Official Publication of the State Bar of New Mexico

Bar Bulletin

June 27, 2018 • Volume 57, No. 26

Siberian Stripes, by Joe Weatherly www.joeweatherly.com

Inside This Issue

The *Bar Bulletin* (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

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

June 27, 2018 • Volume 57, No. 26

Table of Contents

Meetings

June

27
NREEL Section Board
Noon, teleconference

28
Trial Practice Section Board
Noon, Varies

July

10
Appellate Practice Section Board
Noon, teleconference

10
Bankruptcy Law Section Board
Noon, United States Bankruptcy Court

11
Animal Law Section Board
Noon, State Bar Center

11
Employment and Labor Law Section Board
Noon, State Bar Center

12
Business Law
4 p.m., teleconference

Workshops and Legal Clinics

June

27
Consumer Debt/Bankruptcy Workshop
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

July

6
Civil Legal Clinic
10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

18
Family Law Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

18
Common Legal Issues for Senior Citizens Workshop Presentation
10–11:15 a.m., Clayton Senior Citizens Center, Clayton, 1-800-876-6657

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

About Cover Image and Artist: Joe Weatherly is a Southern California based artist specializing in the drawing and painting of animals. His style is bold and vigorous capturing the essence and drama of the subjects he draws and paints. The attitude and expression of the animal's character along with telling a visual story is what his work conveys. Conservation of the natural world is something Weatherly is very passionate about and hopes his work will motivate people to protect it and promote its survival. Weatherly has published several books and teaches drawing part time. Some of his clients include Nickelodeon Animation, Dreamworks Feature Animation, Universal Studios, Art Center, Laguna College of Art and Design and the Academy of Art in San Francisco. His drawings and paintings hang in private collections in Europe and North America. For more of his work, visit www.joeweatherly.com.

Notices

Court News

Probate Code related to Adult Guardianship and Conservatorship Cases

On July 1, changes to the Probate Code related to Adult Guardianship and Conservatorship cases will take effect. These changes to the law apply to all adjudicated cases, pending cases and future cases. As a result of these legislative changes, there are new mandatory reporting forms and Supreme Court Rules. For ease of access to these materials visit https://adultguardianship.nmcourts.gov.

First Judicial District Court

Notice to Attorneys and Public

Effective June 11, a mass reassignment of all closed guardianship and conservatorship cases previously assigned to any Judge in the First Judicial District Court occurred pursuant to NMSC Rule 23-109, the Chief Judge Rule. The First Judicial District Court will review all guardianship and conservatorship cases to determine whether the case is "active" and requires ongoing monitoring by the newly assigned judge. 1251 cases will be assigned to each Civil Division judge for review. Division I, Hon. Francis Mathew 1251 cases, from Judge Joe Cruz Castellano Jr., Judge Timothy L. Garcia, Judge Jennifer L. Attrep, Judge James A. Hall, Judge Steve Herrera, Judge Art Encinias and Judge Roger L. Copple. Division II, Hon. Gregory Shaffer 1251 cases from Judge Daniel A. Sanchez, Judge Sheri Raphaelson, Judge Stephen Pfeffer, Judge Petra Jimenez Maes, Judge Bruce Kaufman and Judge Steve Herrera. Division III, Hon. Raymond Ortiz 1251 cases from Judge Patricio M. Serna, Judge Tony Scarborough and Judge Daniel A. Sanchez. Division VI, Hon. David Thomson 1251 cases from Judge Barbara J. Vigil, Judge Michael E. Vigil, Judge Carol Vigil, Judge Sarah M. Singleton, Judge Patricio M. Serna and Judge Tony Scarborough. Parties who have not previously exercised their right to challenge or excuse will have ten (10) days from July 11, to challenge or excuse the newly assigned judge pursuant to Rule 1-088.1.

Professionalism Tip

With respect to opposing parties and their counsel:

In depositions, negotiations and other proceedings, I will conduct myself with dignity, avoiding groundless objections and other actions that are disrupting and disrespectful.

Second Judicial District Court

Notice to Attorneys and Public

The New Mexico Supreme Court has authorized the Second Judicial District Court Clerk's Office to change its business hours effective July 1. Business hours for the Second Judicial District Court and the court information desk are Monday-Friday from 8 a.m.-5 p.m. The public service windows for the Court Clerk's Office (Children's Court, Criminal Court, Civil Court and Family Court) will be open Monday-Friday from 8 a.m.-4 p.m. The public service windows for the Domestic Violence Division and the Child Support Enforcement Division will be open Monday-Friday from 8 a.m.- noon and 1-5 p.m. The public service windows for the Center for Self Help and Dispute Resolution will be open Monday-Friday 9 a.m.-4 p.m.

Notice of Exhibit Destruction

Pursuant to 1.21.2.617 FRRDS (Functional Records Retention and Disposition Schedules-Exhibits), the Second Judicial District Court will destroy criminal exhibits associated with the following criminal case numbers filed with the Court. Cases on appeal are excluded.

CR-1988-45096; CR-1989-00034; CR-1989-00238; CR-1989-00264; CR-1989-00920; CR-1991-00634; CR-1991-01605; CR-1991-01818; CR-1991-02015; CR-1991-02346; CR-1991-02350; CR-1992-00478; CR-1992-00791; CR-1992-01491; CR-1992-01565; CR-1992-01157; CR-1992-01175; CR-1992-01643; CR-1992-01752; CR-1993-00401; CR-1993-00760; CR-1993-01271; CR-1993-02236; CR-1993-02269; CR-1993-02390; CR-1994-00099; CR-1994-00622; CR-1994-01161; CR-1994-01187; CR-1994-03093; CR-1995-00017; CR-1995-00498; CR-1995-00840; CR-1995-01138; CR-1995-01796; CR-1995-02615; CR-1995-03720; CR-1996-00074; CR-1996-01197; CR-1996-01455; CR-1996-03599; CR-1996-03600; CR-1997-00865; CR-1997-01077; CR-1997-01234; CR-1997-01357; CR-1997-01413; CR-1997-02497; CR-1997-02755; CR-1997-03912; CR-1998-01087; CR-1998-01385; CR-1998-02541; CR-1998-03601; CR-1998-03687; CR-1998-03688; CR-1998-03729; CR-1999-00313; CR-1999-01451; CR-1999-03824; CR-2000-00050; CR-2000-00675; CR-2000-00713; CR-2000-00976; CR-2000-01061; CR-2000-02360; CR-2000-02361; CR-2000-03357; CR-2000-03770; CR-2000-03771; CR-2000-03772; CR-2000-03773; CR-2000-04899; CR-2001-00727; CR-2001-02141; CR-2001-02212; CR-2001-02433; CR-2001-02549; CR-2002-00529; CR-2002-01049; CR-2002-01505; CR-2002-02668; CR-2002-03247; CR-2002-03691; CR-2003-00314; CR-2003-01216; CR-2003-02167; CR-2004-00112; CR-2004-04836; LR-2005-00006; CR-2005-04915; CR-2005-04916; CR-2006-02355; CR-2006-03370; CR-2006-04515; CR-2006-04975; CR-2006-05242; CR-2007-05057; CR-2007-05393; CR-2008-01851; CR-2008-05940; CR-2008-06296

Counsel for parties are advised that exhibits may be retrieved through July 6. Should you have questions regarding cases with exhibits, call to verify exhibit information with the Special Services Division, at 505-841-6717, from 8 a.m.-4:30p.m., Monday-Friday. Plaintiff's exhibits will be released to counsel of record for the plaintiff(s) and defendant's exhibits will be released to counsel of record for defendants(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Third Judicial District Court

Opening Clerk's Office During Lunch Hour

The Third Judicial District Court is changing the hours of operation of the Court Clerk's office to improve customer service and meet the needs of the community. Beginning July 2, the Court will remain open during the noon hour from noon-1 p.m. This change will provide public access to the Clerk's office, where visitors may obtain court records, file documents and conduct other business. The Jury Division and Self-Help Division also will be open to the public. The Court's Self-Help Center provides general information - not legal advice - for people representing themselves in civil cases and offers assistance with court forms.

The business hours of the Doña Ana County Courthouse will remain 8 a.m.-5 p.m. Monday-Friday, except holidays. To accommodate the change in hours, the Clerk's office will close to the public at 4 p.m. to allow court workers to complete daily administrative duties. The court will make arrangements to accept emergency filings after 4 p.m. and will post instructions on its website as the July 2, effective date nears for the new hours of operation.

Governor Susana Martinez
Appoints Michael Stone to Fifth Judicial District Court

Gov. Susana Martinez has appointed Michael H. Stone to fill the judgeship vacancy in Lea County, Division VII. Effective June 13, a mass reassignment of cases occurred pursuant to NMSC Rule 1-088.1. Judge Michael H. Stone was assigned all cases previously assigned to Judge Gary L. Clingman and/or Division VII of Lea County. Pursuant to Supreme Court Rule 1-088.1, parties who have not yet exercised a peremptory excusal will have 10 days from July 5, to excuse Judge Michael H. Stone.

Sixth Judicial District Court
Judicial Notice of Resignation

The Sixth Judicial District Court announces the resignation of the Hon. Timothy L. Aldrich effective Aug. 10. A Judicial Nominating Commission will be convened in Silver City, New Mexico in August/September to interview applicants for the vacancy. Further information on the application process can be found on the Judicial Selection website (http://lawschool.unm.edu/judsel/index.php). Updates regarding the vacancy and the news release will be posted soon.

State Bar News
Animal Law Section
Animal Talk: Audubon Society

2018 is the 100th anniversary of the enactment of the Migratory Bird Treaty Act and the "Year of the Bird" as declared by the Audubon Society. The MBTA prohibits "take" of protected migratory bird species. Until December 2017, the prohibitions on "take" included incidental take. The U.S. Department of Justice prosecuted individuals and businesses for violations of the MBTA take provisions. On Dec. 22, 2017, the U.S. Department of Interior Solicitor issued an opinion redefining "take" to exclude incidental take. What effect will the opinion have on MBTA enforcement? Join Jonathan Hayes, Executive Director New Mexico Audubon Society, at noon on June 29 at the State Bar Center to learn more. R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

Appellate Practice Section
Luncheon with Judge Gallegos

Join the Appellate Practice Section for a brown bag lunch at noon, July 13, at the State Bar Center with guest Judge Daniel Gallegos of the New Mexico Court of Appeals. The lunch is informal and is intended to create an opportunity for appellate practitioners to learn more about the work of the Court. Those attending are encouraged to bring their own "brown bag" lunch. R.S.V.P. to Carmela Starace at cstarace@icloud.com.

Board of Bar Commissioners
Rocky Mountain Mineral Law Foundation Board

The president of the State Bar is required to appoint one attorney to the Rocky Mountain Mineral Law Foundation Board for a three-year term. The appointee is expected to attend the Annual Trustees Meeting and the Annual Institute, make annual reports to the appropriate officers of their respective organizations, actively assist the Foundation on its programs and publications and promote the programs, publications and objectives of the Foundation. Members who want to serve on the board should send a letter of interest and brief résumé by July 2 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Children's Law Section
Tools to Stabilize and Protect Immigrant Clients

Come learn about tools to stabilize and protect immigrant clients and their families who are at risk of deportation during a noon knowledge presentation on July 13, in the Chama Room at Juvenile Court. Jessica Martin will introduce attendees to a holistic approach to serving clients who are immigrants which involves screening for basic forms of immigration relief and educating clients on their rights in the event of contact with or apprehension by Immigration and Customs Enforcement. Guests are invited to bring their own brown-bag lunch.

Committee on Women and the Legal Profession
Nominations Open for 2017 Justice Pamela Minzner Award

The Committee on Women and the Legal profession seeks nominations of New Mexico attorneys who have distinguished himself or herself during 2017 by providing legal assistance to women who are underrepresented or under served, or by advocating for causes that will ultimately benefit and/or further the rights of women. If you know of an attorney who deserves to be added to the award's distinguished list of honorees, submit 1-3 nomination letters describing the work and accomplishments of the nominee that merit recognition to Quiana Salazar-King at Salazar-king@law.unm.edu by June 29. The award ceremony will be held on Aug. 30 at the Albuquerque Country Club. This award is named for Justice Pamela B. Minzner, whose work in the legal profession furthered the causes and rights of women throughout society. Justice Minzner was the first female chief justice of the New Mexico Supreme Court and is remembered for her integrity, strong principals, and compassion. Justice Minzner was a great champion of the Committee and its activities.

Legal Resource for the Elderly Program
Three Upcoming Legal Workshops

The State Bar of New Mexico's Legal Resources for the Elderly Program (LREP) is offering three free legal workshops in Clayton July 18, 10 a.m.-1 p.m., at Clayton Senior Citizens Center, Raton July 19, 10 a.m.-1 p.m., at Raton Senior Center and Roswell July 26, 10 a.m.-1 p.m., at Chaves County Joy Center. Call LREP at 800-876-6657 for more information.

Legal Services and Programs Committee

Committee Appointments

The Legal Services and Programs Committee seeks statewide members for appointment to the Committee. The Committee meets approximately five times year (in-person and by teleconference) and coordinates the annual New Mexico high school student Breaking Good Video Contest, administers Equal Justice Conference attendance stipends and organizes and staffs a tech legal fair in coordination with the Bernalillo County Metro Court Civil Legal Clinic held on the second Friday of each month in order to provide free legal advice to residents across the state. Committee membership is open to attorneys, legal service provider staff, paralegals, and law student members. Visit
https://form.jotform.com/sbnm/CommitteeAppointments
to express interest in serving on the LSAP Committee.

New Mexico Judges and Lawyers Assistance Program

Attorney Support Groups

- July 2, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- July 9, 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#.
- July 16, 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.

Young Lawyers Division

Homeless Legal Clinics in Albuquerque and Santa Fe

The Homeless Legal Clinic is open in Albuquerque from 9-11 a.m. (orientation at 8:30 a.m.), on the third Thursday of each month, at Albuquerque Healthcare for the Homeless, located at 1220 First Street NW and in Santa Fe from 10 a.m.-noon each Tuesday, at the St. Elizabeth Shelter, located at 804 Alarid Street in Santa Fe. Volunteer attorneys are needed to staff the clinics, serve as an "information referral resource" and join the pro bono referral list. For those staffing the clinic or providing other services, a trained attorney will assist you until you feel comfortable by yourself. Even if you are a new lawyer, you will be surprised at how much you have to offer these clients and how your help can make such a major difference in their lives. Visit www.nmbar.org/HLC to volunteer. Direct questions to YLD Region 2 Director Kaitlyn Luck at luck.kaitlyn@gmail.com.

Santa Fe Wills for Heroes

The YLD seeks volunteer attorneys and non-attorneys for a Wills for Heroes event for Santa Fe first-responders from 9 a.m.-12:30 p.m., July 21, at the Santa Fe County District Attorney's Office located at 327 Sandoval St. #2 in Santa Fe. Volunteers should arrive at 8:30 a.m. for breakfast and orientation. Attorneys will provide free wills, healthcare and financial powers of attorney and advanced medical directives for first responders. Paralegal and law student volunteers are needed to serve at witnesses and notaries. Visit www.nmbar.org/WillsForHeroes to volunteer.

2018 Annual Meeting

Resolutions and Motions

Resolutions and motions will be heard at 1 p.m., Aug. 9, at the opening of the State Bar of New Mexico 2018 Annual Meeting at the Hyatt Regency Tamaya Resort & Spa, Santa Ana Pueblo. To be presented for consideration, resolutions or motions must be submitted in writing by July 9 to Executive Director Richard Spinello, PO Box 92860, Albuquerque, NM 87199; fax to 505-828-3765; or email rspinello@nmbar.org.

UNM School of Law

Law Library Hours

Summer 2018 Hours
May 12-Aug. 19

Building and Circulation	
Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.

Other Bars

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.

Nominations for NMDLA Annual Awards

The New Mexico Defense Lawyers Association is now accepting nominations for the 2018 NMDLA Outstanding Civil Defense Lawyer and the 2018 NMDLA Young Lawyer of the Year awards. Nomination forms are available on line at www.nmdla.org or by contacting NMDLA at nmdefense@nmdla.org. Deadline for nominations is July 27. The awards will be presented at the NMDLA Annual Meeting Luncheon on September 28th, at the Hotel Andaluz, in Downtown Albuquerque.

Albuquerque Bar Association

Membership Luncheon

The Albuquerque Bar Association will be holding its July Luncheon on July 10, from noon-1 p.m. at the Hyatt Regency Albuquerque 330 Tijeras NW, Albuquerque, NM, 87102. This Lunch will feature a forum of the major party candidates for the 1st Congressional District. The Lunch is $30.00 for members of the Albuquerque Bar Association and $40.00 for non-members. There is a 5.00 charge for walk-ups and day-of registration. To register please contact the Albuquerque Bar Association's interim executive director Deborah Chavez at dchavez@vancechavez.com or 505-842-6626 or send a check to:
Albuquerque Bar Association PO Box 40, Albuquerque NM 87103

First Judicial District Bar Association

Santa Fe Fuego take on the Roswell Invaders

Join the First Judicial District Bar Association on June 28, at 6 p.m., Fort Marcy Ballpark. This evnt is sponsored by FJBA. All members, families and friends are invited to this free game. Come see which member will sing the national anthem and which member will throw the first pitch. R.S.V.P. and FJBA will send you your tickets before the game or provide your tickets at the gate. Check out the Santa Fe Fuego online before the game at http://www.santafefuego.com. To R.S.V.P. or for more information contact Caitlin Dupuis at cdupuis@cmtisantafe.com

American Bar Association

Conquering Adversity and the Imposter Syndrome

The ABA Commission on Lawyer Assistance Programs presents a free CLE webinar, "The Solo/Small Firm Challenge: Conquering Adversity and the Imposter Syndrome" at 1 p.m. ET on July 16. Imposter syndrome, or the feeling of phoniness in people who believe they are not intelligent, capable or creative despite evidence of high achievement, creates a perfect storm of insecurity, anxiety and stress. Lawyers, especially those in solo practices or small firms, can become paralyzed by these thoughts. This program will discuss what imposter syndrome is, how it can affect competence and judgment as a lawyer and strategies for beginning to overcome it. Register now at ambar.org/impostersyndrome.

Submit announcements
for publication in the *Bar Bulletin* to **notices@nmbar.org** by noon Monday the week prior to publication.

Legal Education

June

27 **Roadmap/Basics of Real Estate Finance, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Roadmap/Basics of Real Estate Finance, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Social Media as Investigative Research and Evidence**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

29 **The Ethics of Social Media Research**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Fourth Annual Symposium on Diversity and Inclusion – Diversity Issues Ripped from the Headlines, II (2018)**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **New Mexico DWI Cases: From the Initial Stop to Sentencing; Evaluating Your Case (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Abuse and Neglect Case in Children's Court (2018)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

July

3 **Employment Investigations: Figuring it Out/Avoiding Liability**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

6 **Baskets and Escrow in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 **Selection and Preparation of Expert Witnesses in Litigation**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 **Protecting Subtenant Clients in Leasing**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **Roadmap of VC and Angel, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Disaster Planning and Network Security for a Law Firm**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Roadmap of VC and Angel, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Ethics for Business Lawyers**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

20 **Changing Minds Inside and Out of the Courtroom**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

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

2018 STATE BAR OF NEW MEXICO Annual Awards

Congratulations to the 2018 recipients!

The State Bar of New Mexico Annual Awards recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2017 or 2018. The Annual Awards will be presented during the 2018 Annual Meeting on Friday, Aug. 10, at the Hyatt Regency Tamaya Resort, Santa Ana Pueblo.

{ Distinguished Bar Service Award–Lawyer }

Ruth O. Pregenzer

{ Distinguished Bar Service Award–Nonlawyer }

Jim Jackson

{ Justice Pamela B. Minzner* Professionalism Award }

Charles J. Vigil

{ Outstanding Program Award }

Family Support Services Program

{ Outstanding Young Lawyer of the Year Award }

Shammara H. Henderson

{ Robert H. LaFollette* Pro Bono Award }

Susan E. Page

{ Seth D. Montgomery* Distinguished Judicial Service Award }

Justice Charles W. Daniels

For more information, visit **www.nmbar.org/annualmeeting.**

STATE BAR of NEW MEXICO

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective June 15, 2018

PUBLISHED OPINIONS

A-1-CA-34961	A Lueras v. Geico	Affirm	06/14/2018
A-1-CA-35661	D Epps v. Geico Indemnity	Affirm	06/14/2018

UNPUBLISHED OPINIONS

A-1-CA-35953	CYFD v. Elizabeth B	Affirm	06/11/2018
A-1-CA-36834	A Heemsbergen v. J Givan	Affirm	06/11/2018
A-1-CA-35010	Bank of NY v. D Eaton	Affirm	06/12/2018
A-1-CA-36268	State v. T Young	Affirm	06/12/2018
A-1-CA-35012	State v. C Schattsneider	Affirm	06/13/2018
A-1-CA-35232	J Roberts v. C George	Affirm	06/13/2018
A-1-CA-36604	State v. N Ochoa	Affirm	06/13/2018
A-1-CA-36812	A Sanchez v. Smiths Food	Affirm	06/13/2018
A-1-CA-37085	CYFD v. Finndelvh B.	Affirm	06/13/2018
A-1-CA-35521	State v. B Trujillo	Affirm	06/14/2018

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

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective June 27, 2018

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

There are no proposed rule changes currently open for comment.

Recently Approved Rule Changes Since Release of 2018 NMRA:

Effective Date

Rules of Civil Procedure for the District Courts

1-003.2	Commencement of action; guardianship and conservatorship information sheet	07/01/2018
1-079	Public inspection and sealing of court records	07/01/2018
1-079.1	Public inspection and sealing of court records; guardianship and conservatorship proceedings	07/01/2018
1-088.1	Peremptory excusal of a district judge; recusal; procedure for exercising	03/01/2018
1-104	Courtroom closure	07/01/2018
1-140	Guardianship and conservatorship proceedings; mandatory use forms	07/01/2018
1-141	Guardianship and conservatorship proceedings; determination of persons entitled to notice of proceedings or access to court records	07/01/2018

Civil Forms

4-992	Guardianship and conservatorship information sheet; petition	07/01/2018
4-993	Order identifying persons entitled to notice and access to court records	07/01/2018
4-994	Order to secure or waive bond	07/01/2018
4-995	Conservator's notice of bonding	07/01/2018
4-995.1	Corporate surety statement	07/01/2018
4-996	Guardian's report	07/01/2018
4-997	Conservator's inventory	07/01/2018
4-998	Conservator's report	07/01/2018

Rules of Criminal Procedure for the District Courts

5-302A	Grand jury proceedings	04/23/2018

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

Certiorari Denied, March 16, 2018, No. S-1-SC-36899

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-031

No. A-1-CA-33064 (filed January 23, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
LAWRENCE BRANCH,
Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
William C. Birdsall, District Judge

HECTOR H. BALDERAS,
Attorney General
MARIS VEIDEMANIS,
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

BENNETT J. BAUER,
Chief Public Defender
MARY BARKET,
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

Linda M. Vanzi, Judge

{1} Defendant appeals his convictions for aggravated battery with a deadly weapon, negligent use of a deadly weapon, and aggravated assault with a deadly weapon. On May 23, 2016, we issued an opinion affirming in part, reversing in part, and remanding for the district court to document its findings related to the serious violent offense designation. *State v. Branch*, 2016-NMCA-071, 387 P.3d 250. The Supreme Court granted a writ of certiorari and conditional cross-petition on July 28, 2016. Order at 1, *State v. Branch*, No. S-1-SC-35951 (July 28, 2016). The Court subsequently quashed the writ of certiorari on Defendant's petition, and quashed and remanded this case to this Court on the State's conditional cross-petition after deciding issues related to whether the firearm enhancements on sentences for aggravated assault with a deadly weapon violated double jeopardy in *State v. Baroz*, 2017-NMSC-030, ¶¶ 20-27, 404 P.3d 769. In that case, our Supreme Court noted that "[t]he legislative policy behind the firearm sentence enhancement is that a noncapital felony, committed with a firearm, should be subject to greater punishment than a noncapital felony committed without a firearm because it is more reprehensible." *Id.* ¶ 27. Consequently, because the Legislature intended to authorize an enhanced punishment when a firearm is used in the commission of aggravated assault, the Court held that "[t]he sentence enhancement does not run afoul of double jeopardy." *Id.*

{2} On remand, we withdraw the opinion issued on May 23, 2016, and substitute this opinion in its stead.

{3} As we noted in our original opinion, there is no question that Defendant Lawrence Branch shot and injured his adult son, Joshua Branch, with a .44 caliber revolver. Defendant confessed to the shooting and was charged with aggravated battery with a deadly weapon and negligent use of a deadly weapon. He was also charged with aggravated assault with a deadly weapon for allegedly assaulting his wife, Patricia Branch, on the theory that Defendant's conduct caused Patricia to reasonably believe that he was about to batter her as well. The key issue at trial was whether the shooting, which was the basis for all three charges, was in self defense.

{4} The jury ultimately convicted Defendant on all counts. Penalties for aggravated battery and aggravated assault were each increased by one year pursuant to the statutory firearm enhancement. NMSA 1978, § 31-18-16(A) (1993). The district court then adjudged the aggravated assault conviction to be a "serious violent offense," which limits Defendant's eligibility for good time credit for time served in a state prison. *See* NMSA 1978, § 33-2-34(A)(1) (2006, amended 2015).

{5} On appeal, Defendant argues that (1) insufficient evidence and instructional error require reversal of the aggravated assault conviction, (2) multiple punishments violate Defendant's right to be free from double jeopardy, (3) discovery and evidentiary rulings undermined Defendant's ability to present a defense and to confront the State's evidence with respect to all charges, and (4) the serious violent offense designation to the aggravated assault conviction lacks necessary findings. In our original opinion, we affirmed Defendant's convictions for aggravated assault and aggravated battery, vacated his conviction for negligent use of a deadly weapon, and remanded for the district court to document its findings related to the serious violent offense designation. The Supreme Court order quashed the writ of certiorari on the questions presented in Defendant's petition on the above issues, and they are no longer subject to further consideration. *See* Order at 2, *State v. Branch*, No. S-1-SC-35951 (Dec. 18, 2017). On remand, and in light of *Baroz*, however, we hold that Defendant's firearm enhancements for aggravated assault and aggravated battery do not violate double jeopardy and that the district court's decision in this regard is affirmed.

BACKGROUND

{6} By all accounts, Joshua and Defendant spent the morning of May 7, 2012, arguing in the front yard, as they often did, about how best to care for the property they occupied in separate trailers. Joshua, who was a college student in the spring of 2012, left in the middle of the argument to take an exam. The argument resumed upon his return and ended when Defendant fired a single shot, striking Joshua in the thigh. Joshua's injuries resulted in five surgeries and ongoing issues with circulation and limb function. He was on crutches when he testified for the State at trial a year later.

{7} The specific circumstances surrounding the shooting were contested below. The State's witnesses testified that Defendant was visibly upset—"aggravated, agitated"—that morning. When Joshua finished his exam and returned to his

parents' trailer, Defendant, with "hatred in his voice," told him to "get . . . off the property." The two then shouted back and forth before Joshua attempted to leave. Joshua and Patricia walked toward the concrete slab that surrounded the steps to the porch. He had plans to meet his girlfriend for lunch, and Patricia, attempting to ease the tension, told him to do that. But as Joshua and Patricia talked near the front steps, Defendant walked past them into the house.

{8} At some point prior, two guns—including a .44 caliber super blackhawk (described as a "hand cannon" by one witness)—were moved from their usual spot in a closet at the back of the trailer and stashed in Defendant's recliner, which faced the trailer's front entrance. Defendant armed himself with the .44 within seconds of entering the trailer and then walked back to the front door. Steven Hickman, a family friend who was visiting the Branch home that day, testified that Defendant "went to the door and then [said] 'get . . . out of here' and then bang, just like that, that quick, the gun was fired."

{9} Patricia testified that she had her hand on Joshua's shoulder when he was shot. The two were facing one another when she looked up and saw Defendant standing in the doorway with the .44. She hollered, "No!" And Defendant fired. She saw the "fire come out" of the gun, felt something hit her leg, and saw Joshua fall. She testified that she "thought he was going to shoot all of us."

{10} While Joshua lay bleeding on the pavement, Defendant came out of the trailer and placed a set of keys on the dash of a car that was parked under the carport. He then looked over to Patricia, turned, and walked up the road, stopping only to dispose of his pocket knife in a flower pot on the way out. Patricia did not see Defendant again that day.

{11} Defendant's version of events differed in some respects. He testified that he was sitting with Patricia on a swing in the yard when Joshua returned from school. Defendant, who no longer wanted to argue, told Joshua that he would leave. When Defendant stood to do so, he saw that Joshua was furious. As Defendant walked toward the trailer, he saw Joshua and Patricia coming toward him. He entered the house and saw Joshua outside, nearing the porch and then reaching for the rail by the door. Defendant was frightened because he knew that Joshua was a "violent kid" with post traumatic stress disorder (PTSD) who had been in several fights before, including a fight in the military. He armed himself with the .44 and shot Joshua, who then released the rail and fell to the concrete. Additional facts will be included as needed in the analysis that follows.

DISCUSSION

A. Instructional Error and Sufficiency of the Evidence

{12} Assault consists of "any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery[.]" NMSA 1978, § 30-3-1(B) (1963). The offense is aggravated when, as in this case, it is committed with a deadly weapon. NMSA 1978, § 30-3-2(A) (1963). Defendant argues that Section 30-3-1(B) required the State to prove something more than general criminal intent, which was the instruction given to the jury. Specifically, Defendant argues that the State had to prove "specific intent to frighten or put someone in fear of an imminent battery[,]" or at the very least, that one charged with violating Section 30-3-1(B) did so recklessly. Reading limiting principles of this sort into the statute would theoretically ensure some nexus between a defendant and his victim, thereby preventing what might otherwise amount to a construction of the assault statute that criminalizes the infliction of emotional distress for every bystander that is reasonably put in fear by the commission of a nearby crime.

{13} Defendant's argument is characterized as a sufficiency of the evidence challenge, as a challenge to the jury instructions themselves, and as an assertion of ineffective assistance of trial counsel in failing to request more demanding jury instructions. "Our review for sufficiency of the evidence is deferential to the jury's findings. We review direct and circumstantial evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Webb*, 2013-NMCA-027, ¶ 14, 296 P.3d 1247 (alteration, internal quotation marks, and citations omitted). With respect to jury instructions, we review for reversible error when an instruction is preserved and for fundamental error when not. *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134. Whether preserved or not, however, Defendant's contention ultimately raises an issue of statutory interpretation, for which our review is de novo. *State v. Tafoya*, 2012-NMSC-030, ¶ 11, 285 P.3d 604; *see also State v. Osborne*, 1991-NMSC-032, ¶ 40, 111 N.M. 654, 808 P.2d 624 ("[I]t is the duty of the court, not the defendant, to instruct the jury on the essential elements of a crime.").

{14} Defendant's view of Section 30-3-1(B) has some merit. At common law, "[a] criminal assault was an attempt to commit a battery. A tortious assault was an act which put another in reasonable apprehension of immediate bodily harm." *United States v. Dupree*, 544 F.2d 1050, 1051 (9th Cir. 1976) (per curiam) (citation omitted). The latter type—reasonable apprehension assault—has since been made a crime in many jurisdictions, which have normally adopted specific intent requirements rooted in the offense's history as an intentional tort. *Carter v. Commonwealth*, 594 S.E.2d 284, 287-88 (Va. Ct. App. 2004); *see, e.g.*, *Robinson v. United States*, 506 A.2d 572, 575 (D.C. 1986) ("An intent to frighten is sufficient[.]"); *Lamb v. State of Maryland*, 613 A.2d 402, 413 (Md. Ct. Spec. App. 1992) ("An assault of the intentional frightening variety . . . requires a specific intent to place the victim in reasonable apprehension of an imminent battery."); *Commonwealth v. Spencer*, 663 N.E.2d 268, 271 (Mass. App. Ct. 1996) ("[P]roof of an intent to cause fear is required."); *accord* Model Penal Code § 211.1(1)(c) (2015) ("A person is guilty of assault if he . . . attempts by physical menace to put another in fear of imminent serious bodily injury."). This apparent uniformity in other jurisdictions has prompted one leading treatise to categorically declare that "[t]here must be an actual intention to cause apprehension, unless there exists the morally worse intention to cause bodily harm." 2 Wayne R. LaFave & David C. Baum, *Substantive Criminal Law* § 16.3(b), at 569 (2d ed. 2003).

{15} But that is not the law of New Mexico. In *State v. Cruz*, this Court held that specific intent is not an essential element of aggravated assault. 1974-NMCA-077, ¶ 7, 86 N.M. 455, 525 P.2d 382. As a principle of construction, when a statute does not refer to intent, which is the case with Section 30-3-1(B), we normally presume that the only mens rea involved is that of conscious wrongdoing—commonly referred to as "general criminal intent." *State v. Campos*, 1996-NMSC-043, ¶ 56, 122 N.M. 148, 921 P.2d 1266 (Franchini, J., dissenting). We applied that presumption to aggravated assault in *Cruz*, and in *State v. Cutnose*, 1974-NMCA-130, ¶¶ 19-20, 87 N.M. 307, 532 P.2d 896. *Cf. State v. Mascarenas*, 1974-

NMCA-100, ¶¶ 11-12, 86 N.M. 692, 526 P.2d 1285 ("[I]nstructions in the language of the statute sufficiently instruct on the required intent.").

{16} In *State v. Manus*, our Supreme Court—apparently persuaded by that reasoning—confirmed that general criminal intent is all that is required to support a conviction of aggravated assault under Section 30-3-1(B). *State v. Manus*, 1979-NMSC-035, ¶ 12, 93 N.M. 95, 597 P.2d 280, *overruled on other grounds by Sells v. State*, 1982-NMSC-125, ¶¶ 9-10, 98 N.M. 786, 653 P.2d 162. The arguments made in *Manus*, which was also a bystander-assault case, are nearly identical to those presented here. A police officer and a bystander were filling out an accident report when the defendant approached and killed the officer with a shotgun. *Id.* ¶ 3. The defendant was charged with killing the officer and assaulting the bystander on the theory that the bystander was put in reasonable fear of receiving an immediate battery. *Id.* ¶¶ 1, 14.

{17} The defendant argued that his conviction for aggravated assault of the bystander could not stand because "there was no evidence of any intentional assault directed at [her]." *Id.* ¶ 12. Our Supreme Court rejected that argument, holding that "[t]he [s]tate was not required to prove that [the defendant] intended to assault [the bystander], but only that he did an unlawful act which caused [the bystander] to reasonably believe that she was in danger of receiving an immediate battery, that the act was done with a deadly weapon, and that it was done with general criminal intent." *Id.* ¶ 14; *see State v. Morales*, 2002-NMCA-052, ¶ 36, 132 N.M. 146, 45 P.3d 406 ("To convict [the d]efendant of aggravated assault on a peace officer, the [s]tate was not required to prove that [the d]efendant intended to injure or even frighten [the officer]."), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110; *see also United States v. Rede-Mendez*, 680 F.3d 552, 557 (6th Cir. 2012) ("The New Mexico version of aggravated assault differs from the generic version most significantly in the mens rea it attaches to the element of bodily injury or fear of injury."); *United States v. Silva*, 608 F.3d 663, 675 (10th Cir. 2010) (Hartz, J., dissenting) ("[A] person [in New Mexico] who intentionally handles a weapon in a manner that induces a fear of battery can be guilty of assault even if he merely wants to show off his dexterity in handling the weapon, without any interest in inducing fear.").

{18} The expansive application of assault in *Manus* controls our construction of Section 30-3-1(B). In accordance with the language of the statute, the State was only required to prove that Defendant "did an unlawful act which caused [the bystander] to reasonably believe that she was in danger of receiving an immediate battery, that the act was done with a deadly weapon, and that it was done with general criminal intent." *Manus*, 1979-NMSC-035, ¶ 14. There is no nexus required between Defendant and Patricia. Liability under the statute is only limited by the requisite mental state of conscious wrongdoing and by the requirement that the victim's fear must be reasonable. *See id.*

{19} Evidence was presented that Defendant's behavior on the day of the shooting was generally threatening. He was "aggravated, agitated at something" on that day; he had "hatred in his voice." He was in the midst of an ongoing argument with Joshua that had taken a turn for the worse. He spent the morning acting erratically—driving around the yard on a backhoe, threatening to "plow Joshua's house down." He demanded that Patricia choose between him and Joshua, but she refused to do so. His demeanor prior to the shooting frightened Patricia.

{20} According to his own version of events, Defendant ascended the porch steps and saw Joshua coming toward the trailer with Patricia "behind him." Steven and Patricia testified that Defendant armed himself within "a couple of seconds" and shot Joshua while Patricia was standing right next to him. Patricia testified that she saw the muzzle flash, felt something hit her leg, and "thought he was going to shoot all of us." We view this testimony in the light most favorable to the State. *See Webb*, 2013-NMCA-027, ¶ 14. While Defendant's version of events differs in some respects, it was for the jury to weigh the credibility of the witnesses and resolve any conflicts in the testimony. *See id.* The jury could conclude that Defendant committed an unlawful act (shooting Joshua), which caused Patricia—who had witnessed the day's events and was "standing right next to" Joshua when the shooting occurred—to reasonably believe that she was also going to be shot. The jury was properly instructed on general criminal intent. Nothing more is required. *See Manus*, 1979-NMSC-035, ¶ 14.

{21} Defendant makes one additional (and related) argument with respect to the sufficiency of the evidence for the aggravated assault conviction. He contends that the evidence failed to establish that he made any threat or exhibited any menacing conduct toward Patricia, which he argues is required by the statute. Defendant misreads Section 30-3-1(B). Assault consists of "any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery[.]" *Id.* The commission of an "unlawful act" is an alternative method of committing the offense that does not rely on threatening or menacing conduct. *See Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 9, 110 N.M. 314, 795 P.2d 1006 ("[T]he word 'or' should be given its normal disjunctive meaning unless the context of a statute demands otherwise."). It was, in fact, the prong of the statute applied in *Manus*, where the state was not required to prove any threat—or any conduct at all—directed toward the bystander. 1979-NMSC-035, ¶ 14. There is abundant evidence to support a finding that Defendant acted unlawfully when he shot Joshua.

B. Double Jeopardy

{22} We next turn to the various double jeopardy issues that Defendant raises. The constitution protects against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6, 112 N.M. 3, 810 P.2d 1223. There are two types of multiple punishment cases: (1) unit of prosecution cases, in which an individual is convicted of multiple violations of the same criminal statute; and (2) double-description cases, in which a single act results in multiple convictions under different statutes. *Id.* ¶¶ 8-9. Defendant's arguments, involving separate statutes, raise only double-description concerns.

{23} Our courts apply a two-step inquiry to double-description claims. *Id.* ¶ 25. First, we analyze the factual question, "whether the conduct underlying the offenses is unitary, *i.e.*, whether the same conduct violates both statutes[,]" and if so, we consider the legal question, "whether the [L]egislature intended to create separately punishable offenses." *Id.* "If it reasonably can be said that the conduct is unitary, then [we] must move to the second part of the inquiry. Otherwise, if the conduct is separate and distinct, [the] inquiry is at an end." *Id.* ¶ 28.

{24} Because it is undisputed that this case involves unitary conduct (the firing of a single shot) that resulted in multiple convictions, our analysis will be limited to

the question of legislative intent. "Determinations of legislative intent, like double jeopardy, present issues of law that are reviewed de novo, with the ultimate goal of such review to be facilitating and promoting the [L]egislature's accomplishment of its purpose." *State v. Montoya*, 2013-NMSC-020, ¶ 29, 306 P.3d 426 (alterations, internal quotation marks, and citation omitted). When, as here, the statutes themselves do not expressly provide for multiple punishments, we begin by applying the rule of statutory construction from *Blockburger v. United States*, 284 U.S. 299 (1932), to determine whether each provision requires proof of a fact that the other does not. *Swafford*, 1991-NMSC-043, ¶¶ 10, 30. If not, one offense is logically subsumed within the other, and "punishment cannot be had for both." *Id.* ¶ 30.

{25} In *State v. Gutierrez*, our Supreme Court modified the *Blockburger* analysis for double jeopardy claims involving statutes that are "vague and unspecific" or "written with many alternatives." 2011-NMSC-024, ¶¶ 58-59, 150 N.M. 232, 258 P.3d 1024 (emphasis, internal quotation marks, and citation omitted). Accordingly, "the application of *Blockburger* should not be so mechanical that it is enough for two statutes to have different elements." *State v. Swick*, 2012-NMSC-018, ¶ 21, 279 P.3d 747. That is, we no longer apply a strict elements test in the abstract; rather, we look to the state's trial theory to identify the specific criminal cause of action for which the defendant was convicted, filling in the case-specific meaning of generic terms in the statute when necessary. *Gutierrez*, 2011-NMSC-024, ¶¶ 58-59. We do so "independent of the particular facts of the case . . . by examining the charging documents and the jury instructions given in the case." *Swick*, 2012-NMSC-018, ¶ 21.

{26} If the statutes survive *Blockburger*, we examine "other indicia of legislative intent." *Swafford*, 1991-NMSC-043, ¶ 31. We look to "the language, history, and subject of the statutes, and we must identify the particular evil sought to be addressed by each offense." *Montoya*, 2013-NMSC-020, ¶ 32 (internal quotation marks and citation omitted). "Statutes directed toward protecting different social norms and achieving different policies can be viewed as separate and amenable to multiple punishments." *Swafford*, 1991-NMSC-043, ¶ 32.

{27} Defendant argues that his right to be free from double jeopardy is violated by multiple punishments for (1) aggravated battery and negligent use of a firearm, (2) aggravated assault and aggravated battery, and (3) the firearm enhancements to aggravated assault and aggravated battery. The State concedes at the outset that Defendant's conviction for negligent use of a firearm must be vacated, because—as charged—it is subsumed within the aggravated battery conviction. We agree. We address Defendant's two remaining arguments in turn.

1. Aggravated Assault and Aggravated Battery

{28} The charge of aggravated assault with a deadly weapon was apparently pursued under the "unlawful act" prong of Section 30-3-1(B). The term "any unlawful act" is a generic one; there are numerous forms of conduct that could fulfill that requirement. *See Mascarenas*, 1974-NMCA-100, ¶ 14 (" 'Unlawful' may mean nothing more than 'not authorized by law.' "). In applying *Blockburger*, we identify the State's actual theory of the case to supply the case-specific meaning of generic statutory terms. *Gutierrez*, 2011-NMSC-024, ¶¶ 58-59. The "unlawful act" that was charged to the jury was that Defendant "shot Joshua Branch while Patricia Branch was standing next to him[.]"

{29} Defendant's conviction for aggravated battery, on the other hand, required the State to prove "the unlawful touching or application of force to the person of another *with intent to injure that person or another*." NMSA 1978, § 30-3-5(A) (1969) (emphasis added). Section 30-3-5(A) always includes a statutory element (intent to injure another person) that is never an element of assault under Section 30-3-1(B), even as charged in this case. That is because—as we have discussed at length in this Opinion—assault under Section 30-3-1(B) has no specific intent requirement. *Manus*, 1979-NMSC-035, ¶ 14. Similarly, assault under Section 30-3-1(B) always includes an element (the victim's reasonable belief that battery is imminent) that is never required to commit a battery. *See In re Marlon C.*, 2003-NMCA-005, ¶ 12, 133 N.M. 142, 61 P.3d 851 ("It is theoretically possible to complete a battery on a person without prior conduct causing the person to believe the person is about to be battered, for example, if the person is struck from behind."). Therefore, one offense is not subsumed within the other, and *Blockburger* alone does not foreclose punishment under both statutes.

{30} When two statutes survive *Blockburger*, we look to "the language, history, and subject of the statutes, and we must identify the particular evil sought to be addressed by each offense." *Montoya*, 2013-NMSC-020, ¶ 32 (internal quotation marks and citation omitted). "[T]he social evils proscribed by different statutes must be construed narrowly[.]" *Swafford*, 1991-NMSC-043, ¶ 32. "The aggravated battery statute protects against the social evil that occurs when one person intentionally physically attacks and injures another." *State v. Carrasco*, 1997-NMSC-047, ¶ 33, 124 N.M. 64, 946 P.2d 1075 (internal quotation marks and citation omitted). The culpable act under Section 30-3-1(B), on the other hand, is one that causes apprehension or fear. In other words, "[t]he harm related to assault is mental harm; assaults put persons in fear. The harm related to battery is physical harm; batteries actually injure persons." *State v. Cowden*, 1996-NMCA-051, ¶ 12, 121 N.M. 703, 917 P.2d 972.

{31} In *State v. Roper*, we held that double jeopardy principles are not offended when a defendant is convicted and sentenced for two counts of assault for pointing a gun at two persons at the same time. 2001-NMCA-093, ¶ 12, 131 N.M. 189, 34 P.3d 133. The analysis in *Roper* is consistent with the principle that our assault statutes are designed to protect distinct victims from mental harm caused by a single act. *Id.*; *Cowden*, 1996-NMCA-051, ¶ 12. Although this is not a unit of prosecution case, the same logic applies here, where one victim is shot and another assaulted. Defendant's convictions for offenses involving distinct social harms caused to multiple victims do not violate the right to be free from double jeopardy.

2. Firearm Enhancements

{32} Defendant next argues that firearm enhancements to his convictions for aggravated battery and aggravated assault, both committed with a deadly weapon, violate double jeopardy because use of a firearm—the only essential requirement for the increased penalty—was also charged to the jury to prove the underlying crimes.

{33} We consider this issue on remand from the Supreme Court in light of the Court's disposition in *Baroz*. *See* Order at 1-2, *State v. Branch*, No. S-1-SC-35951 (Dec. 18, 2017). In *Baroz*, the defendant was sentenced to a term of eighteen months, followed by one year of parole, for each of his convictions of aggravated assault with a deadly weapon. 2017-NMSC-030, ¶ 20. Defendant's sentences on these counts were each enhanced by

one year pursuant to the firearm enhancement statute, Section 31-18-16(A). *Baroz*, 2017-NMSC-030, ¶ 20. Our Supreme Court rejected the defendant's contention that the firearm enhancement violates double jeopardy because use of a firearm is an element of the underlying crime, aggravated assault with a deadly weapon. *Id.* Concluding that the Legislature intended to authorize an enhanced punishment when a firearm is used in the commission of aggravated assault, the Court held that "[t]he sentence enhancement does not run afoul of double jeopardy." *Id.* ¶ 27.

{34} Given the Supreme Court's holding in *Baroz*, we conclude that the firearm enhancements in this case do not violate double jeopardy. We withdraw our previous holding that the enhancements must be vacated and instead affirm the district court's ruling that Defendant's sentences for aggravated battery and aggravated assault each be increased by one year pursuant to the statutory firearm enhancement.

C. Discovery and Evidentiary Rulings

{35} Defendant next argues that discovery and evidentiary rulings undermined his right to present a defense and to confront the State's evidence. He argues that the district court erred when it (1) failed to order disclosure of Joshua's military and mental health records, (2) excluded expert testimony related to PTSD, and (3) failed to provide a remedy for the destruction of evidence material to the case. Defendant asserts that these errors, either separately or combined, deprived him of a fair trial.

{36} We review these contentions in a manner highly deferential to the court below. "The granting of discovery in a criminal case is a matter peculiarly within the discretion of the trial court. A trial judge's denial of a defendant's discovery requests will be reviewed according to an abuse of discretion standard." *State v. Bobbin*, 1985-NMCA-089, ¶ 7, 103 N.M. 375, 707 P.2d 1185 (citation omitted). The same standard applies in evaluating a trial court's decision to exclude evidence, *State v. Stills*, 1998-NMSC-009, ¶ 44, 125 N.M. 66, 957 P.2d 51, and in evaluating a trial court's ruling as to the proper remedy for evidence that has been lost or destroyed, *State v. Chouinard*, 1981-NMSC-096, ¶¶ 25-26, 96 N.M. 658, 634 P.2d 680. "An abuse of discretion arises when the evidentiary ruling is clearly contrary to logic and the facts and circumstances of the case." *State v. Downey*, 2008-NMSC-061, ¶ 24, 145 N.M. 232, 195 P.3d 1244 (internal quotation marks and citation omitted).

1. Disclosure of Military and Mental Health Records

{37} Defendant issued a subpoena duces tecum directing Joshua, who is a veteran of the Marine Corps, to provide a copy of his military discharge paperwork. Defendant also requested a court order authorizing the release of Joshua's discharge records from the National Archives in St. Louis, Missouri. *See* 5 U.S.C. § 552a(b)(11) (2014) (permitting the disclosure of agency records "pursuant to the order of a court of competent jurisdiction"). In response, the State asserted that Joshua's discharge records were inadmissible and contained sensitive personal identifying information and protected medical information. The State also asserted that Joshua's prior service as a Marine could not possibly provide a justification for Defendant shooting him in the leg.

{38} At the hearing on the issue, the district court apparently viewed Defendant's various discovery requests as a "fishing expedition."[1] The court asked Defendant to articulate his reasons for seeking Joshua's military records. Defendant asserted that Joshua had been previously involved in "violence against other members of the military." Defendant specifically referred to a fight in the military that may have resulted in Joshua's service being prematurely terminated. He argued that evidence of the fight could be admissible to show Joshua's propensity for violence. He also argued that Joshua was going to take the stand and that the discharge papers would be useful to impeach him. And finally, Defendant argued that the military records could open an avenue into Joshua's mental health history as it relates to PTSD.

{39} The district court correctly determined that, in self defense cases, evidence of specific instances of a victim's prior violent conduct cannot be admitted as propensity evidence of the victim's violent disposition. *See State v. Armendariz*, 2006-NMSC-036, ¶ 17, 140 N.M. 182, 141 P.3d 526 ("[A] victim's violent character is not an essential element of a defendant's claim of self[]defense, but rather circumstantial evidence that tends to show that the victim acted in conformity with his or her character on a particular occasion. [O]nly reputation or opinion evidence should be admitted to show that the victim was the first aggressor."), *overruled on other grounds by Swick*, 2012-NMSC-018, ¶ 31. The district court also recognized that the discharge papers would not be admissible to impeach Joshua. *See* Rule 11-608(B) NMRA ("[E]xtrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness."). Because the requested records allegedly contained Joshua's "sacrosanct" medical history, and because Defendant did not justify the need for those records at the hearing, the district court quashed Defendant's subpoena and declined to issue an order authorizing production of the documents from the National Archives.

{40} Records are normally discoverable if reasonably calculated to lead to the discovery of admissible evidence. *See* Rule 5-503(C) NMRA. While records need not be admissible to be discoverable, a proponent of discovery may still be required to provide "a reasonable basis on which to believe that it is likely the records contain material information." *State v. Garcia*, 2013-NMCA-064, ¶ 28, 302 P.3d 111. Defendant argues on appeal that the proper procedure to determine materiality of Joshua's military records would have been for the district court to order in camera review of the documents.

{41} We agree that in camera review would have been the best way to balance Joshua's privacy interests with Defendant's interests in obtaining records that were potentially relevant to his defense. *See State v. Luna*, 1996-NMCA-071, ¶ 13, 122 N.M. 143, 921 P.2d 950 ("In camera review of confidential information represents a compromise between the intrusive disclosure of irrelevant information on the one hand and the complete withholding of possibly exculpatory evidence on the other."); *State v. Gonzales*, 1996-NMCA-026, ¶ 20, 121 N.M. 421, 912 P.2d 297 (stating that the proper procedure to determine whether the material requested by the defendant is relevant is in camera review by the district court); *State v. Pohl*, 1976-NMCA-089, ¶ 5, 89 N.M. 523, 554 P.2d 984 (holding that the district court erred in not conducting an in camera review "to determine whether the files contained evidence material to the defense").

{42} But there is one problem for Defendant. Unlike the defendants in *Luna*, 1996-NMCA-071, ¶ 3, *Gonzales*, 1996-NMCA-026, ¶ 20, and *Pohl*, 1976-NMCA-089, ¶ 4, Defendant never actually requested

[1]Defendant also subpoenaed Joshua's college academic records. That subpoena is not involved in this appeal.

in camera inspection of any records before the district court—even after the court asked Defendant to provide "specific knowledge . . . as to what to look for and where, or on the other hand *to request an in camera review*[.]" For that reason alone, this case better resembles *State v. Baca*, in which we stated,

> As in *Pohl*, we cannot determine whether the suppressed evidence was material to [the d]efendants' claim of self[]defense, but, unlike *Pohl*, [the d]efendants neither requested an in camera hearing nor showed as specific a need as could be expected under the circumstances. . . . Rather, our review of the argument made during the motion hearing convinces us that [the d]efendants were on a fishing expedition. [The d]efendants made no showing that their rights would be violated but for full disclosure of the master file[.]

1993-NMCA-051, ¶¶ 25-26, 115 N.M. 536, 854 P.2d 363 (internal quotation marks and citations omitted).

{43} There are compelling arguments on appeal that in camera review of Joshua's military records could have been useful to locate material information, such as the identities of character witnesses who could have testified about Joshua's reputation for violence, *see* Rule 11-405(A) NMRA, or corroborating witnesses who arguably could have testified under Rule 11-404(B) NMRA and *State v. Maples*, 2013-NMCA-052, ¶ 27, 300 P.3d 749. But we cannot say that the district court abused its discretion in rejecting the arguments that were actually presented below, where Defendant did not seek in camera review but sought full disclosure of all discharge records. *See Baca*, 1993-NMCA-051, ¶¶ 25-26; *see also State v. Ortiz*, 2009-NMCA-092, ¶ 32, 146 N.M. 873, 215 P.3d 811 ("To preserve an issue for review on appeal, it must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court." (internal quotation marks and citation omitted)). We affirm the district court because its ruling on the arguments before it was not "clearly contrary to logic and the facts and circumstances of the case." *Downey*, 2008-NMSC-061, ¶ 24 (internal quotation marks and citation omitted).

2. Testimony Related to PTSD

{44} Defense counsel questioned Joshua at a preliminary hearing about a diagnosis of PTSD related to prior military service. The State then filed a motion in limine to exclude evidence of Joshua's mental health history in the absence of expert testimony establishing the relevance of such evidence. The district court granted that motion, ordering that if "Defendant does not make, through expert testimony, a *prima faci*[*e*] showing that evidence of [Joshua's] mental health history is relevant, then no such evidence may be introduced." A little over a week before trial, Defendant identified Dr. Alexander Paret, a psychologist, to testify about PTSD. The State moved to exclude Dr. Paret's testimony on the ground that he had no prior contact with Joshua and would have been unable to testify about how PTSD symptoms were specifically manifested in Joshua.

{45} The district court held a hearing on the issue on the day before trial. Defendant conceded that Dr. Paret had never met or spoken with Joshua and would only testify about PTSD generally because a diagnosis of PTSD goes to the reasonableness of Defendant's assumption that he was in apparent danger when he shot Joshua. The court pointed out that "PTSD is a spectrum" that manifests itself in different people in different ways and that without ever having examined Joshua, Dr. Paret could not assist the jury in determining whether Defendant's alleged concerns about Joshua's PTSD were reasonable. The court suppressed the proposed testimony.

{46} "The very essence of discretion is that there will be reasons for the district court to rule either way on an issue, and whatever way the district court rules will not be an abuse of discretion." *State v. Layne*, 2008-NMCA-103, ¶ 7, 144 N.M. 574, 189 P.3d 707. "The trial judge's discretion is necessarily broad for he sits in the arena of litigation." *State v. Tafoya*, 1980-NMSC-099, ¶ 6, 94 N.M. 762, 617 P.2d 151 (internal quotation marks and citation omitted). It is the trial judge that is best suited to answer the determinative question: "On this subject can a jury from this person receive appreciable help?" *Id.* (internal quotation marks and citations omitted).

{47} The defendant in *Tafoya* was prevented from calling a child psychologist to testify that children had fantasized an alleged instance of sexual assault. *Id.* ¶ 3. The psychologist's testimony "was to have been based upon statements and depositions of the children, as well as tapes of their trial testimony. She had never personally observed the demeanor of the children, nor questioned them herself." *Id.* On appeal, our Supreme Court held that it was not an abuse of discretion for the trial court to "determine that the probative value of the testimony was slight, based upon the lack of personal observation" by the psychologist. *Id.* ¶ 7.

{48} The situation is no different here. The district court in this case reasonably discounted the value of Dr. Paret's general testimony about PTSD, which would have made no reference to any observation of Joshua. "PTSD is simply not a monolithic disease with a uniform structure that does not permit of individual variation." *Brunell v. Wildwood Crest Police Dep't*, 822 A.2d 576, 588-89 (N.J. 2003). Those diagnosed with PTSD exhibit a range of reactions related to their trauma. *See* The National Institute of Mental Health: Post-Traumatic Stress Disorder, *available at* http://www.nimh.nih.gov/health/topics/post-traumatic-stress- disorder-ptsd/index.shtml (last accessed April 20, 2016). Dr. Paret's proposed testimony would not have accounted for any individual variation or meaningfully assisted the jury in determining whether Defendant's reaction to the manifestation of PTSD *in Joshua* was reasonable. "No error occurs when the judge excludes expert testimony where the probative value of that testimony is slight." *State v. Blea*, 1984-NMSC-055, ¶ 7, 101 N.M. 323, 681 P.2d 1100. The cases cited by Defendant are not to the contrary. *State v. Alberico*, 1993-NMSC-047, ¶ 44, 116 N.M. 156, 861 P.2d 192 ("[T]he relevant inquiry is on *this subject* can a jury from *this person* receive appreciable help." (alteration, internal quotation marks, and citation omitted)); *State v. Marquez*, 2009-NMSC-055, ¶ 25, 147 N.M. 386, 223 P.3d 931 (dealing with harmless error in an analysis that has been overruled), *overruled by Tollardo*, 2012-NMSC-008.

3. Destruction of Evidence

{49} At some point on the day of the shooting, Detective Danny Clugsten of the San Juan County Sheriff's Office took photographs of the crime scene that were inadvertently lost. Defendant moved on the morning of trial to dismiss all charges or to otherwise exclude several of the State's witnesses pursuant to *Scoggins v. State*, 1990-NMSC-103, ¶¶ 8-9, 111 N.M. 122, 802 P.2d 631. In the alternative, Defendant requested a last-minute continuance so that the State could review and respond to the authorities cited in the motion to dismiss. The district court denied the motion because it was not timely and because there were multiple eyewitnesses

at the scene who could testify about the relevant details. Defendant subsequently requested a jury instruction that the lost photographs "may have supported the conclusion that Joshua Branch was in a position from which he could cause immediate harm to . . . [D]efendant" and that the jury could consider the loss of evidence to be "unfavorable to the [S]tate." The court gave defense counsel carte blanche to raise the issue in cross-examination of police witnesses and in closing arguments but denied the request for a limiting instruction.

{50} We apply a three-part test to determine whether deprivation of evidence by the State constitutes reversible error. *Chouinard*, 1981-NMSC-096, ¶ 16. We ask, first, whether the State breached some duty or intentionally deprived Defendant of evidence; second, whether the suppressed evidence was material; and third, whether prejudice resulted. *Id.* Because there is no allegation that the photographs were lost in bad faith, Defendant bore the burden of showing materiality and prejudice before any sanctions would have been appropriate. *See State v. Pacheco*, 2008-NMCA-131, ¶ 30, 145 N.M. 40, 193 P.3d 587. The district court is in the best position to evaluate the importance of lost evidence. *Id.*

{51} Defendant's motion was filed at the last minute and without any good reason for the late filing. The defense team had known for months that the photographs were lost. They nevertheless brought the issue to the court's attention on the morning of trial because, after a discussion the night before, they realized they "had a duty to generate a record." They faxed the motion to opposing counsel at 7:00 p.m. that night, leaving the State little opportunity to respond. It was undisputed that the motion was untimely and that there was no good excuse for the late filing.

{52} In any event, Defendant's argument is not convincing on the merits. While there is no doubt that the State breached a duty to preserve evidence, the district court could reasonably conclude that Defendant did not show materiality or prejudice. Defendant asserted at the hearing that blood spatter in the photographs might show Joshua's location when he was shot. That is speculative because Defendant did not know what was in the photographs. "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *State v. Martin*, 1984-NMSC-077, ¶ 37, 101 N.M. 595, 686 P.2d 937 (internal quotation marks and citation omitted). It was, after all, Defendant's burden to establish materiality. *Pacheco*, 2008-NMCA-131, ¶ 30. And that burden might have been met had the defense team addressed the issue when the State brought it to their attention months earlier. The photos were taken and lost by an identified officer, Detective Clugston. There were likely two other witnesses, Deputy Todd Mangan, the first officer that arrived on the scene, and Detective Tim Nyce, who stated in open court that he was present when the photos were taken, that could have testified about the nature of the lost evidence. But instead of interviewing them prior to filing the motion, defense counsel speculated on the morning of trial about the contents of the photographs, asking—based on the unknown—for outright dismissal of all charges, exclusion of several of the State's witnesses, or a continuance of the trial after the jury had already been empaneled. *See State v. Aragon*, 1997-NMCA-087, ¶ 22, 123 N.M. 803, 945 P.2d 1021 ("[A]s a general rule, a motion for a continuance filed at the last minute is not favored.").

{53} Even assuming that there was discernable blood spatter in the photographs, it is unlikely that suppression prejudiced Defendant. The State's theory about Joshua's location when he was shot was not meaningfully different from Defendant's version of events. Joshua testified that he was three to four feet from the railing on the steps to the front porch. Patricia testified to the same effect. Steven saw Joshua lying on the pavement six to eight feet from the trailer after the shooting. And Defendant conceded that Joshua did not follow him onto the porch. All accounts put Joshua in the immediate vicinity of the railing surrounding the door to the trailer when the shooting occurred. The real question was not where Joshua was standing, but whether he was advancing on Defendant. No after-the-fact photograph of blood spatter could have resolved that critical issue. *See State v. Duarte*, 2007-NMCA-012, ¶ 11, 140 N.M. 930, 149 P.3d 1027 ("[R]eversal is not mandated unless the evidence is in some way determinative of guilt." (internal quotation marks and citation omitted)). On these facts, we defer to the district court's sound discretion not to mandate sanctions of any kind.

{54} We conclude that there was no error in any of the district court's discovery and evidentiary rulings, and therefore, there was no cumulative error. *See State v. Salas*, 2010-NMSC-028, ¶ 40, 148 N.M. 313, 236 P.3d 32.

D. Aggravated Assault as a Serious Violent Offense

{55} This final issue arises, as it often does, because the district court used only boilerplate language in a sentencing document to designate a serious violent offense under Section 33-2-34(L)(4)(o) of the Earned Meritorious Deductions Act (EMDA). The EMDA provides that prisoners convicted of serious violent offenses may earn only four (as opposed to thirty) days per month of good time credit for time served in our state prisons. Section 33-2-34(A)(1), (2). The statute divides serious violent offenses into two categories: (1) an enumerated list of crimes, such as second degree murder, that are serious violent offenses as a matter of law; and (2) several "additional offenses that the district court may determine to be serious violent offenses due to the nature of the offense and the resulting harm." *State v. Scurry*, 2007-NMCA-064, ¶ 5, 141 N.M. 591, 158 P.3d 1034 (internal quotation marks and citation omitted). Aggravated assault is a discretionary offense under the second category. Section 33-2-34(L)(4)(o). In language mirroring the statute, the district court designated it to be a serious violent offense "due to the nature of the offense and the resulting harm."

{56} When, as here, an offense is discretionary under the statute, "a court's designation of a crime as a serious violent offense affects the length of time the defendant serves time in prison," and therefore "it is important that the court make specific findings both to inform the defendant being sentenced of the factual basis on which his good time credit is being substantially reduced, and to permit meaningful and effective appellate review of the court's designation." *State v. Loretto*, 2006-NMCA-142, ¶ 12, 140 N.M. 705, 147 P.3d 1138. Express findings must demonstrate that the crime was "committed in a physically violent manner either with an intent to do serious harm or with recklessness in the face of knowledge that one's acts are reasonably likely to result in serious harm." *Id.* ¶ 11 (internal quotation marks and citation omitted). Even where support exists in the record for the district court to make such a determination, it is up to the district court "in the first instance to make the required findings." *State v. Morales*, 2002-NMCA-016, ¶ 18, 131 N.M. 530, 39 P.3d 747, *abrogated on other grounds by*

State v. Frawley, 2007-NMSC-057, ¶ 36, 143 N.M. 7, 172 P.3d 144.

{57} The State argues that "[t]he evidence presented at trial fully supports the trial court's finding that the aggravated assault conviction was a serious violent offense." But the standard is not whether there is sufficient evidence in the record to support the district court's unexplained conclusion. The standard is a bright line that "requires the district court to explain its conclusions." *Scurry*, 2007-NMCA-064, ¶ 6. We have held in this Opinion that, under *Manus*, Defendant may technically have been convicted of aggravated assault without directing any conduct toward Patricia, without acting recklessly, and without harboring any specific intent to cause apprehension or fear. *See* 1979-NMSC-035, ¶ 14. The district court's findings for sentencing on aggravated assault are both important and required. *Morales*, 2002-NMCA-016, ¶¶ 16, 18.

{58} The State has not pointed out any specific findings in the record. The judgment and sentence contains only the same run-of-the-mill explanation—"due to the nature of the offense and the resulting harm"—that frequently causes us to remand cases for additional factfinding. *See, e.g.*, *State v. Irvin*, 2015 WL 4276092, No. 32,643, mem. op. ¶ 37 (N.M. Ct. App. June 23, 2015) (non-precedential); *State v. Kuykendall*, 2014 WL 5782937, No. 32,612, mem. op. ¶ 37 (N.M. Ct. App. Sept. 23, 2014) (non-precedential); *State v. Ybanez*, 2013 WL 4527245, No. 31,216, mem. op. ¶¶ 18-19 (N.M. Ct. App. Mar. 27, 2013) (non-precedential); *State v. Farrell*, 2010 WL 3997938, No. 29,186, mem. op. *7 (N.M. Ct. App. Feb. 3, 2010) (non-precedential); *State v. Salles*, 2009 WL 6677933, No. 29,222, mem. op. *2-3 (N.M. Ct. App. May 1, 2009) (non-precedential).

{59} We once again remand for findings consistent with the standard described in *Morales*, 2002-NMCA-016, ¶¶ 16, 18, and the cases that have followed it.

CONCLUSION

{60} Defendant's convictions for aggravated assault and aggravated battery, both with a deadly weapon, are affirmed. The firearm enhancements to those convictions are also affirmed. Defendant's conviction for negligent use of a deadly weapon is reversed and vacated. Finally, we remand the serious violent offense designation related to Defendant's aggravated assault conviction back to the district court for specific findings to identify and explain the evidence supporting the designation.

{61} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

STEPHEN G. FRENCH, Judge

Certiorari Denied, April 25, 2018, No. S-1-SC-36898

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-032

No. A-1-CA-35903 (filedOctober 11, 2017)

STATE OF NEW MEXICO ex rel. CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
Petitioner-Appellee,
v.
MICHAEL H.,
Respondent-Appellant,
and
IN THE MATTER OF JAYDA'MAE S.,
Child

APPEAL FROM THE DISTRICT COURT OF GUADALUPE COUNTY
Matthew J. Sandoval, District Judge

CHARLES E. NEELLEY,
Chief Children's Court Attorney
REBECCA J. LIGGETT,
Children's Court Attorney
CHILDREN, YOUTH & FAMILIES DEPARTMENT
Santa Fe, New Mexico
for Appellee

NANCY L. SIMMONS
LAW OFFICES OF NANCY L. SIMMONS, P.C.
Albuquerque, New Mexico
for Appellant

ARTHUR L. BUSTOS
Las Vegas, New Mexico
Guardian Ad Litem

Opinion

Henry M. Bohnhoff, Judge

{1} The district court ruled that Appellant Michael H. (Father) had neglected his child (Child) by abandoning her. Father argues that his lack of knowledge that Child's mother, Gina S. (Mother), who had custody of the infant, would neglect her and also his lack of certain knowledge through DNA testing that he in fact was the father of Child negate any conclusion of abandonment under NMSA 1978, Section 32A-4-2(A)(2) (2009, as amended 2016 and 2017), and thus neglect under Section 32A-4-2(F)(1) (current version at Section 32A-4-2(G)(1)). We reject Father's arguments, and therefore affirm.

BACKGROUND

{2} Child was born in March 2015. The New Mexico Children, Youth and Families Department (CYFD) took Child into custody on April 11, 2016. CYFD then filed an abuse/neglect petition on April 13, 2016 naming Mother and Father as respondents, and Carlos G. (Husband) as an interested party. Based on information provided by Mother, CYFD alleged that Father is the biological father of Child and that Mother had not been in a relationship or had contact with Father since she was one month pregnant with Child. The petition alleged that Father abused Child as defined in Section 32A-4-2(B)(1) (one "who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian") and Section 32A-4-2(B)(4) (one "whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health"). The petition also alleged that Father neglected Child as defined in Section 32A-4-2(F)(1) (one "who has been abandoned by the child's parent, guardian or custodian") and Section 32A-4-2(F)(2) (one "who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them").

{3} The district court entered a stipulated order for DNA testing on May 18, 2016. On June 2, 2016, Mother entered a no contest plea to the allegation that she neglected Child under Section 32A-4-2(F)(2). The district court then conducted Father's adjudication hearing on July 7, 2016, during which the following witnesses testified: Mother; Amber Martinez, the CYFD permanency planning worker for Child; and Father.

I. Mother's Testimony

{4} Mother testified that she had just ended a relationship with another man when she began a sexual relationship with Father. Mother testified that she did not live with Father and that she did not have any relationship with him other than a sexual one. When Mother discovered she was pregnant, she immediately identified Father as the father of Child. Mother told Father she was pregnant with Child, and said that "[Father] believed me, like right away, he was all there for it, saying that, yeah, he was gonna take responsibility."

{5} When Mother was three months pregnant, she told Father's live-in girlfriend that she was pregnant with Father's child. When Father learned that Mother had told his girlfriend that she was pregnant with Father's baby, Father told Mother that if she retracted the statement and told his girlfriend that her baby was not Father's, then Father would "take care of [her] and the baby." Mother acceded to Father's request and told the girlfriend that someone else was the father, but Mother did not tell anyone else that he was not Child's father. Shortly thereafter, Mother reaffirmed to Father's girlfriend that Father was the father of Child. Mother also received messages from Father's girlfriend acknowledging that Mother was pregnant with Father's child. Mother testified that, after she reaffirmed to Father's girlfriend that Father was the father of her baby, Father "dropped off the face of the earth."

{6} Father did not provide any support to Mother during her pregnancy. Child was born in Las Vegas, New Mexico; Father was not present at the birth. After Child was born, Mother was told that in order

to receive welfare benefits, she had to file a petition for child support from Father. Mother filed the child support petition, but "dropped it" after she married Husband, as she believed Husband "was a better father than [Father]." Mother testified that her only contact with Father since she was three months pregnant had been during a meeting with CYFD after Child was removed from her custody. Father never supported Mother or Child following Child's birth, and Father did not visit Mother to meet Child after Child's birth. The first time Father met Child was when Ms. Martinez brought Child to his home. Other than that one visit, for the first fifteen months of Child's life, Father had no contact with Child.

II. CYFD Permanency Planning Worker's Testimony

{7} Ms. Martinez testified that she emailed Father on April 28, 2016, regarding Child, and Father called her that day. During that phone call, Father said that he had had sex with Mother one time. Father also told Ms. Martinez that he had a vasectomy two years earlier and so could not be Child's father. The next day, Father called her and stated that after investigating and looking at a timeline, Father did not have a vasectomy two years ago and that Child looked just like his son who was born three months before Child. Ms. Martinez also testified that she had seen Facebook messages in which Mother reported to Father that Child was Father's baby. According to Ms. Martinez, Mother notified Father that Child was his and that after Mother married, Mother told Father that "she didn't . . . need anything from him because her husband was there to step up and be a father to [Child]."

{8} Ms. Martinez testified that she and her supervisor brought Child to Father's home so Father could meet Child. During a family-centered meeting facilitated by CYFD, Father stated that the only reason "he stepped up was because [Child] was in foster care and he didn't want [Child] in foster care." Ms. Martinez testified that Father had not established a relationship or a bond with Child since he had only met Child once before the hearing. Ms. Martinez was also concerned because Father had never provided any financial support to Child.

{9} Ms. Martinez testified that the week before Father's adjudication hearing, Father called her and left a voicemail indicating that he wanted to relinquish his parental rights to Child. Father explained his decision by stating that he did not want to do any parenting classes required by CYFD because he did not feel that he had done anything wrong with respect to Child.

III. Father's Testimony

A. Father's Testimony Regarding When He Had Notice of Mother's Pregnancy With Child

{10} Father testified that he first found out about Child and that he was Child's father when Ms. Martinez emailed him in April 2016, although he did not remember the date. Father, however, also admitted he had notice that Mother was pregnant with his child much earlier than April 2016, when Mother was communicating with both him and his girlfriend on Facebook about Mother's pregnancy with Child, but that Mother told him Child was not his. Father continued, "She kept . . . trying to argue with us on Facebook, that *she just wanted me to take care of my responsibilities*, and I said that you told me that it wasn't my responsibility because it's not my kid." According to Father, because Mother was trying to argue with him on Facebook, he blocked her, and therefore did not find out about Child until CYFD took Child into its custody. Mother never asked him for anything related to Child, which made him believe that Child was not his, because "if it was my daughter, [Mother] would have pursued [me] as being the dad, not telling me and arguing with my [girlfriend] that it was someone else's, we don't need your money no way."

{11} Father insisted he had "no idea" Mother was pregnant with his child until CYFD contacted him because he believed someone else could have been the father and because Mother became pregnant "so soon." On cross-examination by Mother's attorney, when asked whether Mother did give him notice that she was pregnant with his child, Father answered, despite his previous denial, "And when I asked her for a DNA test, she did never get back a hold of me, and she kept writing other letters—that I don't need your help, I don't need your money, I don't need this, I don't need that—and we just blocked her from all the pages, and this is the first time I'm hearing about it now."

B. Father's Other Testimony

{12} Father testified that he has eight children including Child, ranging in age from 25 years to Child's age, which was 16 months at the time of the hearing. Father did not have any previous record with CYFD. When Father's counsel asked him if he wanted to provide for his daughter financially, emotionally, and in every way possible, Father responded yes.

{13} Father admitted that he saw a photograph of his daughter for the first time after he found out where she was (implying foster care), looked on Facebook, found a photograph of Child and said, "Wow, kinda looks like [my son]." Father continued, "[My girlfriend] is the one that said, hey, that's your baby, if it's yours, we're gonna have the DNA test, if it's your kid, we don't want her in foster care. Because [Ms. Martinez] told me the first couple—the family she stayed with, didn't want her for long term. That's what made me push for my kid. I never said, oh, the only reason I want her is because she's in foster care. I wanted her because she's my daughter and I'm a stay at home dad with her brother that's three months older than her." Father also testified that he will "always provide for my kids whether their mothers need me or not."

{14} Father testified that he felt he was being "bullied" and treated unfairly by CYFD because although he was not in Child's life, that was not his fault, and he could not do everything CYFD was asking him to do with the short notice that CYFD was providing him for some tasks.

IV. District Court's Decision

{15} At the conclusion of the July 7, 2016 hearing, the district court orally ruled that Father had abandoned Child. The district court also found that Father knew about Child at the beginning of Mother's pregnancy and, significantly, that Mother was more credible than Father. The district court was troubled by Father's expressed desire to relinquish his rights to Child the week before the adjudicatory hearing, stating that it did "not sit well with the [c]ourt." Finally, the district court stated, "fifteen months have gone by, and here we are. And you didn't step forward, [Father], until you were finally tested, and there you are."

{16} The district court entered Father's adjudicatory judgment on July 20, 2016, which stated in relevant part:

3. CYFD has proven by clear and convincing evidence that as to [Father], [Child] is a neglected child as follows:

a. [Child] has been abandoned by her [Father], pursuant to Section 32A-4-2(F)(1).

4. The [district court made] the following findings and conclusions:

a. [Father] had knowledge that [Mother] was pregnant and that [Mother] indi-

cated he was the father of [C]hild;

b. [Father] did not provide any financial or other support to [Mother] throughout her pregnancy.

c. [Mother] filed a paternity action for child support listing [Father] as the Respondent in 2015.

d. [Father] has not provided any financial support and did not have contact with [C]hild for a period of over three months.

e. [Father] left [Child] in the care of [Mother] where [Child] was neglected.

f. There was no justifiable cause for [Father] leaving [Child] in the care of others without provision for support and without communication for over three months.

DISCUSSION

I. Statutory Framework

{17} The Children's Code, NMSA 1978, §§ 32A-1-1 to -25-5 (1993, as amended through 2017), contains the Abuse and Neglect Act (the Act), NMSA 1978, §§ 32A-4-1 to -35 (1993, as amended through 2017). The purpose of the Children's Code is:

> first to provide for the care, protection and wholesome mental and physical development of children[,] . . . then to preserve the unity of the family whenever possible. A child's health and safety shall be the paramount concern. . . . It is the intent of the [L]egislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit[.]

Section 32A-1-3(A).

{18} The Act defines child abuse, child neglect, and provides the process for the adjudication of both.[1] Section 32A-4-2(A)(2)(a) defines "abandonment" as follows:

> abandonment includes instances when the parent, *without justifiable cause*: . . . (2) left the child with others, *including the other parent* or an agency, *without provision for support and without communication* for a period of: (a) *three months* if the child was under six years of age at the commencement of the three-month period[.]

(Emphasis added.) (Internal quotation marks omitted.) Section 32A-4-2(F)(1) in turn defines a "neglected child" as a child "who has been abandoned by the child's parent, guardian or custodian[.]"

{19} Under the Act, a district court holds an adjudication hearing to determine whether a parent abused and/or neglected his or her child. Section 32A-4-20. According to Section 32A-4-20(H), "If the court finds on the basis of . . . clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court shall enter an order finding that the child is neglected or abused and may proceed immediately or at a postponed hearing to make disposition of the case." Section 32A-4-20(I) provides for immediate appeal to this Court of an adjudication determination.[2]

II. The District Court's Findings Were Supported by Clear and Convincing Evidence and Those Findings Supported the District Court's Determination That Father Had Abandoned and Thus Neglected Child

{20} Father states that he "challenges Findings of Fact Nos. 4(e) and 4(f) for lack of substantial evidence. As a matter of law, Father [also] challenges whether these findings, even if supported by substantial evidence, support the ultimate finding of neglect." As we understand Father's legal argument, he is contending that his lack of knowledge that Mother would neglect Child while Child was in Mother's care and also lack of certain knowledge based on DNA testing that he was the father of Child amount to justifiable cause that negates any conclusion of abandonment under Section 32A-4-2(A)(2) and thus neglect under Section 32A-4-2(F)(1).

{21} "To meet the standard of proof in an abuse or neglect proceeding, the fact finder must be presented with clear and convincing evidence that the child was abused or neglected." *State ex rel. Children, Youth & Families Dep't v. Shawna C.*, 2005-NMCA-066, ¶ 7, 137 N.M. 687, 114 P.3d 367. "For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *Id.* (internal quotation marks and citation omitted). "Our standard of review is a narrow one and we may not re-weigh the evidence. Our standard of review is therefore whether, viewing the evidence in the light most favorable to the prevailing party, the fact finder could properly determine that the clear and convincing evidence standard was met." *Id.* (internal quotation marks and citations omitted). Further, "our review is limited to a determination of whether the district court could have found that the parents abused or neglected [the c]hild based upon the evidence before it. We therefore disregard any of the evidence contained in the record that arose after the adjudication of abuse and neglect." *Id.*

{22} Father's challenge to the district court's determination that he had neglected Child by abandonment without justifiable cause requires interpretation of the statutory definition of abandonment.

---

[1]The 2009 version of the definitions section of the Act, was in effect at the time the petition was filed as opposed to the 2016 version, which was in effect at the time of the adjudication. The definition of "abandonment" is unchanged, and in both the 2009 and the 2016 versions, it is found at Section 32A-4-2(A). The definition of "neglect" is also unchanged, but has been renumbered from Section 32A-4-2(E)(1) in the 2009 version to Section 32A-4-2(F)(1) in the 2016 version. (In its 2017 session our Legislature amended Section 32A-4-2 again (effective June 16, 2017), so that the definition of neglect is now found at Section 32A-4-2(G).) The district court's adjudicatory judgment cites to the 2016 version, and the parties do so on appeal. We cite to the 2016 version as well.

[2]Father acknowledges, and CYFD agrees, that Father's notice of appeal from the adjudication judgment was untimely. The district court entered the written adjudicatory judgment finding that Father neglected Child on July 20, 2016. Father filed his notice of appeal appealing the adjudication judgment on September 12, 2016, which was more than thirty days after the order was filed. *See* Rule 12-201(A)(1)(b) NMRA. "We review de novo the question of whether this Court should accept jurisdiction where the notice of appeal from an adjudication of abuse and neglect is filed late." *State ex rel. Children, Youth & Families Dep't v. Amanda M.*, 2006-NMCA-133, ¶ 18, 140 N.M. 578, 144 P.3d 137. A timely notice of appeal "is a mandatory precondition to the exercise of appellate jurisdiction." *State ex rel. Children, Youth & Families Dep't v. Lance K.*, 2009-NMCA-054, ¶ 51, 146 N.M. 286, 209 P.3d 778. However, "it is well settled that failure to timely file a notice of appeal from either an adjudication of abuse or neglect or an order terminating parental rights constitutes ineffective assistance of counsel per se, such that the merits of an appeal will be considered notwithstanding the procedural deficiency." *Id.* Although Father's notice of appeal was untimely, we proceed to the merits.

This Court "reviews issues of statutory interpretation de novo." *In re Grace H.*, 2014-NMSC-034, ¶ 34, 335 P.3d 746.

A. Substantial Evidence Supports the District Court's Findings That Father (1) Left Child in the Care of Mother (2) Without Provision for Support or Communication, and (3) That Child Was Neglected While in Mother's Care; Substantial Evidence Also Supports the District Court's Finding That Father Was on Notice That He Was the Father of Child

{23} Finding 4(e) states: "[Father] left Child in the care of [Mother] where Child was neglected." The three witnesses testified during the adjudication hearing that Father had no contact with Mother after the time she was three months pregnant until the CYFD-facilitated meeting that occurred before the hearing. Mother testified and Father admitted that Father did not support her during her pregnancy. Father further admitted that the first and only time he met his daughter was when she was fifteen months old, about a month before the adjudication hearing, during a visit that was also facilitated by CYFD. Thus, the district court's finding that Father left Child in Mother's care was supported by clear and convincing evidence.

{24} Further, as stated above, early in this proceeding Mother entered a no contest plea to CYFD's allegation that she had neglected Child. Father does not address the evidence regarding and otherwise does not challenge the underlying finding that Child was neglected while in the care of Mother. "[W]e review substantial evidence claims only if the appellant apprises the Court of all evidence bearing on the issue[.]" *Chavez v. S.E.D. Laboratories*, 2000-NMCA-034, ¶ 26, 128 N.M. 768, 999 P.2d 412, *aff'd in part, rev'd in part*, 2000-NMSC-034, 129 N.M. 794, 134 P.3d 532. Therefore, Father's substantial evidence challenge to Finding 4(e) is rejected.

{25} Finding 4(f) states: "There was no justifiable cause for [Father] leaving [Child] in the care of others without provision for support and communication for over three months. As stated, there also was clear and convincing evidence that, following Child's birth, Father did not support Child or communicate with Child for over three months. The evidence showed that Father did nothing to contact Mother, to provide support to Child, or even to meet Child or inquire as to her well-being. In short, Father did nothing to support or foster any kind of relationship with Child for the first fifteen months of her life, i.e., absent a showing of justifiable cause he abandoned Child as that term is defined in Section 32A-4-2(A)(2). Father testified at the hearing that he would "always provide for my kids whether their mothers need me or not." His actions indicate otherwise. Father did nothing with respect to Child until Ms. Martinez contacted him. Although Mother never reached out to Father again following Child's birth to specifically ask him for support or to introduce Child to him, Father's obligations owed to Child were not contingent upon such action.[3]

{26} Substantial evidence therefore supports the basic factual determinations that underlie the district court's Findings 4(e) and 4(f). Father's main challenge in fact is legal: that as a matter of law he cannot be adjudicated to have neglected Child unless he knew that Mother herself had neglected Child and also that, on the basis of DNA testing, he was the father of Child. We address those arguments in the following sections.

{27} However, because it is material to our analysis, we also note that substantial evidence established that Father was on notice that he was the father of Child. Father and Mother engaged in sexual intercourse. Mother testified that she told Father about her pregnancy by him as soon as she knew about it, and that Father told her he would take responsibility for Child. Mother also testified that Father later told her he would support her during her pregnancy if she would tell Father's girlfriend that Child was not his. Indeed, Father does not challenge the district court's Finding 4(a) that he knew Mother was pregnant and that Mother had identified him as the father of Child. Thus, Father was on notice for several months before Child's birth that he was the father of Child. Further, the fact that Father initially told Mother he would take responsibility for Child amounts to an admission of paternity. The district court specifically stated that it credited Mother's testimony that Father knew he had a child when she was three-months pregnant. As stated above, we do not reweigh this evidence.

B. Father's Knowledge That Child Would Be Neglected While in Mother's Care

{28} Father's first challenge to Findings 4(e) and 4(f) focuses not so much on the fact of Mother's neglect of Child while in her care as on the implication that he bears responsibility for that neglect. That is, he argues that for him to be found to have abandoned and thus neglected Child while Child was in the custody of Mother, as a matter of law he "would have to know that Child would be neglected in his absence." He contends that the district court's adjudication was flawed because it "made no findings with regard to any knowledge by Father that Mother would neglect Child or that Child was otherwise in need of his protection." Using the rubric of Section 32A-4-2(A), we understand his position to be that the absence of such knowledge amounts to "justifiable cause" that negates a determination of abandonment. We are not persuaded. Father identifies no case law that supports such a construction of "justifiable cause," and considerable authority supports the conclusion that, on the contrary, Section 32A-4-2(A)(2) imposes an affirmative obligation on a parent to act to ensure that the child is receiving necessary care and support. Mere ignorance is not justifiable cause for the failure to provide support for, and communicate with, the child that is the statutory predicate for a determination of abandonment and thus neglect.

{29} Under the Children's Code, "[a] child's health and safety shall be the paramount concern." Section 32A-1-3(A). Further, without justifiable cause, Section 32A-4-2(A)(2) mandates a finding of abandonment if the parent "[leaves] the child with others, including the other parent or an agency, *without provision for support and without communication*" for a specified period of time. (Emphasis added.) We understand this language ordinarily to require a parent, if he or she does not have custody of the child, to take necessary steps to communicate with the child and otherwise verify that the child is being cared for and supported while in the custody of the other person. Father could not simply assume that Mother was

[3]Father's actions can be compared with the father's actions in *Benjamin O.*, 2009-NMCA-039, ¶¶ 18-23. In that case, the father did not communicate with his child for five months, and this Court affirmed the district court's finding that he had neglected and abandoned his child. *Id.* ¶ 41-42. Here, Father did not communicate with his child for fifteen months.

properly caring for Child.

{30} New Mexico case law buttresses the proposition that a non-custodial parent has a duty to ensure that his or her child is being adequately supported and cared for. In *State ex rel. Children, Youth and Families Department v. Cosme V.*, 2009-NMCA-094, ¶¶ 21, 27, 146 N.M. 809, 215 P.3d 747, this Court concluded that the district court reasonably could have concluded that the non-custodial parent neglected his children when he failed to "take any significant role, much less an active one, in regularly *assuring* that the [c]hildren's well-being and proper needs were met. [The f]ather did very little to fulfill his parental obligations." (Emphasis added.) (Internal quotation marks and citation omitted.) *See also State ex rel. Children, Youth & Families Dep't v. Alfonso M.-E.*, 2016-NMCA-021, ¶ 31, 366 P.3d 282 ("However, despite [the f]ather's incarceration at the time of the district court's adjudication, he nevertheless had a continuing legal obligation to provide proper care for [the c]hild."); *State ex rel. Children, Youth & Families Dep't v. Benjamin O.*, 2009-NMCA-039, ¶¶ 18-23, 146 N.M. 60, 206 P.3d 171 (holding father's lack of communication with his child for five months constituted abandonment when the child was living with his sister); *cf. In re Guardianship of Ashleigh R.*, 2002-NMCA-103, ¶ 22, 132 N.M. 772, 55 P.3d 984 ("A parent's contact with the children and financial support for the children during their absence will weigh against a finding of abandonment.").

{31} We also reject Father's argument that we should apply to this case our Supreme Court's recent construction of NMSA 1978, Section 30-6-1(B) (2009), which defines "criminal child abandonment" in *State v. Stephenson*, 2017-NMSC-002, ¶¶ 13-17, 389 P.3d 272. Father contends that we should construe Section 32A-4-2(A)(2)'s definition of abandonment in a manner consistent with our Supreme Court's holding that criminal abandonment will be found only where doing so "exposes the child to a risk of harm," and where the abandoning parent is "permanently or temporarily responsible for the custody and control of the child[.]" *Stephenson*, 2017-NMSC-002, ¶ 16. But as CYFD points out, "An abuse and neglect proceeding is not a criminal prosecution." *State ex rel. Children, Youth & Families Dep't v. Michael T.*, 2007-NMCA-163, ¶ 11, 143 N.M. 75, 172 P.3d 1287. Further, the paramount concern of the Children's Code is protecting the health and safety of the child, not punishing conduct that the Legislature has deemed subject to criminal sanction. We therefore do not interpret the definition of abandonment in Section 32A-4-2(A)(2) to incorporate the elements of criminal abandonment under Section 30-6-1(B).

{32} Father was on notice and acknowledged that he was the father of Child. There is no evidence that Father took any steps to check on and ensure Child's well-being while Child was in Mother's care. Under the facts of this case, Father's lack of knowledge of Mother's neglect is not justifiable cause for leaving Child with Mother without provision for support and without communication for a period of three months, i.e., it is no defense to a determination that Father neglected Child by abandoning her.

C. Father's Knowledge That He Was Child's Father

{33} Father also argues that "a man's departure from a child who has not been clearly identified"—in particular, by means of DNA testing—"as his biological child cannot be construed as 'abandonment' for purposes of a petition for neglect." In the context of Section 32A-2-4(A)(2), in challenging Findings 4(e) and 4(f) on this second ground, Father effectively is contending that as a matter of law the absence of DNA testing establishing his paternity constituted "justifiable cause" for not providing for Child's support and for not communicating with her for the first fifteen months of her life. Because there was no such clear and convincing evidence that he had such certain knowledge that he was the father of Child, he urges, the district court's adjudication of neglect on the basis of abandonment was error. Whether a father must have confirmation by DNA test after he is on notice that he has fathered a child before he can be adjudicated to have neglected the child by abandonment is a matter of first impression.

{34} We conclude that the lack of certainty of paternity is not a defense to an adjudication of neglect by abandonment. That is, such uncertainty will not constitute "justifiable cause" for a man who is otherwise on notice that he may have fathered a child to fail to make provision for support of, and communicate with, the child. Under the facts of this case established by clear and convincing evidence, Father had more than sufficient notice that he was the father of Child to give rise to an affirmative obligation to either provide such support and undertake such communication or, alternatively, take steps to establish he was not the father. If he did neither, Father assumed the risk of an adjudication of neglect.

1. Governing Legal Principles

{35} This case does not involve a father who had absolutely no knowledge of his child. On the contrary, Father had notice Mother was pregnant with Child and had acknowledged that he was the father. Therefore, although it arose in the context of an adoption proceeding, *Helen G. v. Mark J.H.*, 2008-NMSC-002, 143 N.M. 246, 175 P.3d 914, assists our analysis. There, our Supreme Court considered whether a father, who knew about the mother's pregnancy but did not act to assert paternity until after another couple filed a petition to adopt the child, could be an "acknowledged" father whose consent was required before the adoption could be finalized. *Id.* ¶¶ 2-6; *see* NMSA 1978, §§ 32A-5-3(F) (2012), -17(A)(5) (2005). *Helen G.* indicates that when a father is on notice that he has fathered a child, if he wishes to preserve his rights as parent, he must act diligently and take affirmative action to qualify as an acknowledged father beyond requesting an adjudication of paternity. 2008-NMSC-002, ¶ 32 ("We conclude that a mere biological connection is insufficient to qualify as a presumed or acknowledged father—it is only the initial step toward acknowledged father status." (internal quotation marks omitted)). *Helen G.* rejected the proposition that "the language of the [Adoption] Act evinces a clear intent to be . . . indulgent of fathers who appear to be indifferent to their children." *Id.* ¶ 20. *Helen G.* also distinguished between the father who was on notice of his paternity and the father "who [did] not know or who [had] no reason to know that [he had] fathered a child." *Id.* ¶ 49. We see that difference as instructive.

{36} Father relies on *In re Interest of Dylan Z.*, 697 N.W.2d 707 (Neb. Ct. App. 2005). In that case, the Nebraska Court of Appeals determined that there was no clear and convincing evidence that the father intentionally abandoned his child because the father's lack of contact with, and support for, the child "was directly attributable to [the father's] lack of knowledge that he was [the child's] father." *Id.* at 718-19. *See also State ex rel. Office for Servs. to Children & Families v. Rangel*, 927 P.2d 1118, 1120 (Or. Ct. App. 1996) ("[Oregon's termination for abandonment statute] contemplates that a father know of the existence of his child before he can be held to have abandoned the child. . . . [The] father testified under oath that he did not know that he was the father until he was served with the petition to terminate his parental rights."). The key

difference between *In re Dylan Z.* and the instant case is that, here, Father had notice he fathered Child. This notice to Father is crucial to our determination that lack of a DNA test does not constitute justifiable cause for leaving Child in Mother's care without support or communication for over three months.

{37} *In re Adoption of D.M.M.*, 955 P.2d 618 (Kan. Ct. App. 1997), is more factually similar to the case at bar than *In re Dylan Z.* There, the Kansas Court of Appeals affirmed the trial court's finding that the father had failed to support his child's mother for six months prior to the child's birth and that the father's consent to adoption was not required because he had abandoned his child after having knowledge of the child's birth. *Id.* at 621. According to the *In re D.M.M.* court, "After the baby was born, [the father] did nothing but visit two times." *Id.* The trial court found, which the *In re D.M.M.* court approved, "The fact that a man knows only that he was a possible father during the pregnancy does not relieve him from the responsibility to support the mother during the pregnancy." *Id.* (internal quotation marks omitted). The trial court continued, stating that the father "could not just sit back and see what happens until some unknown point in time in the future and do nothing until someone else forces the issue." *Id.* (internal quotation marks and citation omitted). The *In re D.M.M.* court also stated:

> Any man should be aware that he may become the father of a child as a result of having sexual intercourse with a woman, regardless of the number of sexual partners she has. If any of those partners wishes to preserve his parental rights in the event of a later adoption, each one will be required to initiate reasonable efforts toward supporting the mother prior to the child's birth.

Id. at 622. This consideration is equally relevant in the context of an adjudication for neglect by abandonment.

{38} *In re Interest of Chance J.*, 776 N.W.2d 519 (Neb. 2009), also provides useful analysis. There, the Nebraska Supreme Court affirmed the juvenile court's finding that the father had abandoned his child. *Id.* at 522. *In re Chance J.* involved a child who was born to a married couple while the mother was a prostitute. *Id.* The couple had separated by the time the child was born, but the father was present for the child's birth. *Id.* The father testified that, when he saw the infant shortly after his birth, the infant had white skin, blue eyes, and red hair, which was "awkward" because the father was African-American. *Id.* (internal quotation marks and citation omitted). The father testified that the mother stated that the child "must have been a trick's baby[, and that] once he saw [the child], he did not believe that [the child] was his son and made no further effort to try and determine whether he was [the] father." *Id.* (internal quotation marks omitted).

{39} The Nebraska Supreme Court was unpersuaded that the father's suspicions that someone else fathered the child justified the father's abandonment of the child, stating:

> In fact, "just cause or excuse" for a parent's failure to maintain a relationship with a minor child has generally been confined to circumstances that are, at least in part, beyond the control of the parent. But there is nothing in the record in this case indicating that [the father] did not have the means or opportunity to confirm his suspicions that [the child] was not his child, at the hospital, or anytime thereafter. . . . Only after the [s]tate filed a petition to terminate his rights, nearly [three] years after [the child] was born, did [the father] attempt to take any responsibility for [the child]. The obligations of parenthood cannot be set aside that easily, based on nothing more than mere physical appearance or unconfirmed suspicions. We will not set the bar so low for responsible parental involvement.

Id. at 527 (footnote omitted).

{40} Here, Child's physical appearance did not suggest that Father was not Child's father. The procedural posture of *In re Chance J.* and the case at bar also differ in certain respects. The *In re Chance J.* court's determination that the father had abandoned the child was based in part on its consideration under Nebraska law that "children born to the parties in a marriage are presumed legitimate until proved otherwise[.]" *Id.* Here, Father and Mother were not married to each other when Child was born. However, the case at bar otherwise has parallels to *In re Chance J.* Like the father in *In re Chance J.*, Father had the means and the opportunity to confirm his suspicion that Child was not his child.[4] Father also did not attempt to take responsibility for Child until after CYFD filed its petition alleging that Father had abandoned Child. We see *In re Chance J.* as instructive for its determination that certainty of knowledge of paternity—in particular, positive DNA testing—is not a condition precedent for a man's obligation to care for a child to arise. *In re Chance J.* indicates that, where a father is in a position to obtain DNA testing, if he has any questions about his paternity then the onus is on him to obtain DNA testing that will confirm non-paternity. For these reasons, we reject Father's argument that, as a matter of law, the lack of certain knowledge of paternity by means of DNA testing is justifiable cause that negates a determination of neglect based on abandonment.

2. Father's Lack of Certain Knowledge of His Paternity Was Not Justifiable Cause for Abandoning Child

{41} Father left Child with Mother without providing for Child's support and without communicating with Child for a period of more than three months. Father's ignorance of Mother's failure to care for Child does not constitute justifiable cause. In addition, under the facts of this case as established by clear and convincing evidence, where Father not only received notice but acknowledged that he was the father of Child, the lack of greater certainty

[4]Under NMSA 1978, Section 40-11A-602(C) (2009) of the New Mexico Uniform Parentage Act, §§ 40-11A-101 to -903 (2009), a man whose paternity of the child is in question may bring a proceeding to adjudicate parentage, and "the district court shall order the child and other designated persons to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding: (1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the persons; or (2) denying paternity and stating facts establishing a possibility that sexual contact between the persons, if any, did not result in the conception of the child." Section 40-11A-502(A). Father, therefore, could have brought a proceeding to adjudicate his parentage of Child, and if he or Mother had submitted a sworn statement either alleging or denying his paternity, the district court would have been required to order genetic testing. Thus, an alleged or putative father can act to determine his parentage with a DNA test.

based on DNA testing regarding paternity was not justifiable cause that negates a determination of abandonment. If Father in fact harbored any doubt about Child's paternity, he bore the burden of taking steps to resolve the question.[5] Because Father neither established he was not the father nor provided the necessary care to Child, the district court properly found that he had neglected Child based on abandonment. *Cf. Cosme V.*, 2009-NMCA-094, ¶ 34 ("Under certain circumstances, parents cannot demand parental rights without pro-actively fulfilling their obligations as parents to care for their children. [The f]ather did not pro-actively fulfill his obligations . . . over a substantial period of time, and there came a point when [CYFD] appropriately intervened, and sought and obtained a neglect adjudication implicating [the f]ather. The neglect determination as to [the f]ather was based on clear and convincing evidence and was proper." (citation omitted)).[6]

CONCLUSION

{42} We affirm the district court's adjudication of neglect with respect to Father.

{43} IT IS SO ORDERED.

HENRY M. BOHNHOFF, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

MICHAEL E. VIGIL, Judge

---

[5]Father testified that he asked Mother for a DNA test during her pregnancy. This testimony is inconsistent with Father's other testimony that he did not know about Child or that Child was his until April 2016. But even assuming the statement was truthful, Father never followed up on the request. On the contrary, he proceeded to block communication with Mother on social media. For these reasons, we do not conclude that Mother's inaction following Father's claimed request for a DNA test to be justifiable cause for Father leaving Child in the care of others without communication or provision for support.

[6]Father also argues that he "is not required to submit to assessments or attend parenting classes *unless and until* he has otherwise been found guilty of neglect[,]" and therefore the district court could not take into account Father's actions post-petition when finding that he neglected Child. We need not consider this argument because we hold that there was clear and convincing evidence that Father abandoned Child before CYFD filed its abuse and neglect petition.

Classified

Positions

Assistant City Attorney – Civil Prosecution
City of Santa Fe

The Santa Fe City Attorney's Office seeks a full-time lawyer to enforce city code through civil and criminal litigation and to provide legal advice and services to multiple City departments. The City is seeking someone with good people skills, strong academic credentials, excellent written and verbal communications skills and civil and/or criminal prosecution experience. Pay and benefits package are excellent and are partially dependent on experience. The position is located in downtown Santa Fe at City Hall and reports to the City Attorney. This position is exempt and open until July 6, 2018. Fill out application at Human Resources Department, City Hall, 200 Lincoln Avenue, Santa Fe, NM; mail application/resume to P.O. Box 909, Santa Fe, New Mexico 87504-0909; or fax application to (505) 955-6810. Applications may be downloaded from our website: www.santafenm.gov; or apply online at www.santafenm.gov.

Multiple Trial Attorney Positions Available in the Albuquerque Area

The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Saavedra ksaavedra@da.state.nm.us or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Full-time Law Clerk

United States District Court, District of New Mexico, Albuquerque, Full-time Law Clerk, assigned to Judge Browning, $61,425 to $73,623 DOQ. See full announcement and application instructions at www.nmd.uscourts.gov. Successful applicants subject to FBI & fingerprint checks. EEO employer.

Mid to Senior-Level Attorney–

Civil litigation department of AV Rated firm. Licensed and in good standing in New Mexico with three plus years of experience in litigation (civil litigation preferred). Experience in handling pretrial discovery, motion practice, depositions, trial preparation, and trial. Civil defense focus; knowledge of insurance law also an asset. We are looking for a candidate with strong writing skills, attention to detail and sound judgment, who is motivated and able to assist and support busy litigation team in large and complex litigation cases and trial. The right candidate will have an increasing opportunity and desire for greater responsibility with the ability to work as part of a team reporting to senior partners. Please submit resume, writing sample and transcripts to palvarez@rmjfirm.com.

Part Time Staff Attorney

Part time staff attorney position with the Senior Citizens' Law Office. Please go to our website at www.sclonm.org under Employment Positions at bottom of home page for the full job advertisement.

Child Support Hearing Officer

The 9th JUDICIAL DISTRICT COURT is accepting applications for a full time at-will Child Support Hearing Officer (CSHO). The 9th Judicial District Court has a contract with HSD to administer a CSHO Program serving the 4th, 8th, 9th and 10th Judicial Districts. The CSHO will be an employee of the 9th Judicial District Court with a Post of Duty in Las Vegas, NM and will primarily hear child support cases in the 4th and 8th Judicial Districts, but may also travel to and serve as back-up to the 9th Judicial District Court's CSHO stationed in Portales, NM who primarily hears child support cases in the 9th and 10th Judicial Districts. QUALIFICATIONS pursuant to NMSA 40-4B-4: J.D. from an accredited law school, NM licensed attorney in good standing, NM licensed driver with good record. Minimum of five years of experience practicing law, with at least 20% having been in family law or domestic relations matters. Familiarity with the NM Domestic Relations statutes, Uniform Parentage Act, Child Support Hearing Officer Act, and related statutory law and regulations preferred. Ability to occasionally travel overnight throughout the 4th, 8th, 9th and 10th Judicial Districts. Complete Job Announcement and job application may be viewed at www.nmcourts.gov. Interested applicants should submit a New Mexico Judicial Branch Application for Employment or Resume and Resume Supplemental Form by July 6th to Kevin Spears, Court Executive Officer, Ninth Judicial District Court, 700 N. Main, Suite 16, Clovis, NM 88101.

Associate Attorneys

The Santa Fe office of Hinkle Shanor LLP seeks to hire an associate attorney with at least 5 years of litigation experience for its employment and civil rights defense practice. Candidates should have a strong academic background, excellent research and writing skills, and the ability to work independently. Applicants must live in or be willing to relocate to Santa Fe. Please send resume, law school transcript, and writing sample to Hiring Partner, P.O. Box 2068, Santa Fe, New Mexico 87504-2068 or jmclean@hinklelawfirm.com.

Compliance Analyst

Sandia Laboratory Federal Credit Union has an opening for a Compliance Analyst. This position requires a candidate who can communicate effectively and is diligent, detail-oriented, and discrete, with significant experience interpreting and applying regulations. If you enjoy research and synthesizing information to make decisions, this might be a good position for you. SLFCU offers competitive compensation, a great work environment and a generous benefit package. You may learn more about this position and about our organization, and submit an employment application, at www.slfcu.org/Join (Careers). EOE

Attorney

Team, Talent, Truth, Tenacity, Triumph. These are our values. Parnall Law is seeking an attorney to help advocate and represent the wrongfully injured. You must possess confidence, intelligence, and genuine compassion and empathy. You must care about helping people. You will receive outstanding compensation and benefits, in a busy, growing plaintiffs personal injury law firm. Mission: Fighting Wrongs; Protecting Rights. To provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients the attention needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Keys to success in this position Litigation experience (on plaintiff's side) preferred. Strong negotiation skills. Ability to thrive in a productive and fast-paced work environment. Organized. Independent / Self-directed. Also willing / unafraid to collaborate. Proactive. Detail-oriented. Team player. Willing to tackle challenges with enthusiasm. Frequent contact with your clients, team, opposing counsel and insurance adjusters is of paramount importance in this role. Integrate the 5 values of Parnall Law. Compelled to do outstanding work. Strong work ethic. Interested in results. Barriers to success: Lack of fulfillment in role. Not enjoying people. Lack of empathy. Not being time-effective. Unwillingness to adapt and train. Arrogance. We are an established personal injury firm experiencing steady growth. We offer competitive salary and benefits, including medical, dental, 401k, and performance bonuses or incentives – all in a great team-based work environment. We provide a workplace where great people can do great work. Our employees receive the training and resources to be excellent performers – and are rewarded financially as they grow. We want people to love coming to work, to take pride in delivering our vision, and to feel valued for their contributions. 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.

Assistant Attorney General Position

The Office of the New Mexico Attorney General is recruiting for an Assistant Attorney General position in the Criminal Appeals Division in Criminal Affairs. The job posting and further details are available at www.nmag.gov/human-resources.aspx.

Mid-Level Employee Benefits Attorney (#75180111)

Holland & Hart is seeking a mid-level associate for its Employee Benefits group. Candidates at the upper end of the mid-level experience may be based in any of the firm's 15 offices. Candidates at the lower end of the mid-level experience will be based in either the Boise or the Denver office. Requirements: Successful candidates will have an energetic personality, interpersonal skills, and the ability to work in a team environment. Excellent legal research and writing skills are required. Preferred candidates will possess a strong academic background and 3+ years of experience in employee benefits (tax and ERISA). All interested applications should apply through the "careers section" of the firm's website: www.hollandhart.com. Should you have issues with the online application form, please contact Michelle Stoeckel, Recruitment Coordinator at mhstoeckel@hollandhart.com. Holland & Hart is an equal opportunity employer. No unsolicited resume from search firms or calls, please. Holland & Hart is a full-service law firm that today has approximately 500 lawyers across eight states and in Washington, D.C. delivering integrated legal solutions to regional, national, and international clients of all sizes in a diverse range of industries. For more information, visit www.hollandhart.com or on Twitter: @HollandHart.

Full-Time Deputy Director

The Administrative Office of the Courts is recruiting for a full-time Deputy Director to oversee statewide judiciary operations. The Deputy Director works closely with the Director under the guidance of the New Mexico Supreme Court to manage all aspects of court operations. AOC responsibilities include oversight of court budgets that exceed $200 million annually, personnel rules and actions statewide, court services and programs, and technology that include a statewide case management system and electronic filing. Duties include frequent contacts with executive and legislative agencies as well as active involvement with legislative initiatives before and during the annual legislative session. This position would serve as the AOC representative staffed to, and supporting many judicial committees that develop and administer judicial policies. The Deputy Director will have primary responsibility for several Divisions within AOC. You are invited to join the AOC team in the challenging and rewarding work done by the New Mexico Judiciary. The office is located in Santa Fe, NM with occasional statewide travel. For more information or to apply to go to the Judicial Branch web page at www.nmcourts.gov under Career Opportunities or 505/827-4810. Equal Opportunity Employer

Solicitation for Letters of Interest for Senior Contract Attorney

The Administrative Office of the Courts invites letters of interest from attorneys with experience working with the child welfare interdisciplinary model of representation in the 13th and/or the 2nd Judicial Districts. Preferably, with three to five years of recent experience representing children, youth, and parents in child welfare proceedings. This is a unique opportunity for a competent and creative attorney to assist in building a high quality legal representation component of interdisciplinary practice for parents/custodians impacted by the child welfare system. Work includes: providing advanced training and mentoring of contract attorneys in the cornerstone model of advocacy, assisting the NM Court Improvement Project with improving the quality of advocacy in and out of court, collaborating with the social work supervisor and peer mentors on program issues, draft and disseminate pleading templates, research bank and other information to contract counsel, and review and recommend contract candidates for the program. In addition, the attorney will work closely with a multitude of stakeholders included the Children's Court Improvement Commission, both the 13th and 2nd Judicial Districts, the Family Support Services Program, Court Improvement Project, and the AOC. The position will be funded by the Court Improvement Project grant, and require no more than part time hours or in excess of $15,000.00. Letters of interest: Please include name, street address, phone number, email address, and a brief statement describing your background and understanding of abuse and neglect cases, years of experience, and a statement of your ability to perform duties. Interested attorneys must be licensed to practice in the State of New Mexico, and must attach a resume to the letter of interest. Contracting attorneys will submit monthly logs, have access to email, meet with the Court or AOC, if requested, and submit invoices as required by AOC protocols. Please send questions to Sarah Jacobs at aocsej@nmcourts.gov or (505) 827-4887. Letters of interest and accompanying resumes should also be emailed to aocsej@nmcourts.gov.

Attorney

Nonprofit children's legal services agency seeks full-time attorney to represent care givers in kinship guardianship cases, children and youth in CYFD custody, youth and young parents, and conduct trainings and perform other duties. Five years legal experience and some experience in civil/family law required. English/Spanish speakers preferred. Demonstrated interest in working on behalf of children and youth preferred. Excellent interpersonal skills, writing skills, attention to detail, and ability to multi-task are required. No telephone calls please. Submit resume with cover letter to info@pegasuslaw.org.

Entry level NM Attorney

Aldridge Pite, LLP is a multi-state law firm that focuses heavily on the utilization of technology to create work flow synergies with its clients and business partners. Aldridge Pite is a full-service provider of legal services to depository and non-depository financial institutions including banks, credit unions, mortgage servicing concerns, institutional investors, private firms, and other commercial clients. Aldridge Pite seeks an entry level attorney for its small uptown office. Duties include managing high-volume real estate and collection cases from inception to completion, attend court hearings and participate in mediation and arbitration hearings. Must be detail oriented, have excellent communication skills be able to manage and prioritize large caseloads. For full job requirements and to apply please see www.aldridgepite.com click on Careers.

Legal Counsel

Meow Wolf, Inc. in Santa Fe is looking for an in-house counsel. Meow Wolf, Inc is composed of nearly 300 artists across all disciplines including architecture, sculpture, painting, steel fabrication, carpentry, photography and video production, virtual and augmented reality, music and audio engineering, narrative writing, costuming and performance, and more. We operate a permanent exhibition in Santa Fe NM. We plan to open a permanent exhibit in Vegas in 2019 and in Denver in 2020. We also travel across the country with temporary exhibits. Most recently, we participated in the SXSW festival in Austin where we debuted our feature length documentary to raving reviews, which was executive produced by George R.R. Martin. Job applications should be submitted through: https://jobs.meowwolf.com/job/6491/legal-counsel/

Associate Attorney

The Carrillo Law Firm, P.C. is seeking an Associate Attorney to join our Las Cruces firm. We handle complex litigation as well as day-to-day legal matters from governmental sector and private corporate clients. Applicant must possess strong legal research and writing skills, have a positive attitude, strong work ethic, desire to learn, and have a current license to practice law in New Mexico. We offer competitive benefits to include health insurance, a profit sharing plan, and an excellent work environment. Please send letter of interest, resume, references, and writing sample via email to deena@carrillolaw.org. All responses are kept confidential.

Divorce Lawyers – Incredible Opportunity w/ New Mexico Legal Group

New Mexico Legal Group, a cutting edge divorce and family law practice is adding one more divorce and family law attorney to its existing team (David Crum, Cynthia Payne, Twila Larkin, Bob Matteucci, Kim Padilla and Amy Bailey). We are looking for one super cool lawyer to join us in our mission.

Why is this an incredible opportunity? You will build the very culture and policies you want to work under; You will have access to cutting edge marketing and practice management resources; You will make more money yet work less than your contemporaries; You will deliver outstanding services to your clients; You will have FUN! (at least as much fun as a divorce attorney can possibly have) This position is best filled by an attorney who wants to help build something extraordinary. This will be a drama free environment filled with other team members who want to experience something other than your run of the mill divorce firm. Interested candidates: send whatever form of contact you think is appropriate, explaining why you are drawn to this position and how you can be an asset to the team, to Dcrum@NewMexicoLegalGroup.com. All inquiries are completely confidential. We look forward to hearing from you!

Request for Proposals #19-350-4905-0001

The State Risk Management Division has issued Request for Proposals #19-350-4905-0001 seeking responses from qualified law firms interested in providing legal services to meet the wide array of needs including representation before the Workers Compensation Administration, defense of general liability claims, civil rights, medical malpractice, employment and other claims. The Contracts' rate structure has been revised and the Proposal Response format has been streamlined to allow for proposals to be prepared and submitted more quickly. Responses are due July 10, 2018. The complete RPF is available for review and download from the State Risk Management Division's website on the link to Solicitations. http://www.generalservices.state.nm.us/riskmanagement/Solicitations.aspx

Paralegal

Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) Mission: To work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Organized. Detail-oriented. Meticulous but not to the point of distraction. Independent / self-directed. Able to work on multiple projects. Proactive. Take initiative and ownership. Courage to be imperfect, and have humility. Willing / unafraid to collaborate. Willing to tackle the most unpleasant tasks first. Willing to help where needed. Willing to ask for help. Acknowledging what you don't know. Eager to learn. Integrate 5 values of our team: Teamwork; Tenacity; Truth; Talent; Triumph. Compelled to do outstanding work. Know your cases. Work ethic; producing Monday – Friday, 8 to 5. Barriers to success: Lack of fulfillment in role. Treating this as "just a job." Not enjoying people. Lack of empathy. Thin skinned to constructive criticism. Not admitting what you don't know. Guessing instead of asking. Inability to prioritize and multitask. Falling and staying behind. Not being time-effective. Unwillingness to adapt and train. Waiting to be told what to do. Overly reliant on instruction. 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.

Seeking Legal Secretary/Paralegal

A highly valued member of our staff is retiring and we need to fill her position! The Davidson Law Firm is a small, established firm in Corrales with a very busy practice. Our team needs a legal secretary/paralegal, with at least 5 years' experience in civil litigation, to work on water law and medical malpractice matters. We are looking for a professional and friendly person who enjoys a direct and hands-on working relationship with attorneys and clients. Competitive compensation provided. Those needing a flex/part time positon will be considered. Please email a resume and cover letter with salary requirements to corralesfirm@gmail.com. All inquiries will be kept strictly confidential.

Litigation Secretary – Las Cruces

The Law Offices of Daniel G. Acosta, Staff Counsel for Farmers Insurance is seeking a litigation secretary for our Las Cruces Branch Legal Office with knowledge of both New Mexico and Texas procedure and 1-5 years of civil litigation support experience. We provide a competitive salary and benefits package, a supportive team environment, and an excellent work-life balance. Please submit your resume to: debra.black@farmersinsurance.com

Bauman, Dow & Stambaugh, P.C.

Looking for an exceptional legal assistant with at least 3 years of experience working with civil trial lawyers. Responsibilities include case management, document review, and trial preparation. We offer a great compensation and benefits package including 401k plan, fully funded health insurance premium, and most importantly, a friendly and professional work environment. Please contact: Chris Bauman @ 505-883-3191

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 .

Administrative Assistant / Legal:

The Office of University Counsel (OUC) at the University of New Mexico has an opportunity for a detail-oriented individual who can work effectively in a fast-paced, multi-task environment. The individual will work under the supervision of, and provide administrative support to, attorneys within the OUC-Health Sciences Center responsible for tort claims and medical malpractice litigation. Will also assist with the credentialing needs of the HSC medical providers. Must have a high level of computer skills, including Word and Excel, and excellent communication and organizational skills. Law firm or law department experience preferred. Minimum requirements are a high school diploma or GED; at least five years of experience directly related to the duties and responsibilities specified; a post-secondary degree from an accredited institution may be substituted for experience on a year-for-year basis. See complete job description and application requirements at https://hr.unm.edu. Please refer to Requisition #5322. Best consideration date: July 5, 2018.

Litigation Paralegal

Litigation paralegal needed for Albuquerque plaintiff's law firm, McGinn, Montoya, Love & Curry PA. Medical malpractice experience preferred but not required. Must be able to work in a busy, fast-paced litigation practice. 3-5 years relevant experience required. Experience obtaining & organizing medical records, compiling and reviewing records, and strong skills in Adobe PDF and Microsoft Office Suite a plus. The right candidate needs strong writing, communication and organization skills. Excellent benefit package included. Salary commensurate with experience. Spanish speaking helpful. Please send a resume and writing sample to MCMLAdmin@mcginnlaw.com

Legal Secretary

Lewis Roca Rothgerber Christie LLP seeks an experienced legal assistant or legal secretary to support the Regulatory and Government group in our downtown Albuquerque office. 3+ years of prior legal experience is required. Must have experience with both electronic and non-electronic court filings. Strong computer skills with MS Office programs is a must. Only applicants that apply through our website will be considered. Apply using this link: https://goo.gl/Gyvzcs

Divorce Paralegal – Incredible Opportunity w/ New Mexico Legal Group

New Mexico Legal Group, a cutting edge divorce and family law practice is looking for one more paralegal to join our team.
Why is this an incredible opportunity? You will be involved in building the very culture and policies that you want to work under. We are offer great pay, health insurance, automatic 3% to your 401(k), vacation and generous PTO. And we deliver the highest quality representation to our clients. But most importantly, we have FUN! Obviously (we hope it's obvious), we are looking for candidates with significant substantive experience in divorce and family law. People who like drama free environments, who communicate well with clients, and who actually enjoy this type of work will move directly to the front of the line. Interested candidates should send a resume and cover letter explaining why you are perfect for this position to DCrum@NewMexicoLegalGroup.com.com The cover letter is the most important thing you will send, so be creative and let us know who you really are. We look forward to hearing from you!

Positions Wanted

Experienced Paralegal Seeks Part-Time Employment In Santa Fe
Highly experienced (20+ years) and recommended paralegal wishes part-time or contract employment in Santa Fe only. For resume and references, please e-mail santafeparalegal@aol.com.

Services

Board Certified Orthopedic Surgeon
Board certified orthopedic surgeon available for case review, opinions, exams. Rates quoted per case. Owen C DeWitt, MD, odewitt@alumni.rice.edu

Office Space

Downtown Office For Sale/Lease
Three (3) Blocks from the courthouse in revitalizing downtown near Mountain Road. Great visibility and exposure on 5th Street. Excellent office space boasting off street parking. Surrounded by law offices the property is a natural fit for the legal or other service professionals. Approximately 1230 square feet with two offices/bedrooms, one full bath, full kitchen, refinished hardwood floors, reception/living area with fireplace and conference/dining area. Property features CFA, 150sf basement and a single detached garage. Run your practice from here! Sale price is $265,000. Lease option and owner financing offered. Contact Joe Olmi @ 505-620-8864.

Office For Rent
820 Second Street NW, office for rent, two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170

Miscellaneous

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

Co-Working Space Available
Feeling isolated? Home officing but finding too many distractions to be productive? Need a professional office address? We provide high-speed Wi-Fi, conference room, copiers/scanners/printers, desks, whiteboards, gourmet coffee and a relaxing but productive work environment. Work with other professionals and pay based upon your amount of usage. Options available from walk-in, once a week all the way up to a reserved private office. Carlisle and Montgomery area. Easy interstate access. (505) 417-9416 website: lowkicoworking.space

Official Publication of the State Bar of New Mexico

BAR BULLETIN

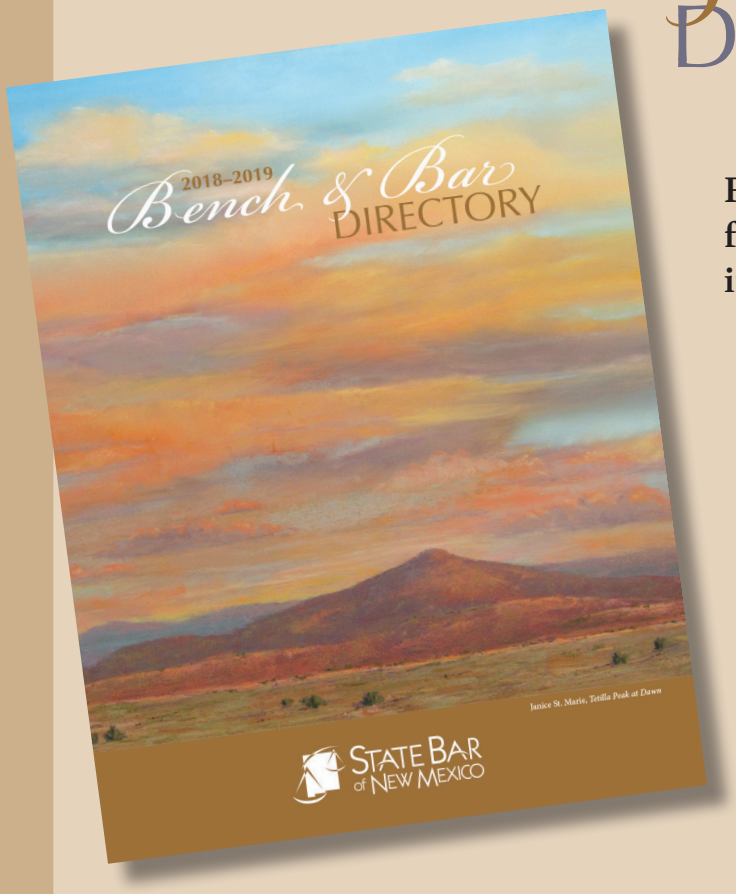
SUBMISSION DEADLINES

All advertising must be submitted via Email by 4 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Wednesday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by the publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.**

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

Check your mail for your copy of the

2018–2019 Bench & Bar DIRECTORY



Featuring helpful information for every attorney practicing in New Mexico:

- State Bar programs, services and contact information
- An extensive list of courts and government entities in New Mexico
- A summary of license requirements and deadlines
- A membership directory of active, inactive, paralegal and law student members

Directories will be mailed to active members by the end of July.

Don't forget the extra copies for your staff!

www.nmbar.org/directory

STATE BAR of NEW MEXICO

-State Bar of New Mexico-

2018 Annual Meeting

Hyatt Regency
TAMAYA RESORT
Santa Ana Pueblo

Aug. 9-11

Registration is now open!

Visit **www.nmbar.org/AnnualMeeting** to reserve your spot today.

Reserve your hotel room today!
Rates start at $179/night at the
Hyatt Regency Tamaya Resort.

Red Raider Hospitality Lounge

— Sponsored by the Texas Tech School of Law —

The Texas Tech University School of Law continues to show their support of the State Bar of New Mexico as the proud sponsor of the 2018 Red Raider Hospitality Lounge!

SPENCE LAW FIRM

Thank you to our Presenting Sponsor

State Bar of New Mexico

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