Official Publication of the State Bar of New Mexico

BAR BULLETIN

January 3, 2018 • Volume 57, No. 1

STATE BAR OF NEW MEXICO
2018 Licensing Notification

Your 2018 State Bar licensing fees and certifications are now due and must be completed by Feb. 1, 2018, to avoid non-compliance and related late fees.

Complete your annual licensing requirements at www.nmbar.org/licensing.

Payment by credit card* available.
If you have any questions, please call
505-797-6083 or email license@nmbar.org
For more details, refer to page 5.

If you have already submitted your licensing statement and fees, please disregard this notice.

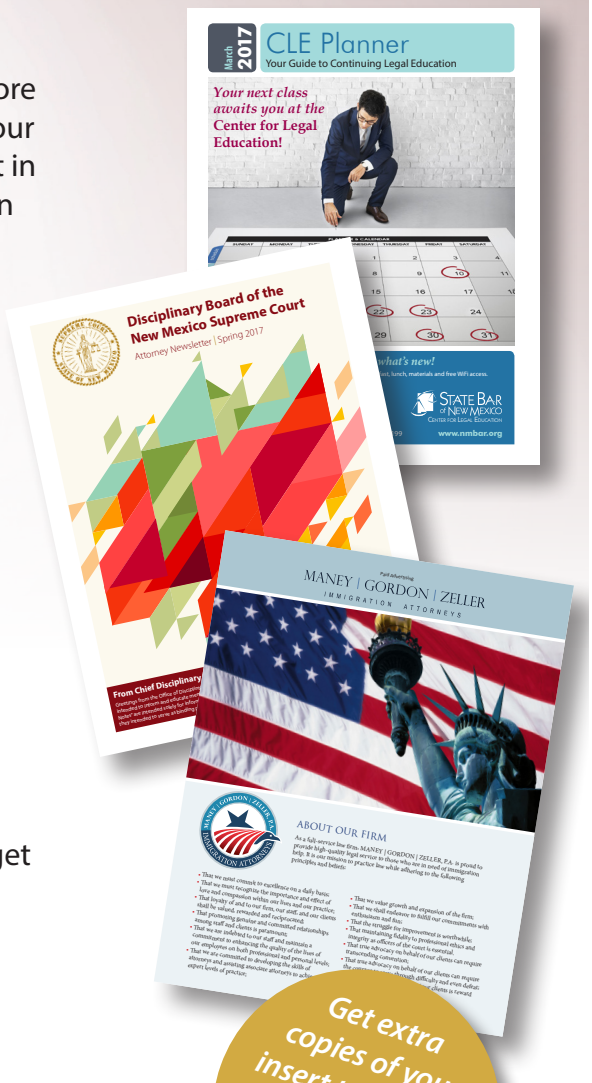
*Online payment by credit card will incur a service charge.

Inside This Issue

Stand Out *from the* Crowd

Profile Your Firm or Business in the *Bar Bulletin*!

Upgrade your marketing strategy and expose more than 8,000 members of the legal profession to your products, services, or start-up. Purchase an insert in the *Bar Bulletin*, the State Bar's weekly publication and take advantage of our loyal readership.



Use an insert to

- Announce products and services
- Deliver news to your stakeholders
- Educate the community about your passion
- Promote leadership and accomplishments
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Bar Bulletin Inserts include

- 4-page, full-color design and printing
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Get extra copies of your insert to use as a promotional piece to give to clients.

STATE BAR of NEW MEXICO

To take advantage of this opportunity, contact Account Executive Marcia Ulibarri at 505-797-6058.

Ask about your member discount!

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

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

28
Consumer Debt/Bankruptcy Workshop
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

Notices

Court News

New Mexico Supreme Court Commission on Access to Justice

Meeting Notice

The next meeting of the Commission on Access to Justice is noon–4 p.m., Jan. 5, at the State Bar Center in Albuquerque. Interested parties from the private bar and the public are welcome to attend. Further information about the Commission is available at Access to Justice at nmcourts.gov.

Supreme Court Law Library

Hours and Information

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

Hours of Operation

Monday–Friday 8 a.m.–5 p.m.

Reference and Circulation

Monday–Friday 8 a.m.–4:45 p.m.

New Mexico Court of Appeals

Announcement of Vacancies

Two vacancies will exist on the Court of Appeals due to the retirement of Hon. Jonathan B. Sutin, effective Dec. 29, 2017, and Hon. Timothy L. Garcia, effective Feb. 2. Inquiries regarding the details or assignment of these judicial vacancies should be directed to the administrator of the court. Alfred Mathewson, chair of the Appellate Court Judicial Nominating Commission, invites applications for these positions 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 at lawschool.unm.edu/judsel/application.php. The deadline for applications is 5 p.m., Jan. 8. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The Appellate Court Judicial Nominating Commission will meet beginning at 9 a.m. on Jan. 17, to interview applicants for the position at the Supreme Court Building, 237 Don Gaspar Avenue in Santa Fe. 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.

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. 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 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

Announcement of Vacancy

A vacancy in the Third Judicial District Court will exist due to the resignation of Hon. Judge Fernando R. Macias effective Jan. 6. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the Court. Alfred Mathewson, chair of the Third 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 at lawschool.unm.edu/judsel/application.php. The deadline for applications is 5 p.m., Jan. 18. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the office of the Secretary of State. The Third Judicial District Court Judicial Nominating Commission will meet at 9 a.m., Feb. 1, to interview applicants for the position in Las Cruces. 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.

Eleventh Judicial District Court

Judicial Vacancy

A vacancy on the Eleventh Judicial District Court will exist as of Jan. 2, due to the retirement of Hon. Sandra Price effective Jan. 1. 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. 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, 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.

Professionalism Tip

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

I will do my best to ensure that court personnel act civilly and professionally.

State Bar News

Attorney Support Groups

- Jan. 8, 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, 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.

2018 Licensing Notification

Must Be Completed by Feb. 1

2018 State Bar licensing fees and certifications are due and must be completed by Feb. 1, 2018, to avoid non-compliance and related late fees. Complete annual licensing requirements online at www.nmbar.org/licensing or email license@nmbar.org to request a PDF copy of the license renewal form. Payment by credit card is available (payment by credit card will incur a service charge). For more information, call 505-797-6083 or email license@nmbar.org. For help logging in or other website troubleshooting, email clopez@nmbar.org. Those who have already completed their licensing requirements should disregard this notice.

Board of Bar Commissioners

Commissioner Vacancy

Third Bar Commissioner District (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties)

A vacancy exists in the Third Bar Commissioner District, representing Los Alamos, Rio Arriba, Sandoval and Santa Fe counties. The Board will make the appointment at its Feb. 23, meeting to fill the vacancy until the next regular election of Commissioners, and the term will run through Dec. 31, 2018. Active status members with a principal place of practice located in the Third Bar Commissioner District are eligible to apply. The remaining 2018 Board meetings are scheduled for May 18 in Albuquerque, Aug. 9 at the Hyatt Regency Tamaya Resort in Bernalillo in conjunction with the State Bar of New Mexico Annual Meeting, Oct. 12 in Albuquerque, and Dec. 13 in Santa Fe. Members interested in serving on the Board should submit a letter of interest and résumé to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765, by Feb. 9.

Appointments

New Mexico Legal Aid Board

The Board of Bar Commissioners will make three appointments to the New Mexico Legal Aid Board for three-year terms, with one of the appointments being a member of and recommended by the Indian Law Section. Members who want to serve on the Board should send a letter of interest and brief résumé by Jan. 10, to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

State Bar of New Mexico Access to Justice Fund Grant Commission

The Board of Bar Commissioners will make two appointments to the newly created State Bar of New Mexico ATJ Fund Grant Commission; the terms will be determined at the first meeting of the Commission. The ATJ Fund Grant Commission will solicit and review grant applications and award grants to civil legal services organizations consistent with the State Plan for the Provision of Civil Legal Services to Low Income New Mexicans. Active status attorneys in New Mexico, not affiliated with a civil legal service organization which would be eligible for grant funding from the ATJ Fund, who are interested in serving on the Commission should send a letter of interest and brief résumé by Jan. 10, to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Solo and Small Firm Section

Spring Monthly Speaker Series Opens with Mark Rudd

Recently-retired UNM Associate Professor Mark Rudd will open the Solo and Small Firm Section spring monthly speaker series with a presentation on social, political and legal movements over the past fifty years through 2018 and beyond on Jan. 16. On Feb. 20, Jeff Proctor, an investigative reporter who has reported on a number of New Mexico controversies from The Round House to the Boyd case to drug interdiction, will discuss hot topics of the day. Both presentations are open to all and will take place from noon-1 p.m. at the State Bar Center. Lunch will be provided. R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

Young Lawyers Division

Volunteers Needed for Homeless Legal Clinic in Albuquerque

The Homeless Legal Clinic returns to Albuquerque from 9-11 a.m. (orientation at 8:30 a.m.), in 2018 on Jan. 18, Feb. 15, March 15, April 19, May 17, June 21, July 19, Aug. 16, Sept. 20, Oct. 18, Nov. 15 and Dec. 13. Clinics are held at Albuquerque Healthcare for the Homeless located at 1217 First Street NW. Volunteer attorneys are needed to staff the clinic, serve as an "information referral resource" and join the pro bono referral list. For those staffing the clinic or providing other services, a trained attorney will assist you until you feel comfortable by yourself. Even if you are a new lawyer, you will be surprised at how much you have to offer these clients and how your help can make such a major difference in their lives. To volunteer, contact YLD Region 2 Director Kaitlyn Luck at luck.kaitlyn@gmail.com.

Volunteers Needed for Rio Rancho Wills for Heroes

The YLD is seeking volunteer attorneys for its Wills for Heroes event for Rio Rancho first-responders from 9 a.m.-noon, Feb. 24, at Loma Colorado Main Library, located at 755 Loma Colorado Blvd NE in Rio Rancho. Volunteers should arrive at 8:15 a.m. for breakfast and orientation. Attorneys will provide free wills, healthcare and financial powers of attorney and advanced medical directives for first responders. Paralegal and law student volunteers are also needed to serve at witnesses and notaries. Contact YLD Director-at-Large Billy Jimenez at billy.j.jimenez@gmail.com to volunteer.

Volunteers Needed for UNM Mock Interview Program

YLD is seeking volunteer attorneys to serve as interviewers for its annual UNM School of Law Mock Interview Program at 10:30 a.m., Saturday, Jan. 27, at the UNM School of Law. The mock interviews and coordinated critiques of résumés assist UNM law students with preparation for job interviews. Judges and attorneys from all practice areas, both public and private sectors, are needed. A brief training ses-

sion will be held at 10 a.m. at the UNM School of Law preceding the interviews, and breakfast will be provided. To volunteer, sign-up at https://form.jotform.com/72126557703961 by Jan. 13.

UNM School of Law

Law Library Hours

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.

Other Bars

Albuquerque Lawyers Club

January Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its January lunch meeting. Vince Ward will present "*United States v. Chelsea Manning*: Government Leaks, National Security, and Why Chelsea's Case Should Matter To Us All." The lunch meeting will be held at noon, Jan. 3, at Seasons Restaurant. The cost is free to members and $30 non-members in advance or $35 at the door. For more information, e-mail ydennig@Sandia.gov or call 505-844-3558.

New Mexico Criminal Defense Lawyers Association

Law Office Management CLE

Join the New Mexico Criminal Defense Lawyers Association for "Ring in the New: Best Practices in Law Office Management" (4.2 G, 2.0 EP) on Jan. 26, 2018, in Albuquerque. Register at 505-992-0050 or info@nmcdla.org.

Address Changes

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

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

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

Board of Bar Commissioners

Meeting Summary

The Board of Bar Commissioners met at the New Mexico Supreme Court in Santa Fe on Dec. 7, 2017. Action taken at the meeting was as follows:

- Approved the Sept. 15, 2017 meeting minutes as submitted;
- Accepted the October 2017 financials;
- Received an update on the negotiations with the auditor that was selected at the September meeting;
- Reported that there were no challenges received to the 2018 Budget Disclosure;
- Approved updating the signers on all State Bar and Bar Foundation checking accounts;
- Received a report on the *Bench & Bar Directory*; the RFP for a printer was sent out-of-state this year as well as in-state and proposals were due Dec. 31;
- Received three proposals for an upgrade to the Bar Center security system and security cameras in the parking lot and approved the proposal from the State Bar's current security service, Industrial & Commercial Security Systems, Inc. (ICSS); the expenditure was budgeted under capital outlay in the 2018 budget;
- Received a report on the 2018 Dues and Licensing Statement; the paper forms are available now and being distributed to the state agencies and larger firms; the electronic form was anticipated to be online in the next week, and an eblast was to be sent out to all members once finalized;
- Received an Executive Committee report on the following: 1) the committee met to discuss the future of the grant making process for the Access to Justice fund; the Supreme Court issued an Order transferring the oversight of the annual Access to Justice consolidated grant funding process to the State Bar of New Mexico and approved the creation of the new State Bar ATJ Fund Grant Commission with one of the members being a member of the Board of Bar Commissioners and the two additional members to be appointed from the State Bar membership at large; a notice for the two positions will be published in the Bar Bulletin; 2) the committee also met to discuss MCLE and Legal Specialization; the Supreme Court notified the State Bar that MCLE will merge with the State Bar; a transition plan will be developed by MCLE and the State Bar for the transfer to occur by Dec. 31, 2018; 3) the committee also met to discuss funding from the Disciplinary Board to assist with the administration of the Judges and Lawyers Assistance Program; the Supreme Court issued an Order authorizing the transfer of the funds from the Disciplinary Board and entering into a Memorandum of Understanding with the State Bar and the Board authorized the signing of the MOU;
- The Board went into executive session to discuss the Executive Director search and received a report from the Executive Director Search Committee;
- Appointed Mary Ann Romero and Antonia Roybal-Mack to the Access to Justice Commission for three-year terms;
- Received a report from the Bylaws and Policies Committee and approved the Taxation Section Bylaw amendments to Section 1.1, Name; Section 6.2, Composition; and Section 8.4, Retiring Chair; approved global changes to the Section Bylaws in Section 7.4, Nominations and Voting, which will streamline the process and ensure that the vacant positions are filled at the beginning of each year; the committee discussed amendments to the New Mexico State Bar Foundation Bylaws and anticipates having a proposal for the Board's consideration at the February meeting;
- Received a report from the Legal Research Committee and approved engaging in a new contract with Fastcase;
- Reported that the Client Protection Fund Commission has had discussions regarding the need for a new Mediation/Fee Arbitration Program for lawyers/client fee disputes and whether it should be voluntary or mandatory; the Commission will discuss further and bring a recommendation to the Board;
- Received a report from Supreme Court Justice Petra Jimenez Maes on the new Secure Odyssey Public Access (SOPA) policy on the JID website regarding the sharing of passwords, and she requested the Board's assistance to inform members and obtain better compliance; an email notice will be sent to the membership and the policy will be forwarded to the Bylaws and Policies Committee for review and input;
- Requested volunteers to serve as liaisons to the Supreme Boards and Committees and the Board's internal committees for 2018;
- Received the 2018 Board meeting dates as follows: Feb. 23, May 18, Aug. 9 (Hyatt Regency Tamaya Resort in Bernalillo in conjunction with the State Bar Annual Meeting), Oct. 12, and Dec. 13 (New Mexico Supreme Court); and
- Presented a gift to President Scotty Holloman for his service as president this year and gifts to outgoing Commissioners J. Brent Moore from the Third Bar Commissioner District, Commissioner Raynard Struck from the First Bar Commissioner District, Young Lawyers Division Chair Tomas J. Garcia, and Paralegal Division Liaison Barbara Lucero.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Feb. 23 meeting.

Legal Education

January 2018

5 **2018 Legislative Preview**
2.0 G
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF

10 **2017 Fair Pay Litigation Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 **Health Care Issues in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **Drafting Distrubtion Provisions in Trusts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Ethics of Working with Witnesses**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Trial Know-How! (The Rush to Judgment) 2017 Trial Practice Section Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Strategies for Well-Being and Ethical Practice (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **2017 Mock Meeting of the Ethics Advisory Committee (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **Arbitration Clauses in Business Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **SALT Online: Understanding State and Local Taxes When Your Client Sells Online**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **2017 Business Law Institute**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **The Cyborgs are Coming! The Cyborgs are Coming! The Latest Ethical Concerns with the Latest Technology Disruptions (2017)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Legal Malpractice Potpourri (2017)**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **ABCs of Choosing and Drafting the Right Trust for Client Goals, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **ABCs of Choosing and Drafting the Right Trust for Client Goals, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

February 2018

1 **Workplace Issues for Employers**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

6 **2018 Ethics Update Part I**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Ethics Update Part II**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Negotiating (and Renegotiating Leases) Part I**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

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

9 **Litigation and Argument Writing in the Smartphone Age (2017)**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **2017 Real Property Institute**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **New Mexico Liquor Law for and Beyond (2017)**
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics (2017)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Sophisticated Choice of Entity, Part I**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Sophisticated Choice of Entity, Part II**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

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

2 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

2-4 **Taking and Defending Depositions (Part 1of 2)**
31.0 G, 4.5 EP
Live Seminar,
Albuquerque
UNM School of Law
goto.unm.edu/despositions

23-25 **Taking and Defending Depositions (Part 2 of 2)**
31.0 G, 4.5 EP
Live Seminar,
Albuquerque
UNM School of Law
goto.unm.edu/despositions

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.*

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

CLERK'S CERTIFICATE OF TELEPHONE AND/OR ADDRESS CHANGES

Dated Dec. 15
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Leila Jacquelyn Reilly
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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
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Effective December 27, 2017

Pending Proposed Rule Changes Open for Comment:

There are no proposed rule changes currently open for comment.

Recently Approved Rule Changes Since Release of 2017 NMRA:

		Effective Date
Rules of Civil Procedure for the District Courts		
1-015	Amended and supplemental pleadings	12/31/2017
1-017	Parties plaintiff and defendant; capacity	12/31/2017
1-053.1	Domestic violence special commissioners; duties	12/31/2017
1-053.2	Domestic relations hearing officers; duties	12/31/2017
1-053.3	Guardians ad litem; domestic relations appointments	12/31/2017
1-079	Public inspection and sealing of court records	03/31/2017
1-088	Designation of judge	12/31/2017
1-105	Notice to statutory beneficiaries in wrongful death cases	12/31/2017
1-121	Temporary domestic orders	12/31/2017
1-125	Domestic Relations Mediation Act programs	12/31/2017
1-129	Proceedings under the Family Violence Protection Act	12/31/2017
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
Rules of Civil Procedure for the Magistrate Courts		
2-105	Assignment and designation of judges	12/31/2017
2-112	Public inspection and sealing of court records	03/31/2017
2-301	Pleadings allowed; signing of pleadings, motions, and other papers; sanctions	12/31/2017
Rules of Civil Procedure for the Metropolitan Courts		
3-105	Assignment and designation of judges	12/31/2017
3-112	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
Civil Forms		
4-223	Order for free process	12/31/2017
4-402	Order appointing guardian ad litem	12/31/2017
4-602	Withdrawn	12/31/2017
4-602A	Juror summons	12/31/2017
4-602B	Juror qualification	12/31/2017
4-602C	Juror questionnaire	12/31/2017
4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
4-941	Petition to restore right to possess or receive a firearm or ammunition	03/31/2017
4-941	Motion to restore right to possess or receive a firearm or Ammunition	12/31/2017
Domestic Relations Forms		
4A-200	Domestic relations forms; instructions for stage two (2) forms	12/31/2017
4A-201	Temporary domestic order	12/31/2017
4A-209	Motion to enforce order	12/31/2017
4A-210	Withdrawn	12/31/2017
4A-321	Motion to modify final order	12/31/2017
4A-504	Order for service of process by publication in a newspaper	12/31/2017
Rules of Criminal Procedure for the District Courts		
5-105	Designation of judge	12/31/2017
5-106	Peremptory challenge to a district judge; recusal; procedure for exercising	07/01/2017
5-123	Public inspection and sealing of court records	03/31/2017
5-204	Amendment or dismissal of complaint, information and Indictment	07/01/2017
5-211	Search warrants	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
5-802	Habeas corpus	12/31/2017

Rules of Criminal Procedure for the Magistrate Courts

6-105	Assignment and designation of judges	12/31/2017
6-114	Public inspection and sealing of court records	03/31/2017
6-202	Preliminary examination	12/31/2017
6-203	Arrests without a warrant; probable cause determination	12/31/2017
6-207	Bench warrants	04/17/2017
6-207.1	Payment of fines, fees, and costs	04/17/2017
6-207.1	Payment of fines, fees, and costs	12/31/2017
6-208	Search warrants	12/31/2017
6-304	Motions	12/31/2017
6-401	Pretrial release	07/01/2017
6-401.1	Property bond; unpaid surety	07/01/2017
6-401.2	Surety bonds; justification of compensated sureties	07/01/2017
6-403	Revocation or modification of release orders	07/01/2017
6-406	Bonds; exoneration; forfeiture	07/01/2017
6-408	Pretrial release by designee	07/01/2017
6-409	Pretrial detention	07/01/2017
6-506	Time of commencement of trial	07/01/2017
6-506	Time of commencement of trial	12/31/2017
6-506.1	Voluntary dismissal and refiled proceedings	12/31/2017
6-703	Appeal	07/01/2017

Rules of Criminal Procedure for the Metropolitan Courts

7-105	Assignment and designation of judges	12/31/2017
7-113	Public inspection and sealing of court records	03/31/2017
7-202	Preliminary examination	12/31/2017
7-203	Probable cause determination	12/31/2017
7-207	Bench warrants	04/17/2017
7-207.1	Payment of fines, fees, and costs	04/17/2017
7-208	Search warrants	12/31/2017
7-304	Motions	12/31/2017
7-401	Pretrial release	07/01/2017
7-401.1	Property bond; unpaid surety	07/01/2017
7-401.2	Surety bonds; justification of compensated sureties	07/01/2017
7-403	Revocation or modification of release orders	07/01/2017
7-406	Bonds; exoneration; forfeiture	07/01/2017
7-408	Pretrial release by designee	07/01/2017
7-409	Pretrial detention	07/01/2017
7-504	Discovery; cases within metropolitan court trial jurisdiction	12/31/2017
7-506	Time of commencement of trial	07/01/2017
7-506.1	Voluntary dismissal and refiled proceedings	12/31/2017
7-606	Subpoena	12/31/2017
7-703	Appeal	07/01/2017

Rules of Procedure for the Municipal Courts

8-112	Public inspection and sealing of court records	03/31/2017
8-202	Probable cause determination	12/31/2017
8-206	Bench warrants	04/17/2017
8-206.1	Payment of fines, fees, and costs	04/17/2017
8-207	Search warrants	12/31/2017
8-304	Motions	12/31/2017
8-401	Pretrial release	07/01/2017
8-401.1	Property bond; unpaid surety	07/01/2017
8-401.2	Surety bonds; justification of compensated sureties	07/01/2017
8-403	Revocation or modification of release orders	07/01/2017
8-406	Bonds; exoneration; forfeiture	07/01/2017
8-408	Pretrial release by designee	07/01/2017
8-506	Time of commencement of trial	07/01/2017
8-506	Time of commencement of trial	12/31/2017
8-506.1	Voluntary dismissal and refiled proceedings	12/31/2017
8-703	Appeal	07/01/2017

Criminal Forms

9-207A	Probable cause determination	12/31/2017
9-301A	Pretrial release financial affidavit	07/01/2017
9-302	Order for release on recognizance by designee	07/01/2017
9-303	Order setting conditions of release	07/01/2017
9-303A	Withdrawn	07/01/2017
9-307	Notice of forfeiture and hearing	07/01/2017
9-308	Order setting aside bond forfeiture	07/01/2017
9-309	Judgment of default on bond	07/01/2017
9-310	Withdrawn	07/01/2017
9-513	Withdrawn	12/31/2017
9-513A	Juror summons	12/31/2017
9-513B	Juror qualification	12/31/2017

9-513C	Juror questionnaire	12/31/2017
9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
9-701	Petition for writ of habeas corpus	12/31/2017
9-702	Petition for writ of certiorari to the district court from denial of habeas corpus	12/31/2017
9-809	Order of transfer to children's court	12/31/2017
9-810	Motion to restore right to possess or receive a firearm or ammunition	12/31/2017

Children's Court Rules and Forms

10-161	Designation of children's court judge	12/31/2017
10-166	Public inspection and sealing of court records	03/31/2017
10-166	Public inspection and sealing of court records	12/31/2017
10-169	Criminal contempt	12/31/2017
10-325	Notice of child's advisement of right to attend hearing	12/31/2017
10-325.1	Guardian ad litem notice of whether child will attend hearing	12/31/2017
10-570.1	Notice of guardian ad litem regarding child's attendance at hearing	12/31/2017
10-611	Suggested questions for assessing qualifications of proposed court interpreter	12/31/2017
10-612	Request for court interpreter	12/31/2017
10-613	Cancellation of court interpreter	12/31/2017
10-614	Notice of non-availability of certified court interpreter or justice system interpreter	12/31/2017

Rules of Appellate Procedure

12-202	Appeal as of right; how taken	12/31/2017
12-204	Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction	07/01/2017
12-205	Release pending appeal in criminal matters	07/01/2017
12-210	Calendar assignments for direct appeals	12/31/2017
12-307.2	Electronic service and filing of papers	07/01/2017
12-307.2	Electronic service and filing of papers	08/21/2017
12-313	Mediation	12/31/2017
12-314	Public inspection and sealing of court records	03/31/2017
12-502	Certiorari from the Supreme Court to the Court of Appeals	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
13-2401	Legal malpractice; elements	12/31/2017
13-2402	Legal malpractice; attorney-client relationship	12/31/2017
13-2403	Legal malpractice; negligence and standard of care	12/31/2017
13-2404	Legal malpractice; breach of fiduciary duty	12/31/2017
13-2405	Duty of confidentiality; definition	12/31/2017
13-2406	Duty of loyalty; definition	12/31/2017
13-2407	Legal malpractice; attorney duty to warn	12/31/2017
13-2408	Legal malpractice; duty to third-party intended - No instruction drafted	12/31/2017
13-2409	Legal malpractice; duty to intended beneficiaries; wrongful death	12/31/2017
13-2410	Legal malpractice; expert testimony	12/31/2017
13-2411	Rules of Professional Conduct	12/31/2017
13-2412	Legal malpractice; attorney error in judgment	12/31/2017
13-2413	Legal malpractice; litigation not proof of malpractice	12/31/2017
13-2414	Legal malpractice; measure of damages; general instruction	12/31/2017
13-2415	Legal malpractice; collectability – No instruction drafted	12/31/2017

Uniform Jury Instructions – Criminal

14-240	Withdrawn	12/31/2017
14-240B	Homicide by vehicle; driving under the influence; essential elements	12/31/2017
14-240C	Homicide by vehicle; reckless driving; essential elements	12/31/2017
14-240D	Great bodily injury by vehicle; essential elements	12/31/2017
14-251	Homicide; "proximate cause"; defined	12/31/2017
14-1633	Possession of burglary tools; essential elements	12/31/2017
14-2820	Aiding or abetting; accessory to crime of attempt	12/31/2017
14-2821	Aiding or abetting; accessory to felony murder	12/31/2017
14-2822	Aiding or abetting; accessory to crime other than attempt and felony murder	12/31/2017
14-4201	Money laundering; financial transaction to conceal or disguise property, OR to avoid reporting requirement; essential elements	12/31/2017
14-4202	Money laundering; financial transaction to further or commit another specified unlawful activity; essential elements	12/31/2017
14-4203	Money laundering; transporting instruments to conceal or disguise OR to avoid reporting requirement; essential elements	12/31/2017

14-4204	Money laundering; making property available to another by financial transaction OR transporting; essential elements	12/31/2017
14-4205	Money laundering; definitions	12/31/2017
14-5130	Duress; nonhomicide crimes	12/31/2017

Rules Governing Admission to the Bar

15-103	Qualifications	12/31/2017
15-104	Application	08/04/2017
15-105	Application fees	08/04/2017
15-301.1	Public employee limited license	08/01/2017
15-301.2	Legal services provider limited law license	08/01/2017

Rules of Professional Conduct

16-100	Terminology	12/31/2017
16-101	Competence	12/31/2017
16-102	Scope of representation and allocation of authority between client and lawyer	08/01/2017
16-106	Confidentiality of information	12/31/2017
16-108	Conflict of interest; current clients; specific rules	12/31/2017
16-304	Fairness to opposing party and counsel	12/31/2017
16-305	Impartiality and decorum of the tribunal	12/31/2017
16-402	Communications with persons represented by counsel	12/31/2017
16-403	Communications with unrepresented persons	12/31/2017
16-701	Communications concerning a lawyer's services	12/31/2017
16-803	Reporting professional misconduct	12/31/2017

Rules Governing Discipline

17-202	Registration of attorneys	07/01/2017
17-202	Registration of attorneys	12/31/2017
17-301	Applicability of rules; application of Rules of Civil Procedure and Rules of Appellate Procedure; service	07/01/2017

Rules for Minimum Continuing Legal Education

18-203	Accreditation; course approval; provider reporting	09/11/2017

Code of Judicial Conduct

21-004	Application	12/31/2017

Supreme Court General Rules

23-106	Supreme Court rules committees	12/31/2017
23-106.1	Supreme Court rule-making procedures	12/31/2017

Rules Governing the New Mexico Bar

24-110	"Bridge the Gap: Transitioning into the Profession" program	12/31/2017

Rules Governing Review of Judicial Standards Commission Proceedings

27-104	Filing and service	07/01/2017

Local Rules for the Second Judicial District Court

LR2-308	Case management pilot program for criminal cases	01/15/2018

Local Rules for the Thirteenth Judicial District Court

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From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-031

No. S-1-SC-34630 (filed October 23, 2017)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
JOHN ERIC OCHOA,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
STEPHEN BRIDGFORTH, District Judge

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Opinion

Barbara J. Vigil, Justice

{1} The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article II, Section 14 of the New Mexico Constitution. Defendant was arrested on May 12, 2008, and charged with a number of offenses relating to criminal sexual contact of a minor. Prior to a mistrial on March 8, 2010, trial was delayed for a number of reasons including a furlough affecting the New Mexico Public Defender Department (Public Defender Department). Two months later, on May 17-20, 2010, Defendant was convicted of one count of interference with communications and two counts of criminal sexual contact of a minor. Defendant was incarcerated for the entire pretrial period. **{2}** Defendant appealed his convictions and the Court of Appeals reversed on speedy trial grounds. *State v. Ochoa*, 2014-NMCA-065, ¶¶ 1, 25-26, 327 P.3d 1102. The Court of Appeals determined that Defendant was prejudiced by his two-year pretrial incarceration, reasoning that "[t]his Court previously concluded that a delay of twenty-two months prejudiced a defendant. Here, Defendant was incarcerated even longer." *Id.* ¶ 23 (citation omitted).

{3} We granted certiorari and reverse, applying the four-factor balancing test from *Barker v. Wingo*, 407 U.S. 514, 530 (1972). We conclude that neither the length of delay, reason for delay, nor assertion of the right to a speedy trial weigh heavily in Defendant's favor. We presume that Defendant suffered some prejudice as a result of his continuous pretrial incarceration, but our presumption does not outweigh the other three factors. *See State v. Garza*, 2009-NMSC-038, ¶ 1, 212 P.3d 387 (holding that a defendant must generally show particularized prejudice). Thus, despite the obvious prejudice to Defendant, his right to a speedy trial was not violated.

I. BACKGROUND

A. The Right to a Speedy Trial

{4} In examining whether a defendant has been deprived of his constitutional right to a speedy trial, we use the four-factor test set forth in *Barker*, balancing the length of delay, the reason for delay, the defendant's assertion of the right to a speedy trial, and the prejudice to the defendant. *See* 407 U.S. at 530. We defer to the district court's factual findings in considering a speedy trial claim, but weigh each factor de novo. *State v. Spearman*, 2012-NMSC-023, ¶ 19, 283 P.3d 272.

{5} The speedy trial analysis is not a rigid or mechanical exercise, but rather "a difficult and sensitive balancing process." *See Barker*, 407 U.S. at 533. The speedy trial right is "amorphous, slippery, and necessarily relative." *Vermont v. Brillon*, 556 U.S. 81, 89 (2009) (internal quotation marks and citations omitted). We consider the factors on a case-by-case basis. *See Barker*, 407 U.S. at 533; *see also Garza*, 2009-NMSC-038, ¶ 13 (stating that *Barker* "necessarily compels courts to approach speedy trial cases on an ad hoc basis").

B. Timeline

{6} We begin by setting forth the facts and circumstances surrounding the delays in bringing Defendant to trial and the role of each party in the delays. *Barker*, 407 U.S. at 530 ("The approach we accept is a balancing test, in which the conduct of both the prosecution and the defendant are weighed."). Defendant was arrested on May 12, 2008 and tried just over two years later, on May 17-20, 2010. Defendant was incarcerated for this entire period.

{7} Trial was reset on multiple occasions. The first, November 10, 2008, was vacated because November 11, 2008 was a holiday and the trial required a multi-day setting. The second, December 17, 2008, was vacated when Defendant requested a continuance to review evidence acquired in delayed witness interviews. The third, March 4, 2009, was vacated due to a pending motion.[1] The fourth, May 26, 2009, was vacated because it was incorrectly set for one day. The fifth, October 27, 2009, was unexpectedly continued when the judge's sister passed away.

[1]Although the district court did not explain why this setting was vacated, the State asserted that it was vacated due to a "pending motion yet to be heard," most likely referring to Defendant's motion to sever, demand for discovery, motion to dismiss the indictment, or motion to compel disclosure filed between November 21, 2008 and December 5, 2008. Defendant also filed a motion for an evidentiary hearing and forensic evaluation to determine witness competency on January 20, 2009. The State filed two requests to extend the time to respond to those motions, which were both granted. The district court held a hearing on Defendant's motions on February 2, 2009, but did not issue orders until March 5, 2009, May 5, 2009, October 26, 2009, and November 9, 2009.

{8} Defendant moved to continue the sixth trial setting, January 13, 2010, because Governor Richardson ordered state employees to cease work for five days, including the third day of trial. The furlough reduced the budget of the Public Defender Department due to a budget shortfall for fiscal year 2010. Despite the furlough, this Court ordered public defenders to appear for regularly scheduled court appearances. The district court granted the continuance to ensure that defense counsel had adequate support staff to prepare a defense. Trial finally began on the seventh setting, March 8, 2010. However, the district court granted a mistrial because a juror made an inflammatory comment.

{9} Over the course of the proceedings, the State filed three petitions to extend the time to commence trial. *See* Rule 5-604(B) NMRA (2008) ("For good cause shown, the time for commencement of trial may be extended by the district court . . . [by] six (6) months."). Defendant opposed two out of three of the State's petitions, but did not file substantive responses to any of them. Each of the petitions was granted.

{10} Defendant filed five demands for a speedy trial and four motions to dismiss based on violation of the right.[2] In its ruling on the first motion to dismiss, the district court found the case to be complex and that the length of pretrial delay was less than the eighteen months required to trigger the speedy trial analysis under *Garza*. *See* 2009-NMSC-038, ¶ 2 (establishing the guideline as eighteen months for complex cases). In each motion to dismiss, Defendant stated that the length of pretrial incarceration was presumptively prejudicial, he had suffered undue anxiety and concern, and his defense was impaired by fading witness memories. Defendant did not present evidence to support his prejudice claims, but instead asserted that the State bore the burden of proving the absence of prejudice, citing *Salandre v. State*, 1991-NMSC-016, ¶¶ 25-28, 111 N.M. 422, 806 P.2d 562, *holding modified by Garza*, 2009-NMSC-038, ¶ 22.

{11} Defendant was finally tried on May 17-20, 2010, after two years of pretrial incarceration. On May 20, 2010, a jury convicted Defendant of two counts of criminal sexual contact of a minor and one count of interference with communications. Defendant appealed, and the Court of Appeals reversed, holding that Defendant's right to a speedy trial was violated. *Ochoa*, 2014-NMCA-065, ¶ 1. We granted certiorari on two issues:

> 1) Whether the Court of Appeals erred in holding that [the State denied Defendant] his constitutional right to a speedy trial when the length and reasons for the delay did not weigh heavily against [the State].
>
> 2) Whether the Court of Appeals erred in creating a bright-line rule that pre-trial incarceration over twenty-two months is unduly prejudicial even when [Defendant] failed to make a particularized showing of prejudice.

Applying the fluid, ad hoc approach of *Barker* to the facts of the instant case, we agree with the Court of Appeals that Defendant was prejudiced by his pretrial incarceration. However, neither the length nor reason for delay weighs heavily against the State. Therefore, we conclude that Defendant's right to a speedy trial was not violated.

II. DISCUSSION

A. Length of Delay

{12} The first factor, length of delay, is both the threshold question in the speedy trial analysis and a factor to be weighed with the other three *Barker* factors. *State v. Serros*, 2016-NMSC-008, ¶ 22, 366 P.3d 1121. The *Barker* Court deferred to the states to prescribe reasonable guidelines for bringing a case to trial. 407 U.S. at 523. This Court prescribed such guidelines in *Garza*. *See* 2009-NMSC-038, ¶ 2. The applicable guideline is dependent upon the complexity of the case: twelve months for a simple case, fifteen months for an intermediate case, and eighteen months for a complex case. *Id.*

{13} Consistent with *Barker*, this Court in *Garza* emphasized that the guidelines are not bright-line tests. *See Barker*, 407 U.S. at 523 ("We find no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months."); *see also Garza*, 2009-NMSC-038, ¶ 49 (explaining that the guidelines are not bright-line tests). The guidelines are designed to prompt the district court to conduct a speedy trial analysis, and do not dispose of the claim itself. *Id.* ¶ 2. As explained in *Garza*, it would be contrary to the flexible, fact-specific nature of the *Barker* approach to presume that there was a violation of the right based on the length of delay alone. *See Garza*, 2009-NMSC-038, ¶ 13. The *Barker* Court "specifically reject[ed] inflexible, bright-line approaches to analyzing a speedy trial claim." *Garza*, 2009-NMSC-038, ¶ 13 (citing *Barker*, 407 U.S. at 529-30).

{14} When the length of delay exceeds a guideline, it must be weighed as one factor in determining whether there has been a violation of the right to a speedy trial, *Serros*, 2016-NMSC-008, ¶ 22, and the burden of persuasion rests on the State to demonstrate that, on balance, there was no violation of the right to a speedy trial. *Garza*, 2009-NMSC-038, ¶ 22. As the delay lengthens, it weighs increasingly in favor of the accused. *Id.* ¶ 24. In other words, a delay barely crossing the guideline "is of little help" to the defendant's claim, while a delay of extraordinary length weighs heavily in favor of the defendant. *Serros*, 2016-NMSC-008, ¶ 26.

{15} We defer to the district court's finding of complexity,[3] which was supported by the number of charges and nature of the allegations. *See State v. Manzanares*, 1996-NMSC-028, ¶ 9, 121 N.M. 798, 918 P.2d 714; *see also State v. Rojo*, 1999-NMSC-001, ¶ 52, 126 N.M. 438, 971 P.2d 829 (explaining that the complexity of the case is best determined by the district court, which must consider both the nature and complexity of the crime). This was a complex case which, under *Garza*, should have been brought to trial within eighteen months. *See* 2009-NMSC-038, ¶ 2.

{16} Defendant was arrested on May 12, 2008. Twenty-two months later, the first trial resulted in a mistrial. This period alone was sufficient to raise speedy trial concerns, unlike cases in which the

[2]Defendant filed the first of five demands for a speedy trial on January 28, 2009, followed by demands on June 22, 2009, September 9, 2009, September 17, 2009, and November 23, 2009. Defendant filed his first motion to dismiss for violation of the right to a speedy trial on September 15, 2009, followed by motions on December 28, 2009, February 11, 2010, and April 20, 2010.

[3]Defendant faced one count of kidnapping, two counts of attempt to commit criminal sexual penetration in the first degree (child under thirteen), one count of interference with communications, ten counts of criminal sexual contact of a minor in the second degree (child under thirteen), and two counts of criminal sexual contact of a minor in the third degree (child under thirteen).

mistrial occurred within the speedy trial guideline. *See, e.g.*, *State v. Castro*, 2017-NMSC-027, ¶ 20, __ P.3d __ (noting that the mistrial occurred within the prescribed period for a simple case). By the time of the retrial on May 17-20, 2010, the case had been pending for a total of two years; six months past the *Garza* deadline. *See* 2009-NMSC-038, ¶ 48.

{17} Nevertheless, while sufficient to trigger the speedy trial analysis, the two-year delay was not extraordinary. *See, e.g.*, *Serros*, 2016-NMSC-008, ¶ 24 (holding that a delay of four years and three months was extraordinary and weighed heavily in the defendant's favor); *see also Doggett v. United States*, 505 U.S. 647 (1992), 657-58 (describing an eight and one-half year delay between the defendant's indictment and arrest as extraordinary). Thus, the length of delay weighs only slightly against the State.

B. Reason for the Delay

{18} The second *Barker* factor requires us to evaluate the reason for the delay. 407 U.S. at 530-31. We begin by calling to mind the three types of delay identified in *Barker*. *See id.* at 531. First, "[a] deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." *Id.* Second, negligent or administrative delay weighs less heavily but nevertheless weighs against the State because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Id.* Third, neutral delay, or delay justified by a valid reason, does not weigh against either party. *See id.* (stating that "a valid reason . . . should serve to justify appropriate delay"); *see also State v. O'Neal*, 2009-NMCA-020, ¶¶ 20-21, 145 N.M. 604, 203 P.3d 135 (describing a mistrial and inclement weather as "purely neutral circumstances" and holding that the resulting delays did not weigh against either party). In addition, delay initiated by defense counsel generally weighs against the defendant. *See Serros*, 2016-NMSC-008, ¶ 46 ("[T]he actions of defense counsel ordinarily are attributable to the defendant.").

{19} Because there was a mistrial in this case, the pre-trial delay falls into two separate periods. Before the mistrial, trial was postponed for a number of reasons, including a furlough affecting the Public Defender Department. The mistrial itself caused an additional two months of delay, what we determine to be a reasonable length of time. For reasons we explain below, we determine that the delay was primarily neutral and administrative.

1. Pre-Mistrial delay

a. Eighteen months of administrative delay

{20} The first four trial settings were postponed for administrative reasons, resulting in nearly eighteen months of pretrial delay.

{21} The prosecution moved along expeditiously for the first six months following Defendant's arrest.[4] The delays began when the district court vacated the first trial setting of November 10, 2008 because the second day of trial fell on a state holiday. This resulted in a one-month delay. The district court then vacated the second trial setting of December 17, 2008 to allow Defendant to conduct witness interviews. This caused a delay of two and one-half months. The district court vacated the third trial setting of March 4, 2009 due to a pending motion. This resulted in a three-month delay. The district court continued the fourth setting of May 26, 2009 because the trial was set for only one day instead of three days. This led to a five-month delay.

{22} The State argues that, because Defendant asked the district court to vacate the second trial setting in order to enable him to conduct witness interviews, the Court of Appeals wrongly attributed the delay following the second trial setting of December 17, 2008 to the State. We disagree with the State and affirm the Court of Appeals on this issue. *See Ochoa*, 2014-NMCA-065, ¶ 11. The basis for the continuance was to enable Defendant to adequately prepare for trial. Defendant needed time to conduct witness interviews, which had been postponed three times. This was a legitimate reason for Defendant to seek to postpone the second trial setting, and the resulting two and one-half month delay does not weigh against him. *See Garza*, 2009-NMSC-038, ¶ 11 ("'[I]f either party is forced to trial without a fair opportunity for preparation, justice is sacrificed to speed.' "). Further, the State did not oppose Defendant's request to continue the second trial setting. This period of delay was necessary to enable Defendant to adequately prepare for trial, and the request does not weigh against him under these circumstances.

{23} The foregoing continuances resulted in almost eighteen months of delay, all of which were caused by negligent or administrative reasons. *See Barker*, 407 U.S. at 531 (explaining that such delay should be weighed less heavily but nevertheless weighs against the State). "As the length of delay increases, negligent or administrative delay weighs more heavily against the State." *Serros*, 2016-NMSC-008, ¶ 29 (citing *Garza*, 2009-NMSC-038, ¶ 26 (quoting *Barker*, 407 U.S. at 531)). Here, the length of delay caused by negligent or administrative reasons was seventeen and one-half months—just under the *Garza* guideline for a complex case. *See Garza*, 2009-NMSC-038, ¶ 48. In other words, the majority of delay in this case falls into the "more neutral" category described in *Barker*. *See* 407 U.S. at 531. As such, we weigh this period slightly against the State.

b. Four and one-half months of neutral delay

{24} The fifth and sixth trial settings were vacated for reasons we determine to be "neutral." The resulting delay amounted to four and one-half months of neutral delay.

{25} The fifth trial setting of October 27, 2009 was vacated because the district court judge's sister died, causing two and one-half months of delay. This delay is a classic example of what we consider "neutral" delay that weighs against neither party. *See, e.g.*, *O'Neal*, 2009-NMCA-020, ¶¶ 20-21.

{26} The sixth trial setting of January 13, 2010 was delayed at Defendant's urging, as a furlough of employees of the Public Defender Department was expected to take effect on the third day of trial. In his motion to continue, Defendant stated that Governor Richardson had designated Friday, January 15, 2010 as a mandatory furlough day for all state employees and that defense counsel, a public defender, was subject to the mandatory furlough. Defendant also noted that this Court, contrary to the Governor's mandate, had

[4]For the reader's convenience, periods of delay are rounded to the nearest half month. The respective periods of delay are May 12, 2008 to November 10, 2008 (five months, 29 days); November 10, 2008 to December 17, 2008 (one month, seven days); December 17, 2008 to March 4, 2009 (two months, 15 days); March 4, 2009 to May 26, 2009 (two months, 22 days); May 26, 2009 to October 27, 2009 (five months, one day); October 27, 2009 to January 13, 2010 (two months, 17 days); January 13, 2010 to March 8, 2010 (one month, 23 days); and March 8, 2010 to May 17, 2010 (two months, nine days).

ordered public defenders to appear at hearings scheduled on the furlough day. Even so, Defendant asserted that defense counsel would be without support staff and unable to provide effective assistance at trial.

{27} The district court granted the request to continue the trial "to ensure the [d]efense [c]ounsel ha[d] adequate support staff to prepare a defense." Defendant argued that the "mandatory furlough is an action by the State" and any resulting delay to the proceedings should weigh against the State. The Court of Appeals agreed with Defendant and weighed the ensuing months against the State. *See Ochoa*, 2014-NMCA-065, ¶ 10. We disagree with attributing this delay to the State for the following reasons.

{28} In *Vermont v. Brillon*, the Supreme Court of the United States established the general rule that "delays caused by defense counsel are properly attributed to the defendant, even where counsel is assigned." 556 U.S. at 94; *id.* at 85 ("[D]elays sought by counsel are ordinarily attributable to the defendants they represent."). However, the *Brillon* Court foresaw an exception to the general rule where the delay results from a "systemic breakdown in the public defender system." *See id.* at 94 (internal quotation marks and citation omitted). The *Brillon* Court did not define the contours of this exception.[5] *See id.* Thus, we must decide whether the furlough, which affected staff at the Public Defender Department for only one day of trial, constitutes a "systemic breakdown in the public defender system." *See id.* (internal quotation marks and citation omitted). We conclude that it does not.

{29} Other courts have interpreted "systemic breakdown in the public defender system" to describe problems that are not only institutional in origin, but sufficiently serious to justify weighing the delay against the government. *See, e.g.*, *Weis v. State*, 287 Ga. 46, 694 S.E.2d 350, 354-55 (2010) (holding that funding problems did not amount to a breakdown of the entire public defender system when "lack of funding . . . was not the sole factor contributing to the delay"), *cert. denied*, *Weis v. Georgia*, 562 U.S. 850 (2010); *cf. United States v. Young*, 657 F.3d 408, 414-15 (6th Cir. 2011) (rejecting the argument that the district court's untimeliness was a "systemic failure" that should weigh against the State). We agree with this interpretation, and conclude that a "systemic breakdown in the public defender system" must be based upon problems that are both institutional in origin and debilitating in scope.

{30} In the instant case, the furlough was initiated by the Governor and resulted from events beyond the control of the defense and the prosecution. *Cf. Brillon*, 556 U.S. at 94 ("The effect of these earlier events should have been factored into the court's analysis of subsequent delay."). Thus, the period of delay caused by the furlough was institutional in origin. However, the furlough was not so debilitating as to justify attributing the delay to the government.

{31} The importance of adequately funding the institutions obligated to fulfill our constitutional responsibilities to accused persons cannot be overstated. *See Kerr v. Parsons*, 2016-NMSC-028, ¶ 40, 378 P.3d 1 (Vigil, J., specially concurring). However, we do not consider the delay caused by the instant furlough to be sufficiently onerous to constitute a "systemic breakdown of the public defender system." *See Brillon*, 556 U.S. at 94 (internal quotation marks and citation omitted). The furlough, which impacted only one day of a three-day jury trial and resulted in just two months of the entire two-year delay, is not the type of "systemic breakdown" contemplated by the *Brillon* Court. *Cf. State v. Brown*, 2015 WI App 90, ¶ 46, 365 Wis. 2d 608, 871 N.W.2d 867 (non-precedential) (concluding that there was no systemic breakdown when its public defender department left an unlicensed attorney on a case for a short period of the delay).

{32} Consistent with *Brillon*, we note that the "contrary conclusion could encourage appointed counsel to delay proceedings by seeking unreasonable continuances, hoping thereby to obtain a dismissal of the indictment on speedy-trial grounds." *See Brillon*, 556 U.S. at 93. Such a rule could create perverse incentives for defense counsel seeking to secure dismissal of a case. *See id.* In turn, "[t]rial courts might well respond by viewing continuance requests made by appointed counsel with skepticism, concerned that even an apparently genuine need for more time is in reality a delay tactic." *Id.* Defendant specifically asserted that he would lack the support of paralegals, secretaries, and investigators on the third day of trial. To weigh the ensuing delay against the State could fault the State for delay initiated by any defense attorney whose support staff were unavailable for trial. This result would be inappropriate where the State diligently persevered in moving the case forward, as in the instant case.

{33} We also do not consider the fact that Defendant sought the continuance—due to the furlough—to be dispositive of this issue. As stated in *Brillon*, courts must account for the earlier factors in a sequence of events when determining the reasons for delay. *Id.* at 94 ("The effect of these earlier events should have been factored into the court's analysis of subsequent delay."). The district court was justified in granting the continuance in anticipation of the furlough day. *See id.* We do not weigh this delay against a defendant "for the simple reason that an indigent defendant has no control over whether a [s]tate has set aside funds to pay his lawyer." *Cf. Boyer*, 133 S.Ct. at 1707 (Sotomayor, J., dissenting from dismissal of writ of certiorari). This analysis leads us to conclude that the two months following the furlough do not weigh against either party. We therefore conclude that this was a neutral delay.

2. Delay following the mistrial

{34} We proceed to consider the period after the mistrial. The mistrial occurred on March 8, 2010, two months before Defendant was convicted in a retrial. The district court found this period to be neutral, consistent with precedent then in force. *See O'Neal*, 2009-NMCA-020, ¶ 21 (weighing the period after a mistrial neutrally because it "[bore] no fault attributable to the parties"). Since then, this Court has announced that after a mistrial "the speedy trial clock does not begin to run anew—that is, the court does not have another [eighteen] months to schedule a [complex] case for retrial." *Castro*, 2017-NMSC-027, ¶ 21.

{35} In *Castro*, we rejected the approach under which the speedy trial "clock"

[5]The Court granted certiorari to determine whether a state's failure to fund counsel for an indigent defendant weighs against the State in *Boyer v. Louisiana*, 133 S. Ct. 1702, 1702 (2013) (per curiam), *dismissing cert. as improvidently granted*. However, the Court dismissed the writ as improvidently granted after determining that the record did not squarely present that issue. *See id.* at 1703 (concluding that most of the delay resulted from defense requests for continuances, other defense motions, and events beyond the control of either party).

resets and runs anew from the date of the mistrial. *Id.*; *see, e.g.*, *State v. Strong*, 258 Mont. 48, 50, 851 P.2d 415 (1993). The "clock" approach does not adequately protect incarcerated defendants in the event of successive mistrials. *Reuster v. Turner*, 250 So.2d 264, 267 (Fla. 1971) ("A construction allowing for a continuing series of new demand periods reinstated in the event of each mistrial would . . . do violence to our organic guarantee of speedy trial . . . ."), *overruling Kelly v. State ex rel. Morgan*, 54 So.2d 431, 432 (Fla. 1951). It is also inconsistent with our obligation to consider the unique circumstances underlying each speedy trial claim, including the particularized prejudice facing each defendant. *See Barker*, 407 U.S. at 522 ("[A]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case."); *see also Garza*, 2009-NMSC-038, ¶ 13 ("Violation of the speedy trial right is only determined through a review of the circumstances of a case, which may not be divorced from a consideration of . . . the harm to the defendant . . . . ").

{36} Nor did we adopt a second approach under which a mistrial is not a "trial" for speedy trial purposes, and defendants must be tried by a statutory deadline or released. *See, e.g.*, *Rider v. State*, 118 S.E.2d 749, 750 (Ga. Ct. App. 1961). The second approach conflicts with *Garza*, which "specifically rejects inflexible, bright-line approaches to analyzing a speedy trial claim." *See* 2009-NMSC-038, ¶ 13. It also conflicts with our rejection of the presumption that the right to a speedy trial has been violated when the delay crosses a threshold of "presumptive prejudice." *See id.* ¶ 21. Like the "clock" approach, the second approach prevents a court from examining the particular circumstances of each case. We reject both of these approaches as inconsistent with our speedy trial jurisprudence.

{37} *Castro* embodies a third approach."Ordinarily the court should schedule the retrial as soon as its docket permits unless the parties justifiably require additional pre-retrial discovery or motions practice." *Castro*, 2017-NMSC-027, ¶ 21. In other words, a defendant must be brought to trial within a reasonable time following a mistrial. *See, e.g.*, *People v. Dixon*, 87 Ill. App. 3d 84, 43 Ill. Dec. 252, 410 N.E.2d 252, 256 (2d Dist. 1980) (concluding that the constitutional right to a speedy trial was not violated when the defendant was retried within a reasonable time). This approach is consistent with both *Barker* and *Garza*. In the event of a mistrial, district courts must consider and weigh the ensuing developments in accordance with the particularized circumstances of each case. *See Garza*, 2009-NMSC-038, ¶ 13; *see also Barker*, 407 U.S. at 530-31 (explaining that the speedy trial inquiry "is necessarily dependent upon the peculiar circumstances of the case").

{38} In *Castro*, we were "particularly disturb[ed]" by a thirty-two month post-mistrial delay. *Castro*, 2017-NMSC-027, ¶ 21. In contrast, the retrial occurred just two months after the mistrial in this case. No one can reasonably contend that the retrial did not occur in a reasonable amount of time.

{39} We emphasize, however, the importance of timely disposition of cases. Boundless pretrial delay caused by the inefficiencies of those responsible for the fair and timely administration of justice has significant adverse consequences to the community and victims, as well as the accused. *Barker*, 407 U.S. at 519 ("[T]here is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused."). The effect of extended delay on determinations of truth and reliability "is a two-edged sword. It is the Government that bears the burden of proving its case beyond a reasonable doubt. The passage of time may make it difficult or impossible for the Government to carry this burden." *Doggett*, 505 U.S. at 659 (O'Connor, J., dissenting). When the regular course of prosecution is interrupted by an unexpected turn of events, it should be rescheduled in the manner best designed to foster expeditious resolution of a case. *See Castro*, 2017-NMSC-027, ¶ 21.

{40} In sum, under the second *Barker* factor, just under eighteen months of delay were caused by administrative reasons. This falls within the guidelines for a complex case and therefore weighs only slightly against the State. *See Garza*, 2009-NMSC-038, ¶ 2 (setting eighteen months as the guideline for a complex case); *id.* ¶ 26 ("The degree of weight we assign against the State for [administrative] delay is closely related to the length of delay[.]"). Further, the four and one-half month delay caused by the unforeseen death and the furlough of the employees of the Public Defender Department is neutral delay and does not weigh against either party. Finally, the State brought Defendant to trial within a reasonable time after the mistrial. Therefore, the second factor does not weigh heavily against the State.

C. Assertion of the Right to a Speedy Trial

{41} The third *Barker* factor asks us to consider whether Defendant asserted the right to a speedy trial. 407 U.S. at 531-32. The district court has the discretion to weigh a defendant's assertion based on the circumstances of the case. *Id.* at 528-29. The frequency and force of the objections can be taken into account in considering the defendant's assertion, as well as whether an assertion is purely pro forma. *Id.* at 529. Pro forma assertions are sufficient to assert the right, but are given little weight in a defendant's favor. *State v. Urban*, 2004-NMSC-007, ¶ 16, 135 N.M. 279, 87 P.3d 1061.

{42} In evaluating the third factor, this Court has also noted the importance of closely examining the circumstances of each case. *Garza*, 2009-NMSC-038, ¶ 33. This includes accounting for a defendant's actions with regard to the delay, such as filing frivolous motions or procedural maneuvers. *See id.* ¶ 32. On one hand, a single demand for a speedy trial is sufficient to assert the right. *See, e.g.*, *id.* ¶ 34. On the other hand, a defendant's assertion can be weakened by a defendant's acquiescence to the delay. *Id.* We also consider the consistency of a defendant's legal positions with respect to the delay. *See id.* ¶ 33.

{43} In the instant case, Defendant filed five demands and four motions to dismiss for violation of the right to a speedy trial. These filings were interspersed with Defendant's requests to continue the second and sixth trial settings. However, Defendant failed to respond to the State's three petitions to extend the time to commence trial.

{44} The State argues that Defendant weakened his assertion by requesting two continuances. We disagree. The Court of Appeals correctly concluded that the continuances sought by Defendant were the result of legitimate concerns in securing a fair trial for two reasons. *Ochoa*, 2014-NMCA-065, ¶ 19. The first was to ensure adequate time to prepare and review newly disclosed information. *See id.* ¶ 11. The second was because the third day of trial fell on a furlough day. *See id.* ¶ 19. We do not expect a defendant to choose between a speedy trial and an adequate defense. *See Garza*, 2009-NMSC-038, ¶ 32 (citing *McNeely v. Blanas*, 336 F.3d 822, 831 (9th Cir. 2003)). Defendant did not weaken his assertion of the right to a speedy trial by

requesting two continuances. *See Urban*, 2004-NMSC-007, ¶ 16 (holding that the defendant's request for a continuance did not "erase" his assertion of the right).

{45} Defendant did, however, dilute the strength of his assertion by failing to respond in a substantive manner to the State's three requests to extend the "six-month rule." *See* Rule 5-604(B)-(C) (Rule 5-604, the "six-month rule," requires the State to bring a defendant to trial within six months, but permits the district court to grant an extension for good cause.). Defendant did not file a response to any of these petitions. The first petition states that Defendant did not oppose the extension. The second petition states that Defendant opposed the extension and would file a response—but Defendant never did so. The third petition states that Defendant opposed the extension but "no hearing [was] necessary."

{46} Substantive responses are necessary to adequately inform the district court of each party's position so it can fully and fairly consider the merits of the request. By failing to assert a consistent position on the issue, Defendant acquiesced to the delay. *Garza*, 2009-NMSC-038, ¶ 34 (explaining that a defendant's "acquiescence to the delay" can mitigate the strength of the assertion). Therefore, Defendant's lack of response to the State's three requests to extend the six-month rule tempered his assertion of the right to a speedy trial.

{47} Further, given the timing of the State's petitions, Defendant's silence muted his demands for a speedy trial. *See Garza*, 2009-NMSC-038, ¶ 33. Just one month before Defendant filed his first demand for a speedy trial, Defendant did not oppose the State's first petition for an extension. One day after filing his second demand for a speedy trial, Defendant did not respond to the State's second request for an extension. Finally, just days before filing his fifth demand for a speedy trial, Defendant did not respond to the State's third request for an extension. The timing of these demands, in relation to Defendant's acquiescence to the State's requests to continue the trial settings, is "reminiscent of Penelope's tapestry."[6] Therefore, we decline to weigh the third *Barker* factor in Defendant's favor.

D. Prejudice

{48} The final *Barker* factor requires us to examine the prejudice to Defendant. 407 U.S. at 532. "Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Id.* These interests are preventing oppressive pretrial incarceration, minimizing anxiety and concern of the accused, and limiting the possibility that the defense will be impaired. *Id.* We examine these interests in light of the specific facts and circumstances of each case. *See id.* at 522.

{49} We begin our analysis of the prejudice factor by noting two important facts. First, Defendant was incarcerated for two years before he was ultimately tried and convicted. Second, Defendant did not offer proof in the form of affidavits, testimony, or other documentation to support his prejudice claim. Thus, we are compelled to assess the prejudice factor with little assistance from Defendant. *See Garza*, 2009-NMSC-038, ¶ 35 ("[W]e will not speculate as to the impact of pretrial incarceration on a defendant or the degree of anxiety a defendant suffers.").

{50} On appeal, the State asserts that the Court of Appeals erred in creating a bright-line rule that twenty-two months of pretrial incarceration is unduly prejudicial even when a defendant fails to make a particularized showing of prejudice. The State asserts that the Court of Appeals wrongly emphasized the length of delay in concluding that Defendant was prejudiced:

> "With respect to pretrial incarceration, the question is whether the length of time was unacceptably long in that it became unduly prejudicial so as to factor into the analysis." *State v. Laney*, 2003-NMCA-144, ¶ 29, 134 N.M. 648, 81 P.3d 591. This Court previously concluded that a delay of twenty-two months prejudiced a defendant. *See State v. Moreno*, 2010-NMCA-044, ¶¶ 36-37, 148 N.M. 253, 233 P.3d 782 (considering twenty-two months of pretrial incarceration as the main factor in determining that the defendant was prejudiced). Here, Defendant was incarcerated even longer. This is the "precise kind" of prejudice the speedy trial right was intended to prevent.

Ochoa, 2014-NMCA-065, ¶ 23. For the reasons that follow, we reject the State's argument and agree with the Court of Appeals on this issue. In doing so, we address three interrelated issues: (1) What is the role of the length of pretrial incarceration in determining whether a defendant suffered prejudice; (2) Can we presume that a defendant suffered particularized prejudice when, as here, he failed to present affirmative proof in support of his prejudice claim; and (3) If so, what is the weight of such a presumption in the overall balancing test? We hold that Defendant was prejudiced as a result of his continuous pretrial incarceration, although this presumption does not dispose of the speedy trial claim.

{51} Defendant was continuously incarcerated during the two years leading up to trial. As the *Barker* Court recognized:

> [There are] societal disadvantages of lengthy pretrial incarceration, [and] obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. . . . The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences . . . is serious.

407 U.S. at 532-33 (footnotes omitted). "The oppressive nature of the pretrial incarceration depends on the length of incarceration, whether the defendant obtained release prior to trial, and what prejudicial effects the defendant has shown as a result of the incarceration." *Garza*, 2009-NMSC-038, ¶ 35 (citing *Barker*, 407 U.S. at 532-33). Because some degree of oppression and anxiety is inherent in every incarceration, "we weigh this factor in the defendant's favor only where the pretrial incarceration or anxiety suffered is undue." *Id.* ¶ 35 (citation omitted).

{52} Consistent with *Barker* and *Garza*, the Court of Appeals properly considered the length of incarceration in determining whether there was oppressive pretrial

[6] *United States v. Loud Hawk*, 474 U.S. 302, 314 (1986) (quoting Homer, The Odyssey, Book II, lines 91-105) (Richmond Lattimore trans., 1965) (comparing a defendant's actions to those of Penelope, the wife of Odysseus, who claimed she would accept a suitor when she finished a tapestry, but unraveled part of the tapestry every night)).

incarceration. *See Barker*, 407 U.S. at 532-33; *Garza*, 2009-NMSC-038, ¶ 35 (citing *Barker*, 407 U.S. at 532-33). Although a defendant bears the burden of proving prejudice, this burden varies with the length of pretrial incarceration. *See Garza*, 2009-NMSC-038, ¶ 35 (explaining that a defendant "bear[s] the burden of production on this issue" (internal quotation marks and citation omitted)); *see, e.g.*, *id.* ¶ 37 (concluding that the defendant made no showing of prejudice when he spent only two hours in jail and apparently offered no proof in support of his prejudice claim); *see also Spearman*, 2012-NMSC-023, ¶¶ 3, 39 (concluding that the record was too limited to determine whether there was prejudice when the defendant spent only one day in jail); *see Serros*, 2016-NMSC-008, ¶¶ 21, 90 (considering the defendant's testimony in its conclusion that four years of pretrial incarceration resulted in extreme prejudice).

{53} Generally, mere allegations are insufficient to prove prejudice. *Jackson v. Ray*, 390 F.3d 1254, 1264 (10th Cir. 2004) (stating that "[t]he burden of showing all types of prejudice lies with the individual claiming the violation and the mere 'possibility of prejudice is not sufficient' "). For example, the defendant in *Garza* spent only two hours in jail and did not offer proof in support of his prejudice claim. 2009-NMSC-038, ¶ 37. We held that the defendant "made no showing of prejudice" cognizable under the fourth *Barker* factor. *Id.* Likewise, the defendant in *Spearman* asserted that he lost employment opportunities, had to move, and eventually suffered bankruptcy due to the pending charges. 2012-NMSC-023, ¶¶ 38, 39. He offered no evidence in support of his assertions and spent only one day in jail. *Id.* ¶¶ 3, 39. This Court concluded that it could not determine whether the defendant was prejudiced due to the lack of evidence in the record. *See id.* ¶ 39.

{54} However, lengthy and onerous pretrial incarceration may render affirmative proof unnecessary to find that the defendant suffered prejudice. *See, e.g.*, *Serros*, 2016-NMSC-008, ¶ 90; *State v. Brown*, 2017-NMCA-046, ¶ 37, 396 P.3d 171 (rejecting the State's argument that a defendant incarcerated for thirty-three months did not suffer particularized prejudice). In *Serros*, for example, the defendant testified that he was incarcerated for more than four years in custodial segregation. *See* 2016-NMSC-008, ¶ 88. We noted that "[the d]efendant's testimony easily establishes that the delay . . . caused him to suffer oppressive pretrial incarceration." *Id.* ¶ 90. However, we also acknowledged that the defendant's testimony was not essential to our conclusion that he suffered oppressive pretrial incarceration. *See id.* (describing the length of incarceration as "oppressive on its face"). Independent of the testimony describing his specific circumstances, the oppressive nature of the incarceration was self-evident based on the sheer length of incarceration. *See id.* Thus, the length of incarceration is a counterweight to a defendant's burden of production.

{55} The State incorrectly assumes that a court cannot find that a defendant has suffered prejudice when the defendant fails to present affirmative proof in support of his prejudice claim. Despite the emphasis in our recent jurisprudence on a defendant's burden in showing prejudice, we have also acknowledged that a defendant need not always present affirmative proof in support of a prejudice claim. *Garza*, 2009-NMSC-038, ¶ 39 (stating that "in some circumstances, prejudice may be presumed" and that "[t]he presumption that pretrial delay has prejudiced the accused intensifies over time" (alteration in original) (internal quotation marks and citations omitted)); *id.* (recognizing that a defendant need not show prejudice when the other three *Barker* factors weigh strongly in his favor (citing *United States v. Mendoza*, 530 F.3d 758, 764 (9th Cir. 2008))); *see also Moore v. Arizona*, 414 U.S. 25, 26 (1973) (per curiam) ("*Barker v. Wingo* expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial[.]").

{56} The United States Supreme Court has expressly held that "consideration of prejudice is not limited to the specifically demonstrable[.]" *Doggett*, 505 U.S. at 655. In *Doggett*, the Court held that the defendant suffered *presumptive prejudice* as a result of an eight and one-half year delay. *Id.* at 655-58. "[E]xcessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Id.* at 655. Although the *Doggett* Court addressed the third type of prejudice—impairment of the defense—its reasoning is persuasive with respect to Defendant's other prejudice claims. Pursuant to *Doggett*, a court can under certain circumstances presume that a defendant suffered some degree of prejudice even without affirmative proof. *Id.* at 655 (presuming that a defendant suffered prejudice and noting that certain forms of prejudice "can rarely be shown").

{57} We agree with the Court of Appeals that Defendant's two-year incarceration resulted in prejudice. *Ochoa*, 2014-NMCA-065, ¶ 23. Continuous pretrial incarceration is obviously oppressive to some degree, even in the absence of affirmative proof. *See Barker*, 407 U.S. at 532-33 (describing disadvantages for the accused as "obvious"). When, as in this case, a defendant was continuously incarcerated for an extended period of time, it requires no speculation to determine that the defendant suffered some prejudice. *Cf. Loud Hawk*, 474 U.S. at 304, 315 (1986) (holding that the prejudice to respondents who were neither under indictment nor subject to official restraint was too speculative to weigh in their favor). Therefore, we presume that Defendant was prejudiced simply by being continuously incarcerated for two years.

{58} We are unpersuaded by the State's argument that the length of delay is too short to presume prejudice. In support of this argument, the State relies on cases in which the defendants did not suffer oppressive pretrial incarceration. *See Barker*, 407 U.S. at 533-34 (finding no prejudice when the defendant was incarcerated for just ten months of the five-year delay); *Jackson*, 390 F.3d at 1258, 1263-65 (declining to presume prejudice when the defendant was incarcerated for just one year and nine months out of the four-year delay, without considering whether the defendant suffered oppressive pretrial incarceration); *United States v. Serna-Villarreal*, 352 F.3d 225, 232-33 (5th Cir. 2003) (holding that a delay of three years and nine months was too short to presume prejudice, without addressing whether the defendant was continuously incarcerated). These cases are distinguishable from the instant case.

{59} Nor are we convinced that the prejudice to Defendant is too speculative to consider in the speedy trial analysis. *See, e.g.*, *Loud Hawk*, 474 U.S. at 314. In *Loud Hawk*, a split court held that the mere possibility of prejudice was not sufficient to support the respondent's assertion that their speedy trial rights were violated. *See id.* at 315. The *Loud Hawk* respondents—unlike Defendant—were unconditionally released from custody. *Id.* at 308. Indeed, *Loud Hawk* expressly holds that the speedy trial right applies when defendants are subject to substantial restrictions on their liberty. *Id.* at 312 ("[T]he Speedy Trial Clause's core concern is impairment of liberty[.]").

We agree with the Court of Appeals that Defendant suffered "the 'precise kind' of prejudice" the speedy trial right is meant to prevent. *See Ochoa*, 2014-NMCA-065, ¶ 23.

{60} But our inquiry does not end there. Though it is obvious that Defendant was prejudiced by virtue of his continuous incarceration, absent affirmative proof, we can only speculate as to the specific circumstances of his incarceration. *See Garza*, 2009-NMSC-038, ¶ 35. In *Serros*, for example, the defendant's testimony supported our determination that the pretrial incarceration resulted in extreme prejudice. *See* 2016-NMSC-008, ¶¶ 88-90 ("[The d]efendant's testimony easily establishes that the delay in his case caused him to suffer oppressive pretrial incarceration."). However, a defendant could conceivably suffer oppressive pretrial incarceration in a much shorter time, or suffer less prejudice during a longer period of incarceration. These particulars are unknowable in the absence of affirmative proof. With affirmative proof, Defendant could have provided the Court with a basis for concluding that he suffered extreme prejudice.

{61} Similarly, we can presume that Defendant suffered some degree of anxiety and concern, but can only speculate as to whether such prejudice was *undue*. *See Spearman*, 2012-NMSC-023, ¶ 39 (declining to hold that the defendant suffered undue anxiety based on the bare allegations of defense counsel); *see also Garza*, 2009-NMSC-038, ¶ 35 (requiring the anxiety to be undue in order to weigh in the defendant's favor). Defendant did not offer affidavits, testimony, or documentation with respect to his specific circumstances of anxiety. Rather, Defendant argued that the State bore the burden of showing that he had not suffered anxiety or concern. Without this showing, we decline to speculate as to the particularized anxiety or concern he may have suffered. *See Garza*, 2009-NMSC-038, ¶ 35.

{62} We also presume that there was some impairment of the defense. *Doggett*, 505 U.S. at 655 (explaining that impairment of the defense may be impossible to prove). The *Doggett* Court explicitly recognized the concept of presumptive prejudice in the form of impairment of the defense, *id.* at 655, and the *Barker* Court described this as the "most serious" form of prejudice because "inability of a defendant adequately to prepare his case skews the fairness of the entire system." 407 U.S. at 532. Fading witness memories are just one collateral effect of prolonged pretrial delay. *See id.* (noting the possibility that the defense could also be impaired by loss of exculpatory evidence). Nevertheless, Defendant was obligated to state "with particularity what exculpatory [evidence] would have been offered[.]" *Serros*, 2016-NMSC-008, ¶ 85 (first alteration in original) (internal quotation marks and citations omitted). Here, Defendant asserted that the memories of the alleged victims exhibited significant discrepancies over the course of the delay, and that one of the witnesses changed her story. Defendant did not state with particularity what exculpatory evidence may have been offered.

{63} Finally, we must determine the weight of our presumption in the overall balance. Presumptive prejudice is not dispositive of the speedy trial claim. *See Doggett*, 505 U.S. at 656. "[P]resumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria." *Id.* Rather, "it is part of the mix of relevant facts, and its importance increases with the length of delay." *Id.*

{64} In conclusion, we presume that Defendant was prejudiced by his two-year, continuous incarceration. This prejudice is obvious and would be unjust to ignore. *Cf. Serros*, 2016-NMSC-008, ¶ 27 ("To weigh a delay of over four years against [the *d*]*efendant*—even slightly—[would be] simply unjust . . . ."). However, without knowing his specific circumstances, we would be strained to conclude that this prejudice prevails over the other three factors. Defendant bore the burden of showing particularized prejudice, *Garza*, 2009-NMSC-038, ¶ 35, which would enable this Court to weigh this factor more strongly in his favor. In the absence of such proof, this factor does not tip the scale in Defendant's favor. *See Doggett*, 505 U.S. at 656.

E. Balancing the *Barker* Factors

{65} We conclude that, while Defendant was prejudiced by his two-year pretrial incarceration, neither the length of delay, reasons for delay, nor assertion of the right to a speedy trial weigh in his favor. We presume prejudice based on Defendant's continuous incarceration for an extended period before trial. Defendant's burden of showing particularized prejudice was counterbalanced by the length of his pretrial incarceration. Nevertheless, this presumption does not weigh strongly in Defendant's favor in this case. Thus, Defendant was not deprived of his right to a speedy trial.

{66} In short, our presumption that Defendant was prejudiced is simply not enough to tip the scale in favor of Defendant's speedy trial claim. Despite the prejudice to Defendant, the other factors do not weigh strongly in his favor. We therefore conclude that Defendant's right to a speedy trial was not violated.

III. CONCLUSION

{67} We reverse the Court of Appeals and reinstate Defendant's convictions.

{68} IT IS SO ORDERED.

BARBARA J. VIGIL, Justice

WE CONCUR:
JUDITH K. NAKAMURA, Chief Justice
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
CHARLES W. DANIELS, Justice

Certiorari Denied, August 3, 2017, No. S-1-SC-36448

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-079

No. A-1-CA-34713 (filed April 3, 2017)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
MICHAEL JAMES LUCERO,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
STAN WHITAKER, District Judge

BENNETT J. BAUR
Chief Public Defender
NINA LALEVIC
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellee

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
JANE A. BERNSTEIN
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Albuquerque, New Mexico
for Appellant

Opinion

Michael E. Vigil, Judge

{1} The State appeals from the district court's order dismissing the charges against Defendant Michael James Lucero without prejudice pursuant to LR2-400.1 NMRA, the special pilot rule enacted by our Supreme Court to govern cases on the "special calendar" in the Second Judicial District Court.[1] Based on the undisputed facts, we conclude that the district court abused its discretion in dismissing the case. We therefore reverse and remand for further proceedings.

I. BACKGROUND

{2} Defendant was charged with first degree criminal sexual penetration of a child under the age of thirteen (Counts 1 and 2), and second degree criminal sexual contact of a child under the age of thirteen (Count 3). As an alternative to Count 3, Defendant was charged with third degree criminal sexual contact of a child under the age of thirteen. Defendant was arraigned on February 28, 2014, and held subject to a $100,000 cash-only bond.

{3} On March 13, 2014, Assistant District Attorney (ADA) Wesley D. Jensen entered his appearance on behalf of the State. Thereafter, on September 22, 2014, Defendant filed the first of two motions to review his conditions of release, in which he claimed that his mother was "quite frail and he [was] needed to provide financial and emotional support." Following a hearing, the district court judge then assigned to the case denied the motion by order on November 26, 2014. That same day, the district court judge entered a pretrial order and scheduled the docket call in this case for March 10, 2015, and the trial for March 23 and 30, and April 6, 2015.

{4} On February 2, 2015, this case was reassigned to another District Court Judge (the court). Approximately one month later, following a scheduling hearing, the court entered a scheduling order with the following deadlines, among others:

> Completion of witness interviews: December 19, 2015;
> Filing certification of readiness for trial: March 3, 2016;
> Filing final witness list: March 27, 2016;
> Docket call: March 28, 2016; and
> Trial shall commence the weeks of April 4, 2016 through April 15, 2016.

{5} Meanwhile, on February 6, 2015, Defendant filed an amended motion to review his conditions of release, explaining that his mother required his assistance as she recovered from eye surgery. The court set a hearing for March 31, 2015, to consider the motion to review conditions of release. The prosecuting attorney, ADA Jensen, was unavailable to attend the March 31, 2015 hearing, so he sent another prosecutor, ADA Nicholas Marshall, in his stead.

{6} During the March 31, 2015 motion hearing, defense counsel informed the court that Defendant was ready for trial and stated: "We have done the witness interview. We are ready to go. We could go tomorrow on this case." The court noted that he had some time and asked ADA Marshall if the State was ready to proceed to trial. ADA Marshall responded: "I don't know, Your Honor, I am filling in for [ADA] Jensen[.] I have some detailed notes about the conditions of release hearing. I'm not certain about whether or not it's ready for trial." The court scheduled a hearing for April 3, 2015 to "address truly" whether the parties were ready to proceed to trial.

{7} ADA Jensen appeared on behalf of the State three days later, on April 3, 2015, for the status hearing. At that time, the court stated that the trial was set for April 6, 2015. ADA Jensen responded: "That's really hard, Your Honor." After the court indicated that it was his understanding that the parties were ready to go to trial, ADA Jensen explained that the State still needed to interview one witness. The court expressed his concern that the case was old and stated that "we're not delaying this for pretrial interviews." He proceeded to say:

> So, [ADA] Jensen, you weren't here, but you had someone to

[1]The State refers to both LR2-400.1, which governs "special calendar cases," and LR2-400 NMRA (2015, recompiled and amended as LR2-308 effective Dec. 31, 2016), which governs "new calendar cases." The special calendar rule, LR2-400.1(B), "applies to all cases filed on or before June 30, 2014, unless identified as a case which will be placed [o]n the 'new calendar.' " See LR2-400(B)(1) ("Criminal cases filed before July 1, 2014, shall be assigned and scheduled as provided for 'special calendar' judges[.]"). The grand jury indictment in this case was filed on February 17, 2014, and therefore, this is a special calendar case.

> stand in and who represented to this [c]ourt that this case was ready to go. [Defense counsel] represented that this case was ready to go, and we set it for trial, and it's set for Monday. So I guess that brings us to—if the State is telling me they're not ready to go, then I have to make a decision.

{8} ADA Jensen explained to the court that he usually asked to have a couple of weeks to subpoena witnesses to trial, and the parties still had not interviewed the therapist in this case. The court stated that "therein lies the reason why we need counsel, the trial counsel present at the scheduling conference so—or the docket call, so we can make sure we know where we are going." After additional discussion between the court and ADA Jensen regarding whether the State would be ready to proceed to trial on April 6, 2015, the court dismissed the case without prejudice, and made the following findings:

> 1. A motion hearing was heard on March 31, 2015, substitute counsel for the [S]tate indicated that they were ready to proceed to trial.
>
> 2. A status hearing was heard in this matter on April 3, 2015[,] before the [the court].
>
> 3. At the status hearing[, the court] dismissed the case without prejudice due to the [S]tate not being ready to proceed to trial on Monday, April 6, 2015.

{9} This appeal followed.

II. DISCUSSION

A. This Court Has Jurisdiction Over the State's Appeal

{10} Before considering the State's argument, we must determine whether the State has a right to appeal. Defendant contends that the State's appeal must be dismissed because the district court's order dismissing the case without prejudice is not a final, appealable order. We review jurisdictional issues de novo. *See State v. Heinsen*, 2005-NMSC-035, ¶ 6, 138 N.M. 441, 121 P.3d 1040.

{11} "The State's right to appeal an adverse ruling in a criminal proceeding exists only by constitutional provision, statute, or rule." *Id.* ¶ 7. Pursuant to NMSA 1978, Section 39-3-3(B)(1) (1972), the State has a right to appeal a district court order dismissing a criminal complaint, indictment, or information. *See id.* ("In any criminal proceeding in district court an appeal may be taken by the state to the supreme court or court of appeals, as appellate jurisdiction may be vested by law in these courts . . . within thirty days from a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts[.]"). And, the State has this right even if the dismissal is without prejudice. *See State v. Armijo*, 1994-NMCA-136, ¶ 6, 118 N.M. 802, 887 P.2d 1269 (concluding that "the [L]egislature intended to permit the [s]tate to appeal *any* order dismissing one or more counts of a complaint, indictment, or information, *regardless* of whether the dismissal is with prejudice" (emphases added)).

{12} Defendant asks this Court to reconsider our decision in *Armijo*; however, we decline to do so. We recently considered the application of *Armijo* to a dismissal pursuant to LR 2-400.1, and we concluded that "in the absence of clear language from our Supreme Court, . . . the pilot rule does not change or otherwise affect the [s]tate's right of appeal." *State v. Angulo*, No. 34,714, mem. op. ¶ 3 (N.M. Ct. App. Jan. 5, 2016) (non-precedential). Thus, we conclude that *Armijo* still applies, and the order of dismissal without prejudice in this case is immediately appealable pursuant to Section 39-3-3(B)(1).

{13} The State timely appealed the district court's order of dismissal within the thirty-day deadline set forth in Section 39-3-3(B)(1). Therefore, this Court has jurisdiction to consider the merits under this provision.

B. The District Court Abused Its Discretion in Dismissing the Case

{14} The State argues that the district court abused its discretion in dismissing the case without prejudice, pursuant to LR2-400.1.[2] We review the district court's ruling under an abuse of discretion standard. *See State v. Navarro-Calzadillas*, 2017-NMCA-___, ¶ 16, ___ P.3d ___ ("[O]ur review of the district court's imposition of sanctions is for an abuse of discretion[.]); *State v. Candelaria*, 2008-NMCA-120, ¶ 12, 144 N.M. 797, 192 P.3d 792 (describing a district court in its appellate capacity to review the sanction of dismissal of a criminal case by a metropolitan court under its inherent power for an abuse of discretion). "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Duarte*, 2007-NMCA-012, ¶ 3, 140 N.M. 930, 149 P.3d 1027 (internal quotation marks and citation omitted).

{15} Under the special calendar rule, specifically LR2-400.1(J)(4),

> [i]f a party fails to comply with any provision of the scheduling order, the court shall impose sanctions as the court determines is appropriate in the circumstances, such as suppression, exclusion, dismissal, monetary sanctions against either the attorney or the attorney's government agency, or any other sanction deemed appropriate by the [c]ourt.

Therefore, under this rule, the district court was required to impose a sanction, which could include dismissal, *if* the State failed to comply with any provision of the scheduling order.

{16} In this case, the court, based on his view that the parties were ready for trial, and in an effort to move the case along more quickly, rescheduled the trial to start April 6, 2015—a full year earlier than the trial dates set forth in the scheduling order. During the status hearing on April 3, 2015, the State indicated that it still needed to interview the therapist, and it was not ready to proceed to trial on April 6, 2015—the next business day. As a sanction, the district court dismissed the case without prejudice. "We will not disturb a district court's order imposing sanctions absent an abuse of discretion." *State v. Harper*, 2010-NMCA-055, ¶ 11, 148 N.M. 286, 235 P.3d 625, *rev'd in part on other grounds by* 2011-NMSC-044, 150 N.M. 745, 266 P.3d 25.

{17} The dismissal was an abuse of discretion for three reasons. First, the dismissal was based on a faulty premise that the case should not be delayed further for pretrial interviews. This ruling, however, was in contravention of the deadline for completion of witness interviews, which was December 19, 2015. Second, the district court erred in finding that at the March 31, 2015 motion hearing, "substitute counsel for the [S]tate indicated that [the State was] ready to proceed to trial." Based on the transcript from the hearing, substitute counsel informed the court that he did not know if the case was ready for trial

[2] *See* supra note 1.

because he was filling in for ADA Jensen to address Defendant's motion to review his conditions of release. Third, the district court treated the hearing on Defendant's motion to review his conditions of release as a docket call, despite the fact that the hearing had been clearly noticed as a hearing on the motion to review Defendant's conditions of release and the docket call deadline was scheduled for March 28, 2016. In light of the foregoing, we conclude that the district court's dismissal of the case was "clearly against the logic and effect of the facts and circumstances of the case" and, therefore, was an abuse of discretion. *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citation omitted).

III. CONCLUSION

{18} Accordingly, we reverse and remand for further proceedings.

{19} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:
LINDA M. VANZI, Chief Judge
JONATHAN B. SUTIN, Judge

Classified

Positions

Staff Attorney

Disability Rights New Mexico, a statewide non-profit agency serving to protect, promote and expand the rights of persons with disabilities, seeks full-time Staff Attorney primarily to represent agency clients in legal proceedings. The position also involves commenting on proposed regulations and legislation, and other policy advocacy. Must have excellent research and writing skills, and demonstrate competence in a range of legal practice including litigation. Advanced education, work experience or volunteer activities relevant to disability issues preferred. Must be licensed or eligible for license in NM. Persons with disabilities, minorities, and bilingual applicants strongly encouraged. Competitive salary and benefits. Send letter of interest addressing qualifications, resume, and names of three references to DRNM, 3916 Juan Tabo NE, Albuquerque, NM 87111, or by email to mwolfe@DRNM.org, by 1/8/18. AA/EEO.

Associate Attorney

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

Town of Taos
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November 10, 2016
SB05-PO1617

The TOWN OF TAOS (Legal Department) is soliciting proposals from qualified attorneys to provide legal defense services to indigent defendants charged with misdemeanor offenses in Taos Municipal Court. Cases are assigned by the Municipal Court Judge when a defendant is indigent and entitled to legal defense services. The number of cases assigned varies but averages about 30-50 cases per year. The successful Offeror must be willing to accept all cases assigned by Municipal Judge unless a conflict and be able to accept cases beginning on or about December 23, 2016. The Offeror must be licensed to practice law in New Mexico and be in good standing. The request for proposals can be reviewed at: Within your proposal, please provide a resume, a copy of your Bar Card, names and contact information of two professional references, your qualifications, legal experience and a short statement why you feel you would be the best candidate to fulfill the Town of Taos requirements. The Town to will prefer compensate the legal defense attorney on a flat fee basis. The successful Offeror will be required to enter into a Professional Services Agreement with the Town of Taos. If you have any questions, please contact Amberley Valdez, Paralegal for the Town of Taos at (575) 751-2010.

Senior Trial Attorney
Assistant Trial Attorney
Entry Level Attorney

The 13th Judicial District Attorney's Office is accepting resumes for experienced Senior/Mid-level/Entry 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.

Associate Attorney

Couture Law, LLC is seeking a full-time associate attorney to join our team. We offer a professional, fast-paced, and pleasant environment. The areas of practice include Family Law and Workers' Compensation, with a primary focus in Family Law. Salary is commensurate with qualifications. Interested candidates should email a cover letter, resume, and salary history to: Tamara@CoutureLaw.com. No phone calls, please.

Associate Attorney - Albuquerque Office

THE FIRM: Noble & Vrapi, P.A. is a premier full service immigration law firm with offices in Albuquerque, Santa Fe, Las Cruces, and El Paso. We offer high quality services and have an excellent reputation among clients, colleagues, and the community. Our mission is simple: "Breaking Barriers, Changing Lives." For more on our core values: http://www.noblelawfirm.com/core-values. THE POSITION: We are hiring for a full time associate attorney to work in our Albuquerque office in matters of family immigration and removal defense litigation. This position requires someone who has extreme attention to detail, can follow instructions closely, and has excellent written and oral communication skills. Mission: Handle family, VAWA/U visa, and removal caseload with efficiency and quality in a team of at least two other attorneys and 3 paralegals. Outcomes: Within the first 6 months on the job: Adhere to firm's core values and team philosophy; Be able to conduct consultations with supervision by other attorneys; Prepare error-free submissions in affirmative filings before USCIS with supervision by other attorneys; Prepare excellent written motions and pleadings before immigration and state courts with supervision by other attorneys; Effectively handle hearings before the Immigration Court and interviews before USCIS in consultation with other attorneys; Take ownership over assigned cases in order to effectively and timely manage cases and deadlines; Effectively communicate with clients regarding the immigration process and case strategy. Within 1 year on the job: Conduct consultations independently; Represent clients before the Immigration Court and in interviews before USCIS independently; Represent clients in state court to seek post-conviction relief with supervision by other attorneys; Independently prepare error-free submissions in affirmative filings before USCIS; Independently prepare excellent written motions and pleadings before immigration and state courts; Establish professional profiles, online presence, and contacts with referral sources. Competencies: Fluency in Spanish; Attention to detail; Efficiency; Teamwork; Excellent oral and written communication skills; Strong organization, planning, and time-management skills; Professional attitude and demeanor; Ability to work independently on collaborative projects; Persistence; Creative problem-solving; Trustworthiness. Location: Albuquerque, NM. Full Time: The position is full time, Monday-Friday. Experience: No prior immigration experience required. New graduates are welcome to apply. Licensing: Must be licensed in any jurisdiction in the United States. New Mexico bar membership preferred. Will consider recent graduates who have not yet taken the bar exam. Compensation:Competitive compensation package. HOW TO APPLY: Send resume to: careers@noblelawfirm.com. In the subject line, please enter: <Last name, First name>; Associate Attorney Position. In the body of the email, in no more than four sentences, please state why you are interested in the position. Attachments: Resume only. References must be included in the resume.

Compliance Specialist I or II

Sandia Federal Credit Union is searching for a Compliance Specialist I or II. Please see the job description below and apply at www.slfcu.org (SLFCU Careers). Job Overview: Assists the Legal and Compliance Officer in the development, monitoring, and maintenance of the Credit Union's compliance program to ensure the Credit Union complies with applicable laws and regulations. Consults on and conducts compliance reviews of SLFCU documents, including member-facing materials, with a focus on reviewing marketing communications. Provides research and recommendations on compliance issues and in response to staff questions. Researches and, as applicable, analyzes member behavior in response to subpoenas and AML alerts. Contributes to other risk management initiatives as appropriate. Job Duties: Assist with the daily administration of the Credit Union's Bank Secrecy Act/Anti-Money Laundering program. Research findings and alerts from systems to determine the accuracy of the alert. Assist with filing of required reports within the prescribed time frames; Interpret laws, such as the Dodd-Frank Act's prohibition against Unfair, Deceptive or Abusive Acts or Practices (UDAAPs), as well as regulations, including those promulgated under the Truth in Lending Act and Truth in Savings Act, applicable to the Credit Union's marketing communications. Review such communications for compliance with applicable laws and Credit Union risk appetites; Conduct compliance reviews and/or audits of Credit Union materials, documents, records, and processes; Help with the development of goals and objectives for the compliance function in alignment with organizational and departmental goals and objectives; In the absence of the Legal and Compliance Officer, represent the Credit Union's regulatory compliance efforts to external auditors, examiners and others as necessary, and be able to provide sufficient explanation and supporting documentation of the Credit Union's policies and procedures as they relate to compliance requirements; Assist in processing summons and subpoena record requests, ensuring correct documentation is delivered, invoices are billed and payments are received; Contribute effectively to the Credit Union's knowledge bases, intranets and other knowledge repositories; Provide effective communications and support to employees in alignment with the Credit Union's core values; Promote the service and sales culture by maintaining basic knowledge of products and services and referring members to the appropriate person/department; Participate in special projects and perform other duties as required. Experience and Knowledge: One year of experience in at least one of the following areas: Analyzing financial information or account histories in a financial institution; or Interpreting and applying regulations; Demonstrated research skills and experience, particularly electronic research; Possesses a general knowledge of financial institution products, including retail and commercial account features and ownership/agency capacities; Basic knowledge of Credit Union products and services, features, and benefits; Strong technical aptitude, including proficiency in MS Word. Capable of becoming proficient in the following software programs: Adobe, iSeries, PCS Vision, SolCom, Transact, Bank of West Imaging, Verafin, Penley, eFunds, and FinCEN's eFiling. Education: Associate's degree in business administration, social science, literature, philosophy, communication or related degree; Equivalent combination of relevant education, training and experience may be substituted for education.

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.

General Practice Attorney

A busy small town practice in northern New Mexico seeks an attorney with 5+ years of experience in general practice, including domestic, criminal, estate planning, civil litigation and transactional. Start at half time and work your way into ownership. Send resume to: phil@reidgriffithlaw.com.

Litigation Legal Secretary

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

Trial Attorney
The Third Judicial District Attorney's Office is accepting applications for a Trial Attorney in the Las Cruces Office. Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Please send interest letter/resume by COB January 12th, 2018 to Whitney Safranek, Human Resources Administrator, 845 N Motel Blvd., Suite D, Las Cruces, New Mexico 88007 or to wsafranek@da.state.nm.us. Further description of this position is listed on our website http://donaanacountyda.com/.

Full-Time Receptionist
Full-Time Receptionist needed for established, mid-sized law firm. Applicant is required to have strong organizational, communication and computer skills (Word/Office 365 a plus), and should be self-motivated and comfortable working in a team-first environment. Responsibilities include answering telephones, greeting clients and legal professionals, and supporting attorneys and legal staff with a variety of duties. Some duties include lifting of up to 25 pounds. Applicant is required to make daily post office runs and occasional errands, and will need reliable transportation. Please send resume with references and salary requirements to: jjelson@ylawfirm.com. No phone calls please.

Legal Secretary/Paralegal
Small law office is seeking an experience full-time legal secretary/paralegal. The firm practices primarily in Domestic, Civil, Probate, Estate Planning and Criminal law. Create documents for District, Municipal and Magistrate Courts including Motions, Pleadings, Correspondence, Estate Planning, QDRO's and Discovery Requests; e-file pleadings through NM Odyssey/Tyler Technologies. Proficiency with Mac computers helpful. Needs to be a team player. This person will need to coordinate office matters with staff, attorneys, judges and clients. Please send resume and cover letter to tonya@reidgriffithlaw.com or call Tonya at 662-3911.

Paralegal
Paralegal for downtown defense law firm, 5+ years paralegal experience. Strong organizational skills and attention to detail necessary. Must be familiar with Outlook and Word. Full-time, salary DOE, great benefits inc. health & life ins. and 401K match. E-mail resume to: kayserk@civerolo.com; fax resume to 505-764-6099; or, mail to Civerolo, Gralow & Hill, PA, P.O. Box 887, Albuquerque NM 87103.

Community Outreach Position
Twelve-week temporary employment community outreach position, beginning January 15 and averaging 20 hours/week. Law student or law graduate Spanish speaker with some income tax background preferred, but we will train. Send resume attention Grace Allison at jobs@nmlegalaid.org.

Services

Board Certified Orthopedic Surgeon
Board certified orthopedic surgeon available for case review, opinions, exams. Rates quoted per case. Owen C DeWitt, MD, odrice@icloud.com

Contract Paralegal Services
Paralegal with over 20 years experience available for contract work. Specializing in civil litigation cases, including medical malpractice, involving large record productions which would benefit from integrated approach to data analysis and synthesis. Resume and references available upon request. Jan Gribble at Contract-paralegal@gmx.com

Office Space

620 Roma N.W.
620 ROMA N.W., located within two blocks of the three downtown courts. Rent includes utilities (except phones), fax, internet, janitorial service, copy machine, etc. All of this is included in the rent of $550 per month. Up to three offices are available to choose from and you'll also have access to five conference rooms, a large waiting area, access to full library, receptionist to greet clients and take calls. Call 243-3751 for appointment to inspect.

Nob Hill Office Building For Rent
3616 Campus Blvd NE. Approx 900 sq. ft.; 3 private offices, 2 admin areas; 6 offstreet parking spaces; near ART line. $1900/month exclusive of all utilities and insurance with year lease. masseylaw@swcp.com.

Modern Law Office
Modern Law Office, shared space for rent, close to downtown, Lomas & I-25. At least two professional offices. Plenty of room for staff. Parking & Storage available. Immediate move-in. Call Paul 505-246-8600

Office for Lease
High visibility Lomas Ave. Office building for lease in historic downtown. 2-3 offices with conference area. Plenty of off-street parking. Walk to courts and downtown. $1325/month. Call 505-235-5141 or email deraadwjd@gmail.com.

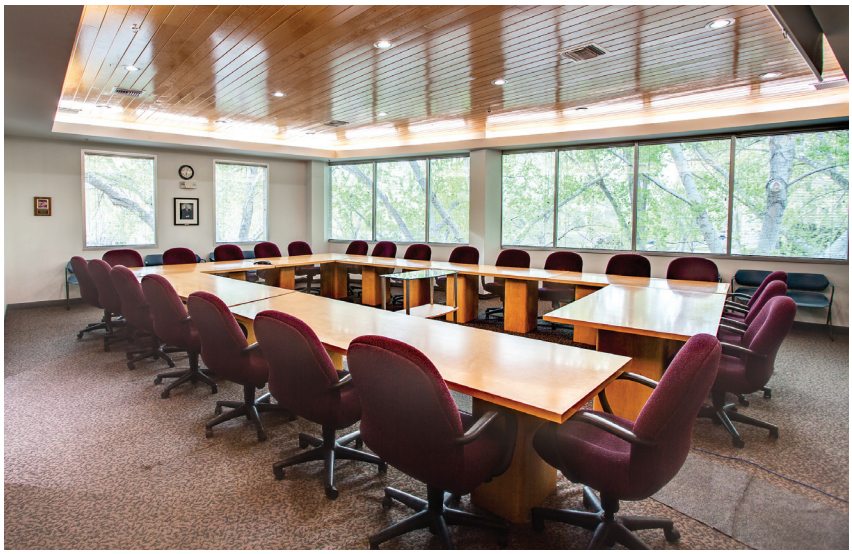
Miscellaneous

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

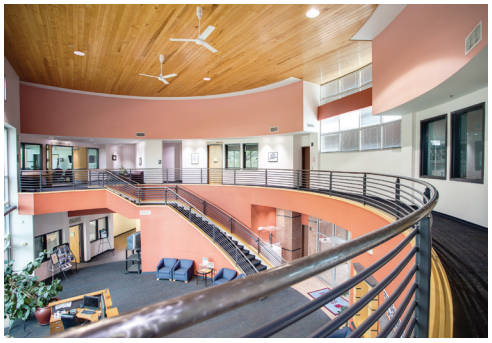
Great Opportunity
I am seeking an Attorney or Attorneys to purchase or take over my practice as a sole practitioner in Alamogordo, New Mexico. The Twelfth Judicial District, and Alamogordo in particular, is experiencing a shortage of attorneys who practice civil and family law. This is a great opportunity for an attorney to take over an established law firm. I opened the Robert M. Doughty II, PC, in July 1999, upon retiring from the District Court Bench. Please contact Robert M. Doughty II, Esq., Robert M. Doughty II, PC, P.O. Box 1569, Alamogordo, NM 88311-1569,(575)434-9155,rmdlaw@qwestoffice.net.

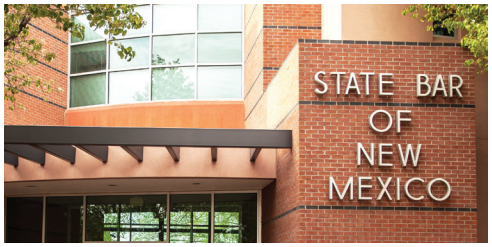
Last Will and Testament
We are searching for the Last Will and Testament of Carlene Mitchell. If you have either the original or a copy, please contact Vincent Haslam at (505) 888-1188.

Hold your conference, seminar, training, mediation, reception, networking social or meeting at the State Bar Center.



Your Meeting Destination





- Multi-media auditorium
- Board room
- Small to medium conference rooms
- Classrooms
- Reception area
- Ample parking
- Free Wi-Fi

For more information, site visits and reservations, call 505-797-6000.

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