and judges are asked to bring their robe.

Second Judicial District Court Destruction of Exhibits

Pursuant to 1.21.2.617 FRRDS (Functional Records Retention and Disposition Schedules-Exhibits), the Second Judicial District Court will destroy exhibits filed with the Court, the criminal cases for the years of 1979 to the end of 2001 including but not limited to cases which have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through Jan. 29, 2018. Those who have cases with exhibits, should verify exhibit information with the Special Services Division, at 505-841-6717, from 10 a.m.–2 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel of record for the plaintiff(s) and defendant's exhibits will be released to counsel of record for

Professionalism Tip

With respect to parties, lawyers, jurors, and witnesses:

I will be considerate of the time constraints and pressures imposed on lawyers by the demands of trial practice.

defendants(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Third Judicial District Court Mass Reassignment

Effective Dec. 18, a mass reassignment of all Division VIII cases previously assigned to Judge Fernando R. Macias will occur pursuant to NMSC Rule 23-109. Judge Conrad F. Perea has been appointed to fill the vacancy in Division VIII. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Dec. 27 to challenge or excuse Judge Conrad F. Perea pursuant to Rule 1-088.1.

Judicial Notice of Retirement

The Third Judicial District Court announces the retirement of Judge Fernando R. Macias effective Jan. 6, 2018. A Judicial Nominating Commission convene in Las Cruces on Feb. 1, 2018 to interview applicants for this vacancy. Further information on the application process can be found on the Judicial Selection website <http://lawschool.unm.edu/judsel/index.php>, along with updates regarding this vacancy and the news releases.

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.

Bernalillo County Metropolitan Court Closure Notice

The Metropolitan Court will be closed from 11 a.m.–1:30 p.m. on Dec. 13 for the Court's annual holiday lunch.

U.S. Courts Library Holiday Open House

The U.S. Courts Library will host a holiday open house on Dec. 13. The Library encourages all state and federal bar members to stop by between 10 a.m. and 5 p.m. to meet the staff, enjoy some cookies and punch, peruse the newly relocated and renovated collection and discover how the Library can become an integral part of your legal research team. The Library is on the third floor of the Pete V. Domenici U.S. Courthouse at the northeast corner of Fourth St. and Lomas Blvd. in downtown Albuquerque. Usual hours of operation are 8 a.m.–noon and 1–5 p.m., Monday through Friday. For more information, call 505-348-2135.

U.S. District Court for the District of New Mexico Udall, Heinrich and Pearce Seek Applicants to Fill Upcoming Vacancy

On Nov. 30, Hon. Robert C. Brack announced his intention to assume senior status after 15 years of distinguished service on the federal bench. Judge Brack's announcement, effective July 25, 2018, will create a vacancy in Las Cruces, N.M., for a

U.S. District Judge for the District of New Mexico. In accordance with their constitutional responsibility as senators to provide advice and consent with respect to federal appointments, U.S. Senators Tom Udall and Martin Heinrich, with the assistance of U.S. Representative Steve Pearce, will recommend to the president a short list of qualified candidates for the position. Individuals who are interested in the position must complete and return an application no later than Dec. 31, 2017. Download the application and instructions at www.tomudall.senate.gov/news/press-releases/udall-heinrich-pearce-seek-applicants-to-fill-upcoming-vacancy-on-us-district-court.

STATE BAR NEWS

Attorney Support Groups

- Jan. 8, 2018, 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#.
- Feb. 5, 2018, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month. The January meeting will be skipped due to the New Year's Day holiday.)

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

Board of Bar Commissioners Election Results

The 2017 election of commissioners for the Board of Bar Commissioners was held on Nov. 30. The results are as follows: Aja N. Brooks and Robert Lara were elected in the First Bar Commissioner District (Bernalillo County), and Erinna M. Atkins and Jared G. Kallunki were elected in the Sixth Bar Commissioner District (Chaves, Eddy, Lea, Lincoln and Otero counties). Only one nomination petition was received for the two positions in the Third Bar Commissioner District (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties), so Elizabeth J. Travis is elected by acclamation. A notice will be published for the vacancy in the *Bar Bulletin*, and the Board will make the appointment at its Feb. 23, 2018, meeting.

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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OTHER BARS

American Bar Association Commission on Lawyer Assistance Programs Twitter Chat on Problem Gambling

On Dec. 13, the ABA Commission on Lawyer Assistance Programs will host a live Twitter chat on "Problem Gambling in the Legal Profession" from 1–2 p.m. EST. @ABACoLAP and special guests will discuss the consequences of problem gambling in the legal profession, signs and symptoms that might indicate a person may have a gambling problem, how to get help or refer someone else to help, and ways law schools and law firms can better address problem gambling. Follow along by tracking tweets with hashtag #GamblingHelp4Lawyers and participate with questions and comments by using #GamblingHelp4Lawyers in your tweets. More information can be found at www.americanbar.org/groups/lawyer_assistance/events_cle/gambling-twitter-chat.html.

New Mexico Criminal Defense Lawyers Association Two Chances to Fulfill Ethics Requirements

The New Mexico Criminal Defense Lawyers Association will host an end-of-year CLE to help members fulfill their ethics/professionalism requirements. "Cross Examination, Ethics & Professionalism" (4.0 G, 2.0 EP) will be held Dec. 15 in Las Cruces. Civil attorneys are welcome to attend the ethics sessions for the CLE! Come learn about defender wellness and how we can take better care of ourselves as professionals. Visit www.nmcdla.org to register and renew membership dues for 2018 today.



New Mexico Lawyers and Judges Assistance Program

Help and support are only a phone call away.

24-Hour Helpline
Attorneys/Law Students
505-228-1948 • 800-860-4914
Judges 888-502-1289
www.nmbar.org/JLAP

New Mexico Women's Bar Association Henrietta Pettijohn Award Nominations

The New Mexico Women's Bar Association invites nominations for the annual Henrietta Pettijohn award, established by the NMWBA board to honor an attorney, female or male, who has, over the previous year(s), done an exemplary job of advancing the causes of women in the legal profession. Previous recipients include Julianna Koob and Hon. Monica Zamora (2013), Congresswoman Michelle Lujan Grisham (2014), Hon. Martha Vázquez (2015), Antonia Roybal-Mack (2016) and Wendy York and Shona Zimmerman (2017). Nominations along with a brief explanation as to why this attorney should be honored with the award should be sent to Peggy Graham at mgraham@pbwslaw.com by Dec. 29.

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.

Legal Education

December 2017

- | | | |
|---|--|---|
| <p>13 2017 Probate Institute
6.3 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Last Chance: Best of the Best Seminar
4.2 G, 1.0 EP
Live Seminar, Santa Fe
New Mexico Trial Lawyers Foundation
www.nmtla.org</p> | <p>19 Eight Things Killing Your Law Firm and How to Stop Them
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>13 2017 Family Law Institute Day 2
5.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Mock Meeting of the Ethics Advisory Committee
2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Storytelling for Lawyers: A Narrative Approach to Success
5.0 G, 1.0 EP
Live Seminar, Albuquerque
William Bernhardt Writing Programs
www.superiorlegalwriting.com</p> |
| <p>14 Trial Know-How! (The Rush to Judgment) 2017 Trial Practice Section Annual Institute
4.0 G, 2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Tech Toch, Tech Tock: Social Media and the Countdown to Your Ethical Demise (2016)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Speech Recognition: Using Dragon Legal in a Law Practice
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 Legal Ethics of Trusts
1.0 EP
Live Seminar, Albuquerque
New Mexico Bank and Trust
www.nmb-t.com</p> | <p>18 2017 Health Law Symposium
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 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>14 WCA Winter Seminar
4.0 G, 2.0 EP
Live Seminar, Albuquerque
Workers Compensation Administration of New Mexico
www.wcaofnm.com</p> | <p>19 The Cyborgs are Coming! The Cyborgs are Coming! The Ethical Concerns with the Latest Technology Disruptions
3.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Fall Elder Law Institute—Hot Topics in Adult Guardianship Law (2017)
4.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 Emerging Problems and Solutions in Environmental Enforcement (2017 Natural Resources, Energy and Environmental Law Institute)
5.5 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics
3.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 A Little Planning Now, a Lot Less Panic Later—Practical Succession Planning for Lawyers (2017)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 Cross Examination, Ethics and Professionalism
4.0 G, 2.0 EP
Live Seminar, Las Cruces
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> | | <p>20 What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics—2016 Edition
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

Listings in the Bar Bulletin CLE Calendar are derived from course provider submissions. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location, course provider and registration instructions.

December 2017

- | | | |
|---|---|--|
| <p>20 Handling the Sale of a Business
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI, Inc.
www.nbi-sems.com</p> | <p>22 2017 Administrative Law Update
2.0 G
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 The Ethics of Lawyer Advertisements Using Social Media
1.0 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>21 The Lifecycle of a Trial, from a Technology Perspective
5.2 G, 1.0 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Ethics in Drafting Claims
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 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>21 60 Legal Tech Tips, Tricks and Websites in 60 Minutes
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Oil and Gas: From the Basics to In-Depth Topics
6.0 G, 1.0 EP
Live Webcast/Live Seminar,
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Deposition Practice in Federal Cases (2016)
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>21 Negotiation Strategies for Litigators
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>28 How to Protect Yourself and Preserve Confidentiality
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 New Mexico DWI Cases: From the Initial Stop to Sentencing—Evaluating Your Case
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>22 Legal Tech Security Measures Every Lawyer Must Take
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

February 2018

- 9 Regional Seminar**
20.5 G
Live Seminar, Santa Fe
Trial Lawyers College
307-432-4042

March 2018

- 1 Introduction to the Practice of Law in New Mexico (Reciprocity)**
4.5 G, 2.5 EP
Live Seminar, Albuquerque
New Mexico Board of Bar Examiners
www.nmexam.org



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THANK

You

The State Bar of New Mexico would like to express its appreciation and gratitude to the following attorneys that participate in the **DIVORCE OPTIONS WORKSHOP.**

Thank you for your professionalism, time and service to the community in New Mexico.

Gretchen Mary Walther
Tiffany Oliver Leigh
Linda Helen Bennett
Maria Montoya-Chavez
Martha Kaser

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at 505-797-6058 or email
mulibarri@nmbar.org

Entrepreneurs in Community Lawyering (ECL)

ECL, the State Bar of New Mexico's legal incubator program, provides a sheltered environment for a maximum of six new solo practitioners passionate about providing quality legal services to New Mexicans of moderate means. ECL has completed its first year with great success and now has five participating lawyers. ECL's lawyers are exploring innovative ways to provide legal services to clients whose incomes fall between 125% to 400% of the federal poverty guidelines, in the areas of family law, adult guardianships, kinship guardianships, simple estate planning, adoptions, DUI defense, workers compensation for injured workers and probate.



Milos Marjanovic immigrated to Albuquerque from Yugoslavia following a civil war in 1997. He graduated from UNM with his criminology degree in 2012 and his J.D. in 2017. Marjanovic opened his firm Marjanovic Law, LLC in the fall of 2017 and is a proud member of the ECL program. Marjanovic is interested in having a general practice and is accepting referrals in family law, adult guardianships, DUI and workers compensation. He can be contacted at 505-508-8454 or milos@legalthelpnm.com.



Ed Lovato is a graduate of UNM's Anderson School of Management and UNM School of Law. Lovato previously served in the enlisted and officer ranks of the U.S. Marine Corps and is a veteran of Iraq and Afghanistan. He is presently accepting referrals in the areas of family law, estate planning and small business. Contact Lovato Law, PC, at 505-738-3777 or ed@lovatolawpc.com.



Carlos Eloy Martinez was born and raised in Albuquerque. He lives in Albuquerque with his wife and two young boys. Martinez has a passion for helping improve his community. This passion was forged when he served as a Peace Corps Volunteer and continues now in the work he does as an attorney. The Law Offices of Carlos E. Martinez, LLC is now accepting referrals in the areas of family law, estate planning and workers compensation at

CMLGL.com, 505-221-6155 or carlos@CMLGL.com.



Joseph Torrez was born and raised in Artesia, N.M. Torrez graduated from the University of New Mexico School of Law and was admitted to the State Bar of New Mexico and accepted into ECL in April. Torrez has opened his solo practice, Joseph Fredrick Torrez, LLC. He is fully bilingual in Spanish and English and plans to develop a practice that focuses on real estate, business law, estate planning and probate. Torrez is graciously accepting referrals at 505-750-2404 or josephrtorrez44@gmail.com.



Ted Kaiman grew up in New York City and is a graduate of the UNM School of Law. He lives in Albuquerque with his wife, son, dogs and chickens. He intends to create a holistic practice focused on Social Security disability, elder law, and estate planning. Ted Kaiman Law, LLC is now accepting referrals at ted@tedkaimanlaw.com or 505-796-8346.



Bobbie Collins, an associate with Lewis Roca Rothgerber Christie in Albuquerque, was honored by the Military Spouse J.D. Network with the 2017 MSJDN Volunteer Service Award at a recent conference in Washington, D.C. MSJDN is a bar association for military spouse attorneys whose mission is to serve military families and improve communities through the network's legal abilities.



Michelle Hernandez, a shareholder with Modrall Sperling, has become the new chair of the Albuquerque Hispano Chamber of Commerce, effective Nov. 17. She has been a member of the Board of Directors since 2013, serving as the Executive Committee's vice chair since 2016 and is also the current regional president of the Hispanic National Bar Association, where she has been a member since 1997.

C. Barry Crutchfield, Templeman & Crutchfield PC, was recognized by Continental Who's Who as a Pinnacle Professional Member in the legal field. He is a member of the State Bar of New Mexico, serving as the chairman of the New Mexico Board of Bar Examiners from 1991-1993. He is also a member of the Lea County Bar Association, the State Bar of Texas, the Association of Trial Lawyers of America, the National Association of Criminal Defense Lawyers, the American Board of Trial Advocates and the Phi Delta Phi Board of Visitors.

Giddens, Gatton & Jacobus, PC

2018 U.S. News & World Report and Best Lawyers: Best Law Firm (bankruptcy and creditor debtor rights/insolvency and reorganization law, and commercial litigation)

Serna Law Offices

Southwest SuperLawyers: David C. Serna (criminal defense, white collar defense and DWI defense)

Stein & Brockmann, PA

2018 Best Lawyers in America: Jay F. Stein (water law) and **James C. Brockmann** (water law)

Modrall Sperling Roehl Harris & Sisk, PA

Benchmark Litigation Highly Recommended Firm

Benchmark Litigation – Litigation Star: Jennifer Anderson, Martha Brown, Timothy Fields, Timothy Holm, George McFall and Lynn Slade

Benchmark Litigation – Future Star: Tiffany Roach Martin, Megan Muirhead, Maria O'Brien and Alex Walker

Benchmark Litigation – Under 40 Hot List: Nathan T. Nieman

U.S. News & World Report and Best Lawyers: national recognition (Native American law) and metropolitan recognition (administrative/regulatory law, antitrust law, arbitration, banking and finance law, bankruptcy and creditor debtor rights/insolvency and reorganization law, commercial litigation, construction law, corporate law, education law, employee benefits (erisa) law, employment law - individuals, employment law - management, energy law, environmental law, government relations practice, health care law, insurance law, litigation - bankruptcy, litigation - construction, litigation - environmental, litigation - labor & employment, litigation - tax, non-profit/charities law, mass tort litigation/class actions - defendants, mediation, mergers & acquisitions law, mining law, municipal law, Native American law, natural resources law, oil & gas law, product liability litigation - defendants, public finance law, railroad law, real estate law, tax law, trusts & estates law and water law)

In Memoriam

George E. Adelo, 64, passed away on Oct. 23 surrounded by his loving family. He was born on April 23, 1953, to Consuelo and George Adelo. He grew up in Pecos, but worked most of his life in Santa Fe where he practiced law since being admitted into the State Bar in 1978. Adelo helped run his family's business and always called Pecos home. He loved music, was the most amazing musician and loved playing music with his band, White Buffalo. He was an actor and had a very creative soul. His presence was large and could never go unnoticed. He was a beautiful man, husband, father and grandfather. Adelo is preceded in death by his parents, grandfather, Samuel Adelo, uncles, Basheer Adelo, Frank Adelo, and Arcy Adelo, in laws Jose and Josephine Jacques, brothers in law, Joseph Jacques and George Shock, nephew David Rascon and special friend Jimmy Varela. George is survived by his most loving wife, Marie Adelo, his most proud children, George Adelo III (Andrea), Ben Adelo (Brandy), Amanda Adelo Padilla (Michael), the love of his life and keeper of his heart, granddaughter Paloma, special uncle, Michael Adelo, sisters in law, Diane Shock, Benny Chavez (Ben), Patsy Rascon (Franky), brother in law, Michael Jacques (Carolyn) and many nieces and nephews, cousins, aunts and uncles, and many, many friends and colleagues.

Frances Davis Bratton was born on Oct. 15, 1932, in Pueblo, Colo., and died peacefully at her home in Albuquerque on April 25, 2017. She was preceded in death by her parents, Floyd Davis and May Elizabeth Darrington Davis; and her husband, Howard C. Bratton. She is survived by her sister, Laura Davis Lindsay of Bremerton, FL; Howard Bratton's children, Sam G. Bratton of Tulsa, OK, Eleanor K. Bratton of Albuquerque, and Jean Bratton Hollowwa of Albuquerque, as well as their six children.



Justice Charles W. Daniels presented Dan Rosenfelt with a certificate of honor for achieving 50 years of practice on Jan. 27 at a ceremony at the State Bar Center.

Daniel Mark Rosenfelt, 76, a prominent New Mexico attorney, passed away peacefully on Nov. 14, after a sudden illness. Rosenfelt was a beloved son, father, husband, uncle, grandfather and dear friend. Rosenfelt, better known as Dan, was born in Kansas City, Mo. He grew up in Newton, Mass. Rosenfelt was a successful attorney with more than 50 years in practice, specializing in business law, real estate commercial litigation, Indian Law and economic development. This past January, he was recognized and honored by the State Bar of New Mexico for practicing law

for more than 50 years (*see photo*). Rosenfelt earned his L.L.B. Degree from Columbia University Law School, New York City, 1966. He was a member of the Trial Lawyers Association and bar associations of New Mexico, California, Arizona and the Navajo Nation. He received his Bachelor of Arts Degree at Johns Hopkins University, Baltimore, Md. He attended Putney Liberal School in Vermont during his high school years. Last year, he attended his 50th class Reunion at Putney. Early in his legal career, he held faculty positions in Harvard and Gonzaga University law schools and taught courses in real estate planning and real property law. He began his legal career in Washington D.C., during the Carter Administration at the Department of the Interior working as assistant solicitor, focusing on Native American Water Rights. In 1970, he was heavily involved in the establishment and early years of the American Rights Fund, a non-profit organization that uses existing laws and treaties to ensure the U.S. Government live up to its legal obligations to indigenous peoples. This field of Indian law interested Rosenfelt and motivated him to move to Albuquerque in the early 1980s. He continued to work for Native American Tribes in California, Arizona, Montana and New Mexico. In 1976, he co-authored and published the case law book for Federal Indian Law, together with attorneys David Getches and Charles Wilkinson, West Publishing Company. In June 1997, he was also admitted as Attorney of the U.S. Court of Federal Claims Courts. He believed with a passion his mission of assisting and representing Native Americans and protecting their sovereign rights. During his tenure, he represented many Governors of Pueblos and the Navajo Nation. He was general counsel when he represented the Governor of San Felipe and their tribal council in the development and beginning of its casino. Rosenfelt was well known by the Governors of these pueblos, including the Jicarita Apache Tribe. Dan worked diligently, along with his peers, in further clarifying the New Mexico Gaming Compacts. Recently, he was working with the Supreme Court of the Navajo Nation and the U.S. Supreme Court. He had established a successful law firm with offices in Gallup, Shiprock and Chinley, Ariz., later known as the Rosenfelt, Barlow, and Borg Law Firm. The firm closed in 2010, and Rosenfelt continued, semi-retired, working as a private attorney, and worked part-time at the Linda Rios Law Firm, Albuquerque. One of his most memorable cases was in 1987 when the Crow Tribe of Montana and the Federal government filed suit, challenging taxation of coal on certain Indian lands. He was recognized and an made honorary member of the Crow Nation in Montana. This successful lawsuit was celebrated with a parade. This was Rosenfelt's first experience riding a horse, and leading a parade. He was presented with a hand-made beaded belt by the Crow Nation Tribe. Recently, he began to be involved with more social and passionate activities, and loved to travel. He was taking courses in foreign policy through the Osher Institute, University of New Mexico and many classes through the Oasis, and was a member of the Albuquerque International Association and Congregation Albert. He and his lovely wife traveled globally, as they created a "bucket" list for travel destinations including places like Brazil, Costa Rica, Peru, Ecuador, Spain, Russia, Tahiti, Hawaii, Zimbabwe, South Africa and recently, Japan. It was particularly meaningful for him to visit Japan, where he lived as a young boy

while his father worked on Post-World War II Reconstruction sponsored by the federal government. In addition, both Rosenfelt and his wife enjoyed golfing, skiing, and ardently following the Boston Red Sox, and the Boston Celtics as loyal fans. Rosenfelt is survived by his beloved wife of 26 years, Viola Martinez; his loving daughters, Rebecca Rosentino, and husband Michael of Portland, Ore.; Rachel Rosenfelt, New York City; his newest and precious grandchild, Edison Rosentino, Portland, Ore.; step-sons, Steven and Joe Martinez, Albuquerque; sisters, Susanna DesJardien and husband, Kent, Rio Rancho, and Joan Rosenfelt, New York; nephew, Aaron Ritoper and wife Nathalie; grandniece, Anna, Nice, France; Sister-in-Law, Veronica Michalski, Albuquerque; and all his close and special friends in the Havara. He was preceded in death by his parents, Mark and Rosalie Rosenfelt, Albuquerque; Aunt Ruth, Chicago; Uncle Harry, Chicago; and recently this year, his close brother-in-law, Salomon Esquibel, Las Vegas, N.M.

George Poole Jones III ("Sandy"), 89, died in his home in Albuquerque on Oct. 26. He is survived by his wife Carol, two stepsons, a daughter in law, four grandchildren, and a long list of people who knew and loved him. He was preceded in death by his son Steve and daughter Ellen. Jones was born in Little Falls, N.Y., on March 28, 1928. He lived there throughout his childhood, and as a teenager he worked for his uncle who owned and operated the Jones Chemical Company, which he always assured us was a big deal. Jones attended Duke University in North Carolina, graduating in 1949. He then enlisted in the Air Force and embarked on several exciting years piloting both airplanes and helicopters. Much of his training was undertaken in Texas and New Mexico. He spent several months in the early 1950s flying planes around the North Atlantic from Keflavik Air Force Base in Iceland. He completed his active duty at his final military post at the Cannon Air Force in Clovis, N.M. Following his active duty in the Air Force, he graduated law school at the University of Florida, finally settling in Albuquerque where he lived for the rest of his life. In March 1978 Sandy married Carol Jones, and became stepfather to her two young boys who he helped raise as his own. He practiced law for 50 years including a few years as a judge. He never truly retired. He loved history, golf, his family, and the outdoors. He enjoyed walks with his friends, and his regular Friday lawyers' luncheon. Most of all he loved his grandchildren. He had a wry sense of humor that is impossible to describe. Anyone that knew him knows the way he talked to other people and to himself. They know how he would laugh with his mouth wide open, shouting his laughs. They know his hugs, which he bestowed on anyone who would stand and take them. They know the embarrassment at being the recipient of his extraordinary generosity. They know his pride in their accomplishments, and the embarrassment of hearing him repeat them for years to every single person he met. They've tuned him out, and then tuned back in upon the realization that he was being viciously creative in making fun of everyone most often himself. They knew that his was a love that knew no limits, no definitions, and would persist without pause forever.

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 December 1, 2017

PUBLISHED OPINIONS

A-1-CA-34747	State v. D Miera	Reverse/Remand	11/27/2017
A-1-CA-34424	Central Consolidated School v. Central Consolidated Education	Affirm	11/30/2017
A-1-CA-34843	A Alarcon v. ABQ Public Schools	Affirm	11/30/2017

UNPUBLISHED OPINIONS

A-1-CA-36579	City of Santa Fe v. 1999 Tan Audi	Dismiss	11/27/2017
A-1-CA-36132	US Bank v. A Hernandez	Affirm	11/28/2017
A-1-CA-36384	State v. C Holguin	Affirm	11/28/2017
A-1-CA-34297	State v. R Romero	Affirm	11/30/2017

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 November 22, 2017

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

Ann-Martha Andrews
Ogletree, Deakins, Nash,
Smoak & Stewart, PC
2415 E. Camelback Road,
Suite 800
Phoenix, AZ 85016
602-778-3702
602-778-3750 (fax)
ann.andrews@ogletree.com

Chandler Blair
Law Offices of the Public
Defender
505 Marquette Avenue, NW,
Suite 120
Albuquerque, NM 87102
505-369-3600
chandler.blair@lopnm.us

David Michael Chavez
Pease & Associates, PLLC
401 E. Main Drive, Suite 415
El Paso, TX 79901
915-345-1100
915-303-7591 (fax)
davidmchavez@gmail.com

**Douglas Carter
Christopherson**
Lynn & Associates, LLC
PO Box 36416
Albuquerque, NM 87176
505-633-6164
505-228-3201 (fax)

Jay R. Combs
101 E. Park Blvd.,
Suite 500
Plano, TX 75074
972-509-1201
972-509-1209 (fax)
jay_combs@hotmail.com

Jeffrey A. Dahl
Holt Mynatt Martinez, PC
PO Box 2699
1660 Hickory Loop (88005)
Las Cruces, NM 88004
575-524-8812
575-524-0726 (fax)
jad@hmm-law.com

Richard R. Fletcher
3102 Seaboard Avenue
Midland, TX 79705
432-559-9558
rr16a@gmail.com

Hon. Joy E. Goldbaum
Las Cruces Municipal Court
PO Box 20000
135 E. Griggs Avenue (88001)
Las Cruces, NM 88004
575-541-2224
575-541-2184 (fax)

John T. Grubestic
Office of the Attorney General
201 Third Street, NW,
Suite 300
Albuquerque, NM 87102
505-490-4834
505-827-6478 (fax)
jgrubestic@nmag.gov

Alan V. Heinz
Office of the City Attorney
PO Box 2248
One Civic Plaza, NW (87102)
Albuquerque, NM 87103
505-768-4500
aheinz@cabq.gov

Kristina N. Holmstrom
Ogletree, Deakins, Nash,
Smoak & Stewart, PC
2415 E. Camelback Road,
Suite 800
Phoenix, AZ 85016
602-778-3724
602-778-3750 (fax)
kristina.holmstrom@ogletree.com

Armand Damacio Huertaz
Lewis Brisbois Bisgaard &
Smith LLP
8801 Horizon Blvd., NE,
Suite 300
Albuquerque, NM 87113
505-545-8309
505-828-3900 (fax)
armand.huertaz
@lewisbrisbois.com

Jared Garner Kallunki
Law Offices of the Public
Defender
610 N. Virginia Avenue
Roswell, NM 88201
575-208-1655
575-578-4319 (fax)
jared.kallunki@lopnm.us

John Frederick Kreienkamp
Office of the Attorney General
PO Box 1508
408 Galisteo Street (87501)
Santa Fe, NM 87504
505-490-4060
jkreienkamp@nmag.gov

Alisa Cook Lauer
The Spence Law Firm NM,
LLC
8205 Spain Road, NE,
Suite 211
Albuquerque, NM 87109
505-832-6363
505-814-5805 (fax)
lauer@spencelawyers.com

Rebecca Leibowitz
9420 Avenida del Oso, NE
Albuquerque, NM 87111
505-307-8997
rebeccamaranleibowitz
@gmail.com

Haley J. Licha
Maryland Office of the Public
Defender
200 Washington Avenue
Towson, MD 21204
410-324-8900
hlich@opd.state.md.us

Bryan L. McKay
Law Offices of the Public
Defender
505 Marquette Avenue, NW,
Suite 120
Albuquerque, NM 87102
505-219-2863
bryan.mckay@lopnm.us

Kristin Elaine Morgan-Tracy
728 Wellesley Drive, NE
Albuquerque, NM 87106
505-301-6428
morgan_tracy@yahoo.com

Matthew E. Ortiz
1205 Camino Carlos Rey
Santa Fe, NM 87507
505-660-0987
mattortiz44law@gmail.com

Katharine Burdic Pena
New Mexico Court of Appeals
PO Box 25306
2211 Tucker Avenue, NE
(87106)
Albuquerque, NM 87125
505-767-6121
505-841-4614 (fax)
coakbp@nmcourts.gov

Edmund E. Perea
Cordell Law LLP
6565 Americas Parkway, NE
Albuquerque, NM 87120
505-444-7119
eperea@cordelllaw.com

Julia Marie Petrucelli
New Mexico Legal Aid
PO Box 1087
200 E. Fourth Street, S
uite 200 (88201)
Roswell, NM 88202
575-623-9669
575-208-1660 (fax)
juliap@nmlegalaid.org

John I Pray III
Fredrikson & Byron, PA
200 S. Sixth Street,
Suite 4000
Minneapolis, MN 55402
612-492-7000
612-492-7077 (fax)
jpray@fredlaw.com

Mark A. Ramsey
Aragon Moss Ramsey &
Hoon, LLC
2201 Menaul Blvd., NE
Albuquerque, NM 87107
505-633-9017
505-888-6040 (fax)
markramsey@amrhlaw.com

Francis J. Rio III
Rio Law Firm
115 N. Bryan Avenue
Portales, NM 88130
505-553-6453
riolawfirm@gmail.com

Joshua R. Simms
1412 Lomas Blvd., NW
Albuquerque, NM 87104
505-842-0392
josh@jrspcllc.com

Tonya Stewart
4600 Stillview Drive
Durham, NC 27712
919-448-1181
sadiemae1967@hotmail.com

Kate S. Thompson
Rothstein Donatelli LLP
500 Fourth Street, NW,
Suite 400
Albuquerque, NM 87102
505-243-1443
505-242-7845 (fax)
kthompson
@rothsteinlaw.com

Javier Torres-Hughes
Javier Torres-Hughes Law
Office, LLC
407 Eleventh Street
Las Vegas, NM 87701
505-922-5570
jav4485@gmail.com

Stephen A. Vigil
Office of the Attorney General
PO Box 1508
408 Galisteo Street (87501)
Santa Fe, NM 87504
505-490-4054
505-717-3600 (fax)
svigil@nmag.gov

**Christopher William
Westenberger**
New Mexico Children, Youth
& Families Dept.
2200 Indian Wells Road,
Suite A
Alamogordo, NM 88310
575-997-8268
christopher.westenb
@state.nm.us

Robin L. Zabel
167 Aspen Way
Palm Coast, FL 32137
386-627-5011
robin.zabel@gmail.com

Alexander Faramarz Zaimi
194 Pineview
Irvine, CA 92620
949-836-8681
zaimi2004@gmail.com

Peter M. Blute
Law Office of Peter M. Blute
6565 West Loop South,
Suite 560
Bellaire, TX 77401
713-460-5500
713-460-2265 (fax)
pblute@blutelaw.com

John R. Eichstadt
3433 W. Dallas Street #911
Houston, TX 77019
713-864-0034
jeichsta@gmail.com

Thomas P. Gallagher
PO Box 9208
San Diego, CA 92169
858-449-5294
terrygallagher@twc.com

Twila A. Hoon
Aragon Moss Ramsey &
Hoon, LLC
2201 Menaul Blvd., NE
Albuquerque, NM 87107
505-633-9017
505-888-6040 (fax)
twilahoon@amrhlaw.com

H. Steven Murphy
Titus and Murphy Law Firm
4000 E. 30th Street
Farmington, NM 87402
505-326-6503
505-326-2672 (fax)
hsmurphy@
titusmurphylawfirm.com

Shellie Ann Patscheck
Titus and Murphy Law Firm
4000 E. 30th Street
Farmington, NM 87402
505-326-6503
505-326-2672 (fax)
shellie@
titusmurphylawfirm.com

Brett Phelps
Aragon Law Office
PO Box 1777
1917 Hot Springs Blvd.
Las Vegas, NM 87701
505-425-5129
505-454-8936 (fax)
aragonlawoffice@gmail.com

Lance A. Sumrall
Richards Elder & Gibson,
PLLC
12223 Quaker Avenue
Lubbock, TX 79424
806-798-8868
lsumrall@regllp.com

David R. Williams
108 Bird Stone Lane
Georgetown, TX 78628
216-956-3502
drwilliams41@gmail.com

Kirk C. Chavez
New Mexico Human Services
Department
Child Support Enforcement
Division
2120 N. Alto Drive,
Suite 110
Hobbs, NM 88240
575-393-3247
kirkchavez@yahoo.com

Leslie Gayle Schaar
Office of the County Attorney
102 Grant Avenue
Santa Fe, NM 87501
505-995-2715
505-986-6362 (fax)
lgschaar
@santafecountynm.gov

Dated December 1, 2017

**CLERK'S CERTIFICATE
OF ADDRESS AND/OR
TELEPHONE CHANGES**

Dakotah R. Benjamin
2001 N. Main Street,
Suite 390
Walnut Creek, CA 94596
925-977-3300
dakotah.benjamin
@bbklaw.com

Anthony R. Burchell
Law Offices of Daniel Wayne
44 Montgomery Street,
Suite 3340
San Francisco, CA 94104
415-649-6203
tony@wayne-law.com

Reggie C. Chavez
PO Box 1684
1018 S. Mesa Road
Belen, NM 87002
505-480-2052
reggiechavezlaw@gmail.com

Amber Fayerberg
302 Catron Street
Santa Fe, NM 87501
505-369-6845
amber.fayerberg@gmail.com

Ashley L. Funkhouser
New Mexico Court of Appeals
PO Box 2008
Santa Fe, NM 87504
505-827-4786
coaalf@nmcourts.gov

Jonathan Galley
Boerner, Dennis &
Franklin, PLLC
920 Avenue Q
Lubbock, TX 79401
806-763-0044
806-763-2084 (fax)
jgalley@bdfllawfirm.com

L. Bernice Galloway
Galloway Legal Group, PA
PO Box 23475
423 Sixth Street, NW (87102)
Albuquerque, NM 87192
505-506-6265
berniceg@gallowaylegalgroup.
com

Bruce Samuel Garber
570 Via Arista
Santa Fe, NM 87506
505-310-9709
bsgarber@me.com

Brenna J. Gaytan
5701 Balloon Fiesta Parkway,
NE
Albuquerque, NM 87113
505-816-2211
brenna.j.gaytan@bcbsnm.com

Deborah Gray
Deborah Gray Law
PO Box 67368
Albuquerque, NM 87193
505-203-0922
deborah@deborahgraylaw.
com

Philomena M. Hausler
McGinn, Carpenter, Montoya
& Love, PA
201 Broadway Blvd., SE
Albuquerque, NM 87102
505-633-8796
505-242-8227 (fax)
philomena
@mcginnlaw.com

Theodore Marc Kaiman
Ted Kaiman Law, LLC
PO Box 7850
5121 Masthead Street, NE
(87109)
Albuquerque, NM 87194
505-796-8346
505-797-6074 (fax)
ted@tedkaimanlaw.com

Taryn M. Kaselonis
Riley, Shane & Keller, PA
3880 Osuna Road, NE
Albuquerque, NM 87109
505-883-5030
505-883-4362 (fax)
tkaselonis@rsk-law.com

Marcia L. Lander
1017 Virginia Street, NE
Albuquerque, NM 87110
505-550-6385
mllander52@gmail.com

Keitha Anne Leonard
PO Box 522
Tesuque, NM 87574
505-989-7688
keithaleonard@msn.com

Jessica D. Marshall
Chapman and Priest, PC
PO Box 92438
4100 Osuna Road, NE,
Suite 2-202 (87109)
Albuquerque, NM 87199
505-242-6000
505-213-0561 (fax)
jessicamarshall
@ccclawnm.com

Audrey K. McKee
Office of the Attorney General
201 Third Street, NW,
Suite 300
Albuquerque, NM 87102
505-452-4923
amckee@nmag.gov

Shay E. Meagle
Moses, Dunn, Farmer &
Tuthill, PC
PO Box 27047
612 First Street, NW (87102)
Albuquerque, NM 87125
505-843-9440
505-247-3213 (fax)
shay@moseslaw.com

Howard C. Meyers
Meyers Law, PLLC
2810 N. Third Street
Phoenix, AZ 85004
602-900-5001
hmeyers@hmeyerslaw.com

Debashree Nandy
Brownstein Hyatt Farber
Schreck, LLP
201 Third Street, NW,
Suite 1800
Albuquerque, NM 87102
505-724-9578
rnandy@bhfs.com

Rocio A. Ocano
New Mexico Legal Aid, Inc.
PO Box 1087
200 E. Fourth Street,
Suite 200 (88201)
Roswell, NM 88202
575-623-9669
rocioo@nmlegalaid.org

Stephanie D. Pauly
Kozacky Weitzel McGrath, PC
55 W. Monroe Street,
Suite 2400
Chicago, IL 60603
312-696-0900
spauly@kwmlawyers.com

Jennifer G. Rochelle
Pima County Public
Defender's Office
2337 E. Ajo Way
Tucson, AZ 85713
520-724-6993
jennifer.rochelle@pima.gov

Catherine Russell
University of New Mexico
MSC09 5300
1 University of New Mexico
Albuquerque, NM 87131
505-272-9854
505-272-1938 (fax)
ccrussell@salud.unm.edu

Catherine Sanchez
PO Box 37290
Albuquerque, NM 87176
505-350-4582
cslaw@vcimail.com

Michael J. Santistevan
9004 Menaul Blvd., NE,
Suite 15
Albuquerque, NM 87112
505-610-1585
505-293-0607 (fax)
peopleslaw1@gmail.com

Joel M. Sauer
PO Box 5577
Albuquerque, NM 87185
505-318-9295
joelsauer1@gmail.com

Ellen Thorne Skrak
2923 Trellis Drive, NW
Albuquerque, NM 87107
505-252-2319
etskrak@gmail.com

Matthew R. Wade
Twelfth Judicial District
Court
1000 New York Avenue,
Suite 209
Alamogordo, NM 88310
575-437-7310
aladmrw@nmcourts.gov

Allison C. Warren
12231 Academy Rd., NE,
Suite 301, PMB #159
Albuquerque, NM 87111
806-470-3169
aleboeuf@ymail.com

Travis J. White
Banafsheh, Danesh & Javid,
PLLC
320 Gold Avenue, SW,
Suite 1026
Albuquerque, NM 87102
505-910-4931
tw@bdjinjurylawyers.com

Freeman Faust
Law Offices of the Public
Defender
419 W. Cain Street
Hobbs, NM 88240
575-263-2272
575-318-2004 (fax)
freeman.faust@lopdm.us

Fritz L. Fisher
Fisher & Suhr, PC
1125 17th Street,
Suite 710
Denver, CO 80202
303-436-1224
ffisher@fishersuhr.com

Tyson Kyle Gobble
Titus and Murphy Law Firm
4000 E. 30th Street
Farmington, NM 87402
505-326-6503
505-326-2672 (fax)
tkgobble@
titusmurphyfirm.com

Edward Wayne Lovato
Lovato Law, PC
PO Box 93264
5121 Masthead Street, NE
(87109)
Albuquerque, NM 87199
505-738-3777
505-738-3767 (fax)
ed@lovatolawpc.com

**Horatio Patrick
Moreno-Campos II**
HMC Attorney at Law LLC
503 Slate Avenue, NW
Albuquerque, NM 87102
505-652-2856
505-445-2511 (fax)
horatiomorenocampos
@gmail.com

Susan G. Pittard
Public Employees Retirement
Association of New Mexico
33 Plaza La Prensa
Santa Fe, NM 87507
505-476-9350
susan.pittard@state.nm.us

Tyson Quail
Fortner & Quail, LLC
2021 E. 20th Street
Farmington, NM 87401
505-326-1817
505-326-1905 (fax)
tyson@fortnerlaw.com

Noel J. Schaefer
Roybal-Mack & Cordova, PC
1121 Fourth Street, NW,
Suite 1D
Albuquerque, NM 87102
505-288-3500
505-288-3501 (fax)
noel@roybalmacklaw.com

Lauren A. Shapiro
2107 Barton Parkway
Austin, TX 78704
512-656-1116
lauren@shapirodunn.com

Gilbert Gregory Valdez
PO Box 6176
Las Cruces, NM 88006
575-312-2580
g.gregvaldez@gmail.com

Dated November 17, 2017

**CLERK'S CERTIFICATE OF
ADMISSION**

Jennifer Hadley Catero
Snell & Wilmer LLP
400 E. Van Buren Street
Phoenix, AZ 85004
602-382-6371
602-382-6070 (fax)
jcatero@swlaw.com

Rita Kreymer
1051 Fordham Lane
Woodmere, NY 11598
516-417-4400
rkreymer@hotmail.com

Sam Jackson Legate
Scherr Legate PLLC
109 N. Oregon Street,
12th Floor
El Paso, TX 79901
915-544-0100
915-532-1749 (fax)
samlegate@scherrlegate.com

Chandra F. Mansfield
PO Box 17081
Phoenix, AZ 85011
281-923-2886
cfmansfield1@gmail.com

Gregory J. Marshall
Snell & Wilmer LLP
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004
602-382-6514
602-382-6070 (fax)
gmarshall@swlaw.com

Ryan P. Swartz
Collinsworth, Specht, Calkins
& Giampaoli
7310 N. 16th Street,
Suite 135
Phoenix, AZ 85020
602-508-3126
602-508-3129 (fax)
rswartz@cslawoffices.com

Cole Parker Wilson
Hinkle Shanor LLP
PO Box 10
400 Penn Plaza, Suite 700
(88201)
Roswell, NM 88202
575-622-6510
575-623-9332 (fax)
cpwilson@hinklelawfirm.com

IN MEMORIAM

As of October 23, 2017
George E. Adelo
PO Box 2477
Santa Fe, NM 87504

As of April 24, 2017
Ingrid Bekhuys
PO Box 8207
Santa Fe, NM 87504

As of July 21, 2017:
Anthony J. Ferrara
PO Box 90396
Albuquerque, NM 87199

As of October 6, 2017
Joe R. G. Fulcher
PO Box 31189
Sea Island, GA 31561

As of November 14, 2017
Daniel M. Rosenfelt
1418 Aliso Drive, NE
Albuquerque, NM 87110

**CLERK'S CERTIFICATE
OF NAME AND ADDRESS
CHANGE**

As of November 16, 2017
Meghan T. Thomas
N.M. Office of the State
Engineer
PO Box 25102
407 Galisteo Street,
Suite 101 (87501)
Santa Fe, NM 87504
505-827-6123
meghan.thomas@state.nm.us

Dated November 17, 2017

**CLERK'S CERTIFICATE
OF CHANGE TO INACTIVE
STATUS**

Effective October 29, 2017:
Jorge Avitia
2306 Dietz Farm Road, NW
Albuquerque, NM 87107
505-206-1615
jorgeavitia@gmail.com

Effective November 30, 2017:
Ashley Nicole Bower
300 E. Basse Road #1337
San Antonio, TX 78209
505-615-8886
ashleybower2@gmail.com

Effective November 6, 2017:
Colleen Jaclyn Brisport
U.S. Department of Labor
Employee Benefits Security
Administration
15 New Sudbury Street
Boston, MA 02203
518-209-6592
brisportc@gmail.com

Effective November 1, 2017:
Maria Elia Castro
559 Woodward Avenue, SE
Atlanta, GA 30312
505-699-1869
castro9385@gmail.com

Effective October 27, 2017:
Nancy M. Hewitt
4113 Soaring Eagle Lane
Santa Fe, NM 87507
505-310-3608
nmhewitt2@aol.com

Effective November 3, 2017:
Stephen D. Kovach
PO Box 13943
Las Cruces, NM 88013
575-522-4393
stephenkov@aol.com

Effective November 8, 2017:
Saied Tadayon
11204 Albermyrtle Road
Potomac, MD 20854
301-294-0434
saiedtadayon@comcast.net

**CLERK'S CERTIFICATE
OF WITHDRAWAL AND
CHANGE OF ADDRESS**

Effective November 29, 2017:
Julie Elaine Chicoine
1029 Sunbury Lake Drive
Westerville, OH 43082

**CLERK'S CERTIFICATE
OF REINSTATEMENT TO
ACTIVE STATUS AND
CHANGE OF ADDRESS**

Effective November 15, 2017
Michael Eshleman
Office of the Otero County
Attorney
1101 N. New York Avenue,
Room 105
Alamogordo, NM 88310
575-437-7427
meshleman@co.otero.nm.us
Effective November 15, 2017:
Raymond L. Ybarra
757 James Drive
Richardson, TX 75080
214-435-2979
972-850-9503 (fax)
rlybarra4@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 November 29, 2017

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:					
<i>There are no proposed rule changes currently open for comment.</i>					
RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2017 NMRA:					
			Effective Date		
Rules of Civil Procedure for the District Courts					
1-015	Amended and supplemental pleadings	12/31/2017	4-402	Order appointing guardian ad litem	12/31/2017
1-017	Parties plaintiff and defendant; capacity	12/31/2017	4-602	Withdrawn	12/31/2017
1-053.1	Domestic violence special commissioners; duties	12/31/2017	4-602A	Juror summons	12/31/2017
1-053.2	Domestic relations hearing officers; duties	12/31/2017	4-602B	Juror qualification	12/31/2017
1-053.3	Guardians ad litem; domestic relations appointments	12/31/2017	4-602C	Juror questionnaire	12/31/2017
1-079	Public inspection and sealing of court records	03/31/2017	4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
1-088	Designation of judge	12/31/2017	4-941	Petition to restore right to possess or receive a firearm or ammunition	03/31/2017
1-105	Notice to statutory beneficiaries in wrongful death cases	12/31/2017	4-941	Motion to restore right to possess or receive a firearm or Ammunition	12/31/2017
1-121	Temporary domestic orders	12/31/2017	Domestic Relations Forms		
1-125	Domestic Relations Mediation Act programs	12/31/2017	4A-200	Domestic relations forms; instructions for stage two (2) forms	12/31/2017
1-129	Proceedings under the Family Violence Protection Act	12/31/2017	4A-201	Temporary domestic order	12/31/2017
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017	4A-209	Motion to enforce order	12/31/2017
Rules of Civil Procedure for the Magistrate Courts			4A-210	Withdrawn	12/31/2017
2-105	Assignment and designation of judges	12/31/2017	4A-321	Motion to modify final order	12/31/2017
2-112	Public inspection and sealing of court records	03/31/2017	4A-504	Order for service of process by publication in a newspaper	12/31/2017
2-301	Pleadings allowed; signing of pleadings, motions, and other papers; sanctions	12/31/2017	Rules of Criminal Procedure for the District Courts		
Rules of Civil Procedure for the Metropolitan Courts			5-105	Designation of judge	12/31/2017
3-105	Assignment and designation of judges	12/31/2017	5-106	Peremptory challenge to a district judge; recusal; procedure for exercising	07/01/2017
3-112	Public inspection and sealing of court records	03/31/2017	5-123	Public inspection and sealing of court records	03/31/2017
3-301	Pleadings allowed; signing of pleadings, motions, and other papers; sanctions	12/31/2017	5-204	Amendment or dismissal of complaint, information and Indictment	07/01/2017
Civil Forms			5-211	Search warrants	12/31/2017
4-223	Order for free process	12/31/2017	5-302	Preliminary examination	12/31/2017
			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	7-406	Bonds; exoneration; forfeiture	07/01/2017
5-802	Habeas corpus	12/31/2017	7-408	Pretrial release by designee	07/01/2017
Rules of Criminal Procedure for the Magistrate Courts			7-409	Pretrial detention	07/01/2017
6-105	Assignment and designation of judges	12/31/2017	7-504	Discovery; cases within metropolitan court trial jurisdiction	12/31/2017
6-114	Public inspection and sealing of court records	03/31/2017	7-506	Time of commencement of trial	07/01/2017
6-202	Preliminary examination	12/31/2017	7-506.1	Voluntary dismissal and refiled proceedings	12/31/2017
6-203	Arrests without a warrant; probable cause determination	12/31/2017	7-606	Subpoena	12/31/2017
6-207	Bench warrants	04/17/2017	7-703	Appeal	07/01/2017
6-207.1	Payment of fines, fees, and costs	04/17/2017	Rules of Procedure for the Municipal Courts		
6-207.1	Payment of fines, fees, and costs	12/31/2017	8-112	Public inspection and sealing of court records	03/31/2017
6-208	Search warrants	12/31/2017	8-202	Probable cause determination	12/31/2017
6-304	Motions	12/31/2017	8-206	Bench warrants	04/17/2017
6-401	Pretrial release	07/01/2017	8-206.1	Payment of fines, fees, and costs	04/17/2017
6-401.1	Property bond; unpaid surety	07/01/2017	8-207	Search warrants	12/31/2017
6-401.2	Surety bonds; justification of compensated sureties	07/01/2017	8-304	Motions	12/31/2017
6-403	Revocation or modification of release orders	07/01/2017	8-401	Pretrial release	07/01/2017
6-406	Bonds; exoneration; forfeiture	07/01/2017	8-401.1	Property bond; unpaid surety	07/01/2017
6-408	Pretrial release by designee	07/01/2017	8-401.2	Surety bonds; justification of compensated sureties	07/01/2017
6-409	Pretrial detention	07/01/2017	8-403	Revocation or modification of release orders	07/01/2017
6-506	Time of commencement of trial	07/01/2017	8-406	Bonds; exoneration; forfeiture	07/01/2017
6-506	Time of commencement of trial	12/31/2017	8-408	Pretrial release by designee	07/01/2017
6-506.1	Voluntary dismissal and refiled proceedings	12/31/2017	8-506	Time of commencement of trial	07/01/2017
6-506	Time of commencement of trial	12/31/2017	8-506	Time of commencement of trial	12/31/2017
6-703	Appeal	07/01/2017	8-506.1	Voluntary dismissal and refiled proceedings	12/31/2017
Rules of Criminal Procedure for the Metropolitan Courts			8-703	Appeal	07/01/2017
7-105	Assignment and designation of judges	12/31/2017	Criminal Forms		
7-113	Public inspection and sealing of court records	03/31/2017	9-207A	Probable cause determination	12/31/2017
7-202	Preliminary examination	12/31/2017	9-301A	Pretrial release financial affidavit	07/01/2017
7-203	Probable cause determination	12/31/2017	9-302	Order for release on recognizance by designee	07/01/2017
7-207	Bench warrants	04/17/2017	9-303	Order setting conditions of release	07/01/2017
7-207.1	Payment of fines, fees, and costs	04/17/2017	9-303A	Withdrawn	07/01/2017
7-208	Search warrants	12/31/2017	9-307	Notice of forfeiture and hearing	07/01/2017
7-304	Motions	12/31/2017	9-308	Order setting aside bond forfeiture	07/01/2017
7-401	Pretrial release	07/01/2017	9-309	Judgment of default on bond	07/01/2017
7-401.1	Property bond; unpaid surety	07/01/2017	9-310	Withdrawn	07/01/2017
7-401.2	Surety bonds; justification of compensated sureties	07/01/2017	9-513	Withdrawn	12/31/2017
7-403	Revocation or modification of release orders	07/01/2017	9-513A	Juror summons	12/31/2017
			9-513B	Juror qualification	12/31/2017

9-513C	Juror questionnaire	12/31/2017	13-2401	Legal malpractice; elements	12/31/2017
9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017	13-2402	Legal malpractice; attorney-client relationship	12/31/2017
9-701	Petition for writ of habeas corpus	12/31/2017	13-2403	Legal malpractice; negligence and standard of care	12/31/2017
9-702	Petition for writ of certiorari to the district court from denial of habeas corpus	12/31/2017	13-2404	Legal malpractice; breach of fiduciary duty	12/31/2017
9-809	Order of transfer to children's court	12/31/2017	13-2405	Duty of confidentiality; definition	12/31/2017
9-810	Motion to restore right to possess or receive a firearm or ammunition	12/31/2017	13-2406	Duty of loyalty; definition	12/31/2017
Children's Court Rules and Forms			13-2407	Legal malpractice; attorney duty to warn	12/31/2017
10-161	Designation of children's court judge	12/31/2017	13-2408	Legal malpractice; duty to third-party intended - No instruction drafted	12/31/2017
10-166	Public inspection and sealing of court records	03/31/2017	13-2409	Legal malpractice; duty to intended beneficiaries; wrongful death	12/31/2017
10-166	Public inspection and sealing of court records	12/31/2017	13-2410	Legal malpractice; expert testimony	12/31/2017
10-169	Criminal contempt	12/31/2017	13-2411	Rules of Professional Conduct	12/31/2017
10-325	Notice of child's advisement of right to attend hearing	12/31/2017	13-2412	Legal malpractice; attorney error in judgment	12/31/2017
10-325.1	Guardian ad litem notice of whether child will attend hearing	12/31/2017	13-2413	Legal malpractice; litigation not proof of malpractice	12/31/2017
10-570.1	Notice of guardian ad litem regarding child's attendance at hearing	12/31/2017	13-2414	Legal malpractice; measure of damages; general instruction	12/31/2017
10-611	Suggested questions for assessing qualifications of proposed court interpreter	12/31/2017	13-2415	Legal malpractice; collectability – No instruction drafted	12/31/2017
10-612	Request for court interpreter	12/31/2017	Uniform Jury Instructions – Criminal		
10-613	Cancellation of court interpreter	12/31/2017	14-240	Withdrawn	12/31/2017
10-614	Notice of non-availability of certified court interpreter or justice system interpreter	12/31/2017	14-240B	Homicide by vehicle; driving under the influence; essential elements	12/31/2017
Rules of Appellate Procedure			14-240C	Homicide by vehicle; reckless driving; essential elements	12/31/2017
12-202	Appeal as of right; how taken	12/31/2017	14-240D	Great bodily injury by vehicle; essential elements	12/31/2017
12-204	Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction	07/01/2017	14-251	Homicide; "proximate cause"; defined	12/31/2017
12-205	Release pending appeal in criminal matters	07/01/2017	14-1633	Possession of burglary tools; essential elements	12/31/2017
12-210	Calendar assignments for direct appeals	12/31/2017	14-2820	Aiding or abetting; accessory to crime of attempt	12/31/2017
12-307.2	Electronic service and filing of papers	07/01/2017	14-2821	Aiding or abetting; accessory to felony murder	12/31/2017
12-307.2	Electronic service and filing of papers	08/21/2017	14-2822	Aiding or abetting; accessory to crime other than attempt and felony murder	12/31/2017
12-313	Mediation	12/31/2017	14-4201	Money laundering; financial transaction to conceal or disguise property, OR to avoid reporting requirement; essential elements	12/31/2017
12-314	Public inspection and sealing of court records	03/31/2017	14-4202	Money laundering; financial transaction to further or commit another specified unlawful activity; essential elements	12/31/2017
12-502	Certiorari from the Supreme Court to the Court of Appeals	12/31/2017	14-4203	Money laundering; transporting instruments to conceal or disguise OR to avoid reporting requirement; essential elements	12/31/2017
Uniform Jury Instructions – Civil					
13-24 Appx 1	Part A: Sample fact pattern and jury instructions for malpractice of attorney in handling divorce case	12/31/2017			

Rule-Making Activity <http://nmsupremecourt.nmcourts.gov>

14-4204	Money laundering; making property available to another by financial transaction OR transporting; essential elements	12/31/2017	16-803	Reporting professional misconduct	12/31/2017
14-4205	Money laundering; definitions	12/31/2017		Rules Governing Discipline	
14-5130	Duress; nonhomicide crimes	12/31/2017	17-202	Registration of attorneys	07/01/2017
	Rules Governing Admission to the Bar		17-202	Registration of attorneys	12/31/2017
15-103	Qualifications	12/31/2017	17-301	Applicability of rules; application of Rules of Civil Procedure and Rules of Appellate Procedure; service	07/01/2017
15-104	Application	08/04/2017		Rules for Minimum Continuing Legal Education	
15-105	Application fees	08/04/2017	18-203	Accreditation; course approval; provider reporting	09/11/2017
15-301.1	Public employee limited license	08/01/2017		Code of Judicial Conduct	
15-301.2	Legal services provider limited law license	08/01/2017			
	Rules of Professional Conduct		21-004	Application	12/31/2017
16-100	Terminology	12/31/2017		Supreme Court General Rules	
16-101	Competence	12/31/2017	23-106	Supreme Court rules committees	12/31/2017
16-102	Scope of representation and allocation of authority between client and lawyer	08/01/2017	23-106.1	Supreme Court rule-making procedures	12/31/2017
16-106	Confidentiality of information	12/31/2017		Rules Governing the New Mexico Bar	
16-108	Conflict of interest; current clients; specific rules	12/31/2017	24-110	"Bridge the Gap: Transitioning into the Profession" program	12/31/2017
16-304	Fairness to opposing party and counsel	12/31/2017		Rules Governing Review of Judicial Standards Commission Proceedings	
16-305	Impartiality and decorum of the tribunal	12/31/2017	27-104	Filing and service	07/01/2017
16-402	Communications with persons represented by counsel	12/31/2017		Local Rules for the Thirteenth Judicial District Court	
16-403	Communications with unrepresented persons	12/31/2017	LR13-112	Courthouse security	12/31/2017
16-701	Communications concerning a lawyer's services	12/31/2017			

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

From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-030

No. S-1-SC-34839 (filed October 5, 2017)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

BENJAMIN DAVID BAROZ III,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

JERRY H. RITTER, JR., District Judge

HECTOR H. BALDERAS,
Attorney General
TONYA NOONAN HERRING, ASSIS-
TANT
Attorney General
Santa Fe, New Mexico
for Appellee

BENNETT J. BAUR,
Chief Public Defender
J. K. THEODOSIA JOHNSON,
Assistant Appellant Defender
Santa Fe, New Mexico
for Appellant

Opinion

Barbara J. Vigil, justice

I. INTRODUCTION

{1} A jury convicted Benjamin David Baroz III (Defendant)¹ of felony murder based on the predicate felony of shooting at or from a motor vehicle, two counts of aggravated assault with a deadly weapon, and possession of drug paraphernalia. The conviction of shooting at or from a motor vehicle was vacated on double jeopardy grounds. *See State v. Frazier*, 2007-NMSC-032, ¶ 1, 142 N.M. 120, 164 P.3d 1 (holding that the predicate felony is always subsumed into a felony murder conviction). Defendant appeals his convictions, arguing that he is entitled to a new trial because: (1) shooting at or from a motor vehicle cannot serve as a predicate felony for felony murder; (2) the evidence was insufficient to support a conviction of second-degree murder; (3) the district court erred in denying his request for a jury instruction on self-defense; (4) the one-year firearm enhancements on his sentences for aggravated assault with a deadly weapon violate double jeopardy; and (5) the State should not have been al-

lowed to impeach his trial testimony with a statement obtained in violation of his *Miranda* rights.

{2} We vacate Defendant's felony murder conviction and order that a conviction of second-degree murder be entered instead. We affirm the district court's holdings that (1) Defendant was not entitled to a self-defense instruction; (2) the imposition of a one-year firearm enhancement on an aggravated assault with a deadly weapon conviction does not violate double jeopardy; and (3) the statements Defendant made after invoking his right to remain silent were voluntary and could be used for impeachment.

II. BACKGROUND

{3} On August 30, 2011, in Alamogordo, New Mexico, Defendant's father drove his truck past Vangie Cordova's house, where she lived with her grandsons, Matthew Cordova and Daniel Cordova, with Defendant in the passenger seat. The truck passed the house at least once, went around the block, and came back again, very slowly, with the windows partially rolled down. Matthew Cordova, Daniel Cordova, and a friend were in the backyard. At that point, multiple shots were

fired from the passenger side window of the truck into the yard, hitting and ultimately killing Matthew Cordova (Victim). {4} The State presented the theory that Defendant fired the gun that killed Victim. Defendant claimed that his father was responsible, and that Defendant did not know that or intend for the shooting to occur. Additional facts are provided below as necessary for the analysis.

III. DISCUSSION

A. Felony Murder Conviction

{5} Defendant contends that shooting at or from a motor vehicle cannot serve as the underlying felony sustaining a felony murder conviction. *See* NMSA 1978, § 30-2-1(A)(2) (1994); NMSA 1978, § 30-3-8(B) (1993). We agree.

{6} We clarified in *State v. Marquez* that "shooting at or from a motor vehicle is an elevated form of aggravated battery, and thus cannot be used as a predicate for felony murder." 2016-NMSC-025, ¶ 23, 376 P.3d 815 (internal quotation marks and citations omitted). In *Marquez*, the defendant was convicted of first-degree felony murder predicated on the underlying felony of shooting at or from a motor vehicle. *Id.* ¶ 1. Like the defendant in *Marquez*, the underlying felony supporting Defendant's felony murder conviction was the felony of shooting at or from a motor vehicle. Thus, Defendant's use of a motor vehicle to commit the killing does not automatically elevate his crime of second-degree murder to first-degree murder. Because shooting at or from a motor vehicle cannot serve as the predicate to felony murder, we vacate Defendant's conviction of felony murder and order that a conviction of second-degree murder should be entered instead.

B. Sufficiency of the Evidence for a Second-Degree Murder Conviction

{7} Next, we address whether there was sufficient evidence presented at trial to support a conviction of second-degree murder. *See State v. Meadors*, 1995-NMSC-073, ¶¶ 1, 45, 121 N.M. 38, 908 P.2d 731 (upholding a defendant's conviction of a lesser included offense); *see also* § 30-2-1(B) (defining second-degree murder as a lesser included offense of first-degree murder). Defendant contends that the evidence presented at trial was insufficient to support a conviction of second-degree murder. Defendant argues that his father was the actual perpetrator of

¹While Defendant's full name is Benjamin David Baroz III, he was referred to as "David" during trial.

the killing and Defendant did not know that or intend for anyone to be killed that day.

{8} Although Defendant was not indicted for second-degree murder, he was on notice to defend against it because it is a lesser included offense of first-degree murder. See *State v. Hernandez*, 1999-NMCA-105, ¶¶ 25-28, 127 N.M. 769, 987 P.2d 1156 (determining whether an offense was a lesser included offense when a court considers a charge *sua sponte*). Second-degree murder is a lesser included offense of felony murder from a strict elements standpoint because a defendant cannot commit the greater charge without also committing the lesser: all of the elements necessary to prove second-degree murder are also necessary to prove felony murder. See *Hernandez*, 1999-NMCA-105, ¶ 25. Because Defendant was on notice to defend against second-degree murder based on the elements of the crime charged, we need not consider the pleadings or the evidence presented at trial. *Id.* ¶ 26 (“The test aims to avoid the inflexibility of the strict elements test while providing notice to the defendant of the crime against which he must defend.” (citation omitted)); see also *Meadors*, 1995-NMSC-073, ¶ 12 (listing additional factors for determining whether a crime is a lesser included offense). In this case, by convicting Defendant of felony murder, the jury convicted Defendant of each of the elements necessary to prove second-degree murder. {9} “The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Flores*, 2010-NMSC-002, ¶ 2, 147 N.M. 542, 226 P.3d 641 (internal quotation marks and citation omitted). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (internal quotation marks and citation omitted). “In reviewing whether there was sufficient evidence to support a conviction, we resolve all disputed facts in favor of the State, indulge all reasonable inferences in support of the verdict, and disregard all evidence and inferences to the contrary.” *Id.* (internal quotation marks and citation omitted). “The jury is free to reject [the d]efendant’s version of the facts.” *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citations omitted).

{10} To support a conviction of second-degree murder, the State had to prove

beyond a reasonable doubt that Defendant killed Victim and knew that his acts created a strong probability of death or great bodily harm to Victim or any other human being. See Section 30-3-8(B). At trial, the jury heard evidence that Defendant was in the passenger seat when his father drove past the Cordova residence. Daniel Cordova testified that he saw the “muzzle flash” from shots fired from the passenger side window of the truck. He also testified that, after the shots were fired, he saw his cousin, Victim, lying on the ground. Dr. Michelle Aurelius testified at trial that Victim died from the gunshot wound. Because Defendant was in the passenger seat and the shots were fired out of the passenger side window, a jury could reasonably conclude that Defendant was the shooter. Based on the testimony that the shots fired resulted in Victim’s death, we conclude there was sufficient evidence for a jury to find beyond a reasonable doubt that Defendant killed Victim.

{11} We now turn to Defendant’s *mens rea*. To be guilty of second-degree murder, Defendant must have had knowledge that his acts created a strong probability of death or great bodily harm. *State v. Ortega*, 1991-NMSC-084, ¶ 25, 112 N.M. 554, 817 P.2d 1196, *abrogated on other grounds as recognized by State v. Suazo*, 2017-NMSC-011, ¶ 23, 390 P.3d 674. Defendant testified that there were five or six people in the yard when he passed by in the truck. On cross-examination, Defendant admitted that he knew that shooting in the direction of a group of people in a residential area presented a danger to human life. If the jury determined that Defendant was the shooter, it would be reasonable to conclude that he “knew that his acts created a strong probability of death or great bodily harm to [Victim] or any other human being.” Accordingly, the evidence was sufficient to support a conviction of second-degree murder or felony murder. See *State v. Campos*, 1996-NMSC-043, ¶ 29, 122 N.M. 148, 921 P.2d 1266 (“[I]n order for the felony murder doctrine to apply to a defendant, the State must prove that the defendant acted with the *mens rea* for at least second-degree murder.”).

C. Self-Defense Instruction

{12} We next address whether the district court erred by refusing Defendant’s requested self-defense instruction for murder, felony murder, and the aggravated assaults. The district court denied the self-defense instruction, reasoning that “seeing someone approaching, even in an

angry manner, with an arm behind the back is insufficient as a matter of law to justify deadly force.” Defendant preserved this issue by requesting the self-defense instruction and presenting his argument concerning that instruction in the district court.

{13} “The propriety of denying a jury instruction is a mixed question of law and fact that we review *de novo*.” *State v. Gaines*, 2001-NMSC-036, ¶ 4, 131 N.M. 347, 36 P.3d 438. “When, as in this case, a challenge to the jury instructions has been preserved, we review for reversible error.” *State v. Ellis*, 2008-NMSC-032, ¶ 14, 144 N.M. 253, 186 P.3d 245. “Failure to instruct on self-defense when there is a sufficient quantum of proof to warrant it is reversible error.” *Gaines*, 2001-NMSC-036, ¶ 4. “We do not weigh the evidence but rather determine whether there is sufficient evidence to raise a reasonable doubt about self-defense.” *Id.*

{14} A defendant is only entitled to jury instructions on a self-defense theory if there is evidence presented to support every element of that theory. *State v. Gonzales*, 2007-NMSC-059, ¶ 19, 143 N.M. 25, 172 P.3d 162. “An instruction on self-defense requires evidence that (1) the defendant was put in fear by an apparent danger of immediate death or great bodily harm, (2) the killing resulted from that fear, and (3) the defendant acted reasonably when he or she killed.” *Id.* ¶ 20 (internal quotation marks and citation omitted). We have described the first two requirements as “subjective in that they focus on the perception of the defendant at the time of the incident.” *State v. Coffin*, 1999-NMSC-038, ¶ 15, 128 N.M. 192, 991 P.2d 477. In contrast, “the third requirement is objective in that it focuses on the hypothetical behavior of a reasonable person acting under the same circumstances as the defendant.” *Id.*

{15} Where there is “enough evidence to raise a reasonable doubt in the mind of a juror about whether the defendant lawfully acted in self-defense [such that] . . . reasonable minds could differ, the instruction should be given.” *State v. Rudolfo*, 2008-NMSC-036, ¶ 27, 144 N.M. 305, 187 P.3d 170 (citation omitted). “When considering a defendant’s requested instructions, we view the evidence in the light most favorable to the giving of the requested instruction[s].” *State v. Swick*, 2012-NMSC-018, ¶ 60, 279 P.3d 747 (alteration in original) (internal quotation marks and citation omitted). For

the reasons that follow, we conclude that Defendant did not act reasonably when he killed Victim and the district court did not err in refusing a self-defense instruction.

{16} Defendant argues that he was entitled to the self-defense instruction based on his testimony that when he and his father approached the Cordova residence in their truck, some people moved toward the truck with their hands behind their backs, leading Defendant to believe that they were armed and going to attack. Additionally, Defendant highlights Daniel Cordova's testimony that the friend in Cordova's yard always carried a gun and that Victim was behaving in a threatening manner.

{17} The circumstances of this case do not meet the standard of objective reasonableness necessary for a self-defense instruction. First, "the law of self-defense does not imply the right to attack, nor will it permit acts done in retaliation for revenge . . ." *State v. Pruett*, 1918-NMSC-062, ¶ 9, 24 N.M. 68, 172 P. 1044. Daniel Cordova testified that Defendant provoked the situation when Defendant and his father drove to the Cordova residence and shouted, "Southside!" Victim and others in the backyard then approached the truck. Because Defendant voluntarily entered into the situation, he cannot avail himself of the law of self-defense.

{18} Additionally, it was not reasonable for Defendant to have used deadly force. See *State v. Sutphin*, 2007-NMSC-045, ¶¶ 23-24, 142 N.M. 191, 164 P.3d 72 (holding that a self-defense instruction is not appropriate where the victim threatened the defendant with a pipe and the defendant responded by repeatedly striking the victim with the pipe even after the victim lost consciousness); *Gaines*, 2001-NMSC-036, ¶ 10 (concluding that a self-defense instruction was not warranted where the victim allegedly had a knife but dropped it "well before the altercation" with the defendant); *State v. Lopez*, 2000-NMSC-003, ¶¶ 24-26, 128 N.M. 410, 993 P.2d 727 (holding that a self-defense instruction was not warranted where the victim pulled a knife on the defendant during a fight and the defendant responded by stabbing the victim fifty-four times and crushing his skull); but see *State v. Parish*, 1994-NMSC-073, ¶¶ 2, 5, 118 N.M. 39, 878 P.2d 988 (concluding that a self-defense instruction was appropriate when the defendant was tackled and beaten by multiple assailants and ultimately ended the fight by pulling a gun and shooting and killing one of

them). While there was some violent history between Defendant and Victim, their fight occurred approximately a year before this shooting. Defendant did not claim that he saw any weapons, nor did he claim to know that anyone at the Cordova residence carried guns. Although Defendant claimed he saw Victim reach behind his back as if he were going to pull out a gun, Defendant did not testify to anything that would support an inference that anyone else had a gun. Defendant and his father had the additional benefit of being inside the truck, which would have offered protection if Victim had a gun, and provided the means for a swift escape if the situation had escalated.

{19} Where "the evidence is so slight as to be incapable of raising a reasonable doubt in the jury's mind on whether a defendant . . . did act in self-defense," the instruction should not be given. *Sutphin*, 2007-NMSC-045, ¶ 22 (omission in original) (internal quotation marks and citation omitted). Because we do not find evidence on which reasonable minds could differ as to the objective element of self-defense in Defendant's case, we conclude that the district court did not err in rejecting his self-defense instruction. We affirm on this issue.

D. Double Jeopardy and the Imposition of a One-Year Firearm Enhancement

{20} Defendant was sentenced to a term of eighteen months, followed by one year of parole, for each of his convictions of aggravated assault with a deadly weapon. See NMSA 1978, § 30-3-2(A) (1963). Pursuant to NMSA 1978, Section 31-18-16(A) (1993), the firearm enhancement statute, Defendant's sentences on these counts were each enhanced by one year. Defendant contends that the firearm enhancement violates double jeopardy because use of a firearm is an element of the underlying crime, aggravated assault with a deadly weapon. We disagree.

{21} The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution protects against multiple punishments for the same offense. *Witte v. United States*, 515 U.S. 389, 395-96 (1995). There are two variations of multiple-punishments cases: (1) unit of prosecution cases, in which an individual is convicted of multiple violations of the same criminal statute; and (2) double description cases, in which the same criminal act is punished under two distinct statutes. *Swafford v. State*, 1991-NMSC-043, ¶¶ 25, 30, 112 N.M. 3, 810 P.2d 1223. Defendant's argu-

ments, involving separate statutes, raise only double description concerns. The protection against multiple punishments is designed to ensure that sentencing discretion is confined to the limits established by the legislature. See *Garrett v. United States*, 471 U.S. 773, 793 (1985); *Ohio v. Johnson*, 467 U.S. 493, 499 (1984); *Brown v. Ohio*, 432 U.S. 161, 165 (1977).

{22} We employ a two-step inquiry to review double description claims. We first determine "whether the conduct underlying the offense is unitary, i.e., whether the same conduct violates both statutes." *Swafford*, 1991-NMSC-043, ¶ 25 (emphasis omitted). Only if the conduct is unitary do we proceed to the second step—to determine whether the legislature intended to create separately punishable offenses. *State v. Carrasco*, 1997-NMSC-047, ¶¶ 22-23, 124 N.M. 64, 946 P.2d 1075. If the statutes do not expressly provide for multiple punishments, we determine whether the legislature intended to authorize multiple punishments for the same offense by applying the rule of statutory construction commonly referred to as the "same elements test." See *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (articulating the test, which asks whether either provision requires proof of a fact which the other does not, to determine whether crimes are indeed separate and whether cumulative punishment may be imposed); see also *State v. Gonzales*, 1997-NMCA-039, ¶ 17, 123 N.M. 337, 940 P.2d 185 (using the term "same elements test").

{23} This case involves a unitary act because the act underlying the aggravated assault and the firearm enhancements, Defendant's firing a gun, was one and the same. Defendant was convicted of aggravated assault, which made him eligible for a sentencing enhancement. As such, we must determine whether the Legislature intended to create separately punishable offenses.

{24} Legislative intent is an issue of law that is reviewed de novo. *State v. Montoya*, 2013-NMSC-020, ¶ 29, 306 P.3d 426. The ultimate goal is to facilitate and promote the Legislature's purpose. *Id.*

{25} Section 31-18-16(A) provides that a sentence shall be increased by one year when a court or jury makes a separate finding of fact that a firearm was used in the commission of a noncapital felony. Section 31-18-16(A) thereby authorizes multiple punishments for the commission of a noncapital felony with a firearm.

{26} The United States Supreme Court held that where "a legislature specifically

authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct under *Blockburger*, a court[] . . . may impose cumulative punishment under such statutes in a single trial." *Missouri v. Hunter*, 459 U.S. 359, 368-69 (1983). In *Swafford*, this Court noted that "[s]tatutes directed toward protecting different social norms and achieving different policies can be viewed as separate and amenable to multiple punishments." 1991-NMSC-043, ¶ 32. "[U]nless unconstitutional, it is not the role of this Court to question the wisdom, policy or justness of legislation enacted by our [L]egislature." *State v. Maestas*, 2007-NMSC-001, ¶ 25, 140 N.M. 836, 149 P.3d 933.

{27} The legislative policy behind the firearm sentence enhancement is that a noncapital felony, committed with a firearm, should be subject to greater punishment than a noncapital felony committed without a firearm because it is more reprehensible.² The very nature of a firearm enhancement is to require the sentencing judge to increase or enhance the basic sentence that applies to the crime. By enacting the enhancement, the Legislature intended to authorize greater punishment for noncapital felonies committed with a firearm. We conclude the Legislature intended to authorize an enhanced punishment when a firearm is used in the commission of aggravated assault. The sentence enhancement does not run afoul of double jeopardy and thus, we affirm the district court's application of the sentence enhancement.

E. Statements Following Invocation of the Right to Remain Silent

{28} Finally, we turn our attention to whether Defendant's statements to the detectives, which followed his invocation of the right to remain silent, were involuntary so as to render improper their admission as impeachment evidence.

{29} Prior to trial, the parties agreed in a stipulated order that some of Defendant's statements provided to the police during an interview violated his right to remain silent, and were inadmissible. The detectives had continued to question Defendant after he invoked his *Miranda* rights. In its stipulated order, the district court also

found that the statements taken before Defendant exercised his right to remain silent were voluntary.

{30} At trial, Defendant requested that the district court determine whether his suppressed statements could be used by the State to impeach him if he testified at trial. Defendant objected to the use of the suppressed statements for impeachment purposes on the basis that they were involuntary. The district court found that the statements were voluntary and allowed the State to use them to impeach Defendant's testimony. The district court instructed the jury that the statements were to be used for the limited purpose of impeaching the witness's testimony at trial.

{31} On appeal, Defendant argues that the persistent questioning and alleged promises of leniency render his statements involuntary and inadmissible at trial for any purpose, including impeachment.

{32} In *Miranda v. Arizona*, the United States Supreme Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. 436, 444 (1966). Those procedural safeguards include warning a suspect of certain rights, and also require that "if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." *Id.* at 445.

{33} Five years later, in *Harris v. New York*, the United States Supreme Court clarified that while statements obtained in violation of *Miranda* would be inadmissible in the prosecution's case in chief, such statements could still be used to impeach a defendant's testimony at trial if their "trustworthiness . . . satisfie[d] legal standards." 401 U.S. 222, 224 (1971). "[T]o meet the standard of trustworthiness, the statements must have been given voluntarily." *State v. Omar-Muhammad*, 1987-NMSC-043, ¶ 26, 105 N.M. 788, 737 P.2d 1165.

{34} We review the voluntariness of confessions de novo. *State v. Evans*, 2009-NMSC-027, ¶ 32, 146 N.M. 319, 210 P.3d

216. "Voluntariness means freedom from official coercion." *State v. Sanders*, 2000-NMSC-032, ¶ 6, 129 N.M. 728, 13 P.3d 460 (internal quotation marks and citations omitted). Promises of leniency on the part of police can be coercive and may render a subsequent statement involuntary. See *Evans*, 2009-NMSC-027, ¶ 42 (noting that threats and promises by the police may rise to the level of coercion).

{35} Express promises of leniency "render[] a confession involuntary as a matter of law." *State v. Tindle*, 1986-NMCA-035, ¶ 25, 104 N.M. 195, 718 P.2d 705. "However, unlike an express promise of leniency, which can render a confession inadmissible as a matter of law, evidence of an implied promise is only [one] factor in the totality of the circumstances that courts consider in determining whether a confession is voluntary." *State v. Gutierrez*, 2011-NMSC-024, ¶ 25, 150 N.M. 232, 258 P.3d 1024 (emphasis added). Where the evidence does not clearly establish a promise of leniency, the question becomes one of an indirect or implied promise.

{36} In this case, we consider "whether the accused could reasonably have inferred a promise going to the punishment for the crime to be confessed." *State v. Munoz*, 1998-NMSC-048, ¶ 34, 126 N.M. 535, 972 P.2d 847 (internal quotation marks and citation omitted). The determination of the voluntariness of a statement "requires careful evaluation of all the circumstances of the interrogation." *Mincey v. Arizona*, 437 U.S. 385, 401 (1978); see also *Munoz*, 1998-NMSC-048, ¶ 24 ("Voluntariness is determined by the totality of the circumstances, not by a number of independent tests of voluntariness"). Importantly, "threats that merely highlight potential real consequences, or are 'adjurations to tell the truth,' are not characterized as impermissibly coercive." *Evans*, 2009-NMSC-027, ¶ 43 (citation omitted).

{37} "On a claim that police coerced a statement, the prosecution bears the burden of proving by a preponderance of the evidence that a defendant's statement was voluntary." *Id.* ¶ 34. "[W]e review the entire record and the circumstances under which the statement or confession was made in order to make an independent determination of whether a defendant's

²*State v. Gabaldon*, 1978-NMCA-101, ¶¶ 25, 28, 92 N.M. 230, 585 P.2d 1352, abrogation recognized on other grounds by *State v. Branch*, 2016-NMCA-071, ¶¶ 36-37, 387 P.3d 250, cert. granted, 2016-NMCERT-____ (No. S-1-SC-35951, July 28, 2016); see also *State v. Charlton*, 1992-NMCA-124, ¶ 26, 115 N.M. 35, 846 P.2d 341, abrogation recognized on other grounds by *State v. Branch*, 2016-NMCA-071, ¶¶ 36-37, 387 P.3d 250, cert. granted, 2016-NMCERT-____ (No. S-1-SC-35951, July 28, 2016).

confession was voluntary.” *State v. Fekete*, 1995-NMSC-049, ¶ 34, 120 N.M. 290, 901 P.2d 708. “[T]he preponderance of the evidence must establish that the confession was not ‘extracted from an accused through fear, coercion, hope of reward[,] or other improper inducements.’” *State v. Cooper*, 1997-NMSC-058, ¶ 30, 124 N.M. 277, 949 P.2d 660 (quoting *State v. Turnbow*, 1960-NMSC-081, ¶ 41, 67 N.M. 241, 354 P.2d 533).

{38} The district court found that Defendant clearly invoked his right to remain silent and repeatedly made clear that he did not want to speak with the detectives. The district court also found that the detectives continued to question Defendant; at times he did not respond, although at other times he provided factual responses.

{39} Defendant expressed his concern to the detectives that “no matter what I’m going to jail. It’s over for me. . . . It’s over for me no matter what.” In response, one of the detectives told Defendant that the:

investigation is not just gonna disappear. . . . [I]f [we] don’t get your side of the story, . . . it’s gonna continue on and it’s gonna go forward and we’re going to do what we have to do. But if [we] get your side of the story the end result could be different. The end result could be a lot different.

After more discussion, the detective told Defendant:

I’m not the judge. I’m not the prosecutor. But I do know that we work hand in hand; okay, the courts, the judges, the prosecutors, us, we all work hand in hand and 95 percent of the time we’re sitting there at the table when it goes to court. . . . And, like I said, David, about my report and my relationship with the judge and the prosecutor and everyone else, it will speak volumes for you; okay?

{40} When Defendant asked the detectives if they were “gonna help me out,” one detective responded, “what I can do is I’ll do my investigation and when I do my report, my report is gonna reflect . . . what they call your demeanor, how you’re acting, how you portray yourself[,] . . . and the truthfulness that you come forward with.” One of the detectives informed Defendant that he would report that Defendant lied, but was remorseful.

{41} Later in the interview, one of the detectives stated, “we need to give this young

man as much help as we can, get him into the programs [W]e need to get you into drug rehab, anger management for sure [W]e need to get [a] psychological evaluation; we need to get this young man some [help.]” Defendant told the detectives, “I just don’t want to be locked up.” One detective replied, “I understand that. But, you know, there’s some things I can’t stop[.]”

{42} Our review of these statements supports the district court’s finding that the detectives made implied promises of leniency to Defendant throughout the interview in exchange for his cooperation, but we conclude that under the totality of the circumstances, the statements were voluntary. The detectives’ statements were not express promises because they did not provide an unequivocal guarantee that Defendant would receive leniency if he gave a statement. And contrary to the State’s assertion, the detectives’ statements were not mere suggestions that Defendant could help himself by being cooperative. Rather, the detectives implied that they would act on Defendant’s behalf and help get his charges reduced.

{43} The detectives’ statements to Defendant gave rise to the understanding that, if he made a statement, the detectives had the ability to influence the individuals who would make the decision on a possible reduction in charges. Though courts have found acceptable mere offers to bring a defendant’s cooperation to the attention of the district attorney, see *Sanders*, 2000-NMSC-032, ¶ 10 (stating that “merely promising to bring a defendant’s cooperation to the attention of the prosecutor is not objectionable”), the detectives made more than a mere offer by stating, “the courts, the judges, the prosecutors, [and the detectives] all work hand in hand[,] and 95 percent of the time . . . sit[] . . . at the table when it goes to court.” These statements constituted a promise of leniency because they implied that, if Defendant confessed, the detectives were not only willing—based on their supposed desire to help Defendant—but also able to help, due to their “relationship” with the court, the judge, and the prosecutor. See *Munoz*, 1998-NMSC-048, ¶ 34; cf. *State v. Lobato*, 2006-NMCA-051, ¶ 18, 139 N.M. 431, 134 P.3d 122 (concluding that there is no implied promise of leniency where the officer told the defendant he would get treatment if he confessed, but did not tell the defendant he would receive treatment instead of prison time).

{44} We have noted, “[w]here the suggestion is that ‘it will be better,’ or that ‘it will be to your best interests’ to tell the

truth, . . . the accused may have inferred some promise going to the punishment for the crime[.]” *State v. Wickman*, 1935-NMSC-035, ¶ 31, 39 N.M. 198, 43 P.2d 933. The detectives made statements to that effect. Based on these statements, Defendant could have inferred that the detectives were making a promise of leniency. See *Munoz*, 1998-NMSC-048, ¶ 34.

{45} However, an implied promise does not by itself render Defendant’s statements involuntary. Rather, it is but one factor in the voluntariness analysis. We next consider the other factors of voluntariness in this case to determine if Defendant’s statements were involuntary. See *Gutierrez*, 2011-NMSC-024, ¶ 25 (stating that “evidence of an implied promise is only a factor in the totality of the circumstances that courts consider in determining whether a confession is voluntary”).

{46} The State correctly distinguishes Defendant’s case from a case involving a similar issue with more extreme facts. *Mincey*, 437 U.S. at 398-401. In *Mincey*, the interrogating officers persisted in questioning a defendant who was injured, hospitalized, in pain, and coming in and out of consciousness. *Id.* In that case, the United States Supreme Court held that “Mincey’s statements were *not* the product of his free and rational choice. To the contrary, the undisputed evidence makes clear that Mincey wanted not to answer[.]” *Id.* at 401 (emphasis in original) (internal quotation marks and citation omitted). Unlike the defendant in *Mincey*, Defendant appeared to be in good health and was not suffering, aside from his complaints about being tired. Therefore, the conduct of the detectives cannot accurately be characterized as overcoming Defendant’s free will.

{47} While Defendant repeatedly expressed his desire to end the conversation, speak to an attorney, and stated that he was too tired to talk, the detectives were not otherwise abusive or threatening so as to render their conduct coercive. Further, the detectives qualified the implied promises with clear statements to the effect that they could not prevent Defendant from getting “locked up.”

{48} While the detectives’ implied promises of leniency and the Defendant’s sleepiness weigh in favor of an involuntary confession, we agree with the district court that based on the totality of the circumstances they were insufficient to render Defendant’s will overborne. See *State v. Barr*, 2009-NMSC-024, ¶ 24, 146 N.M. 301, 210 P.3d 198 (stating that “[a] con-

fession is coerced when the [d]efendant's will [is] overborne and his capacity for self-determination [is] critically impaired" (internal quotation marks and citation omitted)), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37, 275 P.3d 110. We conclude that any implied promises did not overwhelm Defendant's will or impair his capacity for self-determination such that his statements were involuntary.

{49} We therefore affirm the district court's order that the State met its burden of showing by a preponderance of the evidence that Defendant's statements were voluntary, and the statements were admissible for impeachment purposes.

IV. CONCLUSION

{50} We vacate Defendant's conviction of felony murder and order that a conviction of second-degree murder be entered instead. We reject Defendant's remaining claims of error and affirm the district court with respect to Defendant's remaining claims.

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

BARBARA J. VIGIL, Justice

WE CONCUR:

PETRA JIMENEZ MAES, Justice

EDWARD L. CHÁVEZ, Justice

CHARLES W. DANIELS, Justice

JUDITH K. NAKAMURA,

Chief Justice, specially concurring

NAKAMURA, J. (specially concurring).

{52} The majority concludes that Defendant's felony-murder conviction must be vacated because "shooting at or from a motor vehicle cannot serve as the predicate to felony murder . . ." *Maj. Op.* ¶ 6 (citing *Marquez*, 2016-NMSC-025). I accept that the majority is applying the law as stated in *Marquez*. Yet I continue to believe that the predicate felony issue in *Marquez* should have been decided differently and that shooting at or from a motor vehicle *may* serve as a predicate felony for felony murder. The reasoning underlying this conclusion is set out in my dissenting opinion in *Marquez* and need not be restated here. 2016-NMSC-025, ¶¶ 62-81. I note only that the majority in the present case illuminates additional support for my dissenting opinion in *Marquez*.

{53} According to the majority, the fact that Defendant shot at Victim from a motor vehicle is significant. The motor vehicle provided Defendant protection from a counterattack and served as the means for escape. *Maj. Op.* ¶ 18. I agree with this assessment and the conclusion that flows inevitably from it: When a defendant uses a vehicle to perpetrate a shooting, that act is different in kind and

degree from a shooting perpetrated by a defendant who is stationary or walking rather than traveling by car or using other transport. Accordingly, we may infer that our Legislature did not intend to prohibit shooting at or from a motor vehicle from being used as a predicate offense for felony murder but intended to authorize separate application of each criminal statute. See *Marquez*, 2016-NMSC-025, ¶ 19 ("Our case law requires us to 'look, not to the nature of the act, but rather to whether the legislature intended that a particular felony should be able to serve as a predicate to felony murder.' " (emphasis omitted) (quoting *Campos v. Bravo*, 2007-NMSC-021, ¶ 14, 141 N.M. 801, 161 P.3d 846)).

{54} I agree with the majority's conclusion that the evidence was sufficient to support second-degree murder, even though this conclusion operates from the premise that Defendant's felony-murder conviction cannot stand. I concur with the remaining sections of the majority's opinion and the conclusions there reached.

JUDITH K. NAKAMURA,
Chief Justice

Certiorari Denied, August 31, 2017, No. S-1-SC-36586

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-073

No. A-1-CA-34680 (filed June 29, 2017)

STEVEN BEST,
Petitioner-Appellee,
v.
CAMILLE A. MARINO,
Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

DARREN M. KUGLER, DISTRICT JUDGE

JEROLD FRIEDMAN
Law Office of Jerold D. Friedman
Cypress, TX

L. HELEN BENNETT
L. Helen Bennett PC
Albuquerque, New Mexico
for Appellee

BENNETT J. BAUR, CHIEF PUBLIC
DEFENDER
J.K. THEODOSIA JOHNSON,
ASSISTANT APPELLATE DEFENDER
Santa Fe, New Mexico
for Appellant

Opinion

James J. Wechsler, Judge

{1} This appeal arises from a finding of indirect criminal contempt against Respondent Camille Marino for her violation of an order of protection (Order of Protection) issued pursuant to the Family Violence Protection Act (FVPA), NMSA 1978, §§ 40-13-1 through -12 (1987, as amended through 2016). In addition to 179 days incarceration, the district court imposed an almost complete restriction on Respondent's ability to access the Internet.¹

{2} Respondent first argues that the Order of Protection is invalid and should be vacated by this Court. She bases this argument on her claim that Petitioner Steven Best did not allege or prove the elements of "stalking" when he obtained the Order of Protec-

tion in October 2012. Petitioner argues that Respondent's argument is an impermissible collateral attack on the Order of Protection and, as a result, this Court should dismiss Respondent's appeal. Although we agree that Respondent's argument is subject to the collateral bar rule, we decline to dismiss the appeal outright in light of other potentially meritorious issues raised by Respondent. Respondent additionally argues without development that the district court lacked subject matter jurisdiction over this action. This argument lacks merit.

{3} Respondent next argues that the restrictions imposed by the Order of Protection violated her First Amendment right to free speech by treating her online activity²—which inarguably is speech—as sanctionable conduct. We disagree.³ As discussed at length herein, the Order of Protection imposes certain restraints on

Respondent that could not be imposed on a non-restrained person. As such, the appropriate question on appeal is not whether the government can generally restrict the speech at issue in this case, but whether the district court can restrict Respondent from engaging in such speech. We conclude that it can.

{4} In a related argument, Respondent argues that the district court's finding of contempt resulted from a due process violation because the Order of Protection failed to provide sufficient notice that her online activity would be considered "contact" constituting a violation. The district court did not, however, conclude that Respondent "contacted" Petitioner in violation of the Order of Protection. It concluded that Respondent's "harassment of Petitioner" caused "emotional distress." The Order of Protection restrained Respondent from committing "acts of abuse" and defined "abuse" to include "any incident . . . resulting in . . . severe emotional distress[.]" The appropriate question on appeal, therefore, is not whether Respondent's online activity was "contact," but whether Respondent reasonably should have known that her online activity would cause Petitioner to suffer severe emotional distress. We answer this question in the affirmative.

{5} Finally, Respondent argues that the district court's restriction of her ability to access the Internet is overbroad and violates the First Amendment. We agree. We therefore affirm Respondent's term of incarceration but reverse the restriction on her ability to access the Internet.

BACKGROUND

{6} Petitioner is a philosophy professor at the University of Texas at El Paso (UTEP) and resides in Anthony, New Mexico. Respondent resides in Wildwood, Florida. Petitioner and Respondent became acquainted through their work in the animal rights movement and maintained a platonic friendship for several years until that friendship deteriorated in August 2012.

¹The district court's order allowed Respondent to access the Internet to contact her attorney and her accountant. All other access was prohibited.

²Throughout this opinion we use the phrase "online activity" to describe Respondent's posting of statements and photographs related to Petitioner on (1) Respondent's own website; (2) Respondent's own Facebook and other social media pages; and (3) third-party controlled Facebook and other social media pages. Our use of the phrase "online activity" does not include email messages sent directly by Respondent to Petitioner, which we consider separately.

³Substantial evidence supports a finding that Respondent violated the Order of Protection by directly contacting Petitioner by telephone, email, and postal service. See *State v. Smith*, 2016-NMSC-007, ¶ 19, 367 P.3d 420 ("Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (internal quotation marks and citation omitted)). Although we could simply affirm the district court's contempt finding under the right-for-any-reason doctrine, we instead elect to address the questions that arise from its finding that Respondent's online activity constituted a violation of the Order of Protection.

{7} On October 15, 2012, Petitioner filed a petition requesting protection from acts of domestic abuse perpetrated by Respondent. His petition alleged that Respondent (1) sent threatening email messages, (2) made threatening telephone calls, (3) left threatening voice messages, and (4) posted slanderous and derogatory statements about Petitioner on her website and Facebook page.

{8} On October 26, 2012, a domestic violence special commissioner (the special commissioner) held a hearing (October 2012 hearing) on Petitioner's claims. The special commissioner found that Respondent was a "stalker" and recommended that the district court enter an order of protection. Respondent did not file any objections to the special commissioner's findings or recommendations.

{9} The district court reviewed and adopted the special commissioner's findings and recommendations and entered an Order of Protection using Form 4-965 NMRA, which articulated the terms of the order of protection. The Order of Protection restrained Respondent from "committing further acts of abuse or threats of abuse" and "any contact" with Petitioner and defined "abuse" as:

[A]ny incident by one party against the other party or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) threat by . . . Respondent causing imminent fear of bodily injury to the other party or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by Petitioner's . . . residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

In light of the specific conduct alleged, the district court modified the definition of "contact" on Form 4-965. As a result, the Order of Protection stated that Respondent "shall not telephone, talk to, visit or contact [Petitioner] in any way . . . including social media[.]"

On July 1, 2014, Petitioner filed an affidavit of violation, in which he alleged:

Since the filing of th[e O]rder [of Protection], the Respondent has used social media to harass the Petitioner. She has caused severe emotional distress. The Respondent has used her websites, social media (including [F]acebook, [T]witter, [P]interest), and blogging to carry out revenge styled postings, including numerous damaging pictures of [Petitioner] and making outrageous/false accusations against him. These posts are intended to harm [Petitioner's] career, charitable causes, and personal life. This has occurred on numerous dates between the issuance of the [O]rder of [P]rotection and the date of this filing[.]

{10} This affidavit triggered a hearing before the special commissioner. Petitioner introduced sixteen exhibits—consisting of screen captures of Respondent's website and Facebook page—purported to represent merely a fraction of Respondent's online activity since October 2012. Petitioner also introduced an email message sent directly from Respondent to Petitioner on November 8, 2012. The special commissioner found that Respondent violated the Order of Protection by "contacting [Petitioner], by using social media to harass him, by using social media to stalk him, and by using social media to cause severe emotional distress." As a result of these findings, the special commissioner recommended sanctions and certified the matter to the district court for a criminal contempt hearing.

{11} Respondent filed objections to the special commissioner's recommendations. The district court scheduled a hearing to resolve Respondent's objections, which the district court stated was a "hearing de novo" on the special commissioner's recommendations.

{12} Both parties testified, and Petitioner introduced twenty-eight exhibits—again consisting of screen captures of Respondent's online activity. Petitioner also introduced three email messages sent directly from Respondent to Petitioner on Novem-

ber 4, 2012 and November 8, 2012. In these exhibits, Respondent referred to Petitioner as (1) "the grand high exalted drug-addicted hypocrite," (2) "a drug-addled imbecile," (3) "a sexist, racist woman beater," and (4) "UTEP junkie professor." One exhibit threatened to "hold [Petitioner] accountable" and to make him "pay dearly." Other exhibits threatened to "expose" and to "neutralize" Petitioner. Still others contained song lyrics with obliquely violent imagery. Many of the exhibits included photographs of Petitioner snorting prescription drugs (drug photos). Petitioner also testified that: (1) Respondent continued to directly contact Petitioner by telephone and email after the entry of the Order of Protection; (2) Respondent mailed a package containing written materials to Petitioner's home address after the entry of the Order of Protection; and (3) Petitioner's girlfriend received two telephone calls from an unknown individual alleging that the caller was driving through Anthony, New Mexico with the intent to kill Petitioner and his cats.

{13} Inexplicably, the district court did not discuss the possibility that Respondent's direct contact of Petitioner—by telephone, postal service, and email—constituted a violation of the Order of Protection. Instead, it focused its ruling expressly on exhibits related to Respondent's online activity. In its oral ruling, the district court cited specific exhibits that it found to violate the Order of Protection. Its second amended order memorialized its oral ruling and referred to Respondent's use of "social media and the [I]nternet to engage in a sustained pattern of stalking and harassment of Petitioner[.] including . . . emotional distress to Petitioner." It sentenced Respondent to 179 days incarceration with credit for time served. It also ordered that Respondent "shall not use the [I]nternet or any social media for any purpose other than contacting her attorney or accountant." (Emphasis omitted.) This appeal resulted.

{14} On June 13, 2016, Respondent filed a request for this Court to designate the state of New Mexico as the real party in interest. This request was denied.⁴

COLLATERAL ATTACK

{15} Respondent's first argument on appeal is that the Order of Protection is in-

⁴ Although we acknowledge the potential merits of Respondent's argument, Respondent failed to preserve the issue at trial, and we decline to review the question for the first time on appeal. See Rule 1-093(D)(2) NMRA ("The court shall appoint the district court to prosecute the criminal contempt for the state."); *State v. Frazier*, 1973-NMCA-127, ¶ 7, 85 N.M. 545, 514 P.2d 302 (holding that alleged errors that are neither jurisdictional nor fundamental may not be raised for the first time on appeal).

valid and should be vacated by this Court because Petitioner did not allege or prove the elements of “stalking” when he obtained the Order of Protection in October 2012. Petitioner claims that Respondent is not now permitted to attack the validity of the Order of Protection after a finding of contempt. We agree with Petitioner.

{16} This issue was addressed in *State v. Bailey*, in which the defendant defied an injunctive order that required him to obtain a driver’s license and registration prior to operating his vehicle. 1994-NMCA-107, ¶ 3, 118 N.M. 466, 882 P.2d 57. After the defendant refused to comply with the injunction, the district court found him in contempt. *Id.* On appeal, this Court held that the district court lacked authority to issue the injunction but upheld the finding of contempt. *Id.* ¶¶ 6, 11. We based our holding on the “collateral bar rule,” which precludes litigants “from challenging [a] contempt citation by a collateral attack on the injunction.” *Id.* ¶ 11. We additionally noted that “[t]he method of correcting error is by appeal, and not by disobedience.” *Id.* (internal quotation marks and citation omitted).

{17} Respondent claims that, during the October 2012 hearing, Petitioner failed to prove that Respondent’s actions constituted “stalking” as provided in Section 40-13-2(D)(1) and that Petitioner’s principal concern was for his reputation rather than his physical safety. Section 40-13-2(D)(1) limits acts of “domestic abuse” by non-household members to “stalking” and “sexual assault.” Petitioner did not allege that he was a victim of sexual assault. As such, to justify restraint under the FVPA, Petitioner’s burden at the October 2012 hearing was to prove that Respondent’s conduct constituted “stalking.”

{18} The special commissioner expressly found Respondent to be a “stalker.” Rule 1-053.1 NMRA provided Respondent with an opportunity to challenge the special commissioner’s findings, including whether sufficient evidence supported the special commissioner’s finding that Respondent was a “stalker,” before the district court adopted the special commissioner’s recommendations and entered the Order of Protection. See Rule 1.053.1(H)(1)(b) (“If the party files timely, specific objections to the recommendations, the [district] court shall conduct a hearing appropriate and sufficient to resolve the objections.”). Respondent did not file objections to the special commissioner’s recommendations. In the absence of objections from

Respondent, the district court adopted the special commissioner’s recommendations and entered the Order of Protection. The collateral bar rule precludes a restrained party from challenging the merits of an injunction after a finding of contempt. Respondent’s argument presents such a challenge and is, therefore, precluded.

SUBJECT MATTER JURISDICTION

{19} In an associated claim, brought pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, Respondent argues that the district court lacked subject matter jurisdiction over this action. The issue of subject matter jurisdiction may be raised at any time, including for the first time on appeal. *Lasley v. Baca*, 1981-NMSC-041, ¶ 13, 95 N.M. 791, 626 P.2d 1288. We review questions of subject matter jurisdiction de novo. *Murken v. Solv-Ex Corp.*, 2006-NMCA-064, ¶ 8, 139 N.M. 625, 136 P.3d 1035.

{20} “[D]istrict courts are courts of general jurisdiction having the power to hear all matters not excepted by the constitution and those matters conferred by law.” *State ex rel. Foy v. Austin Capital Mgmt.*, 2015-NMSC-025, ¶ 7, 355 P.3d 1 (internal quotation marks and citation omitted). “The only relevant inquiry in determining whether the court has subject matter jurisdiction is to ask whether th[e] kind of claim . . . advance[d] falls within the general scope of authority conferred upon such court by the constitution or statute.” *Gonzales v. Surgidev Corp.*, 1995-NMSC-036, ¶ 12, 120 N.M. 133, 899 P.2d 576 (internal quotation marks and citation omitted).

{21} Petitioner alleged that he was a victim of domestic abuse and that Respondent perpetrated that abuse. Section 40-13-3(A) confers jurisdiction to the district court in the judicial district in which an alleged victim of domestic abuse lives. Respondent does not contest either of these points on appeal. As a result, the district court had subject matter jurisdiction over this action.

FREE SPEECH RIGHTS OF RESTRAINED PERSONS

{22} Respondent next argues that her online activity is protected speech and is, therefore, not sanctionable. As indicated above, we address this argument by considering whether the state is permitted to sanction Respondent’s online activity given the limitations placed on her First Amendment rights by the Order of Protec-

tion. “Whether a statement is privileged under the First Amendment presents a question of law for the court to determine.” *Kimbrell v. Kimbrell*, 2013-NMCA-070, ¶ 32, 306 P.3d 495 (alteration, internal quotation marks, and citation omitted), *rev’d on other grounds*, 2014-NMSC-027, 331 P.3d 915. We review questions of constitutional law de novo. *Morris v. Brandenburg*, 2015-NMCA-100, ¶ 26, 356 P.3d 564, *aff’d* 2016-NMSC-027, 376 P.3d 836.

{23} The First Amendment to the United States Constitution prohibits the government from enacting laws “abridging the freedom of speech.” *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 22, 309 P.3d 53. That said, neither the United States nor the New Mexico Constitution provides an absolute right to free speech. See *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012) (holding that certain categories of speech, including “advocacy intended, and likely, to incite imminent lawless action; obscenity; defamation; speech integral to criminal conduct; so-called ‘fighting words’; child pornography; fraud; true threats; and speech presenting some grave and imminent threat the government has the power to prevent” are not protected by the First Amendment (citations omitted)); *City of Albuquerque v. Pangaea Cinema LLC*, 2012-NMCA-075, ¶ 24, 284 P.3d 1090 (holding that “First Amendment rights are not immune from governmental regulation” (internal quotation marks and citation omitted)), *rev’d sub nom. on other grounds by State, City of Albuquerque v. Pangaea Cinema LLC*, 2013-NMSC-044, 301 P.3d 604; *City of Farmington v. Fawcett*, 1992-NMCA-075, ¶¶ 8-10, 114 N.M. 537, 843 P.2d 839 (holding that (1) Article II, Section 17 of the New Mexico Constitution does not provide an “absolute right” to free speech, and (2) “the state may constitutionally regulate . . . speech”).

{24} The state has broad power to limit a person’s liberty interests based on that person’s prior conduct. See *Black’s Law Dictionary* 935 (10th ed. 2014) (defining “liberty interest” as “[a]n interest protected by the due-process clauses of state and federal constitutions”). Under the most extreme circumstances, the state may incarcerate a person for the remainder of the person’s natural life. See NMSA 1978, § 31-18-14 (2009) (“When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole.”). The state may restrict a convicted felon’s right to vote or to possess

a firearm. See NMSA 1978, § 31-13-1(A) (2005) (“A person who has been convicted of a felony shall not be permitted to vote in any . . . election held pursuant to the provisions of the Election Code[.]”); NMSA 1978, § 30-7-16(A) (2001) (“It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state.”). It may also restrict the movements of convicted sex offenders within the state. See NMSA 1978, § 29-11A-4(B), (F) (2013) (requiring convicted sex offenders to register each and any new physical address with the county sheriff). The rationale underlying such statutes is that the public interest is served by limiting a convicted felon’s ability to engage in certain activity—even though that limitation burdens the exercise of the person’s inherent rights.⁵ See, e.g., *Lewis v. United States*, 445 U.S. 55, 61 (1980) (stating that Congress’s intent in prohibiting the possession of firearms by felons was directly related to “the problem of firearm abuse by felons”); see also *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9, 358 P.3d 249 (holding that “the right to vote is fundamental”); *Griego v. Oliver*, 2014-NMSC-003, ¶ 1, 316 P.3d 865 (describing “the right to bear arms, freedom of speech, [and] freedom of the press” as “inherent rights, enjoyed by all New Mexicans”).

{25} Orders of protection are essentially justified by the same rationale. The purpose of an order of protection is to prevent future harm to a protected party by a restrained party. See *United States v. Or. State Med. Soc.*, 343 U.S. 326, 333 (1952) (“The sole function of an action for injunction is to forestall future violations.”); Section 40-13-5(A)(7) (providing that the district court may order “injunctive relief as [it] deems necessary for the protection of a party”). To achieve this result, it is constitutionally permissible to limit a restrained party’s ability to engage in certain activity—including the exercise of his or her right to free speech.

{26} The Order of Protection limited Respondent’s right to speak and publish freely only inasmuch as it restrained her from (1) directly contacting Petitioner, and (2) causing Petitioner to suffer severe emotional distress. See § 40-13-5(A) (authorizing the district court to enjoin a restrained party from abusing a protected

party); Form 4-965 (prohibiting a restrained party from contacting a protected party and/or from “committing further acts of abuse[.]” and defining “[a]buse” as “any incident . . . resulting in . . . severe emotional distress”). Placing such limitations on Respondent—as the restrained party under the Order of Protection—is not an unconstitutional limitation on her First Amendment rights.

{27} Respondent argues, by citing to *Kimbrell*, 2013-NMCA-070, that a district court must affirmatively find that speech alleged to violate an injunctive order actually constitutes “a true threat or similar unprotected speech” prior to imposing any type of sanction. Respondent’s interpretation of *Kimbrell* is not persuasive in the present case.

{28} *Kimbrell* arose from a highly contentious custody dispute, in which the father filed numerous motions to remove, and at least one disciplinary complaint against, the guardian ad litem (the GAL). *Id.* ¶ 2. In response to his fifth motion to remove the GAL, the district court ordered the father to “refrain from filing any complaint, motion, or other ‘device’ pertaining to the GAL without leave of the court.” *Id.* ¶ 4.

{29} The father in *Kimbrell* sought leave to file another disciplinary complaint against the GAL. *Id.* ¶ 5. The district court instead entered a preliminary injunction that reprimanded the father for “improper” behavior and enjoined him “from communicating with the media, the Department of Justice, or the [c]hildren’s biological parents regarding his complaints about the GAL.” *Id.* The father then formed an organization called “Stop Court Abuse of Children” (SCAC), through which he filed another disciplinary complaint against the GAL without the leave of the district court. *Id.* He also published the newly-filed disciplinary complaint and other related materials (collectively, the materials) on SCAC’s website. *Id.*

{30} The GAL in *Kimbrell* requested that the district court issue a permanent injunction requiring the father to remove the materials from the Internet. *Id.* ¶ 6. At the hearing on this request, the GAL argued that the materials were defamatory. *Id.* The father argued that the requested

injunction would violate the First Amendment. *Id.*

{31} The district court ordered the father to remove the materials but did not determine that the materials were defamatory at trial or in its order. *Id.* ¶¶ 7, 43. Instead, the district court ruled that publication of the materials on the Internet “harass[ed] and intimidate[d] the GAL in the exercise of her duties.” *Id.* ¶ 43 (alteration and internal quotation marks omitted). This Court reversed, stating that “freedom of speech can only be limited where the speech is not protected” and holding that the district court’s order failed to “address[] or establish[] the existence of the requisite elements of defamation[.]” *Id.* ¶¶ 44, 45.

{32} Our reading of *Kimbrell* indicates that the issue on appeal in *Kimbrell* arose not from a violation of the preliminary injunction, but from the GAL’s request that the district court require the father to remove allegedly defamatory materials from the Internet. As such, *Kimbrell* is distinguishable because, unlike the present case, the materials—or speech—at issue were not previously subject to an injunctive order.

{33} The district court in this case found Respondent to be a “stalker” in October 2012. Respondent did not appeal or otherwise contest this finding prior to the date on which Petitioner filed his affidavit of violation. Because she is a “stalker,” Respondent is subject to the restraints imposed by the FVPA and the Order of Protection. Those restraints included valid limitations on her First Amendment rights.

{34} The district court, therefore, was not required to find that Respondent’s online activity constituted defamation or harassment or stalking or some otherwise unprotected speech. Instead, it needed only to conclude that Respondent’s online activity violated the Order of Protection by causing Petitioner to suffer severe emotional distress. Similarly, on appeal, we need not determine whether Respondent’s online activity constituted unprotected speech, but instead we need only determine whether sufficient evidence supports a finding that Respondent’s online activity caused Petitioner to suffer severe emotional distress.⁶

⁵Although Respondent was not convicted of “stalking,” we conclude that the district court’s finding is analogous to a conviction for the purposes of this opinion.

SUFFICIENCY OF THE EVIDENCE

{35} “Sufficient evidence, in a criminal contempt proceeding, is proof beyond a reasonable doubt.” *In re Stout*, 1984-NMCA-131, ¶ 11, 102 N.M. 159, 692 P.2d 545. A “reasonable doubt” is one “that would make a reasonable person hesitate to act in the graver and more important affairs in life.” UJI 14-5060 NMRA. We review the evidence in contempt proceedings “in the light most favorable to the verdict.” *State v. Cherryhomes*, 1992-NMCA-111, ¶ 9, 114 N.M. 495, 840 P.2d 1261.

{36} As described above, Petitioner introduced numerous exhibits that demonstrated the content of Respondent’s online activity. Of these exhibits, the district court emphasized that those containing the drug photos and referring to Petitioner as “a junkie” violated the Order of Protection. Its second amended order found that Respondent “used social media and the [I]nternet to engage in a sustained pattern of stalking and harassment of Petitioner[,] including . . . emotional distress.” It is the emotional distress portion of the district court’s finding that we consider in this opinion.

{37} No New Mexico appellate court has interpreted the meaning of “severe emotional distress” as that phrase is used in the FVPA. Its meaning, therefore, presents a question of statutory interpretation, which we review de novo. *State v. Powels*, 2003-NMCA-090, ¶ 3, 134 N.M. 118, 73 P.3d 256.

{38} When a statute leaves a word or phrase undefined, “[t]he words . . . should be given their ordinary meaning absent clear and express legislative intention to the contrary.” *State v. Ogden*, 1994-NMSC-029, ¶ 24, 118 N.M. 234, 880 P.2d 845. “We give words their ordinary meaning, and if the statute is clear and unambiguous, we refrain from further statutory interpretation.” *Moongate Water Co. v. City of Las Cruces*, 2013-NMSC-018, ¶ 6, 302 P.3d 405 (internal quotation marks and citation omitted). Appellate courts often refer to dictionary definitions to ascertain the ordinary meaning of statutory language. See

State v. Nick R., 2009-NMSC-050, ¶ 18, 147 N.M. 182, 218 P.3d 868 (using dictionary definition in statutory interpretation).

{39} *Webster’s Dictionary* defines “severe” as “of a great degree or an undesirable or harmful extent.” *Webster’s Third New Int’l Dictionary* 2081 (3rd ed. 1993). It defines “emotion” as “the affective aspect of consciousness” and “emotional” as “relating to emotion[.]” *Id.* at 742. Finally, it defines “distress” as “anguish of body or mind” and “a painful situation[.]” *Id.* at 660.

{40} These definitions clarify that “severe emotional distress” is characterized by great harm to a person’s mental health and well-being. This conclusion is consistent with our Supreme Court’s declaration—also in the context of an intentional tort—that “severe emotional distress” is that which “a reasonable person, normally constituted, would be unable to cope adequately with the mental distress engendered by the circumstances.” *Trujillo v. N. Rio Arriba Elec. Coop., Inc.*, 2002-NMSC-004, ¶ 28, 131 N.M. 607, 41 P.3d 333 (internal quotation marks and citation omitted). Considering the context in which the FVPA uses the phrase “severe emotional distress,” we conclude that it unambiguously describes the prohibited conduct. See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to . . . the specific context in which that language is used[.]”).

{41} The evidence demonstrated Respondent’s widespread publication of the drug photos on the Internet. The drug photos were often accompanied by statements claiming that Petitioner was a “junkie,” a “drug-addled imbecile,” and a “drug-addicted hypocrite.” Petitioner testified to the impact of Respondent’s online activity on his emotional well-being, stating that he (1) felt like “a person ha[d] . . . hijacked [his] life,” (2) “go[es] to bed at night wondering what’s coming next,” (3) “had nightmares,” and (4) “talked about suicide.” Viewing the evidence in the light most favorable to the verdict, sufficient evidence supports a finding that Respondent’s online activity resulted in severe emotional

distress, characterized by great harm to Petitioner’s mental health and well-being. {42} We note that the district court found that Petitioner suffered emotional distress without explicitly finding that the emotional distress was severe.⁷ On appeal, however, “there is a presumption of correctness in the rulings and decisions of the trial court and the party claiming error must clearly show error.” *State v. Carlos A.*, 1996-NMCA-082, ¶ 8, 122 N.M. 241, 923 P.2d 608. The district court concluded that Respondent violated the Order of Protection, which required the level of severe emotional distress. Respondent does not find fault with the language of the finding on appeal. The district court’s finding was sufficient under the circumstances.

{43} The Order of Protection validly limited Respondent’s First Amendment rights. Because Respondent’s online activity violated the Order of Protection, she was subject to sanction by the district court.

**NOTICE OF CONDUCT
CONSTITUTING A VIOLATION OF
THE ORDER OF PROTECTION**

{44} Respondent next argues that the district court’s finding of contempt resulted from a due process violation because the Order of Protection did not provide sufficient notice that her online activity was “contact” that would constitute a violation. We review questions related to due process protections de novo. *State v. Tafoya*, 2010-NMCA-010, ¶ 7, 147 N.M. 602, 227 P.3d 92. As indicated above, we address Respondent’s argument by considering not whether her online activity was “contact” as that word is commonly used, but whether she reasonably should have known that her online activity would cause Petitioner to suffer severe emotional distress.

{45} “There is no question that New Mexico district courts have the power to hold a litigant in contempt for disobeying a direct order.” *Bailey*, 1994-NMCA-107, ¶ 6. Such power is, however, subject to due process considerations. See *Concha v. Sanchez*, 2011-NMSC-031, ¶ 26, 150 N.M. 268, 258 P.3d 1060 (“A criminal contempt defendant is . . . entitled to due process

⁶As additional support for her “true threat or other unprotected speech” argument, Respondent provides citation to extrajudicial statutes, including N.Y. Penal Law § 240.30 and Conn. Gen. Stat. § 53A-183 (2017), and cases interpreting those statutes, including *People v. Dupont*, 107 A.D.2d 247, 252 (N.Y. App. Div. 1985) and *State v. Nowacki*, 111 A.3d 911, 928 (Conn. App. Ct. 2015). Because we are analyzing Respondent’s online activity through the lens of the restraints placed upon her by the Order of Protection, neither the statutes nor cases cited by Respondent are pertinent to our analysis.

⁷The district court, however, did find that Respondent “harassed” Petitioner. Criminal harassment is defined, in pertinent part, as conduct that “would cause a reasonable person to suffer substantial emotional distress.” NMSA 1978, § 30-3A-2(A) (1997).

protections of the criminal law[.]”). This Court has previously concluded that due process is satisfied in a criminal contempt proceeding when “an order existed that was sufficient to put [the defendant] on notice of what was required of him.” *Cherryhomes*, 1992-NMCA-111, ¶ 10.

{46} Form 4-965 contains fourteen numbered parts. Part 4 is titled “DOMESTIC ABUSE PROHIBITED.” Part 5 is titled “CONTACT PROHIBITIONS.” Both parts are intended to provide the restrained party with notice of the conduct that is prohibited.

{47} Respondent claims that Part 5 of the Order of Protection is impermissibly vague because it does not place her on notice that “posting about [Petitioner] on her own website or a third-party’s Facebook page would be considered ‘contacting’ [Petitioner].” The generic version of Form 4-965 provides that one or both parties “shall not telephone, talk to, visit or contact the other party in any way except as follows” and includes blank space for the special commissioner or district court to include exceptions. In the present case, the district court modified Form 4-965 to provide that “Respondent . . . shall not telephone, talk to, visit or contact the other party in any way including social media.” Respondent’s argument centers on the meaning of the word “contact.”

{48} The Order of Protection does not clearly define whether Respondent’s online activity would constitute “contact” as that term is commonly used.⁸ Ultimately, we need not decide in this case whether Respondent’s online activity constituted “contact” as prohibited in Part 5 of the Order of Protection.

{49} Part 4 of the Order of Protection expressly prohibited “abuse,” which it defined as “any incident by one party against the other party . . . resulting in . . . severe emotional distress.” Whether this language provides sufficient notice of the conduct prohibited by the Order of Protection presents a question of statutory interpretation. This Court reviews questions of statutory interpretation de novo. *Powels*, 2003-NMCA-090, ¶ 3.

{50} Having just analyzed the meaning of “severe emotional distress” in the context of the FVPA, we decline to undertake the

same analysis here. The Order of Protection prohibited Respondent from engaging in conduct that would cause Petitioner to suffer severe emotional distress. Petitioner is a university professor. Respondent repeatedly used the drug photos to imply that Petitioner had a substance abuse problem. Such intent is demonstrated by her characterization of Petitioner as a “junkie” and a “drug-addled imbecile.”

{51} Respondent argues that the substance of her online activity was not intended to reach Petitioner. This argument is disingenuous. Respondent and Petitioner both worked in the animal rights arena. Respondent’s website was accessible by the public, and she posted the same content on public Facebook pages. It is unreasonable for Respondent to assert that Petitioner could have remained unaware of her online activity in light of his ongoing work in the animal rights movement.

{52} A reasonable person would understand that Respondent’s online activity would cause Petitioner to suffer severe emotional distress as we have defined that phrase above. Therefore, Part 4 of the Order of Protection provided Respondent with sufficient notice that her online activity could constitute a violation even if it did not constitute “contact” as that word is commonly used.

PRIOR RESTRAINT

{53} Respondent finally argues that the district court’s restriction of her ability to access the Internet is overbroad and violates the First Amendment. “A statute is unconstitutionally overbroad if it criminalizes speech that is protected by the [F]irst [A]mendment.” *State v. Gattis*, 1986-NMCA-121, ¶ 10, 105 N.M. 194, 730 P.2d 497. We review questions of constitutional law de novo. *Morris*, 2015-NMCA-100, ¶ 26.

{54} As discussed above, the First Amendment prohibits laws that abridge freedom of speech. *Elane Photography*, 2013-NMSC-040, ¶ 22. “Prior restraint” is a related term and “is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.” *Kimbrell*, 2013-NMCA-070, ¶ 40 (emphasis, internal quotation marks, and citation omitted). Prohibitions on prior restraint ensure

that “the government may not enjoin or restrain a particular expression prior to its judicial review[.]” *Fawcett*, 1992-NMCA-075, ¶ 8.

{55} The district court’s restriction of Respondent’s ability to access the Internet is a clear prior restraint on her First Amendment right to speech. In discussing the Internet generally, the United States Supreme Court has stated that, “[f]rom the publisher’s point of view, [the Internet] constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers.” *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 853 (1997). It is, simply put, the modern-day town square. See Bill Gates, *Business @ the Speed of Thought: Succeeding in the Digital Economy* 131 (1st ed. 1999) (“By enabling people to shop, get news, meet each other, be entertained, and gossip in ways we’re only now beginning to understand, the Internet is becoming the town square for the global village of tomorrow.”); Stephen W. Bosky, Note, *Defamation in the Internet Age: Missouri’s Jurisdictional Fight Begins With Baldwin v. Fischer-Smith*, 56 St. Louis U.L.J. 587, 587 (2012) (same).

{56} “Strict scrutiny applies when the violated interest is a fundamental personal right or civil liberty—such as first amendment rights, freedom of association, voting, interstate travel, privacy, and fairness in the deprivation of life, liberty or property—which the Constitution explicitly or implicitly guarantees.” *Marrujo v. N.M. Highway Transp. Dep’t*, 1994-NMSC-116, ¶ 10, 118 N.M. 753, 887 P.2d 747. To uphold a restriction that deprives an individual of such a right, the state must show “that the restriction . . . supports a compelling state interest, and that the legislation accomplishes its purposes by the least restrictive means.” *Id.* The almost complete restriction of Respondent’s ability to access the Internet imposed by the district court is not the least restrictive means by which to address the harm in this case. See, e.g., *United States v. Walser*, 275 F.3d 981, 988 (10th Cir. 2001) (affirming conditions of release that require the probationer to obtain permission from his probation officer before accessing the Internet);

⁸Although it appears likely that this deficiency resulted from the district court’s lack of familiarity with the nuances of various social media platforms, it is perhaps an indication that the FVPA is not well-suited to address the issue of cyberstalking. Other jurisdictions have enacted statutes that are more narrowly-tailored to the conduct at issue in this case. See, e.g., Wash. Rev. Code § 9.61.260(1)(b) (2004) (“A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, . . . makes an electronic communication to such other person or a third party . . . repeatedly whether or not conversation occurs[.]”).

United States v. White, 244 F.3d 1199, 1206-07 (10th Cir. 2001) (describing filtering software that restricts the user's ability to access blacklisted content and cautioning against sanctions that prohibit the use of any computer).

{57} Petitioner does not argue that either consideration is met in this case. Instead, he requests that we (1) allow the restriction to stand until such a time as Respondent "exhausts her remedies with the district court," or (2) affirm on public policy grounds. Having concluded that

the almost complete restriction of Respondent's ability to access the Internet violates the First Amendment, we decline Petitioner's requests.

CONCLUSION

{58} Respondent's online activity violated the Order of Protection by causing Petitioner to suffer severe emotional distress. We therefore affirm the district court's sentence of 179 days incarceration. However, the district court's restriction of Respondent's ability to access the Internet is unconstitutionally overbroad.

We reverse that restriction. In doing so, we remind Respondent that the Order of Protection remains in effect and that she remains subject to a finding of contempt for online activity that causes Petitioner to suffer severe emotional distress.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

J. MILES HANISEE, Judge

*Thank you for your service
to the State Bar of New Mexico*



SCOTTY HOLLOMAN
2017 PRESIDENT

Farewell and Best Wishes

We wish you every success
in your new role as
In-House General Counsel at
New Mexico Junior College

*After 34 years in private practice,
Scotty Holloman begins a new
professional chapter in January 2018.*



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Is pleased to announce that

Glennas'ba Augborne

Has joined the firm as an associate in the Tempe office. Glennas'ba received her BA from the University of New Mexico and her JD and Indian Legal Program Certificate from Sandra Day O'Connor College of Law, Arizona State University. She practices in Indian law.

— and —

Kate Thompson

Has joined the firm as an associate in the Albuquerque office. Kate received her BA from the University of New Mexico and her JD from the University of New Mexico and is a member of the Order of the Coif. She practices in Criminal law and Civil Rights Litigation.

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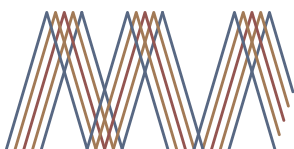


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We would like to introduce

JOEL ALAN GAFFNEY

Joel joined our firm in September. He earned his J.D. from Brooklyn Law School in 2012, and an LL.M in Bankruptcy Studies from St. John's University School of Law. Joel, born and raised in New Mexico, recently relocated back to Albuquerque after practicing bankruptcy law in New York for the past four years. Joel will focus on business reorganizations, collections and business disputes.



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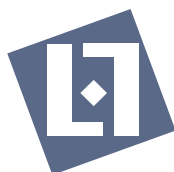
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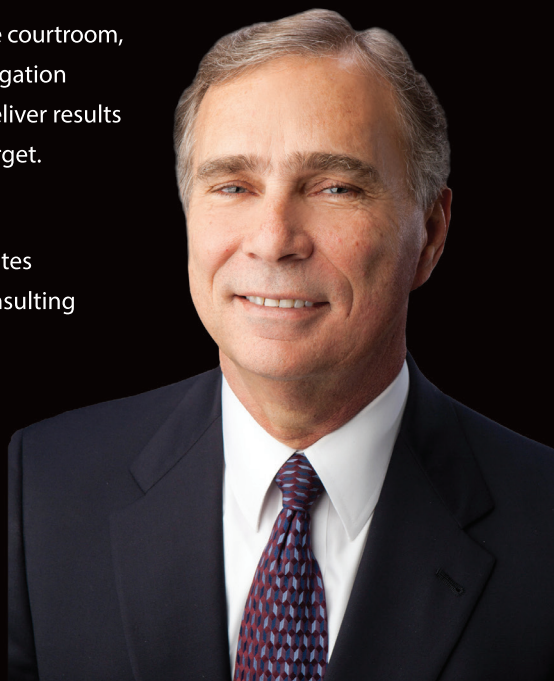
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Positions

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. Must be willing to travel for Hearings and Interviews, as needed. 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.

Santa Fe County – Assistant County Attorney

Santa Fe County is seeking a qualified individual to join its team of attorneys. The successful candidate's practice will focus in areas assigned based upon experience, need, and interest. The ideal candidate are those with strong analytical, research, communication, and interpersonal skills, who enjoy working hard in a collaborative, fast-paced environment on diverse and topical issues that directly impact the community in which they live or work. Salary range is from \$27.0817 to \$40.6221 per hour, depending upon qualifications and budget availability. Applicant must be licensed to practice law in the State of New Mexico and in the New Mexico federal courts and have a minimum of three (3) years of experience practicing law. This position is open until filled, so interested individuals should apply as soon as possible. Individuals interested in joining our team must apply through Santa Fe County's website, at http://www.santafecountynm.gov/job_opportunities.

Associate Attorney

Miller Stratvert P.A. seeks an associate attorney with 1 to 6 years of litigation experience for immediate employment in the Las Cruces office. The Las Cruces office handles a high volume of insurance defense, employment law, professional liability and government entity defense matters in state and federal court. Relevant experience, along with excellent writing, research and communication skills are desired. Competitive salary, excellent benefits and a collegial work environment. Please send resumes and a recent writing sample via e-mail to Chandra Manning, at cmanning@mstlaw.com.

Position Announcement Assistant Federal Public Defender- Albuquerque 2018-01

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced trial attorney for the main office in Albuquerque. More than one position may be filled from this posting. Federal salary and benefits apply. Applicant must have three years minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender FDNM-HR@fd.org. Reference 2018-01 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by December 29, 2017. Position will remain open until filled and is subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

City Attorney

The City Attorney position for the City of Albuquerque is available within the Legal Department for an attorney with Juris Doctorate Degree from an accredited law school recognized by the American Bar Association plus experience in the practice of municipal law, managing a budget, municipal, local, state government and intergovernmental affairs to include direct supervisor experience in a management and/or administrative capacity. The City Attorney must be a licensed attorney at law admitted to practice by the State Bar of New Mexico. Please submit resume to attention of City of Albuquerque Legal Department c/o Angela Aragon Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or amaragon@cabq.gov. Application deadline is December 20, 2017.

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. If you enjoy being outdoors, you will enjoy the spectacular outdoors in the Adventure Capital of New Mexico. 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. January 15th, 2018.

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. If you enjoy being outdoors, you will enjoy the spectacular outdoors in the Adventure Capital of New Mexico. Salary will be 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. January 15th, 2018.

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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.

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Paralegal

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Search for Will and/or Trust

Decedent: George Butterfield; Place of Residence: Albuquerque, NM; Date of Death: October 20, 2017. If located, please contact Mary Ann Green, Attorney at Law, 505-254-0600.



Holiday Advertising Schedule

Due to holiday closures, the following advertising submissions for the *Bar Bulletin* will apply:

Jan. 3, 2018 issue:

Advertising submissions due Dec. 14, 2017

Jan. 10, 2018 issue:

Advertising submissions due Dec. 21, 2017

For more advertising information, contact: Marcia C. Ulibarri at 505-797-6058 or email mulibarri@nmbar.org



MONTGOMERY & ANDREWS, P.A.

is pleased to announce that

J. Brent Moore

has been elected President of the firm.

His two year term will begin on January 1, 2018.



Mr. Moore's practice focuses on governmental relations, lobbying, administrative proceedings, and regulatory matters before the New Mexico Legislature and a number of New Mexico's agencies, including the Insurance Division of the Public Regulation Commission, Environment Department, Regulation and Licensing Department, and Taxation and Revenue Department. Mr. Moore assists his clients with their governmental relations and regulatory needs in the areas of insurance, taxation, environmental law, and natural resources. Prior to joining the firm, Mr. Moore was the General Counsel for the Insurance Division of the New Mexico Public Regulation Commission, where he also served as Deputy Superintendent. After graduating from law school, Mr. Moore participated in the Legal Honors Program for the U.S. Department of Housing and Urban Development in Washington, D.C. Upon completing the program, he served as Agency Counsel for the Navajo Nation Environmental Protection Agency and Assistant General Counsel for the New Mexico Environment Department.



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