Official Publication of the State Bar of New Mexico

Bar Bulletin

February 14, 2018 • Volume 57, No. 7

Santa Cruise, by Jacob Tarazoff

www.jacobtarazoff.com

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CLE Planner

March 23

How to Practice Series
Probate and Non-Probate Transfers

4.0 G 2.0 EP

Friday, March 23, 2018 • 9 a.m.-4:30 p.m.
State Bar Center, Albuquerque

Training in core practice skills!

Co-sponsor: *Young Lawyers Division*

$209 Early-bird registration fee (live attendance only). Registration must be received by Feb. 23
$249 Government and legal services attorneys; Paralegal Division members and Young Lawyers Division Members
$279 Standard and Webcast fee

Attendees will receive an overview of probate in New Mexico and its process and flow, best practices when communicating with heirs and beneficiaries, non-probate transfers and much more! The program includes a case evaluation and mock client interview to help attendees get the hands-on basic skills they can use right away.

March 9

33rd Annual Bankruptcy Year in Review Seminar

6.0 G 1.0 EP

Friday, March 9, 2018 • 8:30 a.m.-5 p.m.
State Bar Center, Albuquerque

Co-sponsor: *Bankruptcy Law Section*

$279 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members
$309 Standard and Webcast fee

The seminar focuses on developments in case law on bankruptcy issues in 2017, both nationally and locally, with special emphasis on decisions by the U.S. Supreme Court, tenth Circuit Court of appeals, tenth Circuit B.A.P. and U.S. Bankruptcy Court for the district of New Mexico. Also included are presentations by the bankruptcy judges for the district of New Mexico, the Assistant U.S. Trustee for the district of New Mexico, the clerk of court, and an ethics/professionalism presentation.

A $20 late fee will be assessed for walk-in registrations (applies to live attendance only).
Registration and payment must be received in advance to avoid the fee.

Register online at **www.nmbar.org/CLE**
or call 505-797-6020.

State Bar of New Mexico
Bar Foundation
Center for Legal Education

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Meetings

February

14
Tax Section Board
11 a.m., teleconference

14
Children's Law Section Board
Noon, Juvenile Justice Center

16
Family Law Section Board
9 a.m., teleconference

20
Solo and Small Firm Section Board
11 a.m., State Bar Center

20
Real Property Trust and Estate Section: Trust and Estate Division
Noon, teleconference

21
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

22
Public Law Section Board
Noon, Cuddy & McCarthy, Santa Fe

22
Trial Practice Section Board
Noon, State Bar Center

Workshops and Legal Clinics

February

9
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

27
Common Legal Issues for Senior Citizens Workshop
Presentation 10–11:15 a.m., Bosque Farms Community Center, Bosque Farms, 1-800-876-6657

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

March

7
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque, 505-797-6022

9
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

About Cover Image and Artist: Jacob Tarazoff is currently focusing on the idea of 'landscape' (living memory) in his work. He aims to present an homage exalting the elemental natural processes that have shaped not only the Earth, but also each person's own biological and sociocultural selves. Tarazoff paints with a limited palette (2 blue, 2 red, 2 yellow, Magenta, Turquoise, and Titanium white), and primarily en plein aire and alla prima (wet into wet, one sitting/all at once). He received a B.F.A. from the University of New Mexico (2006). Commissions are available, along with adventure-painting guided trips in the Sangre De Cristo' and throughout Northern New Mexico and other Western U.S. states. For more of Tarazoff's work, visit www.jacobtarazoff.com, Jacob Tarazoff Fine Art on Facebook and @jacobtarazoff on Instagram.

Notices

Court News

New Mexico Supreme Court Judicial Standards Commission

Seeking Commentary on Proposed Amended Rules

The Commission has completed a comprehensive review and revision of its procedural rules. Commentary on the proposed amendments is requested from the bench, bar and public. To be fully considered by the Commission, comments must be received by March 16 and may be sent either by email to rules@nmjsc.org or by mail to Judicial Standards Commission, PO Box 27248, Albuquerque, NM 87125-7248. To download a copy of the proposed amended rules, visit nmjsc.org/recent-news/.

Supreme Court Law Library

Hours and Information

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

Hours of Operation

Monday–Friday 8 a.m.–5 p.m.

Reference and Circulation

Monday–Friday 8 a.m.–4:45 p.m.

First Judicial District Court

Notice of Judge Assignment

Pro Tem Judge Sarah M. Singleton has been assigned to preside over criminal cases assigned to Division 5 from Feb. 26–May 25 or until a newly assigned judge takes office, whichever occurs first. This assignment is in the interest of judicial efficiency, pursuant to NMSC Rule 23-109, the chief judge rule. This reassignment is effective upon Judge Attrep vacating her position from Division 5 and is under the terms agreed to by Judge Singleton and the First Judicial District Court.

Third Judicial Court

Judicial Candidates

The Third Judicial District Court Nominating Commission convened on Feb. 1 in Las Cruces and completed its evaluation of the six applicants for the vacancy on the Third Judicial District Court. The Commission recommends the following three candidate to Gov. Susana Martinez: **Richard M. Jacquez**, **Isabel Denise Jerabek** and **Jeanne H. Quintero**.

Bernalillo County District Court

Destruction of Tapes

Pursuant to the judicial records retention and disposition schedules, the Second Judicial District Court will destroy tapes of proceedings associated with the following civil and criminal cases:

1. d-202-CV-1992-00001 through d-202-CV-1992-11403;
2. d-202-CV-1993-00001 through d-202-CV-1993-11714;
3. d-202-CV-1994-00001 through d-202-CV-1994-10849;
4. d-202-CV-1995-00001 through d-202-CV-1995-11431;
5. d-202-CV-1996-00001 through d-202-CV-1996-12005;
6. d-202-CV-1997-00001 through d-202-CV-1997-12024;
7. d-202-CR-1983-36058 through d-202-CR-1983-37557;
8. d-202-CR-1984-37558 through d-202-CR-1984-39151;
9. d-202-CR-1985-39152 through d-202-CR-1985-40950;
10. d-202-CR-1986-40951 through d-202-CR-1986-42576.

Attorneys who have cases with proceedings on tape and want to have duplicates made should verify tape information with the Special Services Division at 505-841-7401 from 10 a.m.-2 p.m., Monday through Friday. Aforementioned tapes will be destroyed after March 31.

U.S. District Court for the District of New Mexico

Appointment of Chief Judge

Hon. William P. Johnson will be appointed as the 13th chief judge for the District of New Mexico, effective Feb. 8. Judge Johnson has served the Federal Court for more than 16 years, appointed by President George W. Bush in 2001. His appointment follows Hon. M. Christina Armijo, who has retired from active service.

Professionalism Tip

Lawyer's Preamble

As a lawyer, I will strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers, and I will also conduct myself in accordance with the Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts, and any other person involved in the legal system, including the general public.

State Bar News

Attorney Support Groups

- **New meeting added**
  First meeting: Feb. 19, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albquerque, King Room in the Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- March 5, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- March 12, 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 available. Dial 1-866-640-4044 and enter code 7976003#.

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

2018 Licensing Notification

Late Fees Began Feb. 2

2018 State Bar licensing fees and certifications are due. Late payments or late disclosure penalties were assessed after Feb. 1 and delinquency certification is sent to the New Mexico Supreme Court after March 31. 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 Editors

Call for Articles for Criminal Law Issue of *New Mexico Lawyer*

The *New Mexico Lawyer* is published four times a year and each issue focuses on a specific area of law. The Board of Editors has chosen criminal law as the topic of the next issue of the *New Mexico Lawyer*, to be published in May. The Board seeks abstracts for articles that address criminal law issues in New Mexico. Abstracts should be at least 300 words. Abstract submissions must include the abstract, the author's full name and address and a brief biography of the author. The deadline for submissions is Feb. 23. Send submissions to Director of Communications Evann Kleinschmidt at ekleinschmidt@nmbar.org. The Board of Editors will choose the abstracts and notify authors in March. Articles for the *New Mexico Lawyer* are approximately 1,500 words. For more information about the publication or the call for abstract submissions, visit www.nmbar.org/NewMexicoLawyer or contact Evann.

Seeking Applications for Open Positions

The State Bar Board of Editors has open positions. The Board of Editors meets at least four times a year to review articles submitted to the *Bar Bulletin* and the *New Mexico Lawyer*. This volunteer board reviews submissions for suitability, edits for legal content and works with authors as needed to develop topics or address other concerns. The Board is also responsible for planning for the future of the State Bar's publications. The Board of Editors should represent a diversity of backgrounds, ages, geographic regions of the state, ethnicity, gender and areas of legal practice and preferably have some experience in journalism or legal publications. The State Bar president, with the approval of the Board of Bar Commissioners, appoints members of the Board of Editors, often on the recommendation of the current Board. Those interested in being considered for a two-year term should send a letter of interest and résumé to Director of Communications Evann Kleinschmidt at ekleinschmidt@nmbar.org. Apply by Feb. 23.

Solo and Small Firm Section

Spring Monthly Speaker Series Line-up

On Feb. 20, join 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, for a discussion on the hot topics of the day. On March 20, new Mexico State Sen. Sander Rue will review the 2018 legislative session from the Republican viewpoint and welcome questions and vigorous discussion about the future of New Mexico. 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

UNMSOL Summer Fellowship Open Now

The YLD offers two $3,000 summer fellowships to UNM School of Law students who are interested in working in public interest law or the government sector. The fellowship awards are intended to provide the opportunity for law students to work for public interest entities or in the government sector in an unpaid position. To be eligible, applicants must be a current law student in good standing. Applications for the fellowship must include: 1) a letter of interest that details the student's interest in public interest law or the government sector; 2) a résumé; and 3) a written offer of employment for an unpaid legal position in public interest law or the government sector for the summer. Applications containing offers of employment that are contingent upon the successful completion of a background check will not be considered unless verification of the successful completion of the background check is also provided. Email applications to Breanna Henley at bhenley@nmbar.org by 5 p.m., March 23 for consideration.

Volunteers Needed for Homeless Legal Clinics

The Homeless Legal Clinic is open in Albuquerque from 9-11 a.m. (orientation at 8:30 a.m.), on the third Thursday of each month, at Albuquerque Healthcare for the Homeless, located at 1220 First Street NW and in Santa Fe from 10 a.m.-noon each Tuesday, at the St. Elizabeth Shelter, located at 804 Alarid Street in Santa Fe. Volunteer attorneys are needed to staff the clinics, 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. Visit www.nmbar.org/HLC to volunteer. Direct questions to YLD Region 2 Director Kaitlyn Luck at luck.kaitlyn@gmail.com.

UNM School of Law

Law Library Hours

Through May 12

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.

Free CLE: Balancing the Scales

State Bar members and UNM law students are invited to attend a screening of the documentary "Balancing the Scales" followed by a moderated discussion with New Mexico attorney and executive coach Elizabeth Phillips from 5-7:30 p.m., March 1, at the UNM School of Law. The documentary delves into the challenges women lawyers have faced historically and still face today, including the additional hurdles faced by women lawyers of color, and illustrates how U.S. culture has accepted less than full equality for women and how few women lawyers have really broken the glass ceiling. Explore how the intersectionality of gender and race creates additional challenges and what impact we can have on the profession. Dinner will be served beginning at 5 p.m. and the program begins at 5:30 p.m. This program has been approved by MCLE for 2.0 EP,

sponsored by the UNM School of Law. Dinner is provided by the Committee on Women and the Legal Profession and the UNMSOL Women's Law Caucus. Special thank you to New Mexico PBS for supplying a copy of the film and permitting this special showing. R.S.V.P. to Laura Castille at lcastille@cuddymccarthy.com by Feb. 28.

Other Bars

American Bar Association Health Law Section

19th Annual Conference on Emerging Issues in Healthcare Law

The American Bar Association Health Law Section will be convening the "19th Annual Conference on Emerging Issues in Healthcare Law" on Feb. 21–24 in Scottsdale, Ariz. State Bar of New Mexico members receive a 10 percent discount. Registration is additionally discounted to $595 for first time attendees (representing a savings of $450). Attendees will have the opportunity to network with healthcare bar leaders from across the country and take home meaningful insights from 16 cutting edge CLE programs including immigrant access to healthcare, antitrust enforcement, billing disputes, human trafficking and more. Visit ambar.org/EMI2018 for more information or to register.

American Bar Association

Section of Litigation Appellate Practice Regional Meeting 2018: Colorado

The American Bar Association Section of Litigation presents "Appellate Practice Regional Meeting 2018: Colorado at the U.S. Supreme Court with Solicitor General Fed Yarger" on March 6 in Denver. Registration is $55 for section members, $120 for non-section members and $25 for government attorneys and students. Visit http://ambar.org/ltappellate for more information or to register.

New Mexico Criminal Defense Lawyers Association

Prisons, Pimps and Prejudices: Federal Practice CLE Seminar

Jeff Carson, retired operations manager for the Bureau of Prisons, returns to NMCDLA's "Prisons, Pimps & Prejudices: Federal Practice CLE" (6.0 G) on Feb. 23 in Albuquerque to give attorneys the inside scoop on everything to know about the BOP. Also on the agenda for this seminar is sex trafficking 101, the DOJ and the new war on drugs, implicit bias and a federal case law update. Visit www.nmcdla.org to register and renew membership dues for 2018 today.

Other News

Center for Civic Values

Requesting Judges for Gene Franchini High School Mock Trial

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

132ND BIRTHDAY Celebration

You're Invited!

The State Bar is proud of the tremendous dedication and service that our membership has given to the legal profession and the public. We hope you will join us for this important celebration.

State Bar President Wesley O. Pool and Chief Justice Judith K. Nakamura will honor attorneys celebrating 25 and 50 years of service.

Distinguished guests from the New Mexico Supreme Court, New Mexico Court of Appeals and the UNM School of Law have been invited to attend. Participants in Entrepreneurs in Community Lawyering, the State Bar's legal incubator program, will be in attendance to meet members of the State Bar, share the developments of ECL and discuss the launch of their solo practices.

Friday, Feb. 23

Ceremony at 4 p.m. • Reception to follow

State Bar Center, 5121 Masthead NE, Albuquerque

STATE BAR of NEW MEXICO

Visit **www.nmbar.org/BirthdayParty** to R.S.V.P.
Direct questions to Breanna Henley at bhenley@nmbar.org

How much do you know about the Bar Foundation?

In the last five years the Bar Foundation provided the following services to our community and members:

For Our Community

- Provided direct legal assistance to approximately **20,600** seniors statewide.
- Sponsored **241** workshops statewide on debt relief/ bankruptcy, divorce, wills, probate, long term care Medicaid and veteran's issues.
- Helped more than **3,970** New Mexicans statewide find an attorney.
- Distributed **$2,811,244** for civil legal service programs throughout New Mexico.
- Introduced more than **650** high school students to the law through the Student Essay Contest.
- Provided more than **24,500** pocket Constitutions and instruction by volunteer attorneys to New Mexico students statewide.

For Our Members

- Lawyer referral programs helped members meet new clients and accumulate pro bono hours with more than **3,970** referrals to the private bar, **655** prescreened by staff attorneys.
- Provided more than **100,000** credit hours of affordable continuing legal education.

The **State Bar Foundation** is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the Foundation are to:

- *Enhance* access to legal services for underserved populations
- *Promote* innovation in the delivery of legal services
- *Provide* legal education to members and the public

The State Bar Foundation Relies on the *Passion* of Lawyers!

STATE BAR of NEW MEXICO FOUNDATION

To support the Bar Foundation, contact Stephanie Wagner at 505-797-6007 • swagner@nmbar.org

Kevin J. Banville has been named an income partner with McCoy Leavitt Laskey LLC. Banville has been with the firm since 2015 and continues to refine his practice in civil litigation. Banville concentrates his practice in construction defect, premises liability, trucking litigation, fires/explosions/floods and product liability. Banville is licensed in state and federal courts in New Mexico and Arizona and in Federal Court in Colorado. From 2015 – 2018, Banville has been consistently recognized as a *Southwest Super Lawyers* "rising star."

Eric Burris of Brownstein Hyatt Farber Schreck will chair the litigation department as it further evolves to meet the changing needs of Brownstein's clients. Since 2013, Burris had served as co-chair of the litigation department with Rich Benenson. Burris is known for his presence and success in the courtroom, having represented high-profile clients in the health care, financial services, real estate and other sectors for almost 30 years.

Joshua A. Collins has been elected as a shareholder with Allen, Shepherd, Lewis & Syra, PA.

Robert F. Gentile has been named partner with Guebert Bruckner PC. Gentile practices in the areas of civil litigation including wrongful death, catastrophic personal injury, product defect liability, premises liability and medical malpractice. Prior to joining Guebert Bruckner in 2013, Gentile was a deputy district attorney in San Juan County in northern New Mexico. The firm will change its name to Guebert Bruckner Gentile PC.

Kathryn Ritter Jochems has joined Miller Stratvert PA as an associate attorney. Jochems graduated from the University of New Mexico School of Law, *cum laude*, in May 2017. She is located in the Albuquerque office and her practice areas are civil litigation and commercial transactions.

Brook Laskey has been named the U.S. Personal Injury Lawyer of the Year in 2017 by *Lawyer Monthly*. Laskey has defended more than 400 fire, explosion and flooding cases throughout the country during his 21 year career. He is well known for his experience investigating the origin and cause of fires and his broad-based knowledge of gas industry standards. Laskey is a founding partner of McCoy Leavitt Laskey LLC which opened in 2013. The firm has offices in Albuquerque, Milwaukee, Chicago, Kansas City and Portland, Maine.

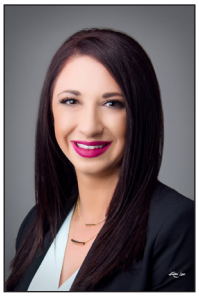
Brandon M. Meyers has been named an associate with McCoy Leavitt Laskey LLC. Meyers recently graduated with his law degree in May 2017 from the University of Alabama School of Law. Meyers earned his bachelor's degree *magna cum laude* from the University of New Mexico in May 2014, where he majored in environmental science and communication. Meyers is currently licensed in state and federal courts in New Mexico.

Keith Mier has been elected as a shareholder with Sutin, Thayer & Browne. Mier belongs to the firm's commercial litigation group and has practiced law in Albuquerque and Santa Fe for four years. He focuses primarily on labor and employment law, healthcare, corrections, Indian law, creditor rights and water law.

Justin R. Sawyer has been elected to board of directors at Sutin, Thayer & Browne. Sawyer is as an Albuquerque lawyer who practices primarily in commercial litigation, effective Jan. 1, Sawyer's director duties include participation in matters of the firm's policy, objectives, compensation, finance, leadership and performance. Sawyer joined the firm in 2010 and became a shareholder in 2014. Sawyer earned his bachelor's in economics and his master's in financial management from the University of New Mexico. He earned his law degree (*cum laude*) from the University of Miami and has practiced law since 2007.

Debora E. Ramirez (left) and **Melanie B. Stambaugh** (right) were elected to the Board of Directors of the Rodey Law Firm on Jan. 24. Ramirez is a member of Rodey's business department. She advises clients in connection with financing and real estate transactions, mergers and acquisitions, securities law issues, leases and contracts and general corporate matters. Stambaugh is a member of Rodey's litigation department. Her practice focuses on complex and commercial litigation. Prior to attending law school, Stambaugh interned and worked for several international nonprofits, including the United Nations, International Rescue Committee and South American Explorers.

The New Mexico Court of Appeals is pleased to welcome **Bonnie Stepleton** as its new court mediator. She replaces Robert Rambo who retired after 15 years of service.



Randi Valverde has been elected a shareholder with Montgomery & Andrews, PA. Valverde's practice includes litigating and counseling clients regarding employment law, labor law, and insurance defense matters. Her practice also includes conducting administrative investigations into personnel matters, drafting personnel policies, conducting employee training and providing strategic policy and media relations advice.

Andrea Salazar, an associate of Cuddy & McCarthy, LLP, has been selected to join the UNM Alumni Board beginning in January 2018.

In Memoriam

Janet Faye Ellis (born Aug. 2, 1946) of Carlasbad, N.M., died Dec. 7, 2017. Janet's road to Carlsbad started at the University of Montana School of Law. She graduated with her law degree in 1996 when she was 50 years old – something of which she was very proud. Along the way, she worked as a judicial clerk in Montana and an attorney for the Navajo Nation in New Mexico. A friend suggested she take a look at Carlsbad. That look led to a job with the District Attorney's office in 2000. That job led to Janet adopting Carlsbad as her new home. Ellis was very active in her new community. She volunteered with the Boys and Girls Club. She sat on the board, and, on Dr. Seuss Day, she could frequently be found dressed as the Cat in the Hat, reading to children. She also served as president on the Carlsbad Battered Families Shelter board. It was her work on the Carlsbad Battered Families Shelter board of which she was most proud. Through her work with state lawmakers and city officials, a state-of-the-art shelter was able to be built. Ellis ran a successful private law practice until her retirement in 2012. After four years in retirement, Janet decided to run for Municipal Judge. She won the race and the gavel. Ellisis survived by her husband, Eric Ellis; her daughter, Erica Ellis of Carlsbad; a sister, Carol White of Florida; a brother Floyd Johnson of Tennessee; a brother, John Greenberger of Montana; and numerous nieces and nephews. She is preceded in death by a brother, Michael Janikula; a sister, Edna Diane Greenberger, and mother, Edna Janikula.

William Vann Cheek, J.D., 88, of Prescott, Arizona, died on Nov. 30, 2017. Cheek was the son of William F. and Harriet Lee Cheek, and loving, husband of Joella Wood Cheek for over 63 years. Cheek was the son of William F. and Harriet Lee Cheek, and loving, husband of Joella Wood Cheek for over 63 years. Cheek was awarded the Bronze Star as a hero and veteran of the Korean War engaged in battles at Inchon and the Chosin Reservoir. He served his country proudly as a U.S. Marine from 1950-53. He went on to attend the University of Oregon. There, he met and married Joella in 1954. He was accepted into the Doctorate of Law Degree Program at the University of New Mexico, and earned his J.D. in 1957. Their first child was born in Albuquerque, at the same hospital where Cheek was born 27 years earlier. Cheek's work career spanned over six decades. He had a passion for work and enjoyed many successful business and community relationships. He initially practiced law in Alamogordo, N.M. for several years where three of his daughters were born. The family relocated to Eugene, Ore., where Cheek worked as a legal counselor for a land and title company. Their fifth child was born in Eugene. In 1966, Cheek became chief legal counsel on staff at Alaska Airlines in Seattle. He would subsequently become vice president of two regional airline carriers in California and Colorado before finally moving to Arizona to complete his career as a professor at Embry-Riddle Aeronautical University (ERAU) in Prescott from 1988-2009. During his time at ERAU he held a number of roles including aviation business administrator (ABA) faculty, department chairABA and campus grants coordinator. He held positions as commandant of the department of Arizona Marine Corps League for two consecutive terms from 2006-2008, and as commander of the prescott veterans of Foreign Wars #541, Also for two terms, spanning 2011-2013. In addition to cooking, Cheek's hobbies included travel, wine and following the stock market. He was the life of the party whatever one was held. He was a story-teller and a jokester, but his legacy lies in his devotion to family, country, co-workers and friends. He was the family patriarch and so well-loved for his leadership. He will be missed immensely missed.

William Oscar Jordan died age 93. A World War II veteran, Jordan was wounded and received the Purple Heart in the Asiatic Pacific Campaign. He retired from U.S. Airforce in 1984 with rank of colonel. Jordan was a member of the first graduating class of University of New Mexico Law School in 1950. Appointed law clerk to Judge Samuel G. Bratton of U.S. District Court of Appeals, a year later he was approved and appointed by Senators Dennis Chaves and Clinton P. Anderson to the position of assistant U.S. attorney, district of New Mexico. In 1953 he took the position of general counsel, NM. State Land Office, retiring in 1982. He was 25 years chairman, Legal and Legislative Committees of Western States Land Commissioners Association; served on the Legal Committee of Interstate Oil Company Commission; former chairman of the Real Property, Probate and Trust Section of the State Bar of New Mexico; and advisor to New Mexico Land Resources Association. He served as commander of the Patrick J. Hurley (Chapter 372) of the Military Order of the Purple Heart Veterans Association. He served on the board of directors (two years as chairman) for Santa Fe Chapter of Retired Public Employees of New Mexico (PERA). For 20 years he served on board of directors (three years as president) of Santa Fe Boys Club. He was born to James O. Jordan and Vera (Greer) Jordan in Quay County, N.M. He was preceded in death by his siblings, Pluma Ringer, Nola Charles, James Jordan and Gayle Jordan and survived by his brother, Doughty Jordan. Oscar met his beloved wife, Virginia Adair (1924-2010), while attending UNM. They married in 1950. He is survived by his children, Steve (Frances) Jordan, Judy (Wayne) Robbie, Jennie (Dave) Austin, Mark Jordan, Beth (Jose) Oms and Tim (Adriana) Jordan. He was preceded in death by grandchild, Kevin Austin, is survived by grandchildren William (Hillary) Robbie, Emilia (Konrad) Dzula, Philip Austin, Kelly (Ivan) Sued, Alex (Heather) Jordan, Tyler Jordan, Harry Oms, Olivia Oms, Jacqueline Jordan and Wyatt Jordan, and great-grandchildren: Clive Jordan, Lily Jordan and Tristan Dzula.

Legal Education

February

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

23 **Drafting Waivers of Conflicts of Interests**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Where the Rubber Meets the Road: The Intersection of the Rules of Civil Procedure and the Rules of Professional Conduct (2017)**
1.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **The Ethics of Lawyer Advertisements Using Social Media (2017)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **2017 Family Law Institute Day 1**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

March

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

1 **Service Level Agreements in Technology Contracting**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.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

6 **Successor Liability in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Family Feuds in Trusts: How to Anticipate & Avoid**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Drafting Professional and Personal Services Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **33rd Annual Bankruptcy Year in Review Seminar**
6.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

13 **Fiduciary Duties in Closely-held Companies: What Owners Owe the Business & Other Owners**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

14 **Role of LLCs in Trust and Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 **Current Immigration Issues for the Criminal Defense Attorney (2017 Immigration Law Institute)**
5.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

16 **Civility and Professionalism (2017 Ethicspalooza)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

22 **2017 Appellate Practice Institute**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **Where the Rubber Meets the Road: The Intersection of the Rules of Civil Procedure and the Rules of Professional Conduct (2017)**
1.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **2017 Mock Meeting of the Ethics Advisory**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **How to Practice Series: Probate and Non-Probate Transfers**
4.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

26 **Trial Know-How! (The Rush to Judgment- 2017 Trial Practice Section Annual Institute)**
4.0 G, 2.0 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

26 **Conflicts of Interest (2017 Ethicspalooza)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Federal and State Tax Updates (2017 Tax Symposium)**
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Lawyer Ethics When Clients Won't Pay Fees**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Structuring For-Profit/Non-Profit Joint Ventures**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Cybersluth: Conducting Effective Internet Research (2017)**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **The Ethics of Using Lawyer Advertisements Using Social Media (2017)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Attorney vs. Judicial Discipline (2017)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Human Trafficking (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Convincing the Jury: Trial Presentation Methods and Issue Presented by Mark Fidel, Applied Records Management**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Abuse and Neglect Case in Children's Court**
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **What's the Dirtiest Word in Ethics?**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

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.*

Opinions

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

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Effective February 14, 2018

PUBLISHED OPINIONS

A-1-CA-34523	J Gabriele v. D Gabriele	Affirm/Reverse/Remand	01/31/2018

UNPUBLISHED OPINIONS

A-1-CA-35125	NM Highlands v. MAKWA Builders	Affirm	01/29/2018
A-1-CA-36587	State v. C Mendez JR	Affirm	01/29/2018
A-1-CA-36676	K McDonald v. City of Gallup	Dismiss	01/29/2018
A-1-CA-36705	Uninsured Employers Fund v. G Gallegos	Affirm	01/29/2018
A-1-CA-36708	CYFD v. Jessica C	Affirm	01/29/2018
A-1-CA-34330	State v. M Farmer	Affirm	01/30/2018
A-1-CA-35914	City of Roswell v. E Kafka	Affirm/Dismiss	01/30/2018
A-1-CA-36165	Tax & Rev v. Diamond T	Affirm	02/01/2018

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective February 7, 2018

Pending Proposed Rule Changes Open for Comment:

		Comment Deadline
10-166	Public inspection and sealing of court records	02/09/2018

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
10-166	Public inspection and sealing of court records	01/15/2018*
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

* The 2018 amendment to Rule 10-166 suspends and republishes for comment the amendments approved by the Court effective December 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
LR2-308	Case management pilot program for criminal cases	01/15/2018*

*The Court approved amendments to LR2-308 on December 4, 2017, to be effective January 15, 2018, and approved additional amendments on January 9, 2018, also to be effective January 15, 2018.

Local Rules for the Thirteenth Judicial District Court

LR13-112	Courthouse security	12/31/2017

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

From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-001

No. S-1-SC-35976 (filed November 9, 2017)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
WESLEY DAVIS,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
LISA B. RILEY, District Judge

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JOHN A. MCCALL
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for Respondent

Opinion

Judith K. Nakamura,

Chief Justice

{1} This case concerns the inventory search exception to the warrant requirement. The Court of Appeals concluded that the inventory search that occurred in this case was invalid because Defendant Wesley Davis did not possess the backpack searched at the time of arrest as the backpack was not "on his person or in his physical possession . . . ." *State v. Davis*, 2016-NMCA-073, ¶¶ 1, 10-11, 387 P.3d 274. We disagree that possession in the inventory search context should be so narrowly construed. We embrace a broader definition of possession, conclude that Davis did possess the backpack at the time of arrest, and hold that the inventory search was valid. The Court of Appeals is reversed.

I. BACKGROUND

{2} On January 12, 2012, Deputy Daniel Vasquez of the Eddy County Sheriff's Department (Sheriff's Department) arrested Davis for operating a motorcycle when his license had been revoked. During the traffic stop, Deputy Vasquez searched Davis's backpack and discovered marijuana. Davis was charged with one count of distribution of marijuana, a violation of NMSA 1978, Section 30-31-22(A)(1)(a) (2011). Davis filed a motion to suppress the marijuana on December 18, 2012. A suppression hearing was held on April 10, 2013. At that hearing, Deputy Vasquez provided the following testimony.

{3} While on patrol in a marked vehicle, Deputy Vasquez saw Davis on a motorcycle at a stop sign. Deputy Vasquez knew Davis did not have a valid driver's license and began to follow Davis. After traveling a short distance, Davis pulled into the driveway of his home. Davis's property is within the city limits of Carlsbad, New Mexico and there are other houses adjacent to Davis's property.

{4} Davis parked his motorcycle, took off his backpack, and placed it on top of a car parked in Davis's open-air carport, a structure with a back wall but no front or side walls. Deputy Vasquez had parked in Davis's driveway behind Davis's motorcycle and the two men met in the driveway between the motorcycle and carport.

{5} Deputy Vasquez asked Davis for his license and registration and then contacted dispatch and learned that Davis's license was in fact revoked with an arrest clause. Deputy Vasquez arrested Davis, patted him down, and asked Davis "if there was anything in the backpack that [he] needed to be aware about." Davis responded that there was marijuana in the backpack. Deputy Vasquez walked to the carport, seized the backpack, searched it, and discovered three plastic bags containing marijuana.

{6} Deputy Vasquez asked Davis about the backpack because the backpack had been on Davis's person and there might have been valuables in the backpack. When asked if he thought the backpack was "secured," Deputy Vasquez stated that an open-air carport is not a secure location to leave an unattended bag. During his testimony, Deputy Vasquez acknowledged that the backpack was not on Davis's person at the time of his arrest.

{7} The Sheriff's Department has a policy that any belongings in a person's possession at the time of an arrest must be inventoried, regardless of whether or not they have value. Deputy Vasquez stated that "anything on your person is gonna go with you when you're arrested." The Sheriff's Department's inventory search policy exists to ensure that the Sheriff's Department has adequate records, to protect the Sheriff's Department, and to ensure that an arrestee's property is protected. The policy does not differentiate between inventory searches occurring on private versus public property.

{8} The district court found that Davis's backpack was not secure at the time of the arrest but was on top of a car in an open-air carport. The court explained that "[i]t would be very easy for somebody to walk by and grab a backpack from off of the top of a vehicle which is not a normal place for storing a backpack." The court concluded that Deputy Vasquez's warrantless search of Davis's backpack was a valid inventory search and denied the motion to suppress. Davis then entered into a conditional plea in which he agreed to plead guilty to the distribution charge but reserved his right to appeal the order denying his suppression motion. *Davis*, 2016-NMCA-073, ¶ 2.

{9} The Court of Appeals reversed the district court's order, concluding that the warrantless search was not a valid inventory search. *Id.* ¶¶ 1, 17. We granted the State's petition for a writ of certiorari—exercising our jurisdiction under Article VI, Section 3 of the New Mexico Constitution and NMSA 1978, Section 34-5-14(B) (1972)—to decide whether the warrantless search was a valid inventory search or not.

II. DISCUSSION

A. Standard of Review

{10} The standard of review applicable in this case is well settled. "A motion to suppress evidence is a mixed question of law and fact." *State v. Garcia*, 2005-NMSC-017, ¶ 27, 138 N.M. 1, 116 P.3d 72. We review the factual analysis for substantial evidence and review the legal analysis de novo. *Id.* "The appellate court must defer to the district court with respect to findings of historical fact so long as they are supported by substantial evidence." *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856.

B. Inventory Searches

{11} "[I]nventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment." *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). "Like all warrantless searches, however, inventory searches are presumed to be unreasonable and the burden of establishing their validity is on the State." *State v. Shaw*, 1993-NMCA-016, ¶ 5, 115 N.M. 174, 848 P.2d 1101.

{12} An inventory search is valid if (1) the police have control or custody of the object of the search; (2) the inventory search is conducted in conformity with established police regulations; and (3) the search is reasonable. *State v. Boswell*, 1991-NMSC-004, ¶ 7, 111 N.M. 240, 804 P.2d 1059 (citing *State v. Ruffino*, 1980-NMSC-072, ¶ 5, 94 N.M. 500, 612 P.2d 1311). The Court of Appeals concluded that the State failed to establish any of these three requirements. *Davis*, 2016-NMCA-073, ¶ 16. We address each in turn.

1. Control or custody

{13} The Court of Appeals concluded that Deputy Vasquez did not have control or custody of the backpack for two reasons: (1) there was no "reasonable nexus" between the arrest and the seizure of the backpack because Davis did not have "possession" of the backpack at the time of arrest and (2) the backpack was seized from Davis's private property. *Id.* ¶¶ 11-12. These conclusions warrant separate treatment.

a. *Reasonable nexus and possession*

{14} In *State v. Williams*, 1982-NMSC-041, ¶ 5, 97 N.M. 634, 642 P.2d 1093, and again in *Boswell*, 1991-NMSC-004, ¶ 7, we identified a "reasonable nexus" requirement for inventory searches. *Boswell* clarifies that this reasonable nexus requirement is not a fourth, independent element the state must prove to establish the validity of an inventory search. 1991-NMSC-004, ¶ 8. Rather, and as we explain below, the test employed to resolve the reasonable nexus requirement is the operative inquiry utilized to establish whether the police have control or custody of the object subjected to an inventory search.

{15} Police may perform inventory searches of those objects over which they have *lawful* control or custody. *See Williams*, 1982-NMSC-041, ¶¶ 5-6 (explaining that control or custody "must be based on some legal ground" (internal quotation marks and citation omitted)). Whether the police have lawful control or custody of an object demands inquiry into whether there is a reasonable nexus between the arrest and the seizure of the object to be searched. *See Boswell*, 1991-NMSC-004, ¶¶ 7-8 ("This case turns on the first prong of the test we articulated in *Williams*, [1982-NMSC-041, ¶ 4]: whether the police lawfully had custody of the wallet, i.e., was there a reasonable nexus between Boswell's arrest and the seizure of the wallet?"). Whether a reasonable nexus exists between the arrest and the seizure of the object to be searched requires, in turn, inquiry into whether there was a valid basis for the inventory search of that particular object. *Boswell*, 1991-NMSC-004, ¶ 9 ("A police inventory of some possession of the arrestee . . . *presupposes that the police had some valid reason for taking custody of that object*, for it is only because of such taking of custody that the police can be said to have some obligation to safeguard the contents." (omission in original) (emphasis added) (internal quotation marks and citation omitted)). A valid basis for an inventory search exists if the search of a particular object is justified in light of the range of governmental interests that support the existence of the inventory search exception itself. *See id.* ¶ 14 ("[T]he reasonable nexus between the initial arrest and seizure is not found in a theory of probable cause . . . but in the need to safeguard defendant's property from loss and to protect the police from liability and charges of negligence.").

{16} Three governmental interests support the existence of the inventory search exception: "(1) to protect the arrestee's property while it remains in police custody; (2) to protect the police against claims or disputes over lost or stolen property; or (3) to protect the police from potential danger." *Shaw*, 1993-NMCA-016, ¶ 10 (citing *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976)). We discussed the first two interests in *Boswell* and observed that "[a]n inventory protects a defendant's property in police custody from theft; conversely, it protects the police from accusations or false claims of theft of the property that was in an arrestee's possession." 1991-NMSC-004, ¶ 10. Accordingly, we concluded that "[p]roperty found on the person or in the immediate possession of a lawful arrestee presents no seizure problem and may be inventoried." *Id.* ¶ 9. The foregoing discussion establishes the following conclusion: if Davis possessed the backpack at the time of arrest, then a reasonable nexus existed between the arrest and the seizure and inventory search of the backpack.

{17} The Court of Appeals concluded that Davis did not possess the backpack at the time of arrest because Davis did not have the backpack "on his person or in his physical possession at the time of his arrest." *Davis*, 2016-NMCA-073, ¶ 11. This conclusion stemmed from the Court's restrictive definition of "possession." *Id.* ¶ 10. It defined "possession" as limited to "having physical custody or control of an object, and not to other legal meanings and connotations that may otherwise be associated with 'possession.'" *Id.* Our case law suggests that a broader conception of possession applies in the inventory search context.

{18} The validity of an inventory search is assessed by examining whether the search is justified in light of the core purposes behind the inventory search exception. Therefore, the conception of possession in the inventory search context should be defined not by reference to a restrictive standard but by reference to principles consonant with the core purposes of the inventory search exception itself. So, for purposes of the inventory search exception, a defendant "possesses" any object that the defendant loses control over as a consequence of arrest and where that loss of control gives rise to the possibility that the object might be lost, stolen, or destroyed and the police potentially held liable for the loss, theft, or destruction. This more expansive conception of possession necessarily encapsulates objects other than those on the defendant's person at the time of arrest. *Boswell* illustrates the validity of this approach.

{19} In *Boswell*, the defendant was suspected of shoplifting, was brought to the store manager's office where police checked his identification and arrested him, and was then transported to the police station. 1991-NMSC-004, ¶ 2. After

arriving at the station, the defendant discovered that his wallet had been left in the manager's office. *Id.* An officer returned to the store, retrieved the wallet, performed an inventory search of the wallet, and discovered illegal drugs inside. *Id.* The issue before this Court was whether the inventory search was permissible. *Id.* ¶¶ 3-5.

{20} In the course of our analysis in *Boswell*, we rejected the principle that serves as the foundation of the Court of Appeals' analysis in the present case: the fact that the wallet was not on the *Boswell* defendant's person when he was booked was not dispositive. *Id.* ¶¶ 6, 13. Indeed, we expressly noted that "[p]roperty found on the person *or* in the immediate possession of a lawful arrestee" may be inventoried. *Id.* ¶ 9 (emphasis added). This use of the disjunctive "or" indicates that objects other than those on the defendant's person at the time of arrest may, given the proper circumstances, be subject to an inventory search. We did not focus in *Boswell* on physical possession, i.e., the spatial relationship between the object and the arrestee; rather, we emphasized that the wallet was rendered unsecure as a consequence of the arrest and held that the inventory search of the defendant's wallet was "justified by appropriate police concerns that defendant's property be secured." *Id.* ¶¶ 13, 15. We offered the following explanatory remarks:

> Leaving the wallet in the office, where [the] defendant had no privacy interest or expectation of security and where any number of unknown individuals may have gained access to the wallet, . . . would be careless police procedure evincing a lack of concern for the defendant's belongings. This is not a situation where the property could have been safely left where it was, nor was it a situation where custody of the property could have been safely and immediately entrusted to a friend or placed in a safe place.

Id. ¶ 13 (footnote omitted).

{21} *Boswell* is clear: The propriety of an inventory search of any given object is not determined by examining where in relation to an arrestee the object was at the time of arrest; rather, the focus is on whether the object is made unsecure by the arrest. ¶¶ 13, 15. Thus, it makes no difference that Davis's backpack was some short distance from him at the time of arrest. Nor does it matter that Davis removed the backpack from his person and placed it on the car in the carport before speaking to the deputy. Deputy Vasquez's duty to secure Davis's property did not end simply because Davis removed the backpack from his person. Police are rightly expected to protect and secure not only those items on an arrestee's person or within the arrestee's immediate control at the time of arrest, but any item belonging to the arrestee that is rendered unsecure by the arrest. *See* 3 Wayne R. LaFave et al., *Search and Seizure: A Treatise on the Fourth Amendment* § 5.5(b), at 297, 297 n.43 (5th ed. 2012) (stating that it would be "clearly improper for the police to simply leave" unattended at the scene of an arrest those objects belonging to an arrestee that are rendered unsecure by the arrest, and collecting cases in support of this assertion).

{22} The district court found that there was a risk that Davis's backpack could be lost or stolen because Davis's arrest precluded him from further controlling the backpack. We see no reason and have been given no reason to question this finding. In addition, we observe that "the scope of a permissible inventory search is broad . . . [,]" *Shaw*, 1993-NMCA-016, ¶ 11 (citing *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983)), and that officers may exercise discretion in the course of deciding whether to conduct an inventory search or not. *See Florida v. Wells*, 495 U.S. 1, 4 (1990) (observing that, while the police "must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of crime," the "exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment" (internal quotation marks and citation omitted)); *cf. Bertine*, 479 U.S. at 372 (observing that the Court's inventory search cases accord "deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody"). This discretionary authority necessarily flows to determinations regarding whether some particular item is susceptible to theft or loss in the wake of an arrest. We conclude that Davis did possess the backpack at the time of arrest and, therefore, a reasonable nexus existed between Davis's arrest and the seizure of the backpack.

b. ***Inventory search and private property***

{23} The Court of Appeals determined that the inventory search in this case was invalid and was in part predicated on the fact that Deputy Vasquez seized the backpack from Davis's private property. *Davis*, 2016-NMCA-073, ¶ 12. The Court stressed that "[a] defendant has a right to place his personal items on his private property and reasonably expect that law enforcement will not seize it without a warrant[,]" and concluded that "the government interests in the inventory search [do not] permit law enforcement to walk on [Davis's] property, enter his carport, and seize his backpack." *Id.* We disagree. These broad pronouncements are inconsistent with the legal principles that govern here.

{24} The Court of Appeals notes that police cannot carry off a defendant's suitcases merely because he is arrested in his home. *Id.*; *see* 3 LaFave, *supra*, § 5.5(b), at 298. But this valid proposition is not a blanket prohibition against inventory searches on private property. The validity of any inventory search must necessarily turn on the facts presented. 3 LaFave, *supra*, § 5.5(b), at 298. Thus, while police officers cannot seize and inventory a defendant's jacket merely because the defendant is arrested in his home, officers may nevertheless require a defendant to don that jacket if a jacket would be necessary to cope with the weather and then may inventory that jacket. *Id.* at 298 n.46. Similarly, where a door to a house is broken and substantial drug money is discovered inside, the police may seize the money for inventory purposes to safeguard it. *Id.* at 298-99 n.46. What these examples illustrate is that the mere fact that the inventory search occurred on Davis's property does not render the search unconstitutional. The facts of the particular case guide the inquiry as to the constitutionality of the inventory search. *Opperman*, 428 U.S. at 373 (explaining that reasonableness of searches and seizures "cannot be fixed by *per se* rules; each case must be decided on its own facts" (internal quotation marks and citation omitted)).

{25} Davis was not arrested in his home but in his driveway. The backpack was not seized from Davis's living room but from atop a car in an open-air carport. These facts are significant. *See Coffin v. Brandau*, 642 F.3d 999, 1010 (11th Cir. 2011) (discussing the expectation of privacy individuals may reasonably expect for

Fourth Amendment purposes over garages and carports and observing that this question, infrequently litigated, is distinct from the question of what degree of privacy an individual may reasonably expect within the home). Moreover, the district court found that the backpack was not secure after the arrest. Given these facts, we are amply persuaded that Deputy Vasquez's decision to inventory Davis's backpack was not an unconstitutional intrusion onto Davis's private property. It was an appropriate exercise of community caretaking to protect Davis's possessions.

c. *Conclusion as to custody or control*

{26} A reasonable nexus did exist between the arrest and the seizure of the backpack and we hold that Deputy Vasquez did have custody or control of it. The fact that the inventory search was conducted on Davis's private property does not cause us to doubt this conclusion.

2. The other inventory search requirements

{27} The Court of Appeals also concluded that the State failed to establish elements two and three: that the search was made pursuant to established police regulations and that the search was reasonable. *Davis*, 2016-NMCA-073, ¶¶ 14-15. As the following analysis demonstrates, these conclusions were largely a consequence of the Court's conclusion that Davis did not possess the backpack at the time of the arrest. *See id.* ¶¶ 14-15.

{28} As to the second requirement, the Court of Appeals emphasized Deputy Vasquez's testimony that "the Sheriff's Department only inventor[ies] items on the person of an arrestee at the time of the arrest." *Id.* ¶ 14. Based on this testimony, the Court concluded that the seizure of the backpack was not carried out in accordance with the Department's policy because the "backpack was not on [Davis's] person at the time of his arrest." *Id.* We disagree. The Court of Appeals has mischaracterized the inventory search policy that governed here.

{29} Deputy Vasquez explained that the Sheriff's Department's inventory search policy mandates that "any belongings in a person's possession at the time of an arrest must be inventoried . . . ." *Id.* ¶ 5. For the reasons already stated, we do not construe this policy as directing officers to inventory *only* those items on an arrestee's person at the time of arrest. It cannot be that the policy directs officers to disregard possessions not on an arrestee's person but that are nevertheless rendered unsecure by the arrest. Indeed, Deputy Vasquez testified that the purpose of the inventory search policy is to protect the Sheriff's Department and to ensure that an arrestee's possessions are secure. Protecting the Sheriff's Department and securing an arrestee's possessions necessarily entails ensuring that *all of the belongings* of an arrestee made unsecure by an arrest are secured and protected. We see no inconsistency between the inventory search policy and Deputy Vasquez's inventory search of Davis's backpack. By seizing and searching the backpack, Deputy Vasquez secured Davis's property and protected the Sheriff's Department by eliminating a potential property-loss claim. The State demonstrated that the search was made pursuant to established police regulations.

{30} As to the third requirement, the Court of Appeals offered the following justifications for its conclusion that the inventory search was not reasonable: the seizure did not comply with the Sheriff's Department's inventory search policy; there is no evidence Deputy Vasquez expressed concern with protecting the backpack or its contents while it was in police custody; there is no evidence Deputy Vasquez was concerned with protecting the Sheriff's Department against a claim or dispute over lost or stolen property; and there is no evidence Deputy Vasquez was concerned with officer safety. *Id.* ¶ 15. Having rejected all of the valid bases that might explain Deputy Vasquez's decision to perform the inventory search, the Court expressed its own view of the deputy's motivations: "[T]he only reason Deputy Vasquez seized and searched the backpack," the Court asserted, "was because [Davis] responded to questioning and said it contained marijuana." *Id.* Again, we disagree with the Court's assessment of the facts presented and with its conclusion.

{31} As we have already explained, Deputy Vasquez's decision to seize and perform an inventory search of the backpack was consistent with the Sheriff's Department's inventory search policy. The backpack was not secure at the time of arrest and Deputy Vasquez testified that his interest in the backpack arose out of his concern that it contained valuables. From these facts, we infer that Deputy Vasquez's decision to secure the backpack emanated not from an impermissible investigative motive but from an understanding that protecting and securing an arrestee's belongings is consistent with the Sheriff's Department's inventory search policy and, more generally, appropriate police conduct. *See Jason L.*, 2000-NMSC-018, ¶ 10 (explaining that an appellate court reviewing a district court's decision on a motion to suppress shall draw all reasonable inferences in support of the district court's decision); *Boswell*, 1991-NMSC-004, ¶ 11 ("[T]he lawfulness of an inventory search operates independently from any suspicion by the police of contraband that may be concealed in a container."). We conclude that the inventory search was reasonable.

C. Other Issues Briefed

{32} The State argues in the alternative that "even if this Court were to conclude that a Fourth Amendment violation did in fact occur, application of the exclusionary rule is not justified given the purpose the rule is designed to serve." Although we granted certiorari to consider this issue, we need not address it in light of our conclusion that the search was a valid inventory search and the exclusionary rule is inapplicable. We also decline to address the State's right for any reason arguments. Our disposition makes it unnecessary to do so.

III. CONCLUSION

{33} The State satisfied its burden as to all of the elements required to prove the validity of the inventory search. We affirm the district court's order denying Davis's motion to suppress and reverse the Court of Appeals. This matter is remanded to the district court for further proceedings consistent with this opinion.

{34} IT IS SO ORDERED.

JUDITH K. NAKAMURA, Chief Justice

WE CONCUR:
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
CHARLES W. DANIELS, Justice
BARBARA J. VIGIL, Justice

From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-002

No. S-1-SC-35302 (filed November 20, 2017)

SARA CAHN,
Plaintiff-Petitioner,
v.
JOHN D. BERRYMAN,
MD
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
NAN G. NASH, District Judge

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Opinion

Judith K. Nakamura, Chief Justice

{1} The Medical Malpractice Act (MMA), NMSA 1978, §§ 41-5-1 to -29 (1976, as amended through 2015) forecloses any cause of action that does not accrue within three years of the act of malpractice. *See* § 41-5-13. In this case, we clarify the contours of the due process exception to this limitation and hold that plaintiffs with late-accruing medical malpractice claims, i.e., claims accruing in the last twelve months of the three-year repose period, shall have twelve months from the time of accrual to commence suit.

{2} Petitioner Sara Cahn invoked the due process exception but did not file her late-accruing medical malpractice claim against Respondent John D. Berryman, M.D., within twelve months. Twenty-one months elapsed between the accrual date of Cahn's claim against Dr. Berryman and the date she filed suit against him. Thus, her claim is barred by Section 41-5-13. We affirm the Court of Appeals and write to clarify the legal principles upon which our decision is based.

I. BACKGROUND

{3} In 2006, Cahn sought treatment for pelvic pain at Lovelace Women's Hospital in Albuquerque. In May 2006, Cahn received a pelvic ultrasound. The ultrasound report indicated that there was a complex mass on Cahn's left ovary and noted that "[a] malignancy need[ed] to be excluded."

{4} On August 8, 2006, Cahn consulted Dr. Berryman. This was Dr. Berryman's only appointment with Cahn. At that time, Dr. Berryman worked for Sandia OB/GYN Associates, P.C., in an office located in the Lovelace Women's Hospital medical complex. Dr. Berryman reviewed the ultrasound report, but did not schedule a biopsy. Rather, he examined Cahn, diagnosed her as having endometriosis, and provided her with medication for that condition intending that she return to his office for a follow-up visit. Contrary to Dr. Berryman's intention, Cahn never returned for follow-up care.

{5} On September 22, 2008, while seeing an OB/GYN in Wyoming for her continuing pelvic pain, Cahn learned that Dr. Berryman had failed to inform her of the mass on her left ovary. Further tests revealed that Cahn had ovarian cancer, and on October 15, 2008, she underwent a hysterectomy in New York.

{6} After surgery, Cahn set out to sue Lovelace Health System, Inc., (LHS) and her doctors. She could not, however, remember Dr. Berryman's name or precisely when he treated her. Cahn took steps to discover Dr. Berryman's name and the date of her consultation with him. She submitted record requests to various Lovelace health care provider entities and other medical providers in Albuquerque, called one Lovelace entity, and requested explanation of benefits forms from her health insurer. But the documents and information she received in response did not identify Dr. Berryman. After Cahn retained counsel, additional record requests were submitted by counsel on Cahn's behalf to various Lovelace entities, but the records received in response to those requests similarly did not reflect the consultation with Dr. Berryman.

{7} On April 10, 2009, Cahn filed a complaint alleging medical malpractice against LHS and several other defendants. Dr. Berryman was not a named defendant. On July 1, 2010, LHS produced records in response to Cahn's requests for production showing that Cahn received care from Dr. Berryman on August 8, 2006. On July 9, 2010, exactly one week after receiving these records, Cahn filed an amended complaint in which she named Dr. Berryman as a defendant and asserted a medical malpractice claim against him. Before proceeding further, we pause to emphasize the dispositive facts which can be discerned from the foregoing.

{8} The act of malpractice that Cahn alleges Dr. Berryman committed occurred on August 8, 2006. Cahn's malpractice claim accrued on September 22, 2008, the date she discovered that Dr. Berryman did not alert her to the findings indicated by the May 2006 ultrasound report. *See Roberts v. Sw. Cmty. Health Servs.*, 1992-NMSC-042, ¶ 27, 114 N.M. 248, 837 P.2d 442 ("[T]he cause of action accrues when the plaintiff knows or with reasonable dili-

gence should have known of the injury and its cause."). Cahn's claim accrued ten and one-half months before August 8, 2009, when the three-year repose period of Section 41-5-13 was set to expire. Cahn sued Dr. Berryman on July 9, 2010, three years and eleven months after Dr. Berryman's act of malpractice occurred and one year and nine and one-half months (more than twenty-one months) after Cahn's claim accrued. A pictorial representation of these events is included at the end of this opinion as Appendix A.

{9} In the Second Judicial District Court, Dr. Berryman moved for summary judgment arguing that Section 41-5-13 barred Cahn's malpractice claim. The court denied Dr. Berryman's motion concluding that application of the statutory bar would violate Cahn's right to due process as guaranteed by the United States and New Mexico Constitutions. The district court later denied Dr. Berryman's motion for reconsideration on the question of the applicability of Section 41-5-13. Dr. Berryman then requested that the court certify the statute-of-repose issue for interlocutory appeal. The court entered an order certifying the issue, but the Court of Appeals denied Dr. Berryman's application.

{10} The district court then set the case for a jury trial, but Cahn and Dr. Berryman entered into a stipulated conditional directed verdict and final judgment, stating that Dr. Berryman was liable to Cahn for medical negligence in the amount of $700,000 but preserving for appeal the issue of whether Section 41-5-13 barred Cahn's malpractice claim. The Court of Appeals, in a divided opinion, concluded that Section 41-5-13 did bar Cahn's claim and reversed the district court, which had "ruled otherwise." *Cahn v. Berryman*, 2015-NMCA-078, ¶ 1, 355 P.3d 58, *cert. granted*, 2015-NMCERT-007.

{11} Cahn petitioned for a writ of certiorari, which we granted, exercising our jurisdiction under Article VI, Section 3 of the New Mexico Constitution and NMSA 1978, Section 34-5-14(B) (1972). We issued the writ to consider whether the application of Section 41-5-13 to bar Cahn's malpractice claim violated her right to due process.

II. DISCUSSION

A. Standard of Review

{12} "This Court's review of orders granting or denying summary judgment is de novo." *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 9, 335 P.3d 1243. "Summary judgment is appropriate in the absence of any genuine issues of material fact and where the movant is entitled to judgment as a matter of law." *Id.* "In reviewing an order on summary judgment, we examine the whole record on review, considering the facts in a light most favorable to the nonmoving party and drawing all reasonable inferences in support of a trial on the merits." *Id.*

B. Section 41-5-13: the MMA's Statute of Repose

{13} "Like many other states, New Mexico reformed its medical malpractice laws in 1976 in response to a much discussed medical malpractice crisis." *Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 40, 121 N.M. 821, 918 P.2d 1321. Surveying that crisis, the Court of Appeals observed that

> [t]he insurance crisis that prompted the enactment of the MMA arose out of a nationwide perception that medical malpractice insurance was increasingly becoming unavailable. The specific event that triggered concern in New Mexico was the announced withdrawal in 1975 of the Travelers' Insurance Company as the underwriter of the New Mexico Medical Society's professional liability program. Travelers' withdrawal jeopardized health care providers' protection against liability claims and, in turn, compromised the legal remedies available to health care consumers injured by the negligence of health care providers.

Baker v. Hedstrom, 2012-NMCA-073, ¶ 22, 284 P.3d 400 (citing Ruth L. Kovnat, *Medical Malpractice Legislation in New Mexico*, 7 N.M. L. Rev. 5, 7 (1976-77)), *aff'd on other grounds*, 2013-NMSC-043, 309 P.3d 1047. The insurance crisis prompted concerns about the departure of medical providers from New Mexico as well as the availability of recovery for New Mexicans who suffer injuries resulting from medical malpractice. *See id.*

{14} The MMA sought to address this crisis by ensuring that professional liability insurance was available to health care providers in New Mexico. Section 41-5-2. The Legislature "concluded that the potential for a malpractice suit being filed long after the act of malpractice was one of the reasons that insurance carriers were withdrawing from medical malpractice liability coverage." *Cummings*, 1996-NMSC-035, ¶ 40. To address this problem, the Legislature enacted Section 41-5-13 and precluded "almost all malpractice claims from being brought more than three years after the act of malpractice." *Cummings*, 1996-NMSC-035, ¶¶ 39-40.

{15} Section 41-5-13 provides as follows:

> No claim for malpractice arising out of an act of malpractice which occurred subsequent to the effective date of the [MMA] may be brought against a health care provider unless filed within three years after the date that the act of malpractice occurred except that a minor under the full age of six years shall have until his ninth birthday in which to file. This subsection . . . applies to all persons regardless of minority or other legal disability.

This provision operates as a statute of repose. *Tomlinson v. George*, 2005-NMSC-020, ¶ 8, 138 N.M. 34, 116 P.3d 105. Statutes of repose reflect a legislative policy to extinguish, after the passage of a period of time, all liability for claims not filed by the end of the repose period irrespective of whether the claims have already accrued or have yet to accrue. *See id.* Statutes of repose begin to run when a statutorily designated event occurs, "without regard to when the underlying cause of action accrues and without regard to the discovery of injury or damages." *Garcia ex rel. Garcia v. LaFarge*, 1995-NMSC-019, ¶ 14, 119 N.M. 532, 893 P.2d 428; *see also* Restatement (Second) of Torts § 899(g) (Am. Law Inst. 1979) ("[S]tatutes [of repose] set a designated event for the statutory period to start running and then provide that at the expiration of the period any cause of action is barred . . . ."). "Section 41-5-13's statutorily determined triggering event is . . . the act of medical malpractice and does not entail whether the injury has been discovered." *Tomlinson*, 2005-NMSC-020, ¶ 9 (internal quotation marks and citation omitted). This Court has concluded that "the three-year time limit of Section 41-5-13 establishes a reasonable termination point for medical malpractice claims." *Cummings*, 1996-NMSC-035, ¶ 39.

C. The Due Process Exception to the Application of Section 41-5-13

{16} The Due Process Clauses of the United States and New Mexico Constitutions, U.S. Const. amend. XIV, § 1; N.M. Const., art. II, § 18, provide the basis for an

exception to the application of the MMA's statute of repose. *Garcia*, 1995-NMSC-019, ¶¶ 35-36 (citing *Terry v. N.M. State Highway Comm'n*, 1982-NMSC-047, 98 N.M. 119, 645 P.2d 1375). Once a cause of action accrues, it is subject to the protections of due process. *See Garcia*, 1995-NMSC-019, ¶¶ 33-36 (citing *Wilson v. Iseminger*, 185 U.S. 55, 62 (1902)); *see also Terry*, 1982-NMSC-047, ¶¶ 9-17. Hence, *Garcia* held that due process requires that the plaintiff have a reasonable amount of time in which to commence suit after any late-accruing medical malpractice claim has accrued. *See* 1995-NMSC-019, ¶¶ 35-36. This due process exception is implicated, however, only if a plaintiff's claim accrues late within the three-year repose period. *See Tomlinson*, 2005-NMSC-020, ¶ 23. Due process does not prevent Section 41-5-13 from cutting off claims that are discovered after the three-year repose period has run. *Id.*

{17} When a medical malpractice claim accrues late within the repose period and the plaintiff requires additional time beyond that period to commence suit, to what amount of time is the plaintiff entitled as a consequence of due process before Section 41-5-13 extinguishes the claim? Three cases have touched directly upon this question.

{18} In *Garcia*, the plaintiff's malpractice claim accrued eighty-five days before the expiration of the MMA's three-year repose period, and we held that eighty-five days is a constitutionally insufficient amount of time for the plaintiff to commence suit. *See* 1995-NMSC-019, ¶¶ 37-38. In *Cummings*, by contrast, the plaintiff's claim accrued eighteen months before the expiration of the repose period, and we determined that eighteen months was a constitutionally reasonable amount of time. *See* 1996-NMSC-035, ¶¶ 57-59. And in *Tomlinson*, the plaintiff's claim accrued thirty-two months before the expiration of the repose period, and we determined that this was most certainly a constitutionally reasonable amount of time. *See* 2005-NMSC-020, ¶¶ 3, 23. Expanding our inquiry beyond the MMA context, we glean additional insight into the answer to the issue before us.

{19} New Mexico appellate courts have upheld as consistent with due process the application of statutory bars that create limitations periods of one year. *See Terry*, 1982-NMSC-047, ¶ 17 ("We have upheld limitations periods as short as one year when justified by specific considerations."); *Martinez v. Pub. Emps. Ret. Ass'n of N.M.*, 2012-NMCA-096, ¶¶ 15, 40-41, 286 P.3d 613 (observing that the one-year deadline set forth in NMSA 1978, Section 10-11-14.5(A) (1997) "functions like a statute of repose" and upholding the application of that statutory provision as consistent with due process). Other jurisdictions have done the same. *See, e.g.*, *Canadian N. Ry. Co. v. Eggen*, 252 U.S. 553, 562-63 (1920) (concluding that a one-year statute of limitations for a personal injury tort action was "*reasonably sufficient* to enable an ordinarily diligent man to institute proceedings for . . . [the] protection [of his rights]" (emphasis added)). The Supreme Court of Ohio, when considering an analogous due process exception to a medical malpractice statute of repose, said that "[a] reasonable time in which to bring a medical malpractice action was defined . . . as *one year* after the discovery of the malpractice." *Gaines v. Preterm-Cleveland, Inc.*, 514 N.E.2d 709, 716 (Ohio 1987) (emphasis added) (internal quotation marks and citation omitted). Limitations periods of less than a year have also been upheld as consistent with due process. *See Ferguson v. N.M. State Highway Comm'n*, 1982-NMCA-180, ¶¶ 12, 14-15, 99 N.M. 194, 656 P.2d 244 (holding that the ninety-day notice requirement of NMSA 1978, § 41-4-16(A) (1977, as amended 2013) within the Tort Claims Act does not deny due process because it is not unreasonably short); *Littlewolf v. Hodel*, 681 F. Supp. 929, 939-40 (D.D.C. 1988) (collecting cases upholding "statutes of limitations barring suit within similarly short periods of time [i.e., 180 days]"); Robin Miller, *Validity of Medical Malpractice Statutes of Repose*, 5 A.L.R.6th 133, § 18 (2005 & Supp. to the present) (collecting cases from jurisdictions that have adjudicated constitutional challenges to analogous medical malpractice statutes of repose). From these various authorities, we draw our conclusion.

{20} We hold that twelve months is a constitutionally reasonable period of time within which to file an accrued claim regardless of whether the claim accrues twelve months or one day before the expiration of the three-year repose period. Our holding should not, however, be interpreted to mean that twelve months is the *minimum time* period that will satisfy due process. Our decision today does not preclude our Legislature from shortening—or lengthening—the additional time plaintiffs with late-accruing claims receive. To ensure that our holding is clear, we offer some illustrations of the rule we have articulated.

{21} If a malpractice claim accrues (i.e., the plaintiff discovers that she has suffered malpractice) twelve months prior to the expiration of the three-year repose period, the plaintiff shall have the remainder of the repose period (twelve months) to commence suit. If, however, the claim accrues six months prior to the expiration of the repose period, the plaintiff will have twelve months from that accrual date to file her claim, i.e., the remainder of the repose period plus an additional six months after the expiration of the repose period (a total of twelve months). If the claim accrues on the last day of the repose period, the plaintiff shall have twelve months from that last day to file suit. These examples are offered to illustrate that a plaintiff with a late-accruing claim shall have twelve months from whichever date the late-accruing claim accrues to file suit. But the benefit of additional time that this due process exception provides inures only to plaintiffs with late-accruing claims, i.e., claims accruing in the last twelve months of the three-year repose period. Plaintiffs with claims accruing in the first twenty-four months of the repose period shall not benefit from this exception to Section 41-5-13 as claims that accrue in that time period are not "late accruing." Additionally, Section 41-5-13 extinguishes any claim accruing after the three-year repose period has expired.

{22} We recognize that our decision to grant plaintiffs with late-accruing medical malpractice claims a twelve-month period in which to file those claims is inconsistent with *Garcia* where we determined that a plaintiff with a late-accruing medical malpractice claim would receive the benefit of the statute of limitations which would have been applicable had Section 41-5-13 never been enacted. 1995-NMSC-019, ¶ 37. We now overrule this specific portion of *Garcia*. Having established the principles that guide our analysis, we need only apply them to the facts in Cahn's case. Before doing so, we respond to the dissent.

{23} The dissent claims that our ruling today is a form of "legislating" that "entangles and imperils fundamental separation-of-powers jurisprudence" and is inconsistent with "longstanding" due-process jurisprudence because the twelve-month rule we embrace applies "in every case regardless [of] the circumstances [presented]." Dissenting Op. ¶¶ 53-54, 63, 74. Clearly, we disagree.

{24} Our Legislature has not made accommodations for plaintiffs, like Cahn, whose medical malpractice claims accrue late in Section 41-5-13's three-year repose period and who require additional time beyond the three-year period to file claims. Other state legislatures have provided such accommodations in statute of repose contexts other than medical malpractice. *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-552(B) (1992) (allowing a one-year period for the commencement of suit on claims accruing in the final year of an eight-year statute of repose); Cal. Civ. Proc. Code § 337.1(b) (West 1967) (allowing a one-year period for the commencement of suit on claims accruing in the final year of a four-year statute of repose); Colo. Rev. Stat. Ann. § 13-80-104(2) (West 2001) (allowing a two-year period for the commencement of suit on claims accruing in the final two years of a six-year statute of repose). Our Legislature's inaction is significant. Once we embrace the conclusion that Cahn is entitled, as a consequence of due process, to some additional period of time beyond that provided in the MMA to initiate her action against Dr. Berryman, we cross a Rubicon of sorts. Whatever answer we supply to the question "To how much additional time, exactly, is Cahn entitled?" we necessarily inject our judgment into a sphere otherwise controlled by statute and must engage in the type of line drawing that is best handled in the first instance by the Legislature. *See Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176 ("The predominant voice behind the declaration of public policy of the state must come from the legislature . . . ."). The dissent contends that we may minimize our intrusion by resorting to "applicable background statute of limitations." Dissenting Op. ¶¶ 43-44. While this claim has surface level appeal, it does not withstand scrutiny.

{25} In an earlier section of this opinion, we noted that our Legislature enacted the MMA and its statute of repose, in part, to supplant the very background statute of limitations the dissent insists should control. If this is so, then applying the background statute of limitations is, if anything, the result most inconsistent with the Legislature's intentions and the result most intrusive and susceptible to criticism based on separation of powers principles. This point seems to have been overlooked by *Terry* and *Garcia*. Neither case provides a meaningful explanation why the background statute of limitations should apply. *Terry* merely notes that the judiciary does not "set appropriate limitations periods." 1982-NMSC-047, ¶ 17. Our decision to extend to Cahn—and any other plaintiff with a late-accruing MMA claim—an additional year from the date of accrual is not "setting a limitations period." The limitations period, or more accurately the repose period, in the MMA is three years. Our opinion today does nothing to change this fact. The additional time we provide plaintiffs with late-accruing claims is a constitutionally mandated exception to the application of this three-year period.

{26} The assertion that the rule we embrace fails to account for the particular facts of each case reflects a misunderstanding of the rule. It is necessarily tethered to the facts of each case and extends the repose period one year beyond the accrual date *of the particular late-accruing claim at issue*. The rule mirrors and, thus, is faithful to the structure of the MMA itself. Like any other MMA claimant, plaintiffs with late-accruing claims must file within a fixed amount of time. If they fail to do so, their claim is lost. If our Legislature determines that our rule is not faithful to the MMA or fails to reflect policy it deems most wise, it is free (as we have already noted) to enact a provision that reflects its judgment about the most prudent way to accommodate plaintiffs with late-accruing claims.

D. Cahn Filed Her Late-Accruing Claim Against Dr. Berryman More Than Twelve Months After It Accrued

{27} Cahn's claim against Dr. Berryman accrued late. At the time her claim accrued, ten and one-half months remained before the expiration of the repose period. Cahn filed suit against Dr. Berryman after the expiration of the repose period. One year and nine and one-half months—more than twenty-one months—elapsed between the date Cahn's claim against Dr. Berryman accrued and the date she filed the amended complaint in which he was named as a defendant. Thus, at the time Cahn commenced suit against Dr. Berryman, more than twelve months had elapsed from the date that Cahn's claim accrued. Cahn has not argued that Dr. Berryman's identity was fraudulently concealed from her. *See Tomlinson*, 2005-NMSC-020, ¶ 2 (recognizing that the statutory period of repose may be tolled when "the plaintiff does not discover the alleged malpractice within the statutory period as a result of the defendant's fraudulent concealment."). Accordingly, Cahn's claim against Dr. Berryman is barred by Section 41-5-13.

III. CONCLUSION

{28} Due process does not preclude application of Section 41-5-13 to bar Cahn's claim against Dr. Berryman. We affirm the Court of Appeals and remand to the district court for the entry of final judgment or any further proceedings the court deems necessary.

{29} IT IS SO ORDERED.

JUDITH K. NAKAMURA, Chief Justice

WE CONCUR:
CHARLES W. DANIELS, Justice
BARBARA J. VIGIL, Justice
EDWARD L. CHÁVEZ, Justice, specially concurring

PETRA JIMENEZ MAES, Justice, dissenting

CHÁVEZ, Justice (concurring in result).

{30} I concur in the result reached by the majority of the Court. However, I cannot join in the holding that "plaintiffs with late-accruing medical malpractice claims . . . shall have twelve months from the time of accrual to commence suit." Maj. op. ¶ 1. I am not persuaded by either the majority or the dissenting opinion that this Court should adopt a specific time period within which a plaintiff must file a lawsuit when due process considerations are at issue. The polestar question in a due process analysis is whether reasonable time remains after a cause of action accrues within which a plaintiff, exercising due diligence, can file his or her claim before it is time-barred under a statute of repose. If the answer is yes, then the claim must be filed within the statute of repose. If the answer is no, then the claim must be filed within a reasonable time after the statute of repose has expired. When reasonableness is the essence of a substantive due process claim, due process abhors the expediency of thoughtlessness. By necessity the due process analysis has always been a fact-based analysis which takes into account more than the date that the plaintiff's claim accrues. Twelve months from when an action accrues under the Medical Malpractice Act (MMA), NMSA 1978, §§ 41-5-1 to -29 (1976, as amended through 2015) may prove to be a reasonable amount of time within which a plaintiff, exercising due diligence, can file his or her claim. But whether the amount of time is reasonable depends on the complexity of the case circumstances–not just when

the cause of action accrued. For example, the complicated medical provider relationships that exist today, and the difficulty in identifying which doctor provided what treatment, or interpreted what lab results, radiographs, or so on, may make twelve months constitutionally inadequate. Nevertheless, because I conclude that Cahn had a reasonable time to bring her cause of action before the statute of repose expired, I concur in the result reached by the majority.

{31} I also do not agree with the dissenting opinion's suggestion that *Garcia ex rel. Garcia v. LaFarge*, 1995-NMSC-019, 119 N.M. 532, 893 P.2d 428, essentially requires a three-year accrual statute of limitations in MMA cases when the cause of action accrues within the statute of repose. *See* dissenting op. ¶¶ 48, 53. In *Garcia*, this Court found that eighty-five days before the statute of repose would run was too short a period of time for the Garcias, who were the plaintiffs, to bring a lawsuit against the defendant. *Id.* ¶ 37. Because the Legislature had not specified a reasonable period of time within which to bring claims that accrue shortly before the running of the statute of repose, in *Garcia* this Court imposed the three-year accrual statute of limitation of NMSA 1978, Section 37-1-8 (Repl. Pamp. 1990). 1995-NMSC-019, ¶ 37. The *Garcia* Court held that as it applied to the Garcias, Section 41-5-13 violated due process—the Court did not hold that the statute of repose was unconstitutional on its face. 1995-NMSC-019, ¶¶ 36-37. Nor did the *Garcia* Court hold that Section 37-1-8 would be the controlling statute of limitation for MMA cases. 1995-NMSC-019, ¶ 37. Had it done so, I would vote to overrule *Garcia* simply on the basis of separation of powers.

{32} In addition, the procedural history in *Garcia* is remarkably different from the instant case. In *Garcia*, the latest act of malpractice occurred on February 8, 1989. 1995-NMSC-019, ¶ 1. The plaintiffs had until February 8, 1992 to file a lawsuit. The cause of action arose out of a cardiac arrest that occurred on November 16, 1991, leaving the plaintiffs only eighty-five days to file suit under the statute of repose. *Id.* ¶¶ 1, 6, 13. On February 24, 1992, the Garcias filed an application with the Medical Review Commission. *Id.* ¶ 1. Under the provisions of Section 41-5-15(A), "[n]o malpractice action may be filed in any court against a qualifying health care provider before application is made to the medical review commission and its decision is rendered." The statute of repose is tolled "until thirty days after the panel's final decision is entered in the permanent files of the commission and a copy is served upon the claimant and his attorney by certified mail." Section 41-5-22; *see also Grantland v. Lea Reg'l Hosp.*, 1990-NMSC-076, ¶ 9, 110 N.M. 378, 796 P.2d 599 (holding that the statute of repose is tolled regardless of the outcome of the case). The Garcias filed their claim against the correct doctor 109 days from when it accrued, or stated differently, just sixteen days after the running of the limitation period in the statute of repose.

{33} Filing an application with the Commission as to one provider does not toll the limitations period as to another provider who was not named in the original application and for whom the statutory period in which to file a cause of action has passed. *See Meza v. Topalovski*, 2012-NMCA-002, ¶ 8, 268 P.3d 1284. I make this latter point because Cahn filed a claim with the Commission, but she did not name Berryman, which deprived her of the tolling provision as to him.

{34} Regarding the question of whether reasonable time remained after a cause of action accrued within which Cahn, exercising due diligence, could have filed her claim before the running of the statute of repose, the following analysis persuades me that the answer is yes. Cahn received a pelvic ultrasound at West Mesa Medical Center on May 19, 2006. On August 8, 2006, she met with Dr. Berryman and provided him a copy of the written ultrasound report. Berryman neither referenced the findings indicated by the ultrasound report nor scheduled a biopsy. Instead, Berryman examined Cahn, diagnosed her as having endometriosis, prescribed medication for that condition, and advised Cahn to return to his office for a follow-up visit. She did not return for a follow-up visit.

{35} Ultimately, as reflected in both the majority and the dissenting opinions, Cahn knew of her injury and its cause[1] on September 22, 2008. However, she could not remember the name of the doctor who caused or contributed to her injury, or when he examined her. We know that Cahn had until August 8, 2009 to discover the identity of the doctor and sue him. By December 2008, Cahn had retained counsel to pursue her malpractice claim. Before retaining counsel, as early as October 27, 2008, while recovering from major surgery, Cahn herself began investigating to determine the identity of the doctor whom she believed had committed the act of malpractice. Did Cahn have health insurance at the time? If so, who did her insurer pay for the evaluation? Did she have a co-payment or a deductible she had to pay? If she did, how did she pay it, and is there a record of who she paid?

{36} These questions might seem obvious in retrospect, but Cahn herself knew to ask the questions. In late 2008 Cahn contacted her health insurer, Lovelace Health Plan, and requested her explanation of benefits (EOB) forms for May, June, and July 2006. The doctor's identity was obviously not in the records that Cahn received because she saw Dr. Berryman in August, 2006. It is not clear why Cahn requested EOBs for only three months. Had she requested all of the EOB forms for 2006 she would have received an EOB dated August 23, 2006, which identified Berryman as the doctor who treated her on August 8, 2006. Lovelace Health Plan had mailed this EOB to Cahn shortly after she received Berryman's medical services. Cahn's credit union bank statement in August 2006 listed Cahn's $30 co-payment to Sandia OB/GYN, where Berryman worked in August 2006.

{37} This procedural history persuades me that Berryman's identity was reasonably ascertainable within the time remaining on the statute of repose. There is no evidence that Berryman was concealing, much less fraudulently concealing, his identity. I would not find a due process violation in this case because the time was not unreasonably short for Cahn and her attorneys to identify Berryman in time to file a lawsuit within three years from the occurrence of the malpractice.

{38} The harshness of the result will be troubling to some, but not to others. Law is adversarial and morally ambiguous because both sides must make irreconcilable moral arguments, and only one side wins. Regarding statutes of limitation or of repose, I am reminded of what this Court stated in *Cummings v. X-Ray Associates of New Mexico, P.C.*, 1996-NMSC-035, ¶ 37, 121 N.M. 821, 918 P.2d 1321 (quoting *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (alterations in original) (footnote omitted):

> There is no statute of limitations that does not prevent some identifiable class from litigating its cause of action. Such a class is always characterized by the fact that its members failed to timely pursue their claim. Whether

> this failure is through careless negligence or innocent lack of information is generally irrelevant to the constitutionality of the time limit.
>
> [Statutes of limitation] are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. [The individual] may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

{39} For example, had Mr. Garcia in the *Garcia v. LaFarge* case suffered his heart attack eighty-six days later, on February 9, 1992, his cause of action would have been time-barred, even though his cause of action had not accrued before then. *See Tomlinson v. George*, 2005-NMSC-020, ¶ 8, 138 N.M. 34, 116 P.3d 105 ("[A] statute of repose terminates the right to any action after a specific time has elapsed, even though no injury has yet manifested itself." (alteration in original) (internal quotation marks and citation omitted)). This Court has upheld the constitutionality of the MMA statute of repose when the cause of action accrues after the statute of repose has expired against both an equal protection and a due process challenge. *Cummings*, 1996-NMSC-035, ¶¶ 22-42. Upholding the constitutionality of the MMA statute of repose in instances when the cause of action accrued after the statute of repose has expired necessarily requires upholding its constitutionality in the present case, where Cahn had reasonable time to bring her cause of action before the statute of repose expired.

{40} I respectfully concur in the result reached by the majority.

EDWARD L. CHÁVEZ, Justice

MAES, Justice (dissenting).

{41} Because I believe the teachings of our prior cases, the relevant statutory structure, the nature of the due process guarantee, and other fundamental constitutional considerations counsel against adoption of the twelve-month rule the majority creates today, I respectfully dissent.

I. The Terry–Garcia Analysis

{42} The principles of our prior cases suggest we need not create a new rule here. For causes of action accruing within the statutory period—as Cahn's did here—our cases have made clear the statutory repose function is typically irrelevant; instead, we must answer two precise due process-oriented questions regarding the remaining effective limitations period for the cause after accrual. *See Terry v. N.M. State Highway Comm'n*, 1982-NMSC-047, ¶¶ 10, 17, 98 N.M. 119, 645 P.2d 1375 (examining ten-year repose period for construction defect suits). First, because "[t]he constitutionality of statutes of limitation has hinged on the reasonableness of the time provided to pursue a remedy," *id.* ¶ 14, we have investigated whether and when the potentially remaining effective period for filing a complaint may be so "abbreviated" as to be constitutionally unreasonable. *Id.* ¶ 16. And where the potential period for filing *is* unreasonably abbreviated, we noted in *Terry*, we must address a second critical question of *what* the appropriate limitations period for the claim may be in the absence of a specific legislative prescription in the repose provision or related provisions. *Id.* ¶ 17.

{43} Investigating the second question in *Terry*, we emphasized that "it is not a judicial function to set appropriate limitations periods." *Id.* Instead of creating our own applicable period, we briefly surveyed other legislatively-drawn periods. *Id.* A period as short as a single year for certain causes of action, we observed, might survive constitutional scrutiny, when "justified by specific considerations." *Id.* But where "the Legislature has not specified a shorter reasonable period of limitations" for the specific kind of action before us, we added, our task is "to apply the period provided by the applicable" background statutes of limitations. *Id.* And thus the *Terry* result was straightforward: because the construction-defect repose provision at issue in *Terry* gave no specific limitations guidance and because the *Terry* plaintiffs' claims were actions for wrongful death and personal injury, we simply applied the legislatively-prescribed periods for wrongful death and personal injury causes of action, much as other courts had done at the time. *Id.*; *see Gaines v. Preterm-Cleveland, Inc.*, 514 N.E.2d 709, 716 (Ohio 1987) (applying background malpractice limitation period in place of constitutionally problematic medical malpractice provision); *McMacken v. State*, 320 N.W.2d 131, 139 (S.D. 1982) (applying background personal injury limitation period in place of constitutionally problematic construction defect provision), *overruled on other grounds by Daugaard v. Baltic Co-op. Bldg. Supply Ass'n*, 349 N.W.2d 419 (S.D. 1984); *Hunter v. School Dist. of Gale-Ettrick-Trempealeau*, 293 N.W.2d 515, 522 (Wis. 1980) (affirming court of appeals decision applying background limitation period in place of more specific period with constitutionally problematic application).

{44} In *Terry*, because both statutory background provisions established limitations periods of three years from the time of accrual and the plaintiffs' claims had accrued approximately three months before expiration of the ten-year repose period for construction defect claims, application to the plaintiffs' claims added two years and nine months to the effective limitations period remaining under the construction-defect provision. 1982-NMSC-047, ¶¶ 9, 17. Application of those background statutory provisions had the effect of giving the *Terry* plaintiffs adequate time to file and the additional effect of treating similarly all prospective plaintiffs for whom actions accrue before the end of the period of repose. While neither effect merited mention in *Terry*, I suggest the result should guide our analysis today and in the future.

{45} In early cases examining the effect of NMSA 1978, Section 41-5-13 (1976), we had no trouble with, and no objection to, application of the basic *Terry* principles. *See, e.g.*, *Garcia ex rel. Garcia v. La Farge*, 1995-NMSC-019, ¶¶ 34-37, 119 N.M. 532, 893 P.2d 428; *Crumpton v. Humana, Inc.*, 1983-NMSC-034, ¶ 5, 99 N.M. 562, 661 P.2d 54. In *Crumpton*, for example, where a cause of action had accrued on the date of alleged malpractice and the plaintiff filed suit more than three years after the date, we marshaled both Section 41-5-13 and the general personal injury limitations period in support of a conclusion the plaintiff's suit was time-barred. *See Crumpton*, 1983-NMSC-034, ¶ 5. The statutes read in tandem, we concluded, "clearly indicate that the statute of limitations" for purposes of these causes of action "commences run-

ning from the *date of injury* or *the date of the alleged malpractice*." *Id.* (emphasis in original). The most probable reason for application of the general personal injury limitations period was clear: we were reluctant to impose our own background rule in the event Section 41-5-13 could not provide the rule for decision under the circumstances.

{46} We revisited the question of the applicable limitations period under Section 41-5-13 again in *Garcia*, where we explicitly adopted and applied the two-step *Terry* inquiry for claims arising under the Medical Malpractice Act (MMA), NMSA 1978, § 41-5-1 to -29 (1976, as amended through 2015). *See Garcia*, 1995-NMSC-019, ¶¶ 29-37. We observed that Section 41-5-13 incorporates functions of both repose and limitation, much like the construction-defect provision at issue in *Terry*. *Garcia*, 1995-NMSC-019, ¶ 14. We reiterated that, for purposes of the limitation function, the constitutionality of the provision would turn on the reasonableness of the time provided for pursuit of existing causes of action. *Id.* ¶ 34. Any constitutionally-appropriate limitations period, we noted, " 'must proceed on the idea that the party has full opportunity afforded him to try his right in the courts.' " *Id.* ¶ 33 (quoting *Wilson v. Iseminger*, 185 U.S. 55, 62 (1902)).

{47} Faced with a plaintiff in *Garcia* whose claim accrued eighty-five days before the three-year period expired, we observed, much as we had in *Terry*, that a statutory provision allowing "an unreasonably short period of time within which to bring an accrued cause of action violates the Due Process Clause of the New Mexico Constitution." *Garcia*, 1995-NMSC-019, ¶ 36. That the remaining effective limitations period for various potential claims arising under Section 41-5-13 was unreasonably short was unquestioned because the potentially effective period would have been unreasonably abbreviated for any "claim accruing near the end of the limitations period." *Garcia*, 1995-NMSC-019, ¶ 36.

{48} Having concluded application of the remaining limitations period under Section 41-5-13 was constitutionally problematic, we turned to the second *Terry* inquiry of what limitations period should appropriately govern the plaintiff's claims. *Garcia*, 1995-NMSC-019, ¶ 37. In answering that question, we relied on *Terry* exclusively, noting, as we had in *Terry*, that while a court "may determine that the limitations period selected is unreasonably short," "it is generally a matter for the legislature to establish limitations periods." *Garcia*, 1995-NMSC-019, ¶ 37. And because the Legislature had not offered some other specific limitation period in the MMA, we concluded, much as we had in *Terry*, that the background three-year rule for personal injury actions, running from the date of accrual, would govern the plaintiff's claims and, as in *Terry*, would have the effects of adding significant time to the limitation period remaining under the repose provision (approximately two years and nine months) and treating similarly all claimants for whom causes of action accrue prior to the end of the repose period. *Garcia*, 1995-NMSC-019, ¶ 37.

{49} Our *Cummings* case came just a year after *Garcia*, and in *Cummings* we again explained Section 41-5-13 incorporates functions of both repose and limitation. *Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶¶ 47-48, 121 N.M. 821, 918 P.2d 1321. And in lieu of explicitly invoking the two-step *Terry–Garcia* analysis, we explained that the *Cummings* plaintiff could not benefit from our standard due process-based limitations analysis because she had failed to "exercise diligence when she first learned she had been misinformed about the mass in her lung" by the defendant. *Cummings*, 1996-NMSC-035, ¶ 57. Our analysis emphasized a lack of diligence. But diligence aside, *Cummings* can be simply understood as yet another application of the two-step *Terry–Garcia* analysis. Section 41-5-13, we concluded, left various potential claimants an unreasonably abbreviated period of time within which to pursue causes of action, and thus *Terry* and *Garcia* required that we look to the relevant background rule. *Cf. id.* ¶ 55 (quoting *Garcia*, 1995-NMSC-019, ¶ 26). The *Cummings* action was an action for personal injury, and thus the three-year personal injury period applied. *See Garcia*, 1995-NMSC-019, ¶ 37. And that was dispositive: because the *Cummings* action had accrued on February 23, 1990, the three-year legislative background rule supplied by the *Terry–Garcia* analysis would have given the plaintiff until February 23, 1993, to file. But having waited to sue the defendant until December 7, 1993, the plaintiff was too late, at nearly ten months beyond expiration of the background rule. *Cummings*, 1996-NMSC-035, ¶ 57.

{50} Despite the straightforward teachings of *Terry*, *Garcia*, and *Cummings*, and despite decades of legislative acquiescence to those decisions, we got off track in *Tomlinson v. George*, 2005-NMSC-020, 138 N.M. 34, 116 P.3d 105. *Cf. Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988) (observing "[j]udicial interpretation and application, legislative acquiescence, and the passage of time have removed any doubt" regarding future application of past interpretive decisions). We avoided legislating in these earlier three cases, and a legislatively-prescribed background rule supplied the appropriate rule for decision in each case. Glossing over that history, we pronounced in *Tomlinson* that *Cummings* had concluded "that one and one-half years is a constitutionally reasonable period of time within which to file a claim." *Tomlinson*, 2005-NMSC-020, ¶ 23. But of course, we put it very differently in *Cummings* stating that:

> At that time there was still about a year and a half before the statute of repose on her malpractice claim expired. Nevertheless, *she sat on her rights* and did not file any claim for more than two years, on July 27, 1992. By that time, almost four years had passed since the 1988 act of malpractice. She did not sue X-Ray Associates until December 7, 1993, more than five years after the act. Cummings *lost her medical malpractice claim through her own lack of diligence*.

Cummings, 1996-NMSC-035, ¶ 57 (emphasis added). Why that one and one-half year period received the transposition it did in *Tomlinson* was and remains unexamined. Regardless, it is sufficient for our purposes today to note we refused to impose our own limitation period in *Terry*, and in *Garcia*, and in *Cummings*, because the statutory background rule had supplied the rule for decision instead. But in *Tomlinson*, we undid the analyses of those cases and crafted our own rule, concluding "two years and eight months is a constitutionally reasonable period of time within which to file" a claim. 2005-NMSC-020, ¶ 24.

{51} Faithful application of the *Terry–Garcia* analysis would have required the opposite result. The *Tomlinson* plaintiff's claim was again one for personal injury, and the three-year personal injury limitation period should have governed, much as it had in *Terry*, 1982-NMSC-047, ¶ 17, in *Garcia*, 1995-NMSC-019, ¶ 37, and in *Crumpton*, 1983-NMSC-034, ¶ 5. And application of the legislatively-prescribed

three-year period suggests the *Tomlinson* plaintiff was timely: the claim accrued on December 24, 1996, and she filed an application with the statutorily-created medical review commission, which tolls the running of the limitation period, on December 13, 1999. 2005-NMSC-020, ¶¶ 4-5; *see* NMSA 1978, § 37-1-8 (1976).

{52} Two obvious objections to that outcome in *Tomlinson* would have arisen; both, however, had been asked and answered in our prior cases. Filing outside the three-year window provided by Section 41-5-13 seems at odds with the basic statutory language—but as we noted in *Terry* and again in *Garcia*, "considerations of fairness implicit in the Due Process Clauses of the United States and New Mexico Constitutions dictate that when the legislature enacts a limitations period it must allow a reasonable time within which existing or accruing causes of action may be brought." *Garcia*, 1995-NMSC-019, ¶ 36; *accord Terry*, 1982-NMSC-047, ¶¶ 14-15. And two years and eight months may have seemed a generously long period for pursuit of the claim, but the statute itself allows three years for early accruing claims; the background period for personal injury actions allows three years; we had applied the background period before without objection from the Legislature; and as we have repeatedly explained, "it is not a judicial function to set appropriate limitations periods." *Terry*, 1982-NMSC-047, ¶ 17; *see Garcia*, 1995-NMSC-019, ¶ 37; *accord Feldhake v. City of Santa Fe*, 1956-NMSC-079, ¶ 33, 61 N.M. 348, 300 P.2d 934, ("The courts cannot legislate . . . .").

{53} We could reject, narrow, or find another justification for *Tomlinson*, but my concern here is that the majority's recap of the case law puts this history aside to Cahn's great detriment, and this new twelve-month rule entangles and imperils fundamental separation-of-powers jurisprudence. *See, e.g.*, *De Graftenreid v. Strong*, 1922-NMSC-031, ¶ 8, 28 N.M. 91, 206 P. 694 ("Courts cannot read into an act something that is not within the manifest intention of the Legislature, as gathered from the statute itself. To do so would be to legislate . . . ."). Despite the *Tomlinson* pronouncement regarding *Cummings*, we have never in this context held, or even concluded, that "eighteen months is a constitutionally reasonable period" for requiring the filing of a claim. Instead, we have asked whether Section 41-5-13 provides an unreasonably abbreviated limitation period for various potential claims and, answering that question in the affirmative, we have moved on to the question of what limitation period should govern for claims accruing before Section 41-5-13 repose applies. The answer was clear in *Garcia*, as it was in *Crumpton*—the legislatively-supplied personal injury limitation period governs those claims where Section 41-5-13 cannot—and it provided the rule of decision for *Cummings*. The answer is just as clear here, and Cahn should benefit from it. Her claim accrued on September 22, 2008, within the Section 41-5-13 period; given the background personal injury provision of three years, she had until September 22, 2011, to file; and she filed against Berryman on July 9, 2010, well within the three-year deadline imposed by the background provision.

{54} The twelve-month rule the majority adopts raises two concerns. First, in order to create this new rule, the majority overrules *Garcia* but does so sua sponte. Majority Op. ¶ 22. Because no party requested that *Garcia* be overruled and we did not request briefing, we are overturning precedent without the benefit of stare decisis. *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶¶ 33-36 ("Stare decisis is the judicial obligation to follow precedent, and it lies at the very core of the judicial process of interpreting and announcing law" and "[p]articular questions must be considered before overturning precedent."); *see State v. Riley*, 2010-NMSC-005, ¶ 40, 147 N.M. 557, 226 P.3d 656, (Chávez, J., specially concurring, Bosson, J., concurring in part and dissenting in part, Daniels, J., specially concurring) (explaining stare decisis prevents this Court from overruling precedent where the parties have not briefed and specifically argued the relevant factors to be considered before overturning our precedent). Secondly, creation of a new rule constitutes the kind of legislation we said we could not craft in *Terry* and *Garcia*. Thus I would not adopt it here. I would also decline to apply the rule retroactively, because we cannot know how Cahn's pursuit of her claim would have transpired had she known she had more time available as she encountered expiration of the initial limitations period. Instead, I would apply the *Terry–Garcia* analysis as we have applied it in the past; and having done that, I would reverse the Court of Appeals decision and reinstate the conditional verdict of the district court.

II. The Statutory Architecture

{55} Even were we hesitant to apply the legislatively-supplied three-year background rule despite the applications in *Terry* and *Garcia* and the ensuing decades of legislative acquiescence, I believe the MMA is designed to obviate the problem that plagued Cahn here. The statutory structure, in other words, suggests claims arising in the posture Cahn's did here need not be subject to the Section 41-5-13 repose.

{56} The MMA made various changes to the way our courts process medical negligence claims; among those changes was the addition of the Section 41-5-13 repose provision we have given much attention today. The MMA also established a "medical review commission," the function of which "is to provide panels to review all malpractice claims against health care providers covered by the [MMA]." Section 41-5-14(A). After the requisite review, the panel is tasked with deciding "(1) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and (2) whether there is a reasonable medical probability that the patient was injured thereby." Section 41-5-20(A)(1)-(2).

{57} This review is required for any claims made against qualifying providers like Berryman; the MMA directs that "[n]o malpractice action may be filed in any court against a qualifying health care provider before application is made to the medical review commission and its decision is rendered." Section 41-5-15. And the review is substantive. An application by a claimant must contain (1) facts, names, dates, and circumstances, "so far as they are known," and (2) a statement authorizing "access to all medical and hospital records and information pertaining to the matter." *Id.* Health care providers involved have reciprocal obligations—they must "answer the application for review," and they must "submit a statement authorizing" the reviewing panel "to obtain access to all medical and hospital records and information pertaining to the matter." Section 41-5-16(B). Eventually, the panel must hold a hearing on the matter; and post-hearing, should the panel conclude it still lacks relevant information for purposes of making the determinations required by statute, the panel "may request that additional facts, records, witnesses or other information be obtained." Section 41-5-19(D). Recognizing the burden this review imposes on the claimant and recognizing the time any review of substance might require, our Legislature built into the MMA a tolling provision which di-

rects that "[t]he running of the applicable limitation period" for these professional negligence claims is tolled while the panel gathers information, reviews, and deliberates. Section 41-5-22.

{58} The provisions governing this review process are instructive in several ways. The flexibility of the phrase "applicable limitation period" of Section 41-5-22 in the tolling provision and the absence of specific reference to the limitation period of Section 41-5-13 are telling. The Legislature surely knew how to incorporate related provisions by reference, and did so elsewhere in the MMA. *See, e.g.*, Section 41-5-5(A)(2) (making reference to specific provisions in Section 41-5-25). The omission of any mention of Section 41-5-13 in the general language of Section 41-5-22 suggests the Legislature may well have understood multiple limitations periods might govern claims brought under the MMA. And the existence of the tolling provision itself reflects a legislative judgment that Section 41-5-13 is not a standard repose provision—repose periods are typically "fixed" and not to "be delayed by estoppel or tolling." 4 Charles Alan Wright, Arthur A. Miller & Adam N. Steinman, *Federal Practice and Procedure* § 1056 (4th ed. 2015); *see also CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014).

{59} More important still are the MMA's information-seeking provisions. The basic purposes underlying creation of the commission and review suggest the information-seeking provisions were designed to preclude the problem that arose here. The legislative objective in creating these screening panels was, ostensibly, to expedite resolution of claims, with associated goals of reducing the overall costs of processing these claims and promoting judicial efficiency. *See* Jean A. Macchiaroli, *Medical Malpractice Screening Panels: Proposed Model Legislation to Cure Judicial Ills*, 58 Geo. Wash. L. Rev. 181, 186, 240 (1990) ("[A]ll state legislatures that have created screening panels have done so for essentially identical reasons."). These panels, in other words, were created to screen, streamline, and filter claims for the parties and the courts. Efficiency across both levels of review—panel and court—was a prominent goal. And these objectives suggest the timeline regarding identification of Berryman here was (1) exceptional, and (2) not likely the kind of timeline our Legislature intended to proscribe in establishing the Section 41-5-13 repose. Once Cahn had timely filed with respect to Lovelace and some of the other providers here, the screening mechanism should typically have identified any individuals involved—the statutory provisions mandate that both parties authorize access to all relevant information, and the panel has an ongoing obligation to seek any information necessary for making its determinations. In most cases, the year-long search for Berryman in discovery should then have been unnecessary; had the panel encountered the same identification difficulty, a case for estoppel or fraudulent concealment might have loomed large. And regardless whether those cases could be made, nothing in the statutory provisions suggests the claimant should suffer when the providers and panel fail to satisfy their own identification obligations—the Section 41-5-13 repose is tolled for as long as the screening process takes.

{60} One objection to reliance on the statutory scheme for guidance may be that with the exception of Berryman, none of the other providers were covered providers here. The record does not clearly reveal the status of the other providers for us; were it the case they were all uncovered providers, no screening would have been required until Berryman was identified, and Cahn would not have benefitted from the information-producing apparatus of review. But it would be at odds with the goals of both the MMA and review to suggest the scheme is intended to encourage affiliations between entities avoiding the burdens of qualification under the MMA and contracting providers who gain its protections, while at the same time encouraging the basic relational disorganization, dysfunction, and opacity giving rise to the identification problem here. The point, we have said, is to "encourage more physicians to carry" insurance—not to encourage strategic and opaquely drawn relationships with those not carrying insurance. *Garcia*, 1995-NMSC-019, ¶ 24.

{61} Instead, the basic legislative preference for filtering, and for developing the information relevant to, as many of these claims as possible in review suggests a legislative understanding that the identification problem and protracted discovery that occurred here should rarely, if ever, arise for qualified providers like Berryman. When those problems do arise and the identification problem is relevant to resolution of the claim, repose is typically tolled. Nothing in the MMA suggests the result should be different for qualified providers when they affiliate with non-qualified providers. *Cf. Grantland v. Lea Reg'l Hosp., Inc.*, 1990-NMSC-076, ¶ 8, 110 N.M. 378, 796 P.2d 599 ("If we require claimants to file in district court at the peril of losing their case before the classification of the health care provider is known, then every claim will be filed in district court as a safety precaution, and the purpose behind the [MMA] . . . will be defeated.").

{62} Based on that architecture and based on the stipulation here of absence of any cost concerns arising from potential frivolity, staleness, questions of causation, or difficulties in establishing misdiagnosis based on negligence, I do not believe we should conclude the Section 41-5-13 repose was designed to apply to the circumstances as they arose here. *Compare Cummings*, 1996-NMSC-035, ¶ 38 (justifying application of repose on grounds that "[c]laims could arise long after memories have faded, parties become unavailable, and evidence is lost").

III. Due Process and Circumstance Specific Reasonableness

{63} And most importantly, this new twelve-month rule that is to be applied in every case regardless the circumstances (with potential carve-outs for other exceptional scenarios like fraudulent concealment, which Cahn does not press on appeal here), is inconsistent with the longstanding case law establishing that due process protection requires circumstance-specific investigation before we may extinguish a vested right. *See, e.g.*, *Terry v. Anderson*, 95 U.S. 628, 633 (1877) (considering "all the circumstances"); *Wilson v. Iseminger*, 185 U.S. at 63 (1902) ("[W]hat is reasonable in a particular case depends upon its particular facts."); *Terry*, 1982-NMSC-047, ¶ 16 (examining potential application of limitations periods "under these facts"); *cf. Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 428 (1965) ("This policy of repose, designed to protect defendants, is frequently outweighed, however, where the interests of justice require vindication of the plaintiff's rights.").

{64} Any cause of action that has accrued as Sara Cahn's has here is a "species of property protected by the Fourteenth Amendment's Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Due process protection, the United States Supreme Court has often explained, generally requires that any deprivation of life, liberty, or property be preceded by notice and an opportunity to be heard in a manner appropriate for "the nature of the case." *Cleveland Bd. of Educ.*

v. Loudermill, 470 U.S. 532, 542 (1985) (citation omitted). In the context of limitations periods, we have explained "that statutes of limitation may be passed where formerly there were none, and existing limitation periods may be reduced while the time is still running," but due process requires that a "reasonable time" be "left for the institution of an action before it is time-barred." *Terry*, 1982-NMSC-047, ¶ 14; *accord Sohn v. Waterson*, 84 U.S. 596, 599 (1873) ("[I]f an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action . . . . It will be presumed that such was not the intent of the legislature. Such an intent would be unconstitutional."). And we have extended application of that rule, imposing it as "an appropriate general restriction on the Legislature's right to statutorily limit actions"—a right our Legislature has attempted to exercise in Section 41-5-13. *Terry*, 1982-NMSC-047, ¶ 15.

{65} "Reasonable time" in this context has always had an intentionally flexible meaning. The reasonableness determination, the United States Supreme Court long ago observed, must account for "all the circumstances" of a particular case. *Terry v. Anderson*, 95 U.S. at 633. Reasonableness in any given case, in other words, depends "upon its particular facts." *Id.*; *see also Terry*, 1982-NMSC-047, ¶ 16 ("We hold that such an abbreviated period is unreasonable."). It has no "fixed content," and we must evaluate it "as the particular situation demands." *U.S. West Commc'ns v. N.M. State Corp. Comm'n (In re 1997 Earnings of U S West Commc'ns, Inc.)*, 1999-NMSC-016, ¶ 25, 127 N.M. 254, 980 P.2d 37 (citation omitted); *accord Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 246 (1944) ("What is due process in a procedure affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case.").

{66} In the context of the MMA, we have often observed that the due process guarantee requires us to account for all case-specific circumstances; and based on those circumstances, the guarantee may compel us to conclude the MMA's provisions must yield. *See, e.g.*, *Jiron v. Mahlab*, 1983-NMSC-022, ¶ 12, 99 N.M. 425, 659 P.2d 311 ("[W]here the requirement of first going before the Medical Review Commission causes undue delay prejudicing a plaintiff by the loss of witnesses or parties, the plaintiff is unconstitutionally deprived of his right of access to the courts."). Due process therefore, ensures that "claimants who make a good-faith attempt to comply with the [MMA]" are "not [to] be deprived of their day in court by placing form above substance." *Grantland*, 1990-NMSC-076, ¶ 6; *see Otero v. Zouhar*, 1985-NMSC-021, ¶ 22, 102 N.M. 482, 697 P.2d 482, *overruled by Grantland*, 1990-NMSC-076 (concluding claimant had failed to comply with strict requirements of Act but had done "what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law" (internal quotation marks and citations omitted)). And thus for purposes of evaluating the MMA's limitation function, we have explained that "protecting the defendant is a laudatory goal," but any period imposed "should reflect a policy decision regarding what constitutes an adequate period of time for a person of ordinary diligence to pursue his claim." *Roberts v. Sw. Cmty. Health Servs.*, 1992-NMSC-042, ¶ 26, 114 N.M. 248, 837 P.2d 442 (internal quotation marks omitted).

{67} Our due process reasonableness determination in the limitations context, in other words, has always necessarily incorporated an examination of the claimant's diligence in pursuing a claim. *See Cummings*, 1996-NMSC-035, ¶ 57 ("Cummings lost her medical malpractice claim through her own lack of diligence."). The concept is neither novel nor antiquated—the diligence inquiry has long featured in due process reasonableness determinations and still does. *See, e.g., Herron v. Anigbo*, 897 N.E.2d 444, 449 (Ind. 2008) ("[T]he plaintiff must file before the statute of limitations has run if possible in the exercise of due diligence."); *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 703 (Tex. 2014) ("[A]n open courts challenge is a due process complaint and requires the party to use due diligence."); *accord Canadian N. Ry. Co. v. Eggen*, 252 U.S. 553, 562 (1920) (explaining "power is in the courts . . . to determine the adequacy and reasonableness" of access to courts, and concluding constitutional problem is avoided when claimant "is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection"). And even in *Tomlinson*, on which the majority relies today for support for elimination of the case-specific diligence inquiry, we recognized that we accept claims conflicting with the MMA's provisions "in cases involving peculiar facts . . . and when a good faith effort has been made to comply with the Act." 2005-NMSC-020, ¶ 22 (internal quotation marks omitted). For this reason, I disagree with the majority that injecting our judgment to decide how much additional time to grant claimants with late accruing action is to adopt statute of time limitations from other jurisdictions. Majority Op. ¶ 24. And I would answer the question "How much additional time, exactly, is Cahn entitled?" by looking at the specific facts in Cahn's case.

{68} Resolution of the traditional diligence inquiry given Cahn's facts is straightforward. By September 2008, two years after Cahn had been misdiagnosed by Berryman, she had relocated to Jackson, Wyoming, and she was still none the wiser. On September 19, 2008, she underwent an annual pap smear and discussed her chronic pelvic pain with a new Wyoming doctor. A copy of her original radiology report was sent to the new physician's office, and she was promptly scheduled for a CT scan on September 22, 2008, three days after her initial visit. Her new scan revealed "extensive abnormality in the pelvis," which was characterized as "highly suspicious for an ovarian malignancy." In the next few weeks, she traveled from Wyoming to New York's Memorial Sloan-Kettering Cancer Center for confirmation of the diagnosis and underwent extensive surgery soon after. Her diagnosis was "metastatic serous borderline tumor of the ovary," and because the tumor had been incorrectly diagnosed at initial discovery, the cancer had progressed from stage I to stage IIIC, substantially decreasing her chances of remedy. On October 15, 2008, she underwent a total abdominal hysterectomy, a bilateral salpingo-oophorectomy, a pelvic and para-aortic node dissection omentectomy, and she was fitted with an intraperitoneal catheter. She remained in New York under the care of her parents for approximately eight months.

{69} Quickly recognizing she had been misdiagnosed, Cahn went to work—as she recuperated in New York—to uncover the identity of Berryman, who had made the error two years earlier. Within twelve days of that massive corrective surgery on October 15, she was sending records requests. Between October 27, 2008, and November 3, 2008, she sent at least eight requests for

information to Lovelace Women's Hospital, Lovelace Westside Hospital, and ABQ Health Partners, in pursuit of Berryman's name. None of the records she received in response made note of her August 2006 visit or Berryman's identity.

{70} In the next month, sensing she might have a viable malpractice claim, she retained—again from New York—Albuquerque counsel to assist with development of what at that point could only have appeared a complex case. She indicated to her Albuquerque attorneys she thought she remembered the date of the relevant 2006 appointment with Berryman, but she could not remember his name. Cahn's attorneys investigated the records she had already received in response to her initial requests, and they sought to supplement the information over the next two months with new requests to all three participating facilities for Cahn's "complete medical chart" and any applicable itemized billing statements covering the period from May 17, 2006, through the time of the requests. All told, Cahn and her attorneys sent the provider entities at least sixteen distinct records requests. Eventually, as a result of her investigation, Cahn discovered she had been assigned three separate medical records numbers in the Lovelace Sandia Health System, which was highly unusual for Lovelace patients; nonetheless, Berryman remained unnamed.

{71} Due at least in part to that unorthodox recordkeeping, Berryman's identity remained a mystery to Cahn and her counsel despite several months of active investigation. Recognizing the Section 41-5-13 limitation period was nearing an end, Cahn, on April 10, 2009, timely filed a district court action, naming the various provider identities she had been able to uncover and adding a placeholder physician John Doe defendant until Berryman could be identified. Cahn's attorneys actively continued to seek Berryman's identity in the district court proceeding—but discovery, experience shows, is rarely quick or clean. Finally, discovery responses received on July 1, 2010 revealed Berryman's name. Days later, on July 6, 2010, Cahn, noting the long and protracted "concerted efforts" she had made to uncover Berryman's identity, sought to amend her complaint to add Berryman in place of the Doe defendant. The district court, finding Cahn's contentions "well taken," granted her leave, and on July 9, 2010 Cahn filed her amended complaint naming Dr. Berryman. Berryman then moved for summary judgment on the ground Cahn's amended complaint was untimely under Section 41-5-13. But the district court, having reviewed this extensive history of Cahn's case, explained our due process case law compelled a conclusion that the Section 41-5-13 period could not bar her claims, and denied the motion.

{72} That record is sufficient to establish Cahn's diligence, and it is thus sufficient to allow us to conclude, as the district court did, that *any* period shorter than the twenty-one months that elapsed between accrual and filing with respect to Berryman would have been unreasonably abbreviated under the circumstances. This was not a case where Cahn "sat on her rights" and failed to "file any claim for more than two years." *Cummings*, 1996-NMSC-035, ¶ 57. And it was clearly not a case where she "knew of her cause of action and had over two years and eight months during the statutory period in which to file her claim." *Tomlinson*, 2005-NMSC-020, ¶ 28. Because it is important to compare the majority rule to Cahn's timeline, I also include a pictorial representation at the end of my dissent as appendix B.

{73} Even Berryman concedes the timeline here may be attributable largely to Lovelace; in that case, he asks only that he not be "deprived" of a "substantive right" based on Lovelace's wrongdoing. Whether that argument should prevail may be a question worth revisiting—regardless, it should have no bearing on the diligence determination. *See, e.g.*, *Campbell v. Holt*, 115 U.S. 620, 629 (1885) ("We can see no right which the promisor has in the law which permits him to plead lapse of time instead of payment . . . ."). And I note that the majority declines, as do I, as did the district court, to reach the conclusion Cahn "lost her medical malpractice claim through her own lack of diligence." *Cummings*, 1996-NMSC-035, ¶ 57.

{74} So why legislate a new statute of repose of one year? Especially as Justice Chávez states in his special concurrence, "difficulty in identifying which doctor provided what treatment" and he cannot agree that in all cases twelve months will be constitutionally adequate. I submit that this is exactly that case and would hold that the ten and one-half months left before the statute of repose expired was not a reasonable time for Cahn to bring her cause of action. Accordingly, I would not apply the majority's rule here, and I would not apply it as an unflinching rule in any case where, as here, the United States and New Mexico Constitutions require that we consider a case's particular facts.

IV. Other Constitutional Concerns

{75} In addition to the due process concerns it raises, the twelve-month rule gives rise to a host of additional constitutional questions. *See, e.g.*, Restatement (Second) of Torts § 899 cmt. g (Am. Law Inst. 1979) ("The statutory period in [statutes of repose] is usually longer than that for the regular statute of limitations, but, depending upon the designated event starting the running of the statute, it may have run before a cause of action came fully into existence. This may well raise constitutional problems."). We have addressed some of the constitutional questions before, and we have generally concluded (1) the repose provision is subject to rational-basis review, and (2) the provision was a reasonable response to the "*perceived* medical malpractice crisis" of the 1970s. *Cummings*, 1996-NMSC-035, ¶ 40 (emphasis in original).

{76} Justice Chávez's special concurrence highlights those constitutional conclusions we made in *Cummings* and suggests those conclusions must govern the outcome here. But several considerations leave me unconvinced. First, we came to those conclusions at a time when our *Garcia* analysis allowed us to address potentially unconstitutional applications case by case, and that opportunity for remediation has vanished with the advent of today's rule.

{77} Second, the due process challenge at issue in *Cummings* was one of "fundamental right of access to the courts." *Cummings*, 1996-NMSC-035, ¶ 33. Our analysis of that claim was straightforward: we explained that "[a] plaintiff has no expectancy of a cause of action that has been legitimately denied by the legislature before it accrues." *Id.* And analyzing a cause of action accruing after the statutory period has expired, we added that "where there is no cause of action, a plaintiff cannot claim they have been denied access to the courts." *Id.* In other words, we concluded, "no right has accrued," and thus there was no need to further examine the challenge. *Id.* But here, as I have explained, the posture is quite different—everybody agrees Cahn's cause of action had accrued before repose set in, and nobody disputes that a cause of action that *has* accrued constitutes a species of property entitled to due process protection not given significant attention in *Cummings*. *See Logan v. Zimmerman Brush Co.*, 455 U.S. at 428 (1982); *accord Cummings*, 1996-NMSC-035, ¶ 33 ("Since no right has accrued, it is moot to ques-

tion whether there has been a denial of a fundamental right to vindicate that right in court."). That basic due process difference suggests the constitutional analysis may be quite different for plaintiffs whose claims accrue before the statutory period has run than for those whose claims accrue later—but that question is clearly not before us today.

{78} Third and finally, *Cummings* featured only limited analysis regarding the specific variant of equal protection challenge that might allow the plaintiff with the latent injury (and thus a late-accruing claim) to prevail, and it is not clear why we addressed that equal protection question in the first instance, given our conclusion the injury had not been latent. *See Cummings*, 1996-NMSC-035, ¶ 57 (explaining "there was still about a year and a half before the statute of repose" expired after plaintiff had discovered injury). Had the facts been different and actually given rise to the equal protection claim, perhaps our conclusion would have been different, and perhaps that would have rendered moot any concerns that our due process case law requires a different analysis for a plaintiff whose claim accrues before the statutory period expires. As at least one commentator has observed, "every court that has spoken with any clarity on the issue has ultimately concluded that victims of misdiagnosis of diseases with long latency periods" may well be subject to, and benefit from, a different analysis. *See* Peter Zablotsky, *From a Whimper to a Bang: The Trend Toward Finding Occurrence Based Statutes of Limitations Governing Negligent Misdiagnosis of Diseases With Long Latency Periods Unconstitutional*, 103 Dick. L. Rev. 455, 495 (1999). Those courts have frequently found unconstitutional deprivation for the plaintiff in the long latency scenario, on equal protection grounds, on due process grounds, and on related state constitutional grounds. *Id.* But as I have noted, those questions are not before us today, and we need not address them here.

{79} Instead, I note more generally that numerous courts have found constitutional challenges compelling in the medical malpractice context, and it may be that future application of today's rule requires us to revisit some of these arguments and their applications. *See generally* Zablotsky, 103 Dick. L. Rev. 455; *see also, e.g.*, *McCollum v. Sisters of Charity of Nazareth Health Corp.*, 799 S.W.2d 15, 19 (Ky. 1990) ("While there may be certain salutary effects from limiting to five years the period in which suits can be brought, these cannot outweigh a plaintiff's constitutional right to have his or her day in court."); *Lee v. Gaufin*, 867 P.2d 572, 587 (Utah 1993) ("[T]he dominant causes of increased health-care costs were factors other than increased malpractice insurance premiums."); *DeYoung v. Providence Med. Ctr.*, 960 P.2d 919, 924 (Wash. 1998) (en banc) ("Plaintiff next contends that the classification of medical malpractice claims which are subject to the eight-year statute of repose does not bear a rational relationship to the purpose of the statute. We agree."); *cf. Pickett v. Brown*, 462 U.S. 1, 18 (1983) (concluding two-year limitations period was "not substantially related to the legitimate state interest in preventing the litigation of stale or fraudulent claims").

{80} But our case law suggests the better course is to steer clear of these constitutional shoals—"we must construe a statute . . . so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score." *State v. Pangaea Cinema, LLC*, 2013-NMSC-044, ¶ 23, 310 P.3d 604 (internal quotation marks and citation omitted). Because *Terry* and *Garcia* have given us a longstanding rule for decision here that obviates at least some of the relevant constitutional concerns, I cannot conclude we have good reason to adopt the majority rule today and embark on a new and uncharted constitutional collision course.

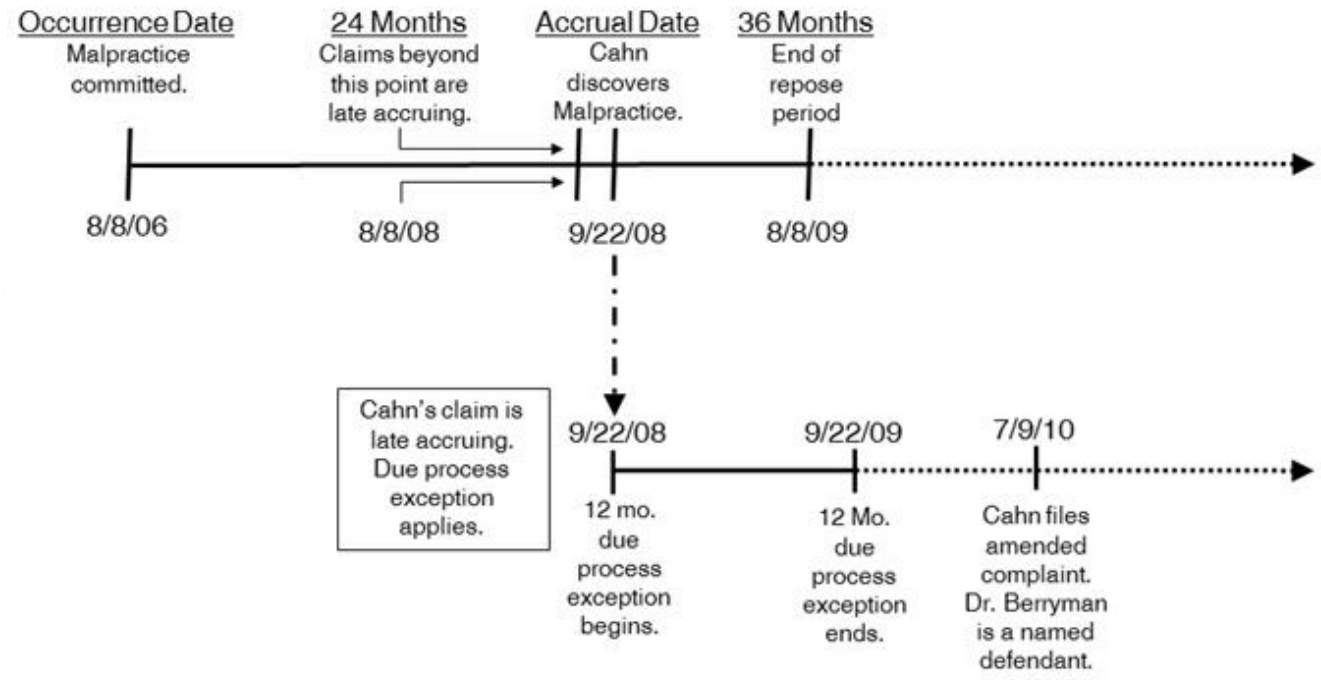
V. Conclusion

{81} It may be simple to impose rigid time restrictions for claims that accrue within the three-year statute of repose to eliminate the legal wrangling that is present with the complexity of these types of cases. But it is inconsistent with the spirit of due process to take this simple route. We must consider time, place, circumstances, and many other factors in the pursuit of fundamental fairness, despite how nebulous the concept may be. A fact-based approach would provide the fairness the Due Process Clause seeks to protect, while also changing the focus of the legal analysis to whether a plaintiff was sufficiently diligent. Accordingly, I would not apply the majority's rule here, and I would not apply it as an unflinching rule in any case where, as here, the United States and New Mexico Constitutions require that we consider a case's particular facts. I respectfully dissent.

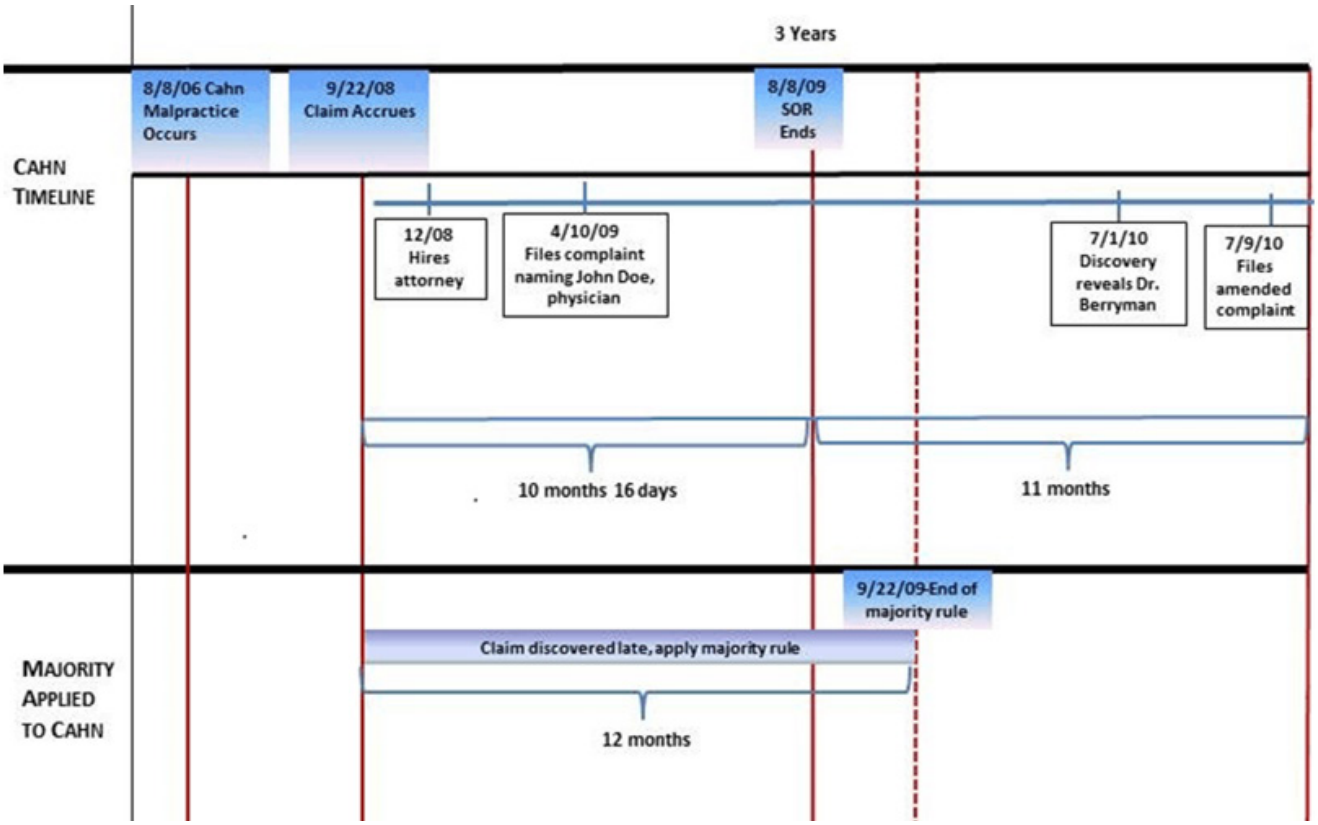
PETRA JIMENEZ MAES, Justice

[1]*See Maestas v. Zager,* 2007-NMSC-003, ¶ 19, 141 N.M. 154, 152 P.3d 141 (describing the discovery rule as when a plaintiff knows or with reasonable diligence should have known of the injury and its cause, although the rule does not require that the plaintiff discover that the defendant's actions constitute medical malpractice).

Appendix A



Appendix B



Classified

Positions

Prosecutor

Do you know why you check the classified section in the Bar Bulletin each week? Because you're not satisfied with the job you have. You're tired of keeping track of your life in 6-minute increments, and tired of doing a job that doesn't give you a sense of purpose. If you're ready for a change and want a job where you will truly make a difference in your community, where you seek truth and justice, try cases, and hold criminal offenders responsible for their actions, come join our team. The Twelfth Judicial District Attorney's Office has a vacancy for a prosecutor in our Lincoln County Office. If you're interested in learning more about the position or want to apply, email your resume and a cover letter to John Sugg at 12thDA@da.state.nm.us or mail to 12th Judicial District Attorney's Office, 1000 New York Ave, Room 101, Alamogordo, NM 88310.

Lawyer Position

Guebert Bruckner P.C. seeks an attorney with up to five years experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

Oil and Gas Title and Transaction Attorney

Cotton, Bledsoe, Tighe & Dawson, P.C., is a well-known law firm in Midland, Texas, one of the leading energy centers of the Southwest.Cotton Bledsoe (www.cottonbledsoe.com) is highly regarded both by the oil and gas industry and among other law firms in Texas and surrounding states. Cotton Bledsoe has an immediate need for an oil and gas title and transaction attorney. Candidates should have at least 5 years of experience in oil and gas title or transaction work within a law firm environment. Both associate and shareholder level attorneys considered. No portable work necessary. Please forward resumes and law school transcript to Michael Hall at mhall@cbtd.com or P.O. Box 2776, Midland, Texas, 79702-2776.

Attorney

Sheehan & Sheehan, P.A., an AV-rated litigation firm, seeks an attorney with 0-5 years' experience to join its growing and dynamic civil litigation practice. This attorney will work primarily in the fields of construction law, employment law, and insurance defense litigation, including professional liability defense. Strong academic credentials and excellent research and legal writing skills a must. All inquiries confidential. Excellent salary and benefits, with opportunities for advancement within the firm. Please send resume, references, and writing sample to applicants@sheehansheehan.com by February 25, 2018 for best consideration.

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. Position open until filled. Please send interest letter/resume 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/.

Attorney

Conklin, Woodcock & Ziegler, P.C. is seeking a full-time experienced attorney (our preference is 3-10 years of experience). We are an eight-attorney civil defense firm that practices in the following areas: labor and employment, personal injury, medical malpractice, commercial litigation, civil rights, professional liability, insurance defense and insurance coverage. We are looking for a team player with litigation experience, a solid academic and work record, and a strong work ethic. Our firm is AV-rated by Martindale-Hubbell. All replies will be kept confidential. No telephone calls please. Interested individuals should e-mail a letter of interest and resumes to jobs@conklinfirm.com

Position Announcement Readvertisement: Assistant Federal Public Defender- Las Cruces 2018-02

The Federal Public Defender for the District of New Mexico is seeking two full time, experienced trial attorneys for the branch office in Las Cruces. These positions were originally advertised as temporary positions, with a term of employment not to exceed one year and one day each. These have now been converted to permanent full time positions. More than one vacancy may be filled from this announcement. Federal salary and benefits apply. Applicant must have one year minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, FDNM-HR@fd.org. Reference 2018-02 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by February 23, 2018. Previous applicants for the temporary positions need not apply again. Your submission will be included for consideration. Positions will remain open until filled and are subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Associate General Counsel

Reporting to the Senior Vice President and General Counsel, this in-house position provides legal advice and assistance on complex and routine legal matters, primarily related to litigation, but also including matters of health law, involving Presbyterian Healthcare Services (PHS) and Presbyterian Health Plan. Litigation matters may include Federal and State law. AA/EOE/VET/DISABLED. Preferred qualifications include 15 years of experience as an attorney, with experience in the health care field and medical malpractice area. To Apply: http://tinyurl.com/ycrdkub6 (requisition #11206)

Litigation Attorney (IRC61705)

The Los Alamos National Laboratory (LANL) Office of Laboratory Counsel is seeking an attorney with at least eight years of experience to provide legal services on a broad range of litigation, including employment, construction, commercial, and other matters. The attorney will work independently and with outside counsel to develop and implement litigation strategies. In addition, the attorney will participate in, and occasionally first-chair, trials, administrative hearings, mediations, arbitrations, and other proceedings. The position requires the ability to obtain a security clearance, which involves a background investigation, and must meet eligibility requirements for access to classified matter. To see full job ad and/or to apply go to: http://www.lanl.gov/careers/ When applying, be sure to apply to IRC61705. For specific questions about the status of this job call Antoinette Jiron at (505) 665-0749. LANL is an equal opportunity employer.

Staff Attorney

The New Mexico Environmental Law Center, a nonprofit public interest law office seeks an attorney to represent New Mexico's communities, environmental groups, indigenous communities and tribal governments in their efforts to protect their air, land, water and public health. Responsibilities include advocating for clients in local, state and federal forums. Our casework is throughout New Mexico. Minimum of five years of experience, including litigation before administrative agencies and courts required. New Mexico bar membership and experience in water law preferred. Competitive nonprofit salary DOE and generous benefits. The Law Center is an equal opportunity employer. Send a cover letter, resume, writing sample and three references to Yana Merrill at ymerrill@nmelc.org or 1405 Luisa Street, Suite 5, Santa Fe, N.M 87505. Applications will be received until the position is filled. No telephone calls please. Further details available at www.nmelc.org.

13th Judicial District Attorney Senior Trial Attorney, Trial Attorney, Assistant Trial Attorney Cibola, Sandoval, Valencia Counties

Senior Trial Attorney - Requires substantial knowledge and experience in criminal prosecution, as well as the ability to handle a full-time complex felony caseload. Minimum of five years as a practicing attorney is required. Trial Attorney - Requires misdemeanor and felony caseload experience. Assistant Trial Attorney - May entail misdemeanor, juvenile and possible felony cases. Salary is commensurate with experience. Contact Krissy Saavedra KSaavedra@da.state.nm.us or 505-771-7411 for application.

Assistant City Attorney

City of Las Cruces - Assistant City Attorney/ Prosecutor. Closing date: Open until filled. Salary: $58,102.98 -- $87,154.47 annually. This posting is for a Municipal Court Prosecutor. Fulltime regular, exempt position that performs a variety of legal duties to support the City Attorney's office which may include review, prepare, and draft briefs, ordinances, resolutions, contracts, leases, permits, and other related documents. Minimum requirements: Juris Doctor Degree plus one (1) year of experience in criminal prosecution. A combination of education, experience, and training may be applied in accordance with City of Las Cruces policy. Member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico; active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. Visit website http://agency.governmentjobs.com/lascruces/default.cfm for further information, job posting, requirements and online application process.

We have an entry-level attorney position available in Las Vegas, New Mexico

Excellent opportunity to gain valuable experience in the courtroom and with a great team of attorneys. Requirements include J.D. and current license to practice law in New Mexico. Please forward your letter of interest and resumé to Richard D. Flores, District Attorney, c/o Mary Lou Umbarger, District Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701; or via e-mail: mumbarger@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

RFLI of Workmans' Compensation Legal Services

Notice is hereby given that the City of Albuquerque, Department of Finance and Administration, Risk Management Division calls for Proposals for RFLI of Workmans' Compensation Legal Services. Interested parties may secure a copy of the Proposal Packet from the City of Albuquerque Risk Management Division, PO Box 470, Albuquerque, NM 87103, (505) 768-3080, or by accessing the City's website at https://www.cabq.gov/dfa/documents/request-for-letters-of-interest-workers-compensation-legal-services.pdf . Proposals submitted pursuant to this request will be accepted by the City on an ongoing basis until further notice in order to maintain a current listing of pre-qualified firms available to perform services for the City.

Attorney Associate, Unclassified, Full-time, Santa Fe, NM

Perm# 10102423-23100; Opening Date: 01/29/2018 – Close Date: 02/28/2018; Job Pay Range LL: $28.128 - $43.95 per hour; Target Pay Range/Rate: $28.128 - $33.65 per hour; The First Judicial District Court is recruiting for a Full-time, Unclassified "at will" Attorney Associate position in Santa Fe, New Mexico. QUALIFICATIONS: Education: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico. Education Substitution: None. Experience: Three (3) years of experience in the practice of applicable law, or as a law clerk. Experience Substitution: None. Other: Completion of a post offer background check may be required. Knowledge: Thorough knowledge of United States and New Mexico constitutions, federal law, New Mexico case law, statutes, rules, policies and procedures; Code of Judicial Conduct; Rules of Professional Conduct; court jurisdiction and operations; manual and computerized legal research; principles of legal analysis and writing, legal proofreading and editing, standard English usage and grammar; and computer software applications (e.g., legal research, word processing, databases, court case management system, e-mail and internet). TO APPLY: A NM Judicial Branch Employment Application or a Resume and Resume Supplemental Form along with a copy of proof of education must be received by mail or hand delivered by 5:00 p.m. Wednesday, February 28, 2018. A legal writing sample must be submitted with the application/resume. First Judicial District Court, Human Resource Office, 225 Montezuma Ave., P.O. Box 2268, Santa Fe, NM 87504. Please visit the NM Judiciary web-site to view a complete job announcement at: https://nmcourts.gov under careers or call 505-455-8196.

POSITION: Civil Legal Attorney (Contract)

PROGRAM: Peacekeepers, Espanola NM; STATUS: Contract; BENEFITS:NO; RATE OF PAY: $40/Hr. to $50/Hr. for 20 hours per week; EDUCATION: Juris Doctorate; EXPERIENCE: 10 years' experience in family law REQUIRED CERTIFICATES: Must be licensed to practice law in the state of New Mexico. The Civil Legal Attorney will practice civil and family law with an emphasis on domestic violence orders of protections within the Eight Northern Pueblos. Must have knowledge of Native American cultures and customs and will be required to practice in tribal courts.

Legal Assistant

Civil litigation & Plaintiff's firm in search of a self-motivated individual interested in employment as a legal assistant. The right individual must be skilled in using Microsoft applications including Word, Excel, Outlook and Exchange. Experience is a must. Please email resumes to: NMHiringManager@aol.com All resumes are kept confidential.

Legal Assistant

Kasdan LippSmith Weber Turner LLP, needs a legal assistant in its Albuquerque office. Our firm handles multi-party civil litigation with a focus on construction defect cases. We need someone to answer phones, schedule appointments and update case files and information. We require proficiency with MS Office software including Outlook, Excel and Access. Experience with E Filing, discovery and civil procedure is also required. If you have the experience and interest to contribute to serving our clients, please send your resume and cover letter to: dochoa@kasdancdlaw.com.

Experienced Legal Secretary

Peifer, Hanson & Mullins, P.A. is hiring a full time experienced legal secretary. The successful candidate must be a detail-oriented team player with strong organization and motivational skills. Salary DOE. Profit-sharing, health insurance, three weeks leave per year, and overtime available. Please send resume, references and salary requirements to Shannon Hidalgo, Firm Administrator, P.O. Box 25245, Albuquerque, NM 87125. No phone calls please.

Litigation Paralegal

Hinkle Law Firm in Santa Fe seeking litigation paralegal. Experience (2-3 years) required in general civil practice, including labor and employment. Candidates must have experience in trial preparation, including discovery, document production, scheduling and client contact. Degree or paralegal certificate preferred, but will consider experience in lieu of. Competitive salary and benefits. All inquires kept confidential. Santa Fe resident preferred. E-mail resume to: gromero@hinklelawfirm.com

Paralegal

Busy personal injury firm seeks paralegal with experience in personal injury litigation. Ideal candidate must possess excellent communication, grammar and organizational skills. Must be professional, self-motivated and a team player who can multi-task. Salary depends on experience. Firm offers benefits. Fax resumes to (505) 242-3322 or email to: nichole@whitenerlawfirm.com

Paralegal Wanted

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

Full-Time Professional Bookkeeper, Paralegal, Executive Assistant

Well established civil litigation firm seeking a full-time professional bookkeeper, paralegal, executive assistant with office management skills. Candidate must have a minimum of 3-5 years' legal experience, including knowledge of local court rules and filing procedures. Excellent clerical, organizational, computer & word processing skills required. QuickBooks and TimeSlips highly preferred. Must be a detail oriented self-starter. Send resume, letter of interest and at least 3 personal references including a reference from a previous employer to legalresume01@gmail.com. All inquiries will be kept confidential.

Legal Secretary/Assistant

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

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