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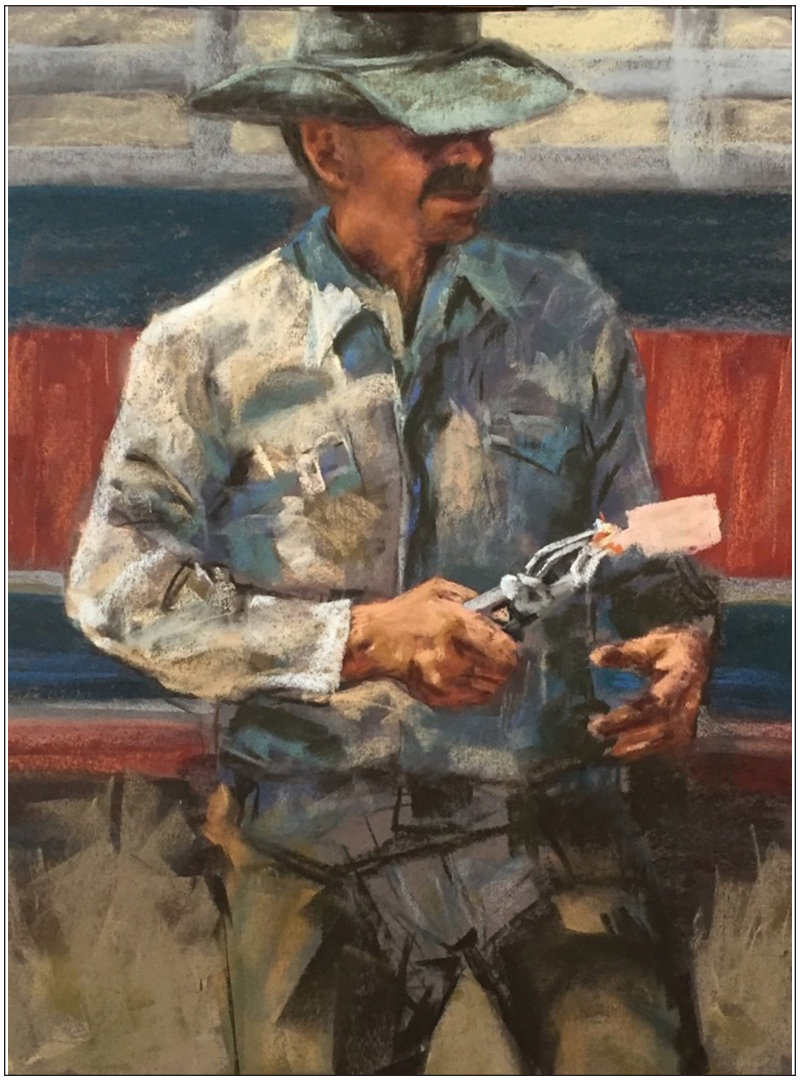

Just Another Job, by Gwen Wilemon El Zocalo Gallery

Inside This Issue

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

Your Meeting Destination

- Multi-media auditorium
- Board room
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- Classrooms
- Reception area
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STATE BAR of NEW MEXICO

www.nmbar.org

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Noon, teleconference

26
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Noon, Peifer, Hanson, Mullins PA

26
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11:30 a.m., State Bar Center

27
Immigration Law Section
Noon, State Bar Center

Workshops and Legal Clinics

April

19
Common Legal Issues for Senior Citizens Workshop Presentation
10–11:15 a.m., Espanola Senior Center, Espanola, 1-800-876-6657

19
Common Legal Issues for Senior Citizens Workshop Presentation
10–11:15 a.m., City of Hobbs Senior Center, Hobbs, 1-800-876-6657

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

About Cover Image and Artist: Although Gwen Wilemon had been sketching and drawing her whole life, it wasn't until she became an adult that she began exploring color through acrylics, oils, pastels, and watercolor. Since then, Wilemon has studied under several artists including Fred Miller, Bud Edmondson, Clive Tyler, Albert Handel and Lorenzo Chavez among others. Wilmon's work has hung in the Sumner and Dene Gallery in Albuquerque, the Wilder Nightingale Fine Art Gallery in Taos, Purple Sage Galeria in Old Town Albuquerque and El Zocalo in Las Vegas, N.M. as well as other galleries and museums around the state. She has also had the honor of having works included in juried shows of the Plein Air Painters of N.M., Masterworks, Miniatures, the Pastel Society of N.M. Small Works, PSNM National Pastel Show, and IAPS Show (International Association of Pastel Societies) and has received awards for watercolor, miniatures, and pastels. Wilmon is a member of the Pastel Society of New Mexico, the Plein Air Painters of New Mexico and is a member of the Camino Real 8, a group of artists in central New Mexico. She is currently represented by El Zocalo Gallery in Las Vegas, N.M.

Notices

Court News

New Mexico Supreme Court

Gov. Susana Martinez appoints Justice Gary L. Clingman

On April 6, Gov. Susana Martinez appointed Fifth Judicial District Justice Gary L. Clingman to the New Mexico Supreme Court, filling the vacancy created by the retirement of Justice Edward L. Chavez. Judge Clingman brings over 30 years of legal experience.

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. The deadline for public commentary has been extended to May 18. To be fully considered by the Commission, comments must be received by that date 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/.

First Judicial District Court

Gov. Susana Martinez appoints Judge Jason Lidyard

On March 30, Gov. Susana Martinez appointed Jason Lidyard to fill the vacant position in Division V of the First Judicial District. On April 14, a mass reassignment of all cases previously assigned to Judge Jennifer L. Attrep will be assigned to Judge Jason Lidyard pursuant to NMSC Rule 23-109, the Chief Judge Rule. Parties who have not previously exercised their right to challenge or excuse will have ten 10 days from May 2, to challenge or excuse Judge Jason Lidyard pursuant to Rule 1-088.1

Professionalism Tip

With respect to my clients:

I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees.

Second Judicial District Court

Children's Court Abuse and Neglect Brown Bag Meeting

The Second Judicial District Court Children's Court Abuse and Neglect Brown Bag will be held on April 20, at noon in the Chama Conference Room at the Juvenile Justice Center, 5100 2nd Street NW, Albuquerque, NM 87107. Attorneys and practitioners working with families involved in child protective custody are welcome to attend. Call 505-841-7644 for more information.

Tenth Judicial District Court

Destruction of Exhibits

The Tenth Judicial District Court County of Quay will destroy exhibits in domestic relations cases for years 1979-2013. Exhibits may be retrieved through April 30 by calling 575-461-4422.

U.S. Bankruptcy Court District of New Mexico

New Location and Phone Numbers

Effective Feb. 20, the Bankruptcy Court is at a new location: Pete V. Domenici U.S. Courthouse, 333 Lomas Boulevard NW, Suite 360, Albuquerque, NM 87102. The Bankruptcy Court customer service counter is located on the third floor of the Lomas Courthouse. Bankruptcy courtrooms and hearing rooms are located on the fifth floor of the courthouse. All Bankruptcy Court phone numbers have changed as part of this move. The new main line phone number is 505-415-7999. Note that 341 meeting locations did not change as part of the Bankruptcy Court relocation.

State Bar News

Attorney Support Groups

- May 7, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- May 14, 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#.
- May 21, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, 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#.

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

ADR Committee

Reframing Presentation

Reframing, like mediation, is an art unto itself. As an art, and as one of the most valuable tools we have as mediators, reframing takes practice and ongoing refinement. Join The ADR committee at noon on April 26 at the State Bar Center in Albuquerque where Diane Grover and Kathleen Oweegon will explore the adventure of "Wrangling With Reframes". This highly interactive 1-hour learning and practice session is a great opportunity to have some fun and get some practice in this challenging and vital skill. Lunch will be provided during the presentation. R.S.V.P. to Breanna Henley at bhenley@nmbar.org. The Committee will meet from 11:30 a.m.-noon in advance of the presentation.

Animal Law Section

Animal Talk: Tethering

During the 2007 Legislative Session, the New Mexico House of Representatives issued House Memorial 19 which requested that the Department of Public Safety study the public safety and humane implications of persistently tethering dogs. Join Alan Edmonds, the high-energy force behind Animal Protection of New Mexico's animal cruelty hotline at noon, April 27, at the State Bar Center for an Animal Talk covering an overview of a 2008 report that was produced by DPS to the Consumer and Public Affairs Committee as a result of House Memorial 19, current statutes and ordinances in N.M. addressing tethering and a comparison of N.M. laws to other states, and efforts in community education on dog behavior, outreach and alternatives to tethering. R.S.V.P. to bhenley@nmbar.org

Board of Bar Commissioners

ABA House of Delegates

The Board of Bar Commissioners will make one appointment to the American Bar Association House of Delegates for a two-year term, which will expire at the conclusion of the 2020 ABA Annual Meeting. The delegate must be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar. However, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members who want to serve on the board must be a current ABA member in good standing and should send a letter of interest and brief résumé by May 4 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Judicial Standards Commission

The Board of Bar Commissioners will make one appointment to the Judicial Standards Commission for a four-year term. The time commitment for service on this Commission is substantial and the workload is voluminous. Receiving, reviewing and analyzing substantial quantities of electronic documents are necessary to prepare for Commission matters. Strict adherence to constitutional, statutory and regulatory authority governing the Commission is mandatory, expressly including but not limited to confidentiality. Commissioners meet at least six times per year for approximately three hours per meeting. A substantial amount of reading and preparation is required for every meeting. In addition to regular meetings, the Commission schedules at least three weeklong trailing dockets of trials. Additional trials, hearings or other events may be scheduled on special settings. Additionally, mandatory in-house training sessions may periodically take place. Unless properly recused or excused from a matter, all Commissioners are required to faithfully attend all meetings and participate in all trials and hearings. Appointees should come to the Commission with limited conflicts of interest and must continually avoid, limit, or eliminate conflicts of interest with the Commission's cases, Commission members, Commission staff, and with all others involved in Commission matters. Members who want to serve on the Commission should send a letter of interest and brief résume by May 4 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Young Lawyers Division

CLE on Proro Bono Representation

Join the YLD and Volunteer Attorney Program on the afternoon of April 20, at the State Bar Center for Pro Bono Representation: Managing the Legal and Ethical Issues. Registration is complimentary to those who sign up for two YLD Homeless Legal Clinics (minimum of two hours each) or to those who sign up to take on a pro-bono case through the Volunteer Attorney Program. This CLE will assist pro bono attorneys in serving a wide variety of client needs. Topics include communication style issues related to working with clients in poverty, Medicaid services, Section 8 housing issues and public benefits. This program qualifies for 3.0 G and 1.0 EP CLE credits. To view the full agenda and to register, visit www.nmbar.org.

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.

Public Talk and Q&A with Gina McCarthy

Join Enivironmental Protection Agency Administrator Gina McCarthy for a public talk with an engaging Q&A from April 25, at 5:45-7 p.m. at UNM Law Forum 1117 Stanford NE. Register at https://goto.unm.edu/mccarthymccarthy. McCarthy, led the EPA from 2013 to 2017, during a period that included passage of the federal Climate Action Plan, the Clean Power Plan and the Paris Climate Agreement. She will address sustainability, world health and climate change. The talk is free and open to the public, but attendees must register here online in advance.

UNM Law Scholarship Classic presented by U.S. Eagle

Friday, June 8, 8 a.m. Tee Off
UNM Championship Golf Course
Join the tournament and members of our fantastic law school community at 8 a.m., June 8, at the UNM Championship Golf Course to play a part in sustaining over $50,000 in life-changing scholarships for law students. Don't delay! The tournament sells out every year. Register at https://goto.unm.edu/golf.

Other Bars

The Albuquerque Bar Association

Trevor Potter is the Law Day Luncheon Keynote Speaker

The Albuquerque Bar Association Annual Law Day Luncheon registration is now open. Join the Albuquerque Bar from 11:30 a.m.-1 p.m. on May 1, at the Embassy Suites Hotel located at 1000 Woodward Pl NE in Albuquerque. With generous

support from the Thornburg Foundation, this year speaker is Trevor Potter, one of the country's most prominent and experienced campaign and election lawyers and a senior adviser to the reform group Issue One, as well as head of the political law practice at the Washington firm of Caplin & Drysdale. To many, he is perhaps best known for his appearances on the Colbert Report as the lawyer for Stephen Colbert's Super PAC, Americans for a Better Tomorrow, Tomorrow, during the 2012 election. Visit https://form.jotform.com/sbnm/LawDayLuncheonRegistration to register online or contact bhenley@nmbar.org to register by check.

New Mexico Christian Legal Aid

Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a training seminar on Friday, April 27, from noon-5 p.m. at 4700 Lincoln Road NE Albuquerque, NM 87109. Join them for free lunch, free CLE credits, and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800 christianlegalaid@hotmail.com.

New Mexico Defense Lawyers Association

Save the Date - Women in the Courtroom VII CLE Seminar

The New Mexico Defense Lawyers Association proudly presents Part VII of "Women in the Courtroom," a dynamic seminar designed for New Mexico lawyers. Join us Aug. 17, at the Jewish Community Center of Greater Albuquerque for this year's full-day CLE seminar. Registration will be available online at nmdla.org in July. For more information contact nmdefense@nmdla.org.

New Mexico Women's Bar Association

2018 Henrietta Pettijohn Reception

The New Mexico Women's Bar Association invites members of the legal profession to attend its annual Henrietta Pettijohn Reception Honoring the Honorable Sharon Walton. The 2018 Supporting Women in the Law Award will be presented to Little, Gilman-Tepper & Batley, PA. The Exemplary Service Award will be presented to Sarita Nair and the Outstanding Young Attorney Award will be presented to Emma O'Sullivan. The reception will be 6–9:30 p.m., May 10, Hyatt Regency Albuquerque. Tickets are $25 for law students, $50 for members, $60 for non-members. Contact Libby Radosevich, eradosevich@peiferlaw.com to purchase tickets and sponsorships.

New Mexico Trial Lawyers Foundation

37th Annual Update on New Mexico Tort Law

On April 20, New Mexico Trial Lawyers Foundation will host the 37th Annual Update on New Mexico Tort Law CLE, 6.7 G. For more information contact 505-243-6003 or www.nmtla.org

The Southwest Women's Law Center

Legal Issues Affecting the Rights of Pregnant and Parenting Students in 2018

This live webinar will discuss the common obstacles that pregnant and parenting students face in accessing vital resources such as education and affordable child care. Attendees will learn about laws that can be used to help pregnant and parenting students protect and advocate for their rights. $50 course registration. CLE is open to attorneys and other professionals. Attorneys will receive 1.0 CLE credit upon completion. The CLE presented by the Southwest Women's Law Center will take place April 27. For more information or to R.S.V.P., please contact Elena Rubinfeld at 505-244-0502 or erubinfeld@swwomenslaw.org.

Legal Education

April

18 **Equipment Leases: Drafting & UCC Article 2A Issues**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Advanced Mediation**
10.2 G
Live Seminar, Santa Fe
David Levin and Barbara Kazen
505-463-1354

20 **Ethically Managing Your Practice (2017 Ethicspalooza)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **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 **Pro Bono Representation: Managing the Legal and Ethical Issues**
3.0 G, 1.0 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **37th Annual Update on New Mexico Tort Law**
6.7 G
Live Seminar, Albuquerque
New Mexico Trial Lawyers Foundation
www.nmtla.org

24 **Drafting Ground Leases, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

25 **Drafting Ground Leases, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Defined Value Clauses: Drafting & Avoiding Red Flags**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Oil and Gas: From the Basics to In-Depth Topics (2017)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Ethics for Government Attorneys (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Add a Little Fiction to Your Legal Writing (2017)**
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

27 **Lawyer Ethics in Real Estate Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Legal Rights and Issues Affecting Pregnant and Parenting Teens in New Mexico**
1.0 G
Live Seminar, Albuquerque
Southwest Women's Law Center
swwomenslaw.org

27 **How to Practice Series: Demystifying Civil Litigation, Pt. I**
6.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Law Day**
3.0 G
Live Seminar, Albuquerque
Paralegal Division - State Bar of NM

30 **Bankruptcy Fundamentals for the Non-Bankruptcy Attorney**
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Guardianship Updates from the 2018 Legislature**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

May

1 **The Law of Consignments: How Selling Goods for Others Works**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **Valuation of Closely Held Companies**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

8 **Ownership of Ideas Created on the Job**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **2018 Trust Litigation Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 **How Ethics Rules Apply to Lawyers Outside of Law Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 **Reps and Warranties in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 **The Ethics of Confidentiality**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **2018 Wrongful Discharge & Retaliation Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

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

18 **The Basics of Family Law (2017)**
5.2 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

18 **A Little Planning Now, A Lot Less Panic Later: Practical Succession Planning for Lawyers (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **Escrow Agreements in Real Estate Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Reforming the Criminal Justice System (2017)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

23 **Ethics and Digital Communications**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **33rd Annual Bankruptcy Year in Review Seminar (2018)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

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

30 **Basics of Cyber-Attack Liability and Protecting Clients s**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Professionalism for the Ethical Lawyer**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

Law Day Call-in Program

NEEDED: **Volunteer attorneys who can answer questions about many areas of law including:**

- Family law
- Landlord/tenant disputes
- Consumer law
- Personal injury
- Collections
- General practice

Saturday, April 28 • 9 a.m. to noon

(volunteers should arrive at 8 a.m. for breakfast and orientation)

Albuquerque and Roswell

Volunteer attorneys will provide very brief legal advice to callers from around the state in the practice area of their choice.
Attorneys fluent in Spanish are needed.

Earn pro bono hours!

For more information or to volunteer, visit www.nmbar.org/AskALawyer

State Bar of New Mexico
Young Lawyers Division

Hearsay

Michelle Hernandez shareholder at Modrall Sperling, will serve as chair of the 2019 International Association of Defense Counsel Convention. She is an active member of IADC. She serves as a member of the IADC Diversity and Inclusion Committee, and is State and Regional Chair of its Membership Committee. In addition to her work with IADC, Hernandez is chair of the Albuquerque Hispano Chamber of Commerce and regional president of the Hispanic National Bar Association where she has been a member since 1997.

Lee Hunt has been appointed as the newest memeber of The New Mexico Judicial Performance Evaluation Commission. Hunt founded Hunt & Marshall, LLC, a legal firm specializing in personal injury, medical malpractice, catastrophic injury and wrongful death, in Santa Fe in 2014. He earned his Juris Doctor degree from the University of Kentucky School of Law in 2000, graduating in the top 10 percent of his class. He served as symposium editor of the K*entucky Law Journal.* He holds a Bachelor of Arts degree in Government and Business from Western Kentucky University, Hunt is active in the New Mexico Trial Lawyers Association.

Montgomery & Andrews, PA is pleased to announce that the **Honorable Timothy L. Garcia** has joined the firm. After retiring from the New Mexico Court of Appeals. The focus of Judge Garcia's practice is mediation and alternative dispute resolution.

Judge Roderick Kennedy was awarded the Harold A. Feder Award by the Jurisprudence Section of the American Academy of Forensic Sciences at the Academy's Annual Meeting in Seattle this past February. The award recognizes Judge Kennedy's service to jurisprudence and forensic science. Judge Kennedy is a Fellow in the AAFS, and chairs its Ethics Committee. He is also a Professional member of the Chartered Society of Forensic Sciences (UK). He retired from the New Mexico Court of Appeals in December 2016 after 27 years on the bench. He currently consults forensic scientists and lawyers concerning the practice of forensic science and the use of expert testimony at trial.

Karen J. Meyers announces her retirement from the Consumer Financial Protection Bureau, Washington, D.C., where she served as the Deputy Enforcement Director for Policy and Strategy. Meyers has been with the CFPB since July 2015 after previously serving as the director of consumer protection for the New Mexico Attorney General from 2007-2014.

In Memoriam

Norman Smith Thayer, Jr. was born on May 30, 1933, in Jacksonville, Fla. Thayer passed away March 2, 2018. He was preceded in death by his father, Norman Smith Thayer, mother, Nannie Mae Porter, and daughter, Tanya Noel Thayer. He is survived by his wife, Martha Ann Thayer, his son, Murray Norman Thayer; his daughter-in-law, Annette DiLorenzo Thayer, his sisters, Natalie Courtney Clark, Nancy Dolores Griggs, and many cherished nieces and nephews. Thayer attended Raton High School and won the state tennis singles championship in 1950. Thayer graduated from UNM with a four-year letter award in tennis in 1954 and then went on active duty in the Navy. After completing three years in the Navy, Thayer enrolled at UNM Law School and graduated in 1960. After graduating, Thayer worked as an Assistant Attorney General from 1960 to 1961 and was the chief counsel of the New Mexico Bureau of Revenue from 1962 to 1964. He then joined the law firm of Sutin & Jones and worked principally for Lewis R. Sutin. The firm was later renamed Sutin, Thayer & Browne, which grew from five lawyers in the summer of 1964 to one of the larger law firms in New Mexico. Thayer was acknowledged as one of the finest trial lawyers to ever practice in New Mexico and was a tremendous mentor to numerous younger lawyers. Thayer loved the legal profession and took a special interest in legal ethics. He served on the Disciplinary Board of NM, the Committee on Rules of Professional Conduct, the Code of Judicial Conduct Committee, the Board of Bar Commissioners, and the Board of Directors of the New Mexico Bar Foundation. He was President of the Trial Lawyers' Association and in 2006 was awarded the Distinguished Bar Service Award from the State Bar. Thayer also loved New Mexico and living in Albuquerque. He was chairman of the Huning Castle Park Trust, President of the Huning Castle Neighborhood Association, and served on the Board of Trustees of the Albuquerque Museum.

Eugene A. Wolkoff, a 25 year Santa Fe resident, died just after midnight on Sept. 9, 2017, from burns suffered the evening before in a White Plains, N.Y. car accident. Born in 1932 to Oscar and Jean Wolkoff, "Gene" grew up in The Bronx during an era when side streets were playgrounds and stick ball was his neighborhood's favorite game. Wolkoff's fondest memories of those days were the freedom to play with his best buddies - many of whom remained his closest friends for life - every spare hour not spent in school or delivering papers. The abiding rule was: Just be home in time for dinner. Since Yankee Stadium was a short subway ride away, he religiously saved his paper route nickels and dimes in order to pay his train fare there, then had the unparalleled pleasure of watching the Yankees play while feasting on a hot dog and soda. His dream was to someday play first base, which he did, but it was for his high school varsity team, not the Yankees. He claimed that it was because he could never hit a curve ball, he'd made the decision to attend college. Wolkoff graduated from Brooklyn College in 1953. Shortly thereafter he enlisted in the U.S. Air Force and served five years flying military transport planes, primarily to Korea. In 1954 he married Claire Zwillinger, his college girlfriend who became the mother of their two daughters, Mandy and Elana. The marriage ended in divorce. After his Air Force enlistment, Wolkoff elected to study law at St. John's University. He was awarded his J.D. in 1961 and was admitted to the New York Bar in 1962. During this time he was an active member of the Air Force Reserves in addition to flying for charter commercial airlines to supplement his beginning attorney's salary. His time in the Reserves took him to obscure bases such as Wake Island, the Azores, Guam, then increasingly to Vietnam and at least once to Israel where he met then Prime Minister, Golda Meir. Concurrently, he became a named partner in the NYC law firm of Callahan & Wolkoff. Between hectic trips and legal work he once boarded a flight in Gander, Newfoundland, where he met Judie Edwards, a teacher and future children's book writer. They married in 1967 and had two daughters, Alexa and Justine. By the 60s, Wolkoff was as passionate about running as he once had been about playing stick ball. His best time ever was in the Bay to Breakers Race. Entered as a seeded runner, he made an impressive finish which he explained in his typical off-handed way as, "I had no choice. It was either run like hell or get trampled to death by a hundred thousand people behind me." In 1990, Wolkoff and Judie bought a house in the historic area of Santa Fe. They decided to move there permanently in 1992 when he began a new phase of his legal career: General Counsel to BGK Properties then its successor properties, Rosemont Realty and Gemini Rosemont Real Estate. Wolkoff passed the New Mexico bar exam without studying and gave credit for this success to his surprising discovery that it contained a question he'd studied for, but hadn't been asked, in his New York bar exam 30 years before, Three decades later, he was delighted that he'd finally been given the opportunity to write his answer. Throughout his life Wolkoff was diligent and hard-working yet always made time to offer his valuable advice and personal counsel to anyone who asked colleagues, a friend of a friend, a domestic worker, relative or a celebrity. He loved the law. He loved the practice of the law and each of the 55 years he gave to the profession. He was a man of great wisdom and integrity, someone who expressed touching humility, but nevertheless could flip a moment of solemnity or questionable gossip upside-down with a quick, irreverent one-liner. He was a much loved husband to Judie who considered him her best and most intimate, reliable friend. He was a pillar of strength to all his "girls"-Mandy, Elana, Alexa and Justine. All grown now and parents themselves, these four daughters were greatly loved and admired for their ethics, independence, perseverance and fair-mindedness, qualities they absorbed by observing their father. In turn, their children, Wolkoff's six grandchildren, Arin, Kayla, Mara, Josh, Hunter and Malcolm are learning by example. In addition to his wife, Judie, his four daughters and six grandchildren, Wolkoff is survived by his sister, Phyllis, his brothers Marc and Allan, his stepfather, Frank Morea, and eight nieces and nephews. He touched us all and will be remembered with love and gratitude each and every day of our lives. He was a noble spirit.

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
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Effective April 6, 2018

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IN MEMORIAM

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From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-008
No. S-1-SC-35245 (filed January 4, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOHN N. "JACK" McDOWELL, JR.,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
George P. Eichwald, District Judge

BENNETT J. BAUR,
Chief Public Defender
C. DAVID HENDERSON,
Appellate Defender
Santa Fe, New Mexico
for Appellant

HECTOR H. BALDERAS,
Attorney General
LAURA ERIN HORTON,
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

Opinion

Edward L. Chávez, Justice

{1} Following a jury trial, Defendant John "Jack" McDowell was convicted of first-degree murder, contrary to NMSA 1978, Section 30-2-1(A) (1994), and tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003). During trial the prosecutor elicited testimony from the arresting detective, without objection, that Defendant had invoked his right to counsel, and that by doing so the detective was precluded from questioning Defendant. Defendant contends on appeal that he was deprived of due process when the prosecutor elicited this testimony. We agree that the prosecutor erred. For decades, prosecutors have been prohibited from commenting on or eliciting testimony about a defendant's exercise of his or her right to remain silent, *see State v. Miller*, 1966-NMSC-041, ¶ 30, 76 N.M. 62, 412 P.2d 240 (citing *Griffin v. California*, 380 U.S. 609, 614-15 (1965)), or his right to counsel, *State v. Callaway*, 1978-NMSC-070, ¶ 10, 92 N.M. 80, 582 P.2d 1293. We review the prosecutor's error in this case for fundamental error because the error was not preserved, and conclude that the error was fundamental due to the prejudicial impact of such testimony and the lack of overwhelming evidence against Defendant. Accordingly, we vacate his convictions and remand to the district court for a new trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} James Chavez died from stab wounds to his chest on July 10, 2011 in his Rio Rancho home. Shortly before his death, Chavez was cleaning his home with two acquaintances, Casey Williams and David Dinelli. Defendant, Defendant's son, and Anthony Villagomez entered the home to recover goods stolen by Chavez that belonged to Defendant's son. Villagomez carried a sawed-off shotgun, pointed it at Williams, and threw her into the garage. Dinelli ran to a bedroom, jumped out through a window, and hid underneath a truck outside the house. Defendant and his son encountered Chavez in the kitchen, where a fight ensued between Defendant's son and Chavez. According to Villagomez, who testified under a grant of immunity, after three to five minutes of fighting, Defendant approached Chavez and stabbed him. Villagomez was the only witness to testify that he saw Defendant stab Chavez.

{3} This Court has jurisdiction over Defendant's appeal under Article VI, Section 2 of the New Mexico Constitution and Rule 12-102(A)(1) NMRA. *See State v. Smallwood*, 2007-NMSC-005, ¶ 6, 141 N.M. 178, 152 P.3d 821. Defendant advances three grounds for reversal: (1) he was deprived of due process when the prosecutor elicited testimony about Defendant's exercise of his right to counsel, (2) Defendant's attorney was ineffective because of his hearing impairment, and (3) the district court erred when it did not hold a hearing to determine whether the jurors accessed outside information to break their deadlock. We conclude that Defendant was deprived of due process and remand for a new trial. We do not need to address the remaining issues because the remedy would be the same—a new trial.

II. DISCUSSION

A. The State erred in commenting on Defendant's right to counsel

{4} New Mexico courts have long held that a prosecutor is prohibited from commenting on a defendant's right to remain silent, which is protected under *Miranda v. Arizona*, 384 U.S. 436 (1966). *See Miller*, 1966-NMSC-041, ¶ 30. Three rationales underlie this prohibition. First, the right against compelled self-incrimination under the Fifth Amendment to the United States Constitution prohibits the prosecution from "ask[ing] the jury to draw an adverse conclusion from the defendant's failure to testify." *State v. DeGraff*, 2006-NMSC-011, ¶ 8, 139 N.M. 211, 131 P.3d 61. Second, the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects post-*Miranda* silence. *Id.* ¶ 12; *see also Doyle v. Ohio*, 426 U.S. 610, 618-19 (1976) (holding that "it would be fundamentally unfair" and a denial of due process protected by the Fourteenth Amendment to allow post-*Miranda* silence to be used in a state criminal trial "to impeach an explanation subsequently offered at trial"). Third, as a matter of New Mexico evidentiary law, "[b]ecause silence is often too ambiguous to have great probative force and may be given improper weight by a jury, evidence of a defendant's silence generally is not admissible as proof of guilt." *DeGraff*, 2006-NMSC-011, ¶ 15; *see also State v. Lara*, 1975-NMCA-095, ¶ 8, 88 N.M. 233, 539 P.2d 623 (holding that comments on a defendant's silence were prejudicial, of minimal probative value, and would require reversal).

{5} Similarly, eliciting testimony or commenting on a defendant's exercise of his or her right to counsel is also reversible error. *Callaway*, 1978-NMSC-070, ¶ 10; *see also United States v. McDonald*, 620 F.2d 559, 564 (5th Cir. 1980) ("It is impermissible to attempt to prove a defendant's guilt by pointing ominously to the fact that he has sought the assistance of counsel."). "Comments that penalize a defendant for the exercise of his right to counsel and that

also strike at the core of his defense cannot be considered harmless error." *McDonald*, 620 F.2d at 564; *see also United States v. Liddy*, 509 F.2d 428, 443-44 (D.C. Cir. 1974) (noting with approval the district court's jury instruction "prohibiting the drawing of an adverse inference from the mere fact of hiring an attorney, at least when the circumstances are such that admission of evidence of such a request provokes the possibility that it will be taken as self-incriminatory").

{6} The line of questioning at issue in this case is as follows:

> Q. [The prosecutor] After making the arrest of Jack, what did you do next in your investigation?
> A. [The detective] Once he was arrested, [Defendant's son] was arrested a short time later driving up to Jack's residence. From that point, I proceeded back to the police department to conduct interviews.
> Q. Okay. And -- now, after you made these arrests and after you went back to the station to conduct interviews, Jack McDowell had already invoked his right to counsel, correct?
> A. No. He did that when I went to interview him in the interview room.
> Q. But he did invoke his right to counsel, correct?
> A. Yes.
> Q. After that, what you know as an officer, what are you to do when someone does that?
> A. Not question them in regards to what I'm investigating.

The prosecutor commented twice on Defendant's exercise of his right to counsel. As if to bring home to the jury the importance of Defendant doing so, the prosecutor elicited testimony that, as a result of Defendant's request for an attorney, the detective could not question him further—which is a comment on Defendant's right to remain silent. *See State v. Madonda*, 2016-NMSC-022, ¶ 26, 375 P.3d 424.

B. The State's error will be reviewed under a fundamental error analysis because Defendant did not preserve the issue

{7} We must first answer the question: what is the proper standard of review? The answer depends on whether Defendant adequately preserved the issue. To preserve an issue for review it must appear from the record that a ruling from the court was fairly invoked. Rule 12-321(A) NMRA. "Where a defendant has made a proper objection at trial, the appellate court determines whether the prosecution commented on the defendant's protected silence, and if so, reverses the conviction unless the State can demonstrate that the 'error was harmless beyond a reasonable doubt.'" *DeGraff*, 2006-NMSC-011, ¶ 22; *see Callaway*, 1978-NMSC-070, ¶ 10. If not objected to, we review for fundamental error. *DeGraff*, 2006-NMSC-011, ¶ 21.

{8} Whether Defendant fairly invoked a ruling from the district court is difficult to ascertain from the record before us because of the less-than-ideal practices employed by both the attorneys and the judge. The prosecutor sought to introduce what was alleged to be an unsolicited statement made by Defendant while being transported to jail and after Defendant had invoked his right to counsel. However, before the detective could testify about the alleged unsolicited statement, Defendant's attorney objected. The relevant questions were as follows:

> Q. [The prosecutor] And when he was taken into custody, did you Mirandize him?
> A. [The detective] Yes, I did.
> Q. Did he make any statements to you?
> [Defendant's attorney]: Objection.
> [The court]: Counsel, approach the bench.

{9} We do not know what the basis for Defendant's objection was. At the bench conference, the judge immediately told the prosecutor to be careful because he was concerned about a mistrial. In response to the judge's concern, the prosecutor explained that he only wanted the detective to testify that Defendant made the unsolicited remark "My life is over" after he had been Mirandized and had invoked his right to counsel. At this point, the judge took a recess to excuse the jury and continue the discussion with counsel.

{10} The judge resumed the discussion by asking the prosecutor to explain what he intended to show with this line of questioning. The prosecutor repeated that he only intended to show that without being questioned by the arresting detective, Defendant stated, "My life is over." The prosecutor also offered to question the detective, who was in the witness box, about the subject. Instead of accepting the offer, the judge converted the discussion to a discovery issue by asking, "Is [the statement] recorded?" The prosecutor said that he did not have a recording, but asked the detective whether the detective had a recording on his jump drive, to which the detective responded, "I might." The prosecutor then asked "Could we check, Judge?" to which the judge replied "Was it disclosed to defense counsel?" The prosecutor stated that the entire file was given to defense counsel. Finally, for the first time since objecting, Defendant's counsel spoke, saying that he had reviewed all of the CDs he had been given by the prosecutor and there was not a recording of the statement, that he had never before heard anything about the statement, and that nonetheless the statement was ambiguous and not Defendant's admission of guilt.

{11} The prosecutor repeated that the entire file was produced to Defendant, who also interviewed the arresting officer, and so was at liberty to question the officer about Defendant's statements. Defendant's attorney protested, stating that he did not ask the officer about the statement "because it was never brought up," and the prosecutor "should have been forthcoming with this a long time ago, and if he had, we would have addressed this issue a long time ago." The judge interjected by stating to the prosecutor, "[Y]ou weren't even aware that there was a tape, were you?" The prosecutor said there were about 100 CDs and implied that he had recently been given the case, and in any event Defendant's attorney had an opportunity to interview the arresting officer. Defendant's attorney retorted, "He had an opportunity to disclose it, Judge." The judge then announced that he was not going to permit the line of questioning that Defendant had made an unsolicited statement after being advised of his *Miranda* rights.

{12} However, the judge's next statement may be more relevant to the issue before this Court. The judge stated, "The other problem I have, he invoked both his right to remain silent, but he also requested counsel." The prosecutor again explained that the statements were not made in response to any questions. The judge returned to the issue of discovery, explaining that he wanted to know if there was a recording of the statement and if it had been produced to Defendant. Defendant's attorney reiterated that he had been through all of the CDs and the transcripts, and "there's nothing there."

{13} In the final analysis, we simply do not know what objection Defendant had to the question "Did he make any statements

to you?" Defendant's attorney never stated the specifics of his objection, nor did the judge ask Defendant's attorney to explain his objection. The objection could not have been that the prosecutor was getting ready to comment on Defendant's exercise of his right to remain silent. A statement is not silence and the prosecutor intended to elicit testimony regarding an allegedly unsolicited statement. Unsolicited statements, whether they are made before or after an accused is informed of his or her *Miranda* rights, are not protected by *Miranda*. *See State v. Fekete*, 1995-NMSC-049, ¶¶ 43-45, 120 N.M. 290, 901 P.2d 708 (noting that *Miranda* protections do not apply to statements that are volunteered, such as spontaneous statements not in response to conversation or questions from police).

{14} Defendant's attorney later acknowledged that he was aware of Defendant's alleged statement because it appeared in a police report. Whether the statement was recorded was never developed at trial. In addition, whether an officer must have his or her recording device on at all times while in a defendant's presence was also not developed at trial.

{15} Perhaps more enlightening was a statement made by the judge the day after the detective's direct examination, which occurred during the prosecutor's request that the district court reconsider its ruling that precluded admission of Defendant's unsolicited statement. After repeating his concern that a recording of the statement was not produced—although it may not have existed—the judge stated that he was denying admission of the statement "for the fact that as far as this [c]ourt is concerned, that recording was not made available to defense counsel." The judge then stated:

> The other issue I have, and it may be a bigger issue that may come back to haunt you at another day, Counsel, in a case such as this, you never make any type of comments with respect to a Defendant's right to remain silent or Defendant's right to an attorney, such as, I Mirandized him, he didn't say nothing.
>
> He Mirandized and then he said something. That's a bigger issue than the one we are talking about right here, because that may come back to haunt you at a later date.

{16} Perhaps this statement reflects the concern the judge expressed the previous day when he commented that he did not want a mistrial. The judge did not state on the record why he was concerned about a mistrial. Had the judge done so, the prosecutor would have been hard-pressed to argue that he was not on notice about the judge's specific concern. Instead, the judge made the issue one of whether a defendant's statements must be recorded and produced to the defendant before they can be admitted into evidence. The immediate issue before us is not whether a defendant's statement must be recorded before it is admissible; the question is whether Defendant objected because the prosecutor commented on Defendant's exercise of his right to counsel. Although the prosecutor should have been aware of the long-established prohibition against commenting on a defendant's exercise of his or her constitutional rights, we conclude that Defendant did not object to the prosecutor's error during the trial.

{17} Our conclusion is confirmed by Defendant's motion for a new trial. In his motion, Defendant alleged that the prosecutor engaged in misconduct when during his examination of Detective Romero he "began his question by inquiring about a statement by Defendant 'before he was Mirandized.'" Defendant explained that although the statement was excluded by the district court, the prosecutor's reference to Defendant's invocation of his right to remain silent was already before the jury. A generous interpretation of Defendant's motion is that he was objecting to the prosecutor having elicited testimony that Defendant invoked his right to remain silent. But even this generous reading does not establish that Defendant objected at a time when the district court could have prevented or corrected the error—for example, at the time the prosecutor asked the officer what he should do after someone invokes his or her right to counsel. *See State v. Carrillo*, 2017-NMSC-023, ¶¶ 21-23, 399 P.3d 367 (holding that the ruling of the district court must be fairly invoked to permit the court an opportunity to correct an error). Defendant did not object to the prosecutor eliciting testimony that Defendant invoked his right to counsel either during the arresting detective's testimony or in his motion for a new trial.

{18} The *DeGraff* Court explained that in the context of a prosecutor's comments on a defendant's right to silence where no timely objection is made, the Court considers only whether the defendant has shown fundamental error. 2006-NMSC-011, ¶¶ 21-22. We will apply the same analysis when a prosecutor elicits testimony or comments on a defendant's exercise of their right to counsel. Fundamental error requires the defendant to show "a reasonable probability that the error was a significant factor in the jury's deliberations relative to the other evidence before them." *Id.* ¶ 22. We must evaluate the prejudicial effect of the testimony and the quantum of evidence against Defendant. If the prejudicial effect is minimal and the evidence of the defendant's guilt overwhelming, the error does not rise to the level of fundamental error. *Id.* ¶ 21. In this case, we review the prosecutor's error for fundamental error.

C. The prejudicial effect of eliciting testimony that Defendant invoked his right to counsel, which precluded Detective Romero from questioning him, was not minimal

{19} Detective Romero testified that he was called to the scene where Chavez was killed on July, 10, 2011. After considerable investigation Detective Romero was able to interview Catherine Chavez, Williams, Dinelli, and eventually Villagomez.

{20} Williams, Dinelli, and all of the other witnesses who had been interviewed remained potential suspects until an arrest was made in January 2013. The prosecutor asked the detective, "[A]s an officer and as a detective, how is it that you sort of knock people off of your list, so to speak, of possible suspects?" The detective answered, "You knock them off of their list by their statements." In response to questions from the prosecutor, the detective also explained to the jury that in this type of case, many of the people he interviewed were involved in the drug culture; therefore, they would not come forward to speak, so the officers had to seek them out.

{21} The detective did not interview Villagomez until after Villagomez had been arrested on federal gun charges. During the interview the detective urged Villagomez to help himself by coming clean and telling the truth. Ultimately both Catherine and Villagomez testified under grants of immunity. During closing argument, the State emphasized that Catherine testified because she wanted to "[come] clean," and Villagomez testified because he wanted "'the truth to come out.'"

{22} The contrast between the witnesses who answered the detective's questions and Defendant, who invoked his right to an attorney, was made apparent during the direct examination of the detective.

The prosecutor not only questioned the detective twice about the fact that Defendant invoked his right to an attorney, the prosecutor emphasized the import of Defendant's decision by eliciting from the detective the fact that by invoking his right to an attorney, the detective could not get information from Defendant. This was the classic contrast—the innocent speak, while the guilty remain silent.

{23} We are not persuaded that the prejudice was minimal. If reference to a defendant's invocation of his or her constitutional rights lacks probative value, reference by the prosecution to the exercise of such rights has an intolerable prejudicial impact on the jury. *See Lara*, 1975-NMCA-095, ¶ 8. What was probative about the fact that Defendant exercised his right to an attorney, and concomitantly his right to remain silent? What fact could be made more or less probable because Defendant had invoked his constitutional rights? The State has not offered any probative value for these questions, particularly since the judge prohibited the prosecution from admitting Defendant's alleged unsolicited statement.

{24} In *Callaway*, we reversed a conviction because the prosecutor focused his questions on Callaway's exercise of his rights to remain silent and to have an attorney. 1978-NMSC-070, ¶¶ 16, 18. We did so although the State argued that the questions were but a brief part of the entire trial and a curative instruction was given. *Id.* ¶ 15. We also analyzed whether the evidence of Callaway's guilt was so overwhelming that the prosecutor's improper questioning would have been harmless error. *Id.* ¶¶ 11-17. Although there was no curative instruction in this case and the questions were brief, we conclude that the prejudice from the prosecutor's improper questions resulted in more than minimal prejudice. We next turn to our evaluation of the evidence of Defendant's guilt to determine whether the evidence was so overwhelming that the prosecutor's error did not rise to the level of fundamental error.

D. The State did not present ove whelming evidence of Defendant's guilt

{25} Defendant was tried as a principal and not as an accomplice. Therefore to support the first-degree murder conviction, the State needed to prove beyond a reasonable doubt that Defendant himself killed Chavez with the deliberate intention of taking away Chavez's life. *See* UJI 14-201 NMRA. To support the tampering with evidence conviction the State needed to prove beyond a reasonable doubt that Defendant destroyed or hid the knife with the intention of preventing his apprehension, prosecution, or conviction. *See* UJI 14-2241 NMRA.

{26} Dr. Ian Paul, a forensic pathologist, testified regarding the injuries suffered by Chavez and the cause and manner of his death. Chavez suffered traumatic injuries, including a tear on the back of his head, bruises on the front part of his neck, small scrapes on the bottom of his front left abdomen, and scrapes on his left hand. Chavez had defensive wounds on the inside of his left wrist and on the third through fifth fingers of his right hand that were consistent with him grabbing a knife or defending against a knife. Chavez was stabbed once in the abdomen, and twice in the chest, with one of the stab wounds penetrating a major artery of the heart which was the cause of Chavez's death.

{27} Whether Defendant or his son stabbed Chavez was disputed. The evidence gathered at the scene—shoe prints and a knife sheath found under Chavez—was not probative of Defendant's guilt.[1] Villagomez was the only witness who testified that he saw Defendant stab Chavez. However, his testimony conflicted with the testimony of Williams who was at the house when Defendant, Defendant's son and Villagomez arrived.

{28} Williams testified that three men entered the house. Two of the men were between the ages of twenty-eight and thirty-four, one of whom had long dark hair and the other with blond hair. The third person was an older man with shorter gray hair. The dark-haired man (Villagomez) took her to the garage and stood beside her holding her at gunpoint until all three men left. As she walked toward the garage, Williams saw the older man head toward the kitchen. Williams did not have a view into the kitchen from the garage because her back was to the door. While in the garage she heard Chavez yelling in a frightened voice.

{29} After five minutes, the blond-haired man left the house, followed by the dark-haired man. Before the older man left the house, he approached Williams and told her, "Not a word." After the older man left, Williams returned to the kitchen, where she saw Chavez lying face down on the ground. She tried shaking him to get him up and heard his breathing. She then went outside the house to see if anyone could help. She returned to the house and checked on Chavez, who was no longer breathing.

{30} By contrast Villagomez testified that he, Defendant, and Defendant's son entered the home and that he encountered Williams in the house. He testified that Defendant took Williams's phone and her identification card. He and Defendant then stood there while Defendant's son fought with Chavez in the kitchen. During the middle of the fight, he took Williams into the garage and returned into the living room of the house to observe the fight. Villagomez testified that after three to five minutes of fighting, Defendant's son left the house and Defendant entered the kitchen and stabbed Chavez two or three times. He testified that after the stabbing, Defendant approached him and said, "The girl needs to go, no witnesses," to which he replied, "You got her ID and her phone. She's not going to say nothing."

{31} Catherine's testimony also persuades us that the evidence of Defendant's guilt was not overwhelming. Catherine, who was once married to Chavez but at the time was in a relationship with Defendant's son, called Defendant's son to report that cars were parked outside of the Chavez house. She waited in her car until she observed Villagomez, Defendant, and Defendant's son arrive, and she then left to her apartment. According to Villagomez, he and Defendant's son had planned to go to Chavez's house to beat him up for stealing the son's property. Villagomez obtained a gun before going to Chavez's house, but Defendant's son took it from him. When they arrived at the house, Villagomez took the gun from Defendant's son because Defendant's son looked mad. Detective Romero testified that a police report revealed Defendant's son had previously threatened Chavez with a gun.

{32} Detective Romero also testified that Defendant's son was nicknamed "Blade" because he was good with a knife and usually carried a knife. Catherine testified that as she arrived at her apartment Defendant's son called her and said, "Come back over here," and she drove back to the Chavez

[1]Detective Romero testified that three or four shoe prints were taken, but that none of the prints connected to Defendant, Defendant's son, or Villagomez. He also testified that the knife sheath found underneath Chavez was submitted for "[f]ingerprint DNA analysis," but that "[t]he major DNA came back to decedent, James Chavez."

house. When she arrived, Defendant's son threw a knife that belonged to him into her car and told her "Get out of here." She buried the knife so that she would be the only person to find it.

{33} Catherine also testified that Defendant told her that Chavez did not have a knife, that Defendant's son and Chavez fought, that Defendant's son left the room, and that Defendant stood over Chavez until he took his last breath. This latter testimony does not corroborate Villagomez's testimony that Defendant stabbed Chavez. She did not testify that Defendant told her he stabbed Chavez and stood over his body. It is equally plausible that Defendant stood over Chavez after his son stabbed Chavez.

{34} The evidence at trial was not the quantity or quality of overwhelming evidence that overcomes the prejudicial impact of the prosecutor eliciting testimony regarding Defendant's exercise of his constitutional rights. We note that Defendant raised the issue of sufficiency of the evidence in his statement of issues. However, he did not argue it in his brief in chief and therefore abandoned the issue. *See* Rule 12-318(A)(4) NMRA (providing that an argument in a brief in chief "shall set forth a specific attack on any finding, or the finding shall be deemed conclusive."); *Jones v. Beavers*, 1993-NMCA-100, ¶ 17, 116 N.M. 634, 866 P.2d 362 ("An appellant waives the right of review for sufficiency of the evidence by failing to provide an adequate summary of the relevant evidence to satisfy the appellate briefing rule and related case law."). Villagomez's testimony in any event would have been sufficient evidence to sustain the verdicts. We reverse Defendant's convictions and remand to the district court for a new trial.

III. CONCLUSION

{35} For the foregoing reasons, we vacate Defendant's convictions and remand to the district court for a new trial.

{36} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Justice

WE CONCUR:

JUDITH K. NAKAMURA, Chief Justice

PETRA JIMENEZ MAES, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice

From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-009
No. S-1-SC-34789 (filed January 4, 2018)

TUE THI TRAN,
Petitioner-Petitioner,
and
CLINTON W. DEMMON,
Intervenor-Petitioner,
v.
ROBERT G. BENNETT,
Respondent-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
T. Glenn Ellington, District Judge

CAREN I. FRIEDMAN
Santa Fe, New Mexico
for Petitioners

JANE B. YOHALEM
LAW OFFICE OF JANE B. YOHALEM
Santa Fe, New Mexico
for Respondent

Opinion

Petra Jimenez Maes, Justice

{1} This case involves three people who agreed to co-parent one minor child (Child): Tue Thi Tran (Mother); Clinton Demmon (Demmon), who is Child's biological father and Mother's current partner; and Robert Bennett (Bennett), who was married to Mother at the time of Child's birth. In 2007, the parties entered into a memorandum of agreement that settled the issue of legal paternity in Demmon's favor yet provided that all three adults were Child's "co-parents." The district court adopted the memorandum of agreement as a stipulated order of the court. Disputes arose between the parties, and in 2012 the district court issued a parenting order that expressly awarded joint legal custody of Child to Mother, Demmon, and Bennett. The district court also held Mother and Demmon in contempt of court for violating the vacation and visitation provisions in the memorandum of agreement.

{2} On appeal, Mother and Demmon challenge the 2012 parenting order, arguing that Bennett is not Child's father and that the district court erred by awarding custody to a non-parent. Mother and Demmon also contend that the district court abused its discretion by holding them in contempt of court.

{3} We conclude that the parties effectively settled the issue of paternity under the Uniform Parentage Act, NMSA 1978, Sections 40-11-1 to -23 (1986, as amended through 2004) (repealed 2009), when they entered into the memorandum of agreement and that the district court adjudicated the issue of paternity when it issued the stipulated order adopting the agreement. We therefore hold that Demmon is Child's legal father. We further hold that the parties' memorandum of agreement does not confer parental rights on Bennett, in addition to Child's two legal parents. Finally, we vacate the contempt order for the reasons set forth in this opinion.

I. BACKGROUND

{4} Mother and Bennett got married in 1998 in Vietnam, Mother's home country, and later moved to Santa Fe. While married to Bennett, Mother began a relationship with Demmon and became pregnant. During the pregnancy, Mother informed Bennett that Demmon might be the baby's father. Despite doubt regarding whether Bennett was the biological father, Bennett's name was entered on Child's birth certificate when Child was born in May 2003. Mother and Child lived with Bennett until Child was nearly twenty-two months old. According to Mother, Demmon visited Mother and Child soon after Child's birth and continued to visit Mother and Child when Bennett was not at home. In early 2005, Mother and Child moved into Demmon's home, and the three have lived together as a family ever since.

{5} Mother filed for divorce in October 2006. Mother represented in her petition for dissolution of marriage that she and Bennett had no minor children. Bennett responded by filing an emergency motion asserting that he is Child's father and that Mother had denied Bennett contact with Child. Bennett also filed a counterclaim, arguing that even if Demmon is Child's biological father, Bennett was presumed to be Child's legal father under the Uniform Parentage Act because he and Mother were married when Child was born. Bennett asked the district court to grant the divorce and to determine parenthood issues.

{6} In November 2006, Demmon filed a motion in Mother and Bennett's divorce case, seeking to establish paternity. Demmon attached the results of a DNA (deoxyribonucleic acid) test which found a 99.8% probability that Demmon is Child's biological father. Demmon asserted that Bennett was aware of the test results yet refused to undergo genetic testing or to have the birth certificate changed to reflect Demmon's paternity. In December 2006, the district court granted Demmon's unopposed motion to intervene in the case. The district court scheduled a hearing on Demmon's paternity claim and gave Bennett two months to obtain a genetic test for himself, should he wish to do so.

{7} It appears from the record before this Court that the district court never held the paternity hearing because the parties, who were represented by counsel, settled the matter through mediation proceedings, resulting in a memorandum of agreement. The memorandum of agreement included a section labeled "Legal paternity" that required the modification of Child's birth certificate "to indicate Clint Demmon as his biological father." The agreement also included a "Co-parentage" provision, stating that Child

> has three co-parents—[Mother, Demmon, and Bennett]. [Demmon and Mother] affirm that [Bennett] as a co-parent is part of [Child's] life and deserves time and involvement with [Child]. All three will demonstrate through cooperative and supportive actions their shared primary concern for [Child's] well-being. Each will encourage and support [Child's] relationships with the others.

{8} The agreement further provided that Mother and Demmon would include Bennett in decisions related to Child's

health and education, with one vote to Bennett and two votes to Mother and Demmon, but that Bennett would not be expected to contribute financially to Child's education or dental expenses. The agreement granted Bennett visitation with Child three days a week, plus additional time during extended school breaks. The agreement required the parties to meet each year to create a summer vacation schedule for Child. Finally, the agreement contemplated annual review and recognized that it "may be superseded by a more detailed Parenting Plan."

{9} The district court issued a stipulated order in October 2007 that adopted the memorandum of agreement as an order of the court. Consistent with the legal paternity provision in the agreement, the stipulated order required Bennett to "sign all necessary documentation to modify the birth certificate to indicate [Demmon] as [Child's] biological father." Mother and Bennett finalized their divorce in November 2008. The divorce decree stated that "[t]he parties share responsibility for [Child], whose care and disposition are addressed and ordered in the [stipulated order] . . . ."

{10} In August 2011, Mother and Demmon filed a motion for an order to show cause alleging that for three years in a row, Bennett had taken Child on a summer vacation without Mother and Demmon's consent. They complained that Bennett had refused during the most recent trip to provide an itinerary or contact information and had not permitted Child to call Demmon. Mother and Demmon argued that Bennett's conduct violated the visitation and vacation provisions in the agreement and asked the district court to terminate Bennett's visitation rights and to hold him in contempt of court. The district court held a hearing in October 2011 and found that all three parties were responsible for generating conflict around Child's summer vacation schedule. The court declined to hold Bennett in contempt of court.

{11} About three months later, Bennett filed a motion for an order to show cause, alleging that Mother and Demmon had violated the agreement by taking Child on a trip over Child's winter break, thereby preventing Bennett's court-ordered visitation time with Child. Following an evidentiary hearing, the district court found that the parties had attempted to communicate about winter break by passing letters in Child's backpack but had failed to reach an agreement. The court further found that Mother and Demmon knew when they took Child on vacation that their trip interfered with Bennett's visitation time. The court concluded that Mother and Demmon's conduct constituted a knowing and willful violation of the 2007 stipulated order and held them in contempt of court. The court ordered that Mother and Demmon "shall be incarcerated for a period of fifteen (15) days, with said period of incarceration suspended until further order of the Court." The district court also ordered Mother and Demmon to pay Bennett's reasonable attorney's fees associated with the contempt proceedings. The district court subsequently awarded Bennett a total of $3,015.73 in attorney's fees, costs, and gross receipts tax over Mother and Demmon's objection to the sum.

{12} The district court issued an amended parenting order in December 2012. The order did not use the term "co-parents" but did award "joint legal custody" of Child to Mother, Demmon, and Bennett as "joint legal custodians." The order required the parties to "share major decisions of education, medical care, religion, discipline and other matters of major significance." The order granted Bennett weekly and holiday visitation with Child and permitted Bennett to take Child on a week-long vacation.

{13} Mother and Demmon appealed the 2012 parenting order and the order holding them in contempt of court. The Court of Appeals affirmed in an unpublished memorandum opinion. *Tran v. Bennett*, No. 32,677, mem. op. ¶ 2 (N.M. Ct. App. May 28, 2014) (non-precedential), *cert. granted*, 2014-NMCERT-008. Mother and Demmon filed a petition for writ of certiorari, asking this Court to address whether the district court erred by (1) awarding joint legal custody to two biological parents and to a third person who lacks parental standing, and (2) holding Mother and Demmon in contempt of court. We granted certiorari under Article VI, Section 2 of the New Mexico Constitution and NMSA 1978, Section 34-5-14(B) (1972), and we now reverse.

II. DISCUSSION

A. Mother and Demmon Are Child's Parents, and the Memorandum of Agreement Does Not Confer Parental Rights on Bennett

1. A New Parenting Order Entered in 2016 Did Not Render This Issue Moot

{14} After this Court granted certiorari and heard oral argument on this case, the parties' appellate counsel filed a joint notice in this Court, explaining that the district court had entered a new parenting order in August 2016 and that the time to appeal from the order had run without an appeal being filed. Prior to issuing the order, the district court held a hearing at which Mother and Demmon appeared, represented by counsel, but at which Bennett failed to appear. The 2016 parenting order awarded "sole legal custody" to Mother and Demmon, superseding the 2012 parenting order, which had awarded "joint legal custody" to Mother, Demmon, and Bennett. The 2016 parenting order further provided that

> [Mother] and [Demmon] shall make all decisions concerning [Child's] education, childcare, health care (physical or mental), ongoing activities and religious upbringing. [Mother] and [Demmon] shall keep . . . Bennett apprised of any major changes in [Child's] education, childcare, health care (physical or mental), ongoing activities and religious upbringing. [Mother] and [Demmon] shall not change [Child's] residence, which is Santa Fe, New Mexico, without a court order.

The order granted Bennett weekly and holiday visitation with Child and permitted Bennett to take Child on a week-long vacation.

{15} In their joint notice to this Court, appellate counsel explained that the

> parties dispute the meaning and effect of the [2016] order. [Bennett] interprets the order to mean that he is Child's co-parent. [Mother and Demmon] interpret the order to mean that [Bennett] is not Child's co-parent. The parties are in agreement that the case pending before this Court is not moot.

We agree. Since no party has appealed the 2016 parenting order, which awards "sole legal custody" to Mother and Demmon, it appears that the narrow issue of whether the district court erred in 2012 by awarding "joint legal custody" to Mother, Demmon, and Bennett is moot. But because this appeal centers around whether the parties could mutually agree that Child "has three co-parents," Mother, Demmon, and Bennett, we agree with the parties that the parentage issues raised by this appeal are not moot. Although the issue of custody has been resolved by the 2016 parenting order, the broader issue

remains: What is Bennett's legal relationship to Child?

2. Standard of Review

{16} Mother and Demmon's claim that Bennett is not Child's parent requires us to interpret statutory provisions relating to parentage. We apply de novo review to questions of statutory construction. *Chatterjee v. King*, 2012-NMSC-019, ¶ 11, 280 P.3d 283. To the extent that this claim implicates issues of constitutional law or constitutional rights, our review is likewise de novo. *See N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 27, 142 N.M. 248, 164 P.3d 947.

3. Demmon Is Child's Father Under the Uniform Parentage Act

{17} Bennett and Demmon each claim to be Child's father under the Uniform Parentage Act. As a preliminary matter, we must determine which version of the Act applies. New Mexico first enacted the Uniform Parentage Act in 1986. *See* Uniform Parentage Act (UPA), NMSA 1978, §§ 40-11-1 to -23 (1986, as amended through 2004) (repealed 2009). The Legislature repealed the original UPA in 2009 and adopted the New Mexico Uniform Parentage Act, effective January 1, 2010. *See* NMSA 1978, §§ 40-11A-101 to -903 (2009). The parties rely on both acts. We conclude that the original UPA applies in this case because Demmon sought to establish paternity and was joined as an intervenor in Mother and Bennett's divorce case in 2006, prior to the new statute taking effect in 2010. *See* § 40-11A-903 ("A proceeding to adjudicate parentage that was commenced before the effective date of the New Mexico Uniform Parentage Act is governed by the law in effect at the time the proceeding was commenced.").

{18} We thus turn to the original UPA, NMSA 1978, §§ 40-11-1 to -23 (1986, as amended through 2004) (repealed 2009), as the appropriate mechanism for determining who is Child's father. The UPA provides multiple scenarios under which a "man is presumed to be the natural father of a child." Section 40-11-5(A). Relevant here, a man is presumed to be the natural father if "he and the child's natural mother are or have been married to each other and the child is born during the marriage." Section 40-11-5(A)(1). Alternatively, a "man is presumed to be the natural father of a child if, pursuant to blood or genetic tests . . . the probability of his being the father is ninety-nine percent or higher." Section 40-11-5(D). In this case, Bennett and Demmon each established a presumption that he was Child's natural father under the UPA. Bennett was presumed to be Child's natural father because Child was born during Mother and Bennett's marriage. Demmon was presumed to be Child's natural father because uncontested DNA test results demonstrated a 99.8% probability that he is Child's biological father.

{19} The UPA requires the district court to adjudicate paternity when there is a dispute between two presumptive natural fathers and sets forth a procedure for doing so. *See* § 40-11-5(C) ("If two or more men are presumed under this section to be the father of the same child, paternity shall be established as provided in the Uniform Parentage Act . . . ."). The court begins by holding an informal hearing "[a]s soon as practicable" after the commencement of the paternity action. Section 40-11-10. Following the informal hearing, the court provides the parties with an initial recommendation regarding settlement of the paternity issue. Section 40-11-11(A). If the parties accept the initial recommendation, the court enters judgment consistent with the recommendation. Section 40-11-11(B). "If a party refuses to accept [the initial] recommendation . . . and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable." Section 40-11-11(C). The court shall then "make an appropriate final recommendation." *Id.* "If a party refuses to accept the final recommendation, the action shall be set for trial . . . ." *Id.* If the action goes to trial, the court adjudicates paternity based on all relevant evidence, including genetic test results. *See* § 40-11-13(C), (D). If the adjudicated father is not listed on the child's birth certificate, "the court shall order that a new birth certificate be issued." Section 40-11-15(B); *see also* § 40-11-22(A) ("Upon order of a court . . . the vital statistics bureau . . . shall prepare a new certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.").

{20} Bennett asserts that he is Child's father under the UPA, arguing that Demmon waited too long to assert paternity and failed to obtain a court order establishing paternity. Mother and Demmon acknowledge that the district court did not expressly adjudicate paternity under the UPA but argue that this Court should nonetheless recognize that Demmon is Child's father under the UPA.

{21} We conclude that Demmon is Child's father under the UPA. Demmon sought genetic testing when Child was an infant and confirmed with near certainty that he is Child's biological father. Demmon then sought an adjudication of paternity and was granted intervenor status in this case. *See* § 40-11-8(A) (providing that an action to determine parentage under the UPA may be joined with an action for dissolution of marriage). Although the district court gave Bennett two months to arrange for genetic testing prior to a paternity hearing, Bennett failed to undergo testing, object to the test results submitted by Demmon, or otherwise rebut the presumption that Demmon is Child's natural father. Instead, Bennett and Demmon agreed to settle the issue of legal paternity and entered into the memorandum of agreement. The agreement provided that Demmon would be recognized as Child's legal father and would be listed on Child's birth certificate and that Bennett would maintain visitation rights with Child and would not be required to provide financial support.

{22} Despite these agreements, Bennett argues that this is not an appropriate case in which to use biological evidence to rebut the presumption that he is Child's natural father because he has always acted as Child's father, even after learning that Demmon is Child's biological father. *See* § 40-11-5(C) (providing that a presumption of paternity "may be rebutted *in an appropriate action* only by clear and convincing evidence" (emphasis added)). Mother and Demmon argue that it is appropriate to use DNA evidence to rebut the presumption that Bennett is Child's father because doing so leaves Child with two fit, natural parents, Mother and Demmon. We agree that this is an appropriate action in which to use biological evidence to rebut the presumption of paternity. The UPA requires the district court to determine paternity "[i]f two or more men are presumed to be the father of the same child," *see id.*, and permits the district court to rely on genetic test results to adjudicate paternity, *see* §§ 40-11-11(C), 40-11-12, 40-11-13(C). This Court has cautioned that it would be inappropriate to rebut a presumption of parentage if doing so would deprive a child of having the support of two parents. *See Chatterjee*, 2012-NMSC-019, ¶ 42 (providing examples from California cases and concluding "that the legislature, by using the phrase '*in an appropriate action*,' limited the circumstances for rebuttal of the parentage presumption" (emphasis in original)). Similarly, the Court of Appeals

has explained that the district court will "not determine paternity solely on the basis of a biological relationship" if doing so would sever a close emotional bond between a child and a presumed father. *Tedford v. Gregory*, 1998-NMCA-067, ¶ 15, 125 N.M. 206, 959 P.2d 540. But these concerns are not determinative in this case because rebutting the presumption leaves Child with two fit, natural parents. Moreover, the parties assure this Court that regardless of the outcome of this appeal, all parties want Bennett to maintain his relationship with Child.

{23} Contrary to Bennett's claim that there is no court order determining paternity, we conclude that the 2007 stipulated order constituted an adjudication of the issue of paternity. The order adopted the memorandum of agreement, which recognized Demmon as Child's father and directed Bennett to take the steps needed to modify Child's birth certificate. Because the parties settled the paternity issue through a mediated agreement, the district court did not need to follow the procedures in the UPA for holding a paternity hearing or proposing a recommended settlement to the parties. We do not find anything in the UPA or our case law prohibiting parties from stipulating to or settling the issue of paternity. To the contrary, the UPA encourages settlement of paternity disputes prior to trial. *See* § 40-11-11(A)-(C) (requiring the district court to make recommendations for pretrial settlement). Under the circumstances of this case, further litigation of the paternity issue was not needed. We hold that Demmon is Child's father under the UPA, as determined in the 2007 stipulated order adopting the memorandum of agreement.

4. The Memorandum of Agreement Does Not Confer Parental Rights on Bennett

{24} The 2007 memorandum of agreement settled the issue of legal paternity in Demmon's favor but also designated Mother, Demmon, and Bennett as "co-parents," purporting to give Child three parents. Bennett argues that the memorandum of agreement created an enforceable three-way legal custody arrangement. Mother and Demmon assert that the agreement did not give Bennett custody and argue that the agreement could not confer parental standing or custodial rights on Bennett because Bennett is not Child's parent. We need not determine whether the memorandum of agreement awarded custody to Bennett because the agreement has been superseded by the 2012 and 2016 parenting orders. *See Rhinehart v. Nowlin*, 1990-NMCA-136, ¶ 14, 111 N.M. 319, 805 P.2d 88 (determining that the district court has authority to modify or vacate a stipulated order involving the care and custody of a child). But we conclude that the memorandum of agreement, which settled the issue of legal paternity in Demmon's favor, does not confer enforceable parental rights on Bennett.

{25} Mother and Demmon are Child's legal parents under the UPA. *See Chatterjee*, 2012-NMSC-019, ¶ 5 n.3 (noting that the UPA uses the terms paternity and maternity to "refer to legal determinations of parenthood"); *see also* § 40-11-15(A) (providing that a district court order adjudicating paternity under the UPA is "determinative for all purposes"). New Mexico law confers a variety of rights and privileges on a child's parents and subjects them to the duties and obligations of parentage. *See* § 40-11-2. Moreover, "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

{26} In a custody dispute between a parent and a non-parent, "New Mexico has long recognized the parental preference doctrine." *In re Guardianship of Ashleigh R.*, 2002-NMCA-103, ¶ 14, 132 N.M. 772, 55 P.3d 984. The parental preference doctrine limits the district court's discretion to award custody to a non-parent and requires the court to award custody to the parent unless the parent is unfit or extraordinary circumstances are present. *Id.* ¶¶ 14-16; *see* NMSA 1978, § 40-4-9.1(K) (1999) ("When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent."); *see also In re Adoption of J.J.B.*, 1995-NMSC-026, ¶ 59, 119 N.M. 638, 894 P.2d 994 ("A parent's right is not absolute and under extraordinary circumstances, custody of a child may be awarded to a nonparent over the objections of a parent."). If the district court finds "parental unfitness or extraordinary circumstances, the district court can then determine what custody arrangement would be in the comparative best interest of the child." *In re Ashleigh R.*, 2002-NMCA-103, ¶ 16.

{27} In this case, Mother and Demmon are Child's parents, so the district court could not award legal custody to Bennett over Mother and Demmon's objection absent a finding that Mother and Demmon were unfit or that extraordinary circumstances were present. The district court never made such a finding.

{28} Bennett asserts that his visitation rights should remain intact if this Court concludes that Demmon is Child's father. Mother and Demmon agree that Bennett should continue to have visitation with Child, and the 2016 parenting order grants Bennett visitation rights. The 2016 parenting order is not before us on appeal, and we make no determination regarding Bennett's visitation rights. We observe, however, that New Mexico law does not limit the right to seek visitation in the same way that it limits the right to seek custody. *See Rhinehart*, 1990-NMCA-136, ¶ 19 ("[T]he legislature did not equate custody and visitation rights."). In *Rhinehart*, the Court of Appeals examined the statutes addressing dissolution of marriage proceedings and concluded that the district court's authority over matters relating to the guardianship, care, and custody of children includes the power to grant visitation rights to a person who is significant and important to a child's welfare. *See id.* ¶ 14; *see also* NMSA 1978, § 40-4-7(B)(4) (1997) (providing that in a dissolution of marriage proceeding, the district court may issue "an order for the guardianship, care, custody, maintenance and education of the minor children"). Visitation is not subject to the parental preference doctrine, and the district court has discretion to award visitation to a non-parent when visitation is in the best interests of the child. *See Rhinehart*, 1990-NMCA-136, ¶¶ 25-26. *But cf. Troxel*, 530 U.S. at 73, 75 (holding that application of a grandparent visitation statute violated a parent's due process right but declining to define "the precise scope of the parental due process right in the visitation context"); *In re Adoption of Francisco A.*, 1993-NMCA-144, ¶ 20, 116 N.M. 708, 866 P.2d 1175 ("[B]ecause granting visitation rights does infringe on a parent's custody, it is appropriate to limit this decision to situations such as this where the party seeking visitation has acted in a custodial or parental capacity.").

{29} We hold that the memorandum of agreement does not confer parental rights on Bennett. Although the agreement designated Bennett as a "co-parent," the significance of that designation is unclear because the word "co-parent" is not defined in the dissolution of marriage

statutes or the UPA. *Cf.* § 40-4-9.1(L)(5) (defining "parent" for purposes of determining custody in a dissolution of marriage proceeding); § 40-11-2 (defining "parent and child relationship" as used in the original UPA). Moreover, the memorandum of agreement has been superseded by the 2012 and 2016 parenting orders. Under the 2016 parenting order, Bennett is a third party with visitation rights, not a parent.

B. The District Court Erred by Holding Mother and Demmon in Contempt of Court

1.Standard of Review

{30} We review the district court's imposition of contempt sanctions for abuse of discretion. *See Gedeon v. Gedeon*, 1981-NMSC-065, ¶ 13, 96 N.M. 315, 630 P.2d 267. An abuse of discretion occurs when the court's "ruling is clearly against the logic and effect of the facts and circumstances of the case" or is "based on a misunderstanding of the law." *Chavez v. Lovelace Sandia Health Sys., Inc.*, 2008-NMCA-104, ¶ 25, 144 N.M. 578, 189 P.3d 711 (internal quotation marks and citation omitted).

2. The District Court Failed to Follow the Substantive and Procedural Law Governing Contempt of Court Proceedings

{31} In its contempt order, the district court found that Mother and Demmon knowingly and willfully violated the 2007 stipulated order by unilaterally taking Child on a vacation that interfered with Bennett's visitation rights. The district court ordered that Mother and Demmon "shall be incarcerated for a period of fifteen (15) days, with said period of incarceration suspended until further order of the Court." The district court also ordered Mother and Demmon to pay Bennett's "reasonable attorney's fees for the preparation of the motion and order to show cause, oral argument and the order resulting from the hearing."

{32} On appeal, Mother and Demmon challenge the order of contempt as an abuse of power. They argue that the district court acted arbitrarily by holding them in contempt because the court had refused to hold Bennett in contempt for similar conduct occurring the previous summer. Bennett contends that the district court acted within its discretion when it held Mother and Demmon in contempt. He argues that the contempt order was justified because Mother and Demmon's contemptuous conduct occurred less than three months after the district court admonished the parties to abide by the vacation and visitation provisions in the memorandum of agreement. We conclude that the district court abused its discretion by holding Mother and Demmon in contempt because the contempt proceedings and resulting order reflect a misunderstanding of contempt law.

{33} The district courts possess inherent and statutory authority to impose punitive or remedial sanctions for contempt of court. *See* NMSA 1978, § 34-1-2 (1851); *see also Concha v. Sanchez*, 2011-NMSC-031, ¶¶ 22-26, 150 N.M. 268, 258 P.3d 1060. "Contempts of court are classified as civil or criminal," and the "major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised." *Concha*, 2011-NMSC-031, ¶ 24 (internal quotation marks and citation omitted). Criminal contempt proceedings vindicate the authority of the court by punishing "completed acts of disobedience." *Id.* ¶ 26. Civil contempt proceedings are remedial, "instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court." *In re Klecan*, 1979-NMSC-094, ¶ 5, 93 N.M. 637, 603 P.2d 1094.

{34} In this case, our review of the contempt order is complicated by the district court's failure to specify whether it was holding Mother and Demmon in civil contempt, criminal contempt, or both. For purposes of our analysis, we treat the contempt order primarily as one of civil contempt because the apparent purpose of the contempt proceedings was to preserve and enforce Bennett's visitation rights and to compel Mother and Demmon to comply with the 2007 order adopting the memorandum of agreement. Additionally, although we are not bound by the parties' characterization of the contempt as civil or criminal, *see Concha*, 2011-NMSC-031, ¶ 32, we note that the parties rely on civil contempt law in their briefs and that the Court of Appeals treated the contempt as civil. *See Tran*, No. 32,677, mem. op. ¶ 41.

{35} "The elements necessary for a finding of civil contempt are: (1) knowledge of the court's order, and (2) an ability to comply." *In re Hooker*, 1980-NMSC-109, ¶ 4, 94 N.M. 798, 617 P.2d 1313; *see also State v. Rivera*, 1998-NMSC-024, ¶ 13, 125 N.M. 532, 964 P.2d 93 (recognizing a conflict in prior case law regarding the elements of civil contempt and explaining that "[n]either willfulness nor intent is an element of civil contempt"). If the court finds civil contempt, there are two general categories of remedial sanctions that the court may impose: compensatory sanctions or coercive sanctions. *See State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc.*, 1964-NMSC-068, ¶ 10, 74 N.M. 201, 392 P.2d 347.

{36} Compensatory sanctions may include damages or attorney's fees and are imposed for the purpose of compensating a party for pecuniary losses sustained due to the contempt. *Id.* ("[S]anctions may . . . be employed in civil contempt . . . to compensate the complainant for losses sustained."); *see also In re Hooker*, 1980-NMSC-109, ¶ 5 ("The general rule is that a court has power to award damages and attorney's fees to a party aggrieved by a contempt."). Our courts have limited the amount of a compensatory sanction "to the actual loss plus the costs and expenses, including counsel fees, incurred in investigating and prosecuting the contempt." *In re Hooker*, 1980-NMSC-109, ¶ 5.

{37} Coercive sanctions may include "fines, imprisonment, or other sanctions" designed "to compel the contemnor to comply in the future with an order of the court." *Concha*, 2011-NMSC-031, ¶ 25. Coercive sanctions are conditional, imposed to address the contemnor's continuing violation of a court order. *See id.* To effect this purpose, an order imposing a coercive sanction should state the actions that the contemnor must take to purge the contempt. *See In re Hooker*, 1980-NMSC-109, ¶ 4. A contemnor subject to a coercive sanction has the power to discharge the civil contempt at any time "by doing what [the contemnor] has previously refused to do." *Concha*, 2011-NMSC-031, ¶ 25 (internal quotation marks and citation omitted). Thus, the coercive sanctions "end when the contemnor complies" with the underlying court order. *Id.*

{38} In this case, the fifteen-day term of imprisonment imposed by the district court was not an appropriate remedial sanction for civil contempt of court. Sending Mother and Demmon to jail could not compensate Bennett for any monetary damages sustained due to the contemptuous conduct. *See Jencks v. Goforth*, 1953-NMSC-090, ¶ 20, 57 N.M. 627, 261 P.2d 655 ("Imprisonment cannot undo or remedy what has been done, nor afford any compensation for the pecuniary injury caused by the disobedience." (internal quotation marks and citation omitted)). And although a conditional sentence of

imprisonment may be an appropriate civil contempt sanction in some situations, the sentence must be crafted in a way that permits the contemnor to discharge himself or herself of the contempt by complying with the court's order. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 60, 125 N.M. 343, 961 P.2d 768 ("A court may directly order an individual to comply with its order to purge himself or herself of contempt and may stay further sanctions if the individual complies with the order by a specified date."); *see, e.g.*, *Papatheofanis v. Allen*, 2009-NMCA-084, ¶ 5, 146 N.M. 840, 215 P.3d 778 ("The district court held [w]ife in contempt for failure to pay her share of the fee, ordered [w]ife to pay a $250 fine, but allowed [w]ife to purge the contempt if she made full payment to the expert by February 28, 2007."). Here, it was unclear whether the contempt order had a coercive purpose because the order did not state the actions that Mother and Demmon must take to purge the contempt.

{39} Moreover, it is not clear how imposition of a jail sentence would be an effective means of coercing a child's parents into complying with an underlying order addressing the care and custody of the child. When exercising discretion to impose coercive sanctions, the judge must consider "the degree of harm threatened by continued contumacy and whether or not the contemplated sanctions will bring about a compliance with the court's order." *State v. Pothier*, 1986-NMSC-039, ¶ 4, 104 N.M. 363, 721 P.2d 1294. In this case, imprisoning Mother and Demmon would have prevented them from caring for Child under the 2007 stipulated order.

{40} In addition, we take this opportunity to express concern that Mother may not have been afforded sufficient procedural due process at the hearing. "Civil contempt sanctions may be imposed by honoring the most basic due process protections—in most cases, fair notice and an opportunity to be heard." *Concha*, 2011-NMSC-031, ¶ 25. Mother and Demmon received notice of the contempt allegations, and the district court held a show cause hearing before finding Mother and Demmon in contempt of court. But Mother did not have a Vietnamese interpreter at the hearing, and the record reflects that the lack of an interpreter may have precluded Mother from having a meaningful opportunity to be heard. *See Bethlehem Area Sch. Dist. v. Zhou*, 976 A.2d 1284, 1286 (Pa. Commw. Ct. 2009) (explaining that the "constitutionally protected rights afforded by due process . . . includes the right to be heard which, in certain circumstances, include the right to assistance from an interpreter"). During Mother's testimony, the district court judge remarked that Mother did not seem to understand the questions posed by Bennett's counsel. And at the end of the hearing, the judge acknowledged that at

> [a]ny subsequent hearings we need an interpreter for [Mother]. I think she probably does have relevant competent material testimony to give, but I think the language problem has become—or maybe always has been—so severe that I'm not sure she's able to meaningfully participate as a party or to testify as a witness in future hearings. So we'll need to make arrangements for an interpreter for her from now on.

{41} We are troubled that the district court imposed contempt sanctions on Mother after concluding that she was unable to meaningfully participate in the contempt hearing. We do not base our holding on this procedural due process issue, which was not raised by the parties. But we remind courts that the exercise of the contempt power must comport with the appropriate level of procedural due process, which varies depending on whether the proceeding is civil or criminal in nature. *See Concha*, 2011-NMSC-031, ¶¶ 25-26.

{42} Having concluded that the contempt order cannot be upheld as a valid exercise of the civil contempt power, we consider whether the order can be enforced as one of criminal contempt. Although the district court judge failed to articulate whether he was exercising the civil contempt power or the criminal contempt power, the language of the contempt order suggests that the sanction may have had a punitive, rather than remedial, purpose. If the purpose of the sanction was to punish Mother and Demmon for a previous violation of the 2007 stipulated order, the sanction is better characterized as one of criminal contempt, and Mother and Demmon were entitled to the full panoply of due process protections afforded to criminal defendants. *See id.* ¶¶ 26, 34. Of particular significance, a criminal contempt defendant "is presumed innocent until found guilty beyond a reasonable doubt" and "cannot be compelled to testify against himself [or herself]." *Int'l Minerals & Chem. Corp. v. Local 177, United Stone & Allied Prods. Workers*, 1964-NMSC-098, ¶ 16, 74 N.M. 195, 392 P.2d 343. In this case, Bennett's counsel compelled Mother and Demmon to take the stand at the contempt hearing without any advice of rights. There is no indication that the district court followed the procedures of the criminal law or applied the heightened standard of proof associated with a criminal trial and the presumption of innocence. We conclude that the contempt sanctions cannot be upheld as a valid exercise of the criminal contempt power.

{43} We have cautioned judges to use "extraordinary self-restraint to avoid abuses" of the contempt power. *Concha*, 2011-NMSC-031, ¶ 30. In this case, the contempt order reflects a misunderstanding of the substantive and procedural law governing contempt of court proceedings. We hold that the contempt order was neither a valid civil contempt order nor a valid criminal contempt order, and we vacate the contempt order as an abuse of discretion.

III. CONCLUSION

{44} We hold that Demmon is Child's legal father under the UPA and that the memorandum of agreement does not confer parental rights on Bennett. We further hold that the district court abused its discretion when it held Mother and Demmon in contempt of court, and we vacate the contempt order.

{45} IT IS SO ORDERED.

PETRA JIMENEZ MAES, Justice

WE CONCUR:

JUDITH K. NAKAMURA, Chief Justice

EDWARD L. CHÁVEZ, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice

From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-010
No. S-1-SC-34798 (filed January 8, 2018)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
JOSHUA MAESTAS,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Reed S. Sheppard, District Judge

HECTOR H. BALDERAS,
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Opinion

Petra Jimenez Maes, Justice

{1} In prior cases we have determined that while a defendant has the constitutional right to confrontation, that right may be forfeited as a result of his own wrongdoing. In this case we determine whether wrongdoing requires an overt threat of harm to procure a witness's silence or absence. When the State's witness, Juliana Barela, Defendant Joshua Maestas's girlfriend, refused to testify at trial, the district court declared her unavailable. The State then requested that the district court find that Defendant had obtained Barela's unavailability by wrongdoing, and to therefore admit at trial testimony Barela gave to the grand jury, a statement she made to police, and a call she made to 911 operators. In support of its claim that Defendant had procured and intended to procure Barela's unavailability by way of misconduct, the State offered recorded jailhouse phone conversations between Defendant and Barela. The district court determined that Defendant had neither caused nor intended to cause by any wrongdoing Barela's decision not to testify, concluded Barela's prior statements were thus inadmissible, and dismissed Defendant's indictment. The State appealed. The Court of Appeals affirmed the district court's ruling. *See State v. Maestas*, No. 31,666, mem. op. ¶¶ 1, 20 (N.M. Ct. App. Jun. 3, 2014) (non-precedential).

{2} The State appealed to this Court pursuant to Rule 12-502 NMRA, which governs petitions for review of a decision by the Court of Appeals. We granted certiorari. We hold that wrongdoing, for purposes of the forfeiture-by-wrongdoing exception, need not take the form of overt threat of harm; various forms of coercion, persuasion, and control may satisfy the requirement. Accordingly, we reverse the decisions of the district court and Court of Appeals and remand to the district court to apply the forfeiture-by-wrongdoing exception, which we clarify today.

I. BACKGROUND

{3} Following the altercation with Defendant, Barela received treatment for a concussion at Presbyterian Medical Center and her doctor reported a domestic incident to the police. While at the hospital, Deputy Metzgar of the Bernalillo County Sheriff's Department recorded his interview with Barela, who alleged that on December 2, 2009, Defendant had physically abused her and then threatened to kill her if he went to jail. Barela also completed a written statement. Barela later testified before a grand jury as a witness for the State. The grand jury returned an indictment charging Defendant with aggravated battery against a household member pursuant to NMSA 1978, Section 30-3-16 (2008); intimidation of a witness pursuant to NMSA 1978, Section 30-24-3(A)(3) (1997); child abuse pursuant to NMSA 1978, Section 30-6-1(D) (2009); battery against a household member pursuant to NMSA 1978, Section 30-3-15 (2008); and assault against a household member pursuant to NMSA 1978, Section 30-3-12 (1995).

{4} At Defendant's arraignment on January 4, 2010, his probation officer recommended that the district court increase Defendant's bond because Defendant was "an extreme risk to the victim." The probation officer added that at the time of his arrest in this case, Defendant was on supervised release for failing to comply with conditions of release for a separate misdemeanor domestic battery, for which Barela was also the alleged victim. The State expressed concern "about the continued ongoing violence." The district court, concerned that Defendant had acquired a new charge while he was under court-ordered supervision, increased Defendant's bond from $25,000 to $50,000. At the end of the hearing, Defendant acknowledged he was not to have any contact with Barela as a condition of his release.

{5} On February 26, 2010, the district court heard Defendant's motion to review his conditions of release. Defendant asked that his bond be reduced to $25,000 cash or surety with release to a third-party custodian—his aunt or to other relatives in Las Vegas. The State argued in response that bond had already been increased to $50,000 based on a finding that Defendant was a danger to Barela and the community. The State added that Defendant had intimidated and threatened Barela on other occasions as well and reported that a separate criminal matter was pending, stemming from an August 29, 2009, incident wherein Defendant had continually called and harassed Barela, threatening to shoot her. The State also raised that Barela also believed that Defendant's family members had been following her by car on January 2 and January 6, 2010. The district court lowered Defendant's bond to $25,000 and ordered Defendant released pre-trial to the Las Vegas relatives. Again, at the conclusion of the hearing, Defendant acknowledged the court's order not to "have any contact in any manner whatsoever with [Barela]." Barela was present at the hearing.

{6} On April 6, 2010, the district court held a hearing on a new motion Defendant

had filed seeking review of his conditions of release. Defendant asked the district court to change his third-party custodian to his aunt and to reduce his bond. The State argued the $25,000 bond set by the district court was reasonable based on Defendant's lengthy history of domestic violence; he had been arrested seven times for domestic violence between 2003 and 2009. Barela was again present at the hearing. The district court denied Defendant's motion to reduce his bond, finding $25,000 was reasonable under the circumstances. The district court allowed Defendant to be released into the custody of his aunt under a continuing order that Defendant "have . . . no contact whatsoever" with Barela.

{7} On April 30, 2010, the parties stipulated to a stay of the proceedings pending a determination of Defendant's competency. At later hearings, the district court determined Defendant was not competent to stand trial and was dangerous to himself and others. The district court thus stayed the proceedings and ordered Defendant committed for evaluation and treatment to attain competency. *See* NMSA 1978, § 31-9-1.2 (1999). Defendant remained under the supervision of his aunt pending transportation for treatment to attain competency.

{8} On November 3, 2010, the day after a hearing to determine Defendant's dangerousness, the State filed an emergency motion for reconsideration of Defendant's conditions of release. The State alleged that Defendant, angry at the outcome of the dangerousness hearing, called and drove to the home of Barela's mother's boyfriend and threatened Barela's mother with a drive-by shooting. By the time police arrived at the home, the State alleged, Defendant had fled the scene. The district court convened a hearing to reconsider Defendant's conditions of release. Defense counsel was present and stated that he had attempted to contact Defendant, had communicated with Defendant's family, and was told Defendant had not returned home. Defense counsel indicated he was not waiving Defendant's presence at the hearing. In response, the State expressed concern that Defendant had allegedly carried a handgun when he threatened Barela's mother with a drive-by shooting, and the State thus asked that Defendant be held in custody until he could be transported for treatment to attain competency. Based on the State's allegations, the district court issued a bench warrant for Defendant's arrest and ordered a no-bond hold. Defendant was arrested later that day and held at the Bernalillo Country Metropolitan Detention Center.

{9} From November 10, 2010, through January 6, 2011, Barela contributed money to Defendant's detention center phone account. Partly because of those contributions, they remained in frequent contact, exchanging a total of 588 phone calls over that period.

{10} On May 5, 2011, Barela filed a notarized affidavit of nonprosecution that she had signed without her own counsel in Defendant's attorney's office, indicating that her statement to the police had been made "under pressure from the police and was written in error"; that on or about December 2, 2009, Defendant "did not intimidate [her] or threaten [her] to keep [her] from reporting the incident of December 2, 2009 to the police"; and that Defendant "did not threaten [her] or cause [her] to believe [she] was in danger of receiving an immediate battery." Then on July 1, 2011, in response to a subpoena to appear at an interview at the district attorney's office, Barela appeared with her counsel, who instructed Barela not to give a statement at the pre-trial interview. The State filed a motion to compel Barela's testimony. The district court held a hearing on the motion on September 2, 2011, and Barela was placed under oath. The State asked, "Ms. Barela, can you tell me what occurred on December 2nd of 2009 involving the defendant, Mr. Joshua Maestas?" At that point, Barela's counsel asserted Barela's Fifth Amendment right not to testify.

{11} After the hearing, the State filed a motion in limine requesting that the district court declare Barela unavailable and find that her prior statements were admissible under the doctrine of forfeiture by wrongdoing. The State contended Defendant had repeatedly called Barela from the jail, instructed her to lie for him and recant her statements, and intended to and did cause Barela's assertion of her Fifth Amendment right, rendering her unavailable to testify against him. In a written response, Defendant did not deny the content of the calls but described them as "puffing" and "not relevant to the issue of whether actions by [Defendant] caused Barela to make the affidavit[] which resulted in her asserting her privilege and ultimately in her unavailability." Defendant added he was not sophisticated enough, based on intelligence test scores, to devise that kind of plan. Furthermore, Defendant contended, Barela continued to place money on Defendant's jail account for phone calls, Barela and Defendant had "genuine feelings for each other," and Barela had recanted because she simply "wanted to right a wrong."

{12} On September 26, 2011, during a hearing on pending motions, the State asked the district court to "declare [Barela] unavailable" and stated its intention to then argue for admission of her prior statements based on a claim Defendant had forfeited his confrontation right by wrongdoing. Defendant argued that Barela's May 5, 2011, affidavit of nonprosecution "essentially recant[ed]" both her statement to the police and her grand jury testimony and accordingly had waived her Fifth Amendment right under Rule 11-511 NMRA.

{13} After discussion of whether Barela had been informed of the consequences of making voluntary statements and whether she had waived her Fifth Amendment right under Rule 11-511, the district court found Defendant's counsel had no obligation to counsel Barela before she signed the notarized affidavit in his office. The district court granted the State's request to find Barela unavailable because of her assertion of her Fifth Amendment right.

{14} The State then sought to introduce evidence of Barela's cooperation with the prosecution prior to Defendant's threatening phone calls in support of its claim of Defendant's forfeiture of his confrontation right by wrongdoing. The evidence included (1) the recording of the 911 call concerning the December 2, 2009 domestic abuse, (2) a belt tape recording of Barela's statements to the officer at the hospital, (3) the written statement Barela authored as part of the police investigation of Defendant's case, and (4) the transcript of Barela's testimony to the grand jury. The district court considered all but the 911 call, concluding the call was "not relevant" for purposes of evaluating the application of the doctrine of forfeiture by wrongdoing.

{15} The State also sought to establish Defendant's forfeiture by introducing evidence of his threats to Barela and her mother. This evidence included a CD containing the 588 phone calls—totaling more than 55 hours—that Barela had with Defendant while he was in jail and a recording of a 911 call Barela's mother had made in response to Defendant's threat that he would conduct a drive-by shooting. The district court held that any alleged threats to Barela's mother were irrelevant

for purposes of evaluating Defendant's forfeiture by wrongdoing.

{16} The district judge indicated that while he had not been provided transcripts, he had been provided the CD of the jail telephone call recordings at a prior hearing. He stated

> [t]he Court has spent over an hour listening to phone calls. That's a very good representative sample of the total of almost 56 hours of phone calls. I listened to ten in a row and I just selectively skipped through and listened to primarily the longer calls.

After that review, the district judge noted (1) Barela had added the money to Defendant's detention center phone account "to enable those calls to be made in the first place," (2) the language used on the calls was "atrocious," (3) Barela had often supported Defendant's dislike for her mother, and (4) Barela and Defendant typically said "I love you, babe" to each other at the end of each call. Based in part on those findings,

> The [c]ourt found no threats and have not been pointed to any threats by the State to the effect that, "Juliana, if you don't come in and take the Fifth or file a nonaffidavit, nonprosecution affidavit or go to Mr. Encinias' office to file an affidavit, I'm going to kill or hurt your mother." That's not the essence of these phone calls at all that I have reviewed. I'm not going to listen to 55 hours of phone calls.

{17} The district court added that "no single call has been pointed out to the Court wherein [a nonprosecution affidavit is] the subject of the conversation. . . . I found no threats that under the Forfeiture by Wrongdoing Doctrine would indicate that [Defendant] has done anything—and this is very important—with the intent to keep . . . Barela from testifying." The district court emphasized that Defendant "says all these things he's going to do if he gets out, but it's not in the context of trying to prevent her from testifying. . . . These are two people that apparently have very strong feelings for one another . . . ." And, the district court observed, on the occasion when Defendant threatened to "blow[] up" Barela's mother's house, the conversation "had no contextual setting that he was doing that to threaten . . . Barela that if she came in to court and testified then he was going to blow up her mother's house."

{18} Based on those conclusions, the district court determined that although Barela was unavailable, the State had failed to prove Defendant caused Barela's unavailability and had failed to prove Defendant intended to prevent Barela from testifying. The district court therefore denied the State's motion to admit Barela's prior statements. And based on the State's position that it could not proceed to trial without Barela's statements, the district court entered an order dismissing Defendant's charges on October 3, 2011.

{19} The State appealed. The Court of Appeals affirmed the district court's ruling. *See Maestas*, No. 31,666, mem. op. ¶ 1. The State sought further review in this Court, pursuant to Rule 12-502 (governing petitions for the issuance of a writ of certiorari). We granted certiorari to review the sole issue of "[w]hether the doctrine of forfeiture by wrongdoing requires an overt threat of harm in addition to other conduct designed to procure a witness's silence or absence."

II. STANDARD OF REVIEW

{20} The State argues that because the facts are undisputed and this case requires review of "the scope of the doctrine of forfeiture by wrongdoing" and "admissibility under the Confrontation Clause," de novo review is appropriate. Defendant argues in response that the true issue concerns the district court's factual determination that Defendant did not cause Barela's unavailability and therefore a review for abuse of discretion is appropriate.

{21} We generally review evidentiary matters for an abuse of discretion. *State v. Montoya*, 2014-NMSC-032, ¶ 15, 333 P.3d 935. "This standard of review, however, is different when a defendant's evidentiary challenge is based on constitutional rights to confrontation." *Id.* "[Q]uestions of admissibility under the Confrontation Clause are questions of law, which we review de novo." *Id.* ¶ 16 (quoting *State v. Aquilino Lopez*, 2013-NMSC-047, ¶ 7, 314 P.3d 236 (citation omitted)); *State v. Attaway*, 1994-NMSC-011, ¶ 10, 117 N.M. 141, 870 P.2d 103, (explaining that when "the relevant legal principle can be given meaning only through its application to the particular circumstances of a case," the "appellate court is reluctant to give the trier of fact's conclusions presumptive force and, in so doing, strip . . . [an] appellate court of its primary function as an expositor of law" (internal quotation marks and citation omitted) *holding modified on other grounds by State v. Richard Lopez*, 2005-NMSC-018, 138 N.M. 9, 116 P.3d 80); *see also United States v. Henderson*, 626 F.3d 326, 333 (6th Cir. 2010); *United States v. Townley*, 472 F.3d 1267, 1271 (10th Cir. 2007).

III. DISCUSSION

{22} Criminal defendants are guaranteed the constitutional right to confront the witnesses to be used against them at trial. *See* U.S. Const. amend. VI; N.M. Const. art. II, § 14. The confrontation right is robust, subject to just a few founding-era exceptions. *Crawford v. Washington*, 541 U.S. 36, 54 (2004). One of those exceptions arises when a defendant engages in certain forms of wrongdoing; and in these scenarios, the United States Supreme Court has often observed, the defendant may forfeit the confrontation right. *See, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 158 (1878); *see also Giles v. California*, 554 U.S. 353 (2008).

{23} We first considered in New Mexico the contours of the forfeiture-by-wrongdoing exception in *State v. Alvarez-Lopez*, a case where a defendant had absconded after indictment and remained a fugitive for seven years so as to avoid trial and potential incarceration. *See Alvarez-Lopez*, 2004-NMSC-030, ¶¶ 6-7, 136 N.M. 309, 98 P.3d 699. A key witness had been deported in the interim and was thus unavailable to testify when the defendant was eventually tried; had the trial happened sooner, unavailability may not have been an issue. *Id.* The state asked us to conclude, given those facts, that the defendant had forfeited his constitutional right to confront the witness. *Id.*

{24} Examining the scope of the exception, we looked first to the common-law history. *Id.* ¶ 8. We noted the federal courts had long concluded that a defendant may forfeit his confrontation right by wrongdoing on the reasoning that even the constitutional right will not allow an actor to benefit from "his own wrong." *See id.* (quoting *United States v. Mastrangelo*, 693 F.2d 269, 272 (2d Cir. 1982) (internal quotation marks omitted)). And reflecting that widespread application, we observed, the Federal Rules of Evidence had been amended in 1997 to add a hearsay exception codifying the forfeiture doctrine as applied by the courts at the time. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 9. The result of that codification was Federal Rule of Evidence 804(b)(6) (Rule 804(b)(6)), which permitted introduction at trial of certain hearsay statements, like Barela's statements at issue here, when the "statement [wa]s

offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." *Alvarez-Lopez*, 2004-NMSC-030, ¶ 9 (quoting Rule 804(b)(6) (internal quotation marks omitted)). The language of Rule 804(b)(6) has since been modified slightly. It now allows admission of statements "against a party that wrongfully caused—or acquiesced in wrongfully causing" unavailability, where the party does "so intending that result." Rule 804(b)(6).

{25} Although we had not adopted a Rule 804(b)(6) analog at the time, we observed in *Alvarez-Lopez* that we are compelled to grant defendants at least as much protection as the federal rule, derived as it is from the constitutional requirement of confrontation. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 9. And thus hewing closely to the language of Rule 804(b)(6), we held each of the following conditions must be met before forfeiture may be found: (1) a declarant was expected to be a witness, (2) the declarant became unavailable, (3) the defendant's misconduct caused the unavailability of the declarant, and (4) the defendant intended by his misconduct to prevent the declarant from testifying. *Id.* ¶ 10. And, we emphasized, unavailability resulting only in some "attenuated" way from wrongdoing will not render the forfeiture exception applicable. *Id.* ¶ 12. Instead, the exception applies only when a defendant actually intends to procure, and does procure, the unavailability of the witness by his wrongdoing. *Id.* ¶ 14. It is the state's burden, we added, to establish each of those conditions by a preponderance of the evidence. *Id.* ¶ 10.

{26} We were asked to revisit the forfeiture exception a few years later and to address the question of whether Rule 804(d)(6) and the derivative test we had adopted compels a broader forfeiture exception more closely aligned with the constitutional provisions. *See State v. Romero*, 2007-NMSC-013, ¶ 28, 141 N.M. 403, 156 P.3d 694. That might be the case, we recognized in *Romero*, for reasons of policy, or it might be the case were we willing to embrace and explore a distinction between *waiver* and *forfeiture* of the confrontation right. *Id.* But we found neither analytic avenue supported broader application of the forfeiture exception—both the Supreme Court case law and principles of policy dictate that the constitutional confrontation right applies broadly and the corresponding forfeiture exception applies narrowly and carefully, and only in cases in which "intentional wrongdoing" justifies "an equitable conclusion of forfeiture." *Id.* ¶ 34 (highlighting the "important public policy of deterring intentional wrongdoing that threatens the strength of the process in which the constitutional right operates"). *Alvarez-Lopez*, we held, continued to set the standard for forfeiture of the confrontation right by wrongdoing. *Id.* ¶ 37.

{27} Our *Alvarez-Lopez* and *Romero* analyses gained further support a year later when the United States Supreme Court recognized the common-law forfeiture exception's codification in the federal rule and added that the constitutional confrontation right must apply as broadly as we had recognized in *Romero*. *See Giles*, 554 U.S. at 367 (emphasizing the exception's intent requirement). And in 2011, given that widespread acceptance and application, we added in New Mexico an analog to the federal rule which embraced the four-condition test we had first set forth in *Alvarez-Lopez* for establishing forfeiture. *See* Rule 11-804(B)(5) NMRA. The *Alvarez-Lopez* conditions thus continue to reflect the requirements for establishing forfeiture of the confrontation right, and Defendant has given us no grounds for exploring additional state constitutional protection here that would narrow the forfeiture exception. As noted, the State bears the burden of establishing each condition by a preponderance of the evidence. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 10.

{28} We have in the past made reference to the forfeiture exception as both "rule" and "doctrine," reflecting its long history as a common-law doctrine and its more recent "codification" in the Federal Rules of Evidence. *See, e.g.*, *Alvarez-Lopez*, 2004-NMSC-030, ¶ 7 ("rule"); *see also Romero*, 2007-NMSC-013, ¶ 37 ("doctrine"); *accord Giles*, 554 U.S. at 367 ("We have described [Rule 804(b)(6)] as a rule which codifies the forfeiture doctrine." (internal quotation marks and citation omitted)). Because our focus here is on the scope of the exception to the constitutional right, our preferred descriptor is "forfeiture-by-wrongdoing exception." We have no occasion to examine here any potential distinctions between a rule-based form of the exception and the common-law form.

{29} In this case, the first two *Alvarez-Lopez* conditions were satisfied: (1) The State included Barela in its witness list, and the district court subpoenaed her to testify; and (2) Barela "became unavailable" when she asserted her Fifth Amendment right and chose not to testify. The parties and the district court do not dispute those facts. The parties do dispute, however, whether the third and fourth *Alvarez-Lopez* conditions have been satisfied—they disagree as to whether Defendant caused by misconduct Barela's unavailability and whether he intended to procure her unavailability by that misconduct. The State argues that the Court of Appeals and the district court analyzed the forfeiture exception inappropriately by requiring a showing of proof of an overt threat of harm, and it advances the theory that the doctrine applies not only to threats of physical harm "but to any means of intentionally procuring a witness's absence." Defendant responds by arguing that the lower courts did not impose a requirement of specific or overt threat, but instead, in applying the *Alvarez-Lopez* conditions, appropriately concluded that the State failed to establish wrongdoing causing and intended to cause Barela's unavailability.

{30} The language of the district court's ruling does not cleanly reveal whether a requirement of specific or overt threat was imposed. Defendant, we note, does not contend the district court *should* have imposed that requirement; both parties are apparently in agreement that both intent and causation may be established without a showing of specific or overt threat of harm. Instead, the dispute here requires resolution of related questions of what other kinds of conduct may constitute wrongdoing for purposes of establishing forfeiture, whether the conduct here sufficed, and whether the State's evidence established that the *Alvarez-Lopez* intent and causation requirements were met.

A. Wrongdoing Need Not Take the Form of Overt Threat of Harm

{31} Regarding the question of what conduct might constitute wrongdoing, we observe that nowhere in *Alvarez-Lopez* did we require an overt or specific threat of harm. *See generally Alvarez-Lopez*, 2004-NMSC-030. We did briefly, if inconclusively, examine the boundaries of the wrongdoing concept in noting that where a defendant procures unavailability "by chicanery, by threats, or by actual violence or murder, the defendant cannot then assert his confrontation clause rights." *Alvarez-Lopez*, 2004-NMSC-030, ¶ 8 (quoting *Mastrangelo*, 693 F.2d at 272-73 (2d. Cir. 1982) (internal quotation marks omitted)). That language, of course, suggests wrongdoing encompasses a variety of conduct, not all of which need constitute overt or specific

threat. We also observed that deterrence of witness intimidation is one of the "primary purposes" of the forfeiture exception, but we had no occasion then to enumerate the ways in which intimidation might occur. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 14. In the end, we assumed that absconding—even without threat—might constitute the requisite wrongdoing; but the state's forfeiture claim turned more precisely, we explained, on the questions of whether by absconding the defendant had intended to cause, and did cause, the witness's unavailability. *See id.* ¶¶ 12-13. In *Romero*, we had no occasion to consider what kinds of conduct may give rise to application of the exception; we concluded only that murder of a witness may suffice assuming the other prerequisites, including intent, have been met. *See Romero*, 2007-NMSC-013, ¶¶ 30-31. We did note, however, the forfeiture exception's "equitable limitation on the right of confrontation" typically applies when a defendant seeks to undermine our judicial process "by procuring or coercing" the unavailability of the witness. *Id.* ¶ 29 (quoting *Davis v. Washington*, 547 U.S. 813, 833 (2006) (internal quotation marks omitted)). That language bore no hint of overt threat requirement; and as in *Alvarez-Lopez*, we reiterated in *Romero* that the emphasis in making the forfeiture determination is not typically on the wrongdoing itself but on the question of whether the wrongdoing was intended to cause, and did cause, unavailability. *Id.* ¶ 37.

{32} The genesis and lengthy history of application of the forfeiture exception in federal and state case law and the exception's codification in the federal evidence rules suggest that cases from other jurisdictions may provide us additional guidance in delineating the scope of wrongdoing for purposes of forfeiture. Various courts have recognized the concepts of wrongdoing and misconduct might imply, at least superficially, a requirement of "some illegality in the defendant's actions," but they have been quick to note the great weight of case law cannot support such a restrictive understanding. *See, e.g.*, *State v. Hallum*, 606 N.W.2d 351, 356 (Iowa 2000); *see also United States v. Williams*, 443 F.3d 35, 46 (2d Cir. 2006) (noting wrongdoing "need not consist of a criminal act"); *accord People v. Pappalardo*, 576 N.Y.S.2d 1001, 1004 (N.Y. Sup. Ct. 1991) ("As the cases in this area demonstrate, the specific method used by a defendant to keep a witness from testifying is not determinative."). That reading is consistent with the advisory committee notes for Rule 804(b)(6), which explain that although "wrongdoing" is given no definition in the text of the rule, it "need not constitute a criminal act." Rule 804(b)(6) advisory committee's notes to 1997 amendment. Instead, generally any use of "coercion, undue influence, or pressure" may silence testimony and impede the truth-seeking function of trial, and thus any pressure of that kind may interfere with the background interests giving rise to the exception. *United States v. Scott*, 284 F.3d 758, 764 (7th Cir. 2002); *Steele v. Taylor*, 684 F.2d 1193, 1201 (6th Cir. 1982). While wrongful conduct thus "obviously includes" force and threat, it may also include "persuasion and control" by the wrongdoer, certain nondisclosure of information, or a command that a witness "exercise the fifth amendment privilege." *Steele,* 684 F.2d at 1201; *Scott*, 284 F.3d at 763-64; *accord United States v. Dhinsa*, 243 F.3d 635, 653-54 (2d Cir. 2001) (noting wrongful conduct includes scenarios where "the defendant . . . was involved in, or responsible for, procuring the unavailability of the declarant 'through knowledge, complicity, planning or in any other way'" (citation omitted)).

{33} In examining wrongful conduct, we must be careful to distinguish between "affirmative action" designed to produce unavailability and "simple tolerance of, or failure to foil" a third party's own decision not to appear. But that distinction typically tells us more about the causation question than whether conduct may be characterized as wrongful. *See Leif Thurston Carlson v. Att'y Gen. of Cal.*, 791 F.3d 1003, 1010-11 (9th Cir. 2015). The rationale supporting the forfeiture exception suggests the background interest in disclosing relevant information at trial is "paramount," and "any significant interference with that interest" beyond the exercise of legal rights provided the defendant by the trial or constitution may constitute wrongful conduct. *Hallum*, 606 N.W.2d at 356 (quoting *Steele*, 684 F.2d at 1201 (internal quotation marks omitted)); *accord United States v. Donald Laverne Carlson*, 547 F.2d 1346, 1359 (8th Cir.1976) ("Nor should the law permit an accused to subvert a criminal prosecution by causing witnesses not to testify at trial who have, at the pretrial stage, disclosed information which is inculpatory as to the accused."). Various forms of manipulation may satisfy that condition, and it may often be the case that the nature of the conduct is less important than the effect of the conduct on the witness's willingness or ability to testify at trial. *See United States v. Jonassen*, 759 F.3d 653, 662 (7th Cir. 2014); *Hallum*, 606 N.W.2d at 356 ("Misconduct sufficient to give rise to a forfeiture is not limited to the use of threats, force or intimidation."); *accord United States v. Mayes*, 512 F.2d 637, 650-51 (6th Cir. 1975) (finding wrongful conduct where counsel invoked witness's Fifth Amendment privilege for defendant's protection).

{34} The weight of the case law both here and elsewhere is thus clear: wrongdoing, for purposes of application of the forfeiture exception, need not take the form of an overt threat of harm. As we noted explicitly in *Alvarez-Lopez* and *Romero*, chicanery, coercion, or intimidation may satisfy under the circumstances. *See Alvarez-Lopez*, 2004-NMSC-030, ¶ 8; *see also Romero*, 2007-NMSC-013, ¶ 29. In many cases, the basic question to be answered—in cases where it may be appropriately separated from the causation and intent questions—is simply whether the defendant has actively applied pressure by persuasion, coercion, intimidation, or otherwise, that may interfere with a witness's availability or willingness to testify. *See, e.g.*, *Commonwealth v. Edwards*, 830 N.E.2d 158, 170-71 (Mass. 2005) (noting forfeiture may turn on collusion if defendant "contributed to the witness's unavailability in some significant manner"); *accord Jonassen*, 759 F.3d at 662 (highlighting "tactics rang[ing] from pleas for sympathy to bribes"). Accordingly, application of the forfeiture-by-wrongdoing exception requires no showing of overt threat of harm; it applies to any conduct intended to interfere with or undermine the judicial process. A threat of physical harm may suffice, as may persuasion, intimidation, murder, or other violent conduct. Defendant's conduct here—in the form of repeated demands for Barela to change her story and various expressions of frustration and anger when she was not immediately compliant, preceding Barela's signing, uncounseled, the affidavit of nonprosecution in Defendant's attorney's office and her refusal to testify—clearly had the potential for persuasive and coercive effect and thus constituted wrongful conduct. Application of the exception, however, requires not just wrongdoing but both intent to cause, and causation of, unavailability by that wrongdoing.

B. Principles Guiding the Intent and Causation Determinations

{35} To guide examination of the causation and intent questions on remand, we note the State offers two basic arguments in asking us to conclude both were established here. The State contends that inferences of both causation and intent may be drawn from recordings demonstrating Defendant's repeated demands that Barela recant or refuse to testify against him. The State adds that inferences of both causation and intent may be drawn from the history of domestic violence between Defendant and Barela. And, the State maintains, the district court and Court of Appeals erred in concluding that domestic violence evidence was irrelevant, in contravention of the *Giles* Court's teaching regarding the importance of that contextual evidence. In response, Defendant contends the district court correctly concluded that the State failed to prove by a preponderance of the evidence that he intended to cause and did cause Barela's unavailability. Instead, Defendant maintains, she voluntarily invoked her Fifth Amendment right.

{36} The district court may have been somewhat hamstrung in its review of these questions. While the State represented that a listing of the phone calls was attached as an exhibit to a motion filed on September 2, 2011, the listing was not attached to the motion and does not appear in the record. And in a later hearing, the district court noted that it had not been provided with transcripts of the recordings. The listing and transcripts would clearly have aided the district court in its review. Nevertheless, the district court endeavored to listen to one hour of the more than fifty-six total hours of recorded phone calls, calling it "a very good representative sample." Having engaged in that review, the district court found that while Defendant made various remarks regarding Barela's mother, Barela did not seem threatened or upset based on her responses and even ended each conversation by saying, "I love you, babe." The purpose of these phone calls, the district court found, was not to threaten and thereby prevent Barela from testifying. Instead, the court explained, "He says all these things he's going to do if he gets out, but it's not in the context of trying to prevent her from testifying. It's just not."

{37} The Special Concurrence advocates restricting the district court's review on remand to two phone calls the State properly admitted into evidence at trial, to avoid allowing the State an undeserved second bite at the apple. We disagree because on remand the district court has discretion to decide whether to utilize all of the evidence in the record or a subset, perhaps as offered by the parties on remand. We have reviewed the recordings of the calls between Defendant and Barela and identified some of the most relevant exchanges[1] in the following summary, which exemplify the types of information that may be used to address the elements of causation and intent.

{38} In one call Defendant demanded that Barela "better fucking put money on [her] phone or fucking do something," which she agreed to do. [CD 1288823715_313 at 12:59:59-13:00:01] In another call, he demanded: "You're going to get your dumb ass and go to fucking court tomorrow in the morning because I'm going back to fucking court, and you're going to tell them you're fucking lying, okay?" [CD 1288824162_324 at 12:57:26-31] Barela simply responded, "All right." [CD 1288824162_324 at 12:57:31-33] Defendant continued, "Since you fucking lie for everybody else, bitch, you're going to lie for me." As the call was cut off by the operator, Barela agreed to give Defendant more money. [CD 1288824162_324 at 12:57:34-50] On multiple occasions, he threatened Barela and her mother, telling Barela that "[Barela's mother is] going to be the next bitch missing in the mesa"; [CD 1288824923_326 at 12:59:25-29] "Your mom, I'm going to get out and fucking kill that bitch"; [CD 1288825413_326 at 12:55:53-55] and "Your mom better watch out. That's all I gotta say . . . . I can't wait 'til I get out so I can blow up your fucking house sick . . . just blow it up off the fucking foundation." [CD 1288826312_326 at 12:56:22-52] On another occasion, he asked why Barela had yet to lie for him, and she interrupted him, exclaiming, "Okay! . . . I will, okay? All right? I will." [CD 1288826652_326 at 12:55:56-56:04] Later, he directed her to go to the district attorney "tomorrow . . . first thing" and tell them that she was lying about the incident because she had a lying problem. [CD 1288833219_326 at 12:57:02-25] And Barela replied, "Oh, yeah, I know that." [CD 1288833219_326 at 12:57:34-37] In a subsequent call, Defendant pleaded with Barela to "burn the DA, to just go in there and tell them that you're lying about everything . . . . I can get out probably . . . probably about a month if you make efforts to try and try and try to do it." [CD 1288982841_124 at 13:06:52-07:04] And Barela responded, "I've been. You should have seen me today." [CD 1288982841_124 at 13:07:04-07] But Defendant then changed his mind and instructed Barela to "call the judge's secretary," identifying the judge by name. [CD 1288982841_124 at 13:07:35-42] In a subsequent call, Defendant complained that Barela was not doing enough to help him. [CD 1288995187_123 at 13:04:47-51] Defendant reiterated that she could say she was lying; in response Barela asked, as she had previously, whether Defendant would support her if he were released from jail. [CD 1288995187_123 at 13:05:10-40] Barela added that if she didn't want to help Defendant, she would not be "calling everybody" at his behest. [CD 1288995187_123 at 13:06:10-12] Defendant responded by lamenting, "I've been telling you to fucking call the DA since I first fucking came in here, haven't I?" [CD 1288995187_123 at 13:06:40-45] As the conversation heated up, Barela exclaimed that she'd "been calling [the DA], Josh! I talked to one of them. I have to talk to Susan! What part of that don't you fucking get?" [CD 1288995187_123 at 13:06:45-55] Defendant shouted angrily in response, "Call the fucking judge. Call the fucking judge. Call the fucking judge." [CD 1288995187_123 at 13:06:55-07:00] Barela began to cry in response and eventually told Defendant to find someone else to help him before ending the call abruptly. [CD 1288995187_123 at 13:07:01-38] And in another call, Defendant emphasized for Barela that he was "ready to fucking kill someone . . . . I'm tired of being fucking ratted on by bitches." Barela, crying, responded by imploring Defendant to stop calling if he continued to believe she had ratted on him. [CD 1288826550_326 at 12:59:12-30] And Barela's crying was hardly uncommon—she could frequently be heard crying at the end of their conversations.

1. Causation

{39} In determining whether the causation requirement has been satisfied in *Alvarez-Lopez*, we looked to the language of Rule 804(b)(6) for guidance, noting the language at that point required that a defendant "procure" unavailability by wrongdoing. *Alvarez-Lopez*, 2004-NMSC-030, ¶

[1]Because each call begins with the number 12888, each call we reference is identified by the last six digits (before the underscore) of the file name. The audio files do contain a time stamp, which has been included as a pinpoint reference.

12. And although the language of the rule has since changed, substituting "cause" for "procure," the basic point of *Alvarez-Lopez* remains instructive: "indirect and attenuated" consequences will not satisfy the causation condition for purposes of forfeiture. *Id.* Even tort law's familiar "but-for" principle is not typically enough in these cases; other courts have explained something more like a "precipitating and substantial" cause may be required, *see United States v. Jackson*, 706 F.3d 264, 266-67 (4th Cir. 2013) (internal quotation marks and citation omitted), and even a determination that the wrongful conduct was "the real reason" for unavailability. *Scott*, 284 F.3d at 765.

{40} At the same time, however, causation need not be established by direct evidence or testimony; rarely will a witness who has been persuaded not to testify regarding an underlying crime come forward to testify about the persuasion. *See Scott*, 284 F.3d at 764 ("It seems almost certain that, in a case involving coercion or threats, a witness who refuses to testify at trial will not testify to the actions procuring his or her unavailability."); *State v. Weathers*, 724 S.E.2d 114, 117 (N.C. Ct. App. 2012) ("It would be nonsensical to require that a witness *testify against a defendant* in order to establish that the defendant has intimidated the witness into *not* testifying.") (emphasis in original). Instead, the question must often be resolved by inference. In cases involving long-term domestic relationships, various factors may support an inference that wrongdoing has caused unavailability. The Tenth Circuit Court of Appeals, for example, has upheld a trial court's application of the exception given a history of domestic violence and violations of a no-contact order between a defendant and the witness refusing to testify. *United States v. Montague*, 421 F.3d 1099, 1102-03 (10th Cir. 2005).

{41} Courts have relied on indirect evidence of forfeiture by wrongdoing in additional contexts. *See People v. Jones*, 144 Cal. Rptr. 3d 571, 575-77 (Cal. Ct. App. 2012) (concluding forfeiture may be established based in part on the contents of threatening phone calls from jail wherein the unavailable witness, in the face of the threats, assured defendant that she "had his back"); *Roberson v. United States*, 961 A.2d 1092, 1097 (D.C. 2008) (concluding trial court could find co-conspirators had eliminated a witness when defendant, after his arrest, had spoken with conspirator "several times by telephone," had indicated shortly after the death of the witness that the conspirator had "taken care of" the witness, and had not countered the suggestion at trial that the conspirator had killed the witness); *State v. Warner*, 116 So. 3d 811, 814-815, 818 (La. Ct. App. 2013) (upholding admission of testimonial statements under the forfeiture exception when witness had received anonymous threats to which defendant may have acquiesced and then refused to testify only after contact in jail with defendant). *Cf. People v. Burns*, 832 N.W.2d 738, 745 (Mich. 2013) (overturning a trial court's admission of victim's statements under the forfeiture exception while noting that the timing of wrongdoing is important and wrongdoing conducted after the filing of criminal charges may give rise to stronger inference of causation).

{42} In this case, the nature of the relationship between Barela and Defendant may have supported an inference of causation. *Giles*, 554 U.S. at 377; *Montague*, 421 F.3d at 1103-04. The timing and circumstances surrounding Barela's assertion of the Fifth Amendment right may have also supported the inference. *Warner*, 116 So. 3d at 817. And the nature of the many conversations they had while Defendant was detained may have supported an inference, particularly given the abandonment of the immunity petition and the unlikelihood that Barela's unavailability was instead motivated by her fear of a future perjury charge. On remand, application of these and related factors should guide the determination of whether the State has established by a preponderance of the evidence that Defendant's misconduct caused Barela's unavailability and has thus satisfied *Alvarez-Lopez*'s causation requirement.

2. Intent

{43} For purposes of intent, we explained in *Alvarez-Lopez* that the party pressing the forfeiture exception need not show the wrongdoer was motivated solely by a desire to procure the witness's unavailability; instead, the proponent need only establish that the wrongdoer "was motivated *in part* by a desire" to procure the unavailability. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 13 (quoting *Dhinsa*, 243 F.3d at 654 (internal quotation marks and citation omitted)); *see also Jackson*, 706 F.3d at 269 (noting forfeiture may be warranted even if actor has "multiple motivations"). The intent required is nevertheless a specific one, as the *Giles* Court explained; the exception only applies when the actor "has in mind the particular purpose of making the witness unavailable" by his conduct. *Giles*, 554 U.S. at 367 (internal quotation marks and citation omitted). And as is the case in many contexts, the proponent need not advance direct evidence of intent because it may suffice "to infer under certain facts" that the wrongdoer intended to prevent the witness from testifying. *Alvarez-Lopez*, 2004-NMSC-030, ¶ 13.

{44} The U.S. Supreme Court has observed that a history of abuse in a relationship provides additional "highly relevant" context for ascertaining intent. *Giles*, 554 U.S. at 377 ("Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. Where such an abusive relationship culminates in murder, the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution—rendering her prior statements admissible under the forfeiture doctrine."). *See also* Clifford S. Fishman, *Confrontation, Forfeiture, and* Giles v. California*: An Interim User's Guide*, 58 Cath. U. L. Rev. 703, 729 (2009) (concluding that a majority of the fractured opinions in *Giles* held that intent to thwart witness testimony could be inferred from a history of abuse). There may often, in other words, be little "reason to doubt that the element of intention would normally be satisfied by the intent" imputed to the "domestic abuser in the classic abusive relationship, which is meant to isolate the victim from outside help, including the aid of law enforcement and the judicial process." *Giles*, 554 U.S. at 380 (Souter, J., concurring in part).

{45} Many of the facts that support an inference of causation here could likewise support an inference of intent. The history of the abusive relationship and the various threatening phone calls may themselves have "expressed" an "intent to isolate" Barela and to prevent her from cooperating with the prosecution. *Giles*, 554 U.S. at 377. The fact that Defendant repeatedly demanded that Barela lie for him and give the prosecution an account different from the one previously given may also support an inference that he intended to secure her unavailability. *See, e.g.*, *United States v. Aguiar*, 975 F.2d 45, 47-48 (2d Cir. 1992) (concluding defendant forfeited his confrontation right after he told witness

how to testify and threatened witness and witness's family). The inference may have gained strength given the timing and nature of Defendant's calls and the timing of Barela's change of heart—regardless of whether, as the district court found, the calls may have also reflected shared love and strong feelings. *See, e.g.*, *People v. Smith*, 907 N.Y.S.2d 860, 861 (N.Y. App. Div. 2010) ("The power, control, domination and coercion exercised in abusive relationships can be expressed in terms of violence certainly, but [is] just as real in repeated calls sounding expressions of love and concern."). As with the causation inquiry, application of these and related principles should guide the determination of whether the State has established by a preponderance of the evidence that Defendant's misconduct was intended to cause Barela's unavailability and has thus satisfied *Alvarez-Lopez*'s intent requirement.

IV. CONCLUSION

{46} Wrongdoing, for purposes of the forfeiture-by-wrongdoing exception, need not take the form of overt threat of harm; various forms of coercion, persuasion, and control may satisfy the requirement. And the proponent of application of the exception may establish with the aid of inference that a wrongdoer intended to cause, and did cause, the unavailability of the subject witness. We reverse the decision of the Court of Appeals and remand to the district court for further proceedings consistent with the principles set forth in this opinion.

{47} IT IS SO ORDERED.
PETRA JIMENEZ MAES, Justice

WE CONCUR:
JUDITH K. NAKAMURA, Chief Justice
CHARLES W. DANIELS, Justice
BARBARA J. VIGIL, Justice

EDWARD L. CHÁVEZ, Justice (concurring in part and dissenting in part)

CHÁVEZ, Justice (concurring in part, dissenting in part).

{48} I fully concur with the legal analysis of the forfeiture-by-wrongdoing exception. If it was not already clear that wrongdoing, for purposes of the forfeiture-by-wrongdoing doctrine, does not require evidence of an overt threat of harm but can be proven with evidence of coercion, persuasion, and/or control, the majority opinion adds clarity. However, I cannot agree with the decision of the majority to cite to evidence that was not presented to the trial court. We should not interfere with the trial court's decision on remand by cataloging calls never considered by the trial court or mentioned by the State in the proceedings below. Because the majority does so, I respectfully dissent.

{49} The State offered no testimony in support of its written motion to have the trial court apply the forfeiture-by-wrongdoing doctrine. The State simply cited generally to a "*CD of phone calls from [the] jail phone*" it attached to its motion. The State did not select the calls it relied on to prove the elements of the doctrine. The State did not provide the court with a transcript of the calls it relied on to prove the elements of the doctrine. The State did not even cite to the court where on the CD the court could find the relevant calls. The prosecutor even acknowledged that the problem with her motion was that she "didn't identify specific calls." Yet the trial court allowed the prosecutor to make a record. The prosecutor then described in general terms "two particular calls in the bundle of calls" she intended to play for the court, which she thought proved that Defendant's conduct indicated an intent to silence the witness. The State did not play the calls for the trial court. The State did not provide a transcript of the two calls. The State did not specify where on the CD the trial court could locate the calls.

{50} The CD contained 588 calls between Defendant and Barela, which took place over more than 55 hours. In an affront to standard practice, the State did not cite to any specific calls or locations within the CD that supported its motion or factual averments. The State also neglected to produce in the record on appeal an index of the calls which it claimed was attached to its motion. The majority opinion makes the polite understatement that "[t]he district court may have been somewhat hamstrung in its review of these questions" because of the State's factual presentation. *Maj. Op.* at ¶ 36.

{51} It is not the responsibility of either this Court or the trial court to search the record for evidence to support a claim or assertion. That responsibility belongs to the attorney. We usually do not disturb a trial court's findings when the substance of all pertinent evidence is not stated with proper citations to the transcripts or exhibits. *See* Rule 12-318 NMRA; *Bank of N.Y. v. Romero*, 2011-NMCA-110, ¶ 8, 150 N.M. 769, 266 P.3d 638, *rev'd on other grounds*, 2014-NMSC-007, 320 P.3d 1. The following exchange between the trial court and the prosecutor during the September 26, 2011 hearing demonstrates why we should be reluctant to reverse the trial court based on the record below and to give the State a second bite at the apple.

> THE COURT: The State's burden in this type of a proceeding is to prove that the defendant's conduct was with the intent to silence a witness; is that correct?
> MS. CALLAWAY: Yes, Judge. But I think what the Court has to do, also, is not to necessarily silence the witness. I think that we have to interpret the word silence. Because in this case the defendant was encouraging the witness to come in and lie. And that's the information that's on the jail tape.
> MS. CALLAWAY: So I'm asking the Court to listen to the jail calls. I'm not going to play 588 calls, but I have several calls that indicate what kind of conversations are being had with this witness. And I think it's important for the Court to hear that.
> THE COURT: Well, the Court has been provided with no transcripts of the recordings. And, yet, the Court was provided with a DVD or CD of the jail calls some time ago at a prior hearing, and the Court has spent over an hour listening to phone calls. That's a very good representative sample of the total of almost 56 hours of phone calls. I listened to ten in a row and I just selectively skipped through and listened to primarily the longer calls.
> The Court found no threats and have [sic] not been pointed to any threats by the State to the effect that, "Juliana, if you don't come in and take the Fifth or file a nonaffidavit, nonprosecution affidavit or go to Mr. Encinias' office to file an affidavit, I'm going to kill or hurt your mother." That's not the essence of these phone calls at all that I have reviewed. I'm not going to listen to 55 hours of phone calls. But no single call has been pointed out to the Court wherein that's the subject of the conversation.
> MS. CALLAWAY: May I make a record, Your Honor?

> THE COURT: Yes, ma'am.
> MS. CALLAWAY: Okay. Because my understanding that it is appealable.
> At this point, Judge, I would just like to point out that there were two particular calls that I intended to play for the Court today. The Court may have listened to them. I don't know. I think part of the problem may be perhaps when I submitted my motion was I didn't identify specific calls. And with 588 calls I can imagine the Court had its hands full.
> So there's two particular calls in the bundle of calls that I think do state what the Court is looking for. It does—the defendant does tell the witness that she will come to Court and lie for him. And so I don't know if the Court is willing to listen to those two particular calls. I know you've ruled, Judge, but there's two particular phone calls that would identify the threat to the victim.
> I'm looking at the list of calls that I attached to the motion. In particular, No. 6, that particular call identifies the fact that the defendant is threatening to kill the victim's mother.
> On No. 9, he threatens to blow up her house. . . .
> So perhaps the State wasn't clear in its motion. I had submitted the CD of the phone calls, but I think that those two particular phone calls sum up the State's concern with the continued contact with the victim. And so I don't know if the Court is willing to reconsider that.

{52} Ultimately the State pointed to phone call nos. 6 and 9, which as described in general terms by the State, concerned threats of violence against Barela's mother. Although the State asserted that there were calls where Defendant encouraged Barela to lie for him, the State never specifically identified such calls. The State asked for an opportunity to "make a record" after the trial court announced that it would not listen to 55 hours of calls, and the trial court granted the State permission. However, rather than playing those portions of the CD that the State considered to be pertinent, the State described the two calls in general terms. This effort to make an offer of proof was marginally adequate under Rule 11-103 NMRA. *See State v. White*, 1954-NMSC-050, ¶ 21, 58 N.M. 324, 270 P.2d 727 ("The basic reason underlying the rule of tender is directed at insuring exact knowledge on the part of the trial court of the evidentiary facts which he is called upon to admit into or exclude from consideration.").

{53} The State's appellate counsel did take the time to review the calls and cite this Court to specific portions of the CD that may support the State's argument. The trial court did not have the benefit of appellate counsel's professional work. The trial court rightfully refused to listen to all 55 hours of calls, and correctly afforded the State an opportunity to specify which calls supported the State's argument. The State failed to take advantage of the opportunity. In my opinion it is inappropriate to catalog the calls we were alerted to on appeal for two reasons. One, it condones and therefore encourages the artless practice below with the expectation that appellate counsel will salvage the case. Two, it signals to the trial court how this court wants the trial court to decide the case on remand. Instead, we should leave it to the discretion of the trial court whether to reopen the case for additional evidence or simply consider calls 6 and 9 to determine whether the State met its burden under the legal analysis in the majority opinion.

{54} However, the majority has opted to detail some of the calls it finds are "the most relevant exchanges...that may be used to address the elements of causation and intent." *Maj. Op.* at ¶ 37. Although I think it is wrong for the majority to detail and comment about these calls, *see id.* ¶¶ 38, 45, I have reproduced a portion of paragraph 38 of this Court's majority opinion as it was circulated for the votes of the Justices to illustrate an appropriate way for counsel to cite to voluminous recorded evidence.

> **{38}** In one call Defendant demanded that Barela "better fucking put money on [her] phone or fucking do something," which she agreed to do. **[CD 1288823715_313 at 11:59:59-12:00:01]** In another call, he demanded: "You're going to get your dumb ass and go to fucking court tomorrow in the morning because I'm going back to fucking court, and you're going to tell them you're fucking lying, okay?" **[CD 1288824162_324 at 11:57:26-31]** Barela simply responded, "All right." **[CD 1288824162_324 at 11:57:31-33]** Defendant continued, "Since you fucking lie for everybody else, bitch, you're going to lie for me." As the call was cut off by the operator, Barela agreed to give Defendant more money. **[CD 1288824162_324 at 11:57:34-50]**

{55} The trial court sampled approximately one hour of the over 55 hours of calls. It is clear to me that the trial court did not find the calls that are summarized in paragraph 38 of the majority opinion. I am not sure that call nos. 6 and 9, which were relied on by the State, are within the calls the majority relies on to reverse the trial court. We should not go beyond the State's offer of proof. If we are not obligated to search the record for evidence to support a party's argument, I see no reason why a trial court must do so. Yet the circulating opinion reverses the trial court because the court did not search the CD for telephone calls between Defendant and Barela that would support the State's motion. Surely the State reviewed the CD of telephone calls. The State bears the burden of proving its case, and therefore it should have reviewed the CD of telephone calls and cited to the particular calls on which it was relying. The State could also have submitted a summary to prove the content of the voluminous CD. Rule 11-1006 NMRA. Instead, the State erroneously chose to impose this burden on the trial court. The shortcut taken by the State has resulted in years of prolonged appeals with others doing the work for the Second Judicial District Attorney's office.

{56} Although I question the need for a rule that requires citation to specific portions of exhibits during motions practice, some districts have such a rule. For example, the First Judicial District Court's Local Rule LR1-305(B) NMRA, "[e]xhibits to motion, response, or reply," provides: "[o]nly relevant excerpts from affidavits or other documentary evidence shall be attached as exhibits. Pertinent portions shall be highlighted, underlined, or otherwise emphasized for the court's attention and on all copies." The same rule should apply to electronic evidence. Perhaps it is time to adopt a statewide rule mandating lawyers to do what should be an obvious best practice—cite specifically to the evidence that supports their case.

{57} In this case the State offered a general description of two phone calls for the trial court's consideration, which the trial

court did not find adequate to support the State's motion. Whether the trial court will find that either or both calls satisfy the forfeiture-by-wrongdoing exception, which we clarify today, should be for the trial court to decide. Whether the trial court, in its discretion, will allow the State to tender additional evidence, should also be for the trial court to decide.

{58} I would remand to the trial court to apply the forfeiture-by-wrongdoing exception to the evidence presented to the court in the State's offer of proof. Ordinarily a case is not remanded in order to afford a party an opportunity to supply missing evidence. *Rochez Bros., Inc. v. Rhoades*, 527 F.2d 891, 894 (3d Cir. 1975). An exception may occur when the missing evidence was the result of a misunderstanding by the court and the parties, or an ambiguity in the rules of procedure. *Id*. at 894-95. If the two calls are not adequate, I would allow the trial court to determine whether there is justification to allow the State to supply the missing evidence on remand. But I cannot agree to join my colleagues in an opinion that does the work for the prosecutor, because doing so condones and therefore encourages the artless practice that occurred in this case. For these reasons I respectfully dissent.

EDWARD L. CHÁVEZ, Justice

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Immediate opportunity in Albuquerque for a Paralegal with Real Estate experience. Experience with HOA's a plus. WordPerfect experience is highly desirable. Send resume and writing sample to: Steven@BEStstaffAbq.com

Administrative Assistant

Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) Duties include: Work together with the Administrator as a team to keep the office running smoothly. Assist the Administrator in her outcomes by performing various administrative tasks related to running of the office. Manage the building by: ordering supplies; communicating with office vendors; ensuring equipment and services are completed; IT liaison. Assist in bookkeeping tasks such as Accounts Payable entries. Various other tasks such as filing, and party-planning. Assist in scheduling meetings and travel arrangements for the attorneys. Possible assistance with marketing projects. We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. What it takes to succeed in this position: Organization, following directions, being proactive, ability to work on multiple projects, ability to listen and ask questions, intrinsic desire to achieve, no procrastination, desire to help team, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in providing support to the Administrator. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Lack of organization. Lack of drive and confidence, inability to ask questions, lack of fulfillment in role, procrastination, not being focused, too much socializing, taking shortcuts, excuses. Being easily overwhelmed by information, data and documents. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at www.HurtCallBert.com/jobs. Emailed applications will not be considered.

Legal Assistant

Established civil litigation law firm in the Journal Center area is looking for a full-time legal assistant. Must have previous legal experience, be familiar with local court rules and procedures, and be proficient in Odyssey and CM/ECF e-filing. Duties include proof reading pleadings and correspondence, drafting supporting pleadings, and providing support for multiple attorneys. Knowledge of Word, Outlook, and editing documents with Adobe Pro or eCopy software is preferred. Send resume and salary requirements to jyazza@guebertlaw.com.

Legal Assistant

Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) Legal assistant duties include support to 8 paralegals in the form of drafting basic form letters, scanning, creating mediation/arbitration notebooks, efiling, compiling enclosures and sending out letters/demand packages, follow up phone calls with clients, providers, and vendors, IPRA requests and monitoring. We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. What it takes to succeed in this position: Organization, decision making, being proactive, ability to work on multiple projects, ability to listen and ask questions, intrinsic desire to achieve, no procrastination, desire to help team and client, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in managing and filing documents and data. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Lack of drive and confidence, inability to ask questions, lack of fulfillment in role, procrastination, not being focused, too much socializing, taking shortcuts, excuses. Being easily overwhelmed by information, data and documents. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at www.HurtCallBert.com/jobs. Emailed applications will not be considered.

Paralegal

Job Title: Paralegal; Job Location: Albuquerque, NM; Job Type: Elder Law – Civil Legal Services; www.sclonm.org; Organization: Senior Citizens Law Office, Inc. (SCLO). Position Description: SCLO provides free and reduced fee legal services to Central New Mexico seniors over the age of 60. We have an opening for a part-time (20 hours per week) experienced litigation and transactional (estate planning) Paralegal who is an energetic self-starter. Requirements: Excellent organizational, computer, and word processing skills required. Also required is the ability to patiently communicate with clients over the age of 60. Ability to speak Spanish is desirable, but not required. Must possess a valid driver's license, automobile insurance, and have use of an automobile. Salary DOE. How to Apply: Applications must include a cover letter, resume, and three references. No phone calls please. Send by e-mail to: kheyman@sclonm.org. Note: SCLO is an Equal Opportunity/Affirmative Action Employer. Minorities, women, veterans and persons with disabilities are encouraged to apply. Submission Deadline: Until filled.

Receptionist

Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) Duties: To warmly and compassionately greet callers and visitors, making them feel welcome and comfortable. To make the best first, continued, and lasting impression on clients and all visitors and callers, including lawyers, doctors and other providers, witnesses, court reporters, insurance adjusters, etc. To create raving fan clients, and help the business and law practice grow and thrive. We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. What it takes to succeed in this position: Intelligence, able to handle and transfer multiple calls, warm personality, great phone voice, welcoming appearance, able to think ahead, common sense, able to diffuse a heated situation, obtaining accurate information for messages, desire to help team and client, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in managing the front desk, and being the firm's first impression. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Struggling with database, unable to handle stress, guessing instead of asking, not looking for tasks to complete between calls, unprofessional appearance, lack of fulfillment in role. Thin skin. Being easily overwhelmed by a fast pace and multiple callers and/or visitors, or by information, data and documents. Lack of drive and confidence, procrastination, not being focused, too much socializing, taking shortcuts, excuses. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at www.HurtCallBert.com/jobs. Emailed applications will not be considered.

Positions Wanted

Legal Asst/Paralegal Seeks Immediate FT Employment

Desire to work in Personal Injury area of law. Strong Work Ethic. Integrity. Albq./RR area only. Over 5 yrs exp. E-file in State & Fed Courts. Calendaring skills. Med Rec. Rqsts & Organization. Please contact 'legalassistantforhire2017@gmail.com ' for resume/references.

Office Space

UNM area/Nob Hill Professional Office Building

1930's remodeled vintage office in high traffic area one block off Central. Large, spacious rooms with lots of historic Nob Hill character including hardwood floors, floor to ceiling windows and built-in storage cabinets. 1,200 sf with two private offices, large open staff area, reception room, 500 sf partial basement, full kitchen and ¾ bath. Updated electrical, HVAC, security doors and alarm system. Tree-shaded yard in front and private 6-space parking lot in back. Ideal for professional practice: law, accounting, health care. See Craigslist ad for photos. $1,400/month with one year lease. Contact Beth Mason, bethmason56@gmail.com, 505-379-3220

Three Large Offices

Three large offices and two secretarial ares. Reception area with cathedral ceiling and skylights. Refrig. air and great parking." $850.00 per month. Please call (505) 243-4541

Individual Office Space for Rent in Santa Fe

Gas/electric/water included. Large reception area. Coffee/tea/water service provided. Access to copier. File room available at no extra cost. No smoking. Beautiful grounds. $500.00/month unfurnished or $550.00/month furnished. Contact Kathy Howington (505) 916-5558.

Shared Office Space Available – Highly Desirable Uptown Location

Beautifully furnished and spacious office suite includes your choice of 2 available large window offices and 2-3 available interior offices. Rent includes; access to 2 spacious and beautiful conference rooms, phones, fax service, internet, copy machine, janitorial service, large waiting area, kitchenette and garage parking. Class A space. Rent ranges $1,000 to $2,000 per month dependent space selections. Contact Nina at 505-889-8240 for more details.

Downtown Mid Century Office for Lease

Office condo at 509 Roma NW with reserved off street parking. Walk to all courthouses and downtown services. 4 Private offices with a conference room, kitchenette and reception. Phone, copy machine, and updated furniture included if desired. $2900/mo. Email carrie.sizelove@svn.com or call 505-203-9890. Also available for purchase.

Office for Rent in Established Firm

New and beautiful NE Heights office near La Cueva High School. Available May 1. Please contact Tal Young at (505) 247-0007.

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-State Bar of New Mexico-

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State Bar of New Mexico

The $26 resort fee has been waived for State Bar of New Mexico Annual Meeting attendees.