

BAR BULLETIN

August 1, 2018 • Volume 57, No. 31



King of the Hill, by Janice St. Marie (see page 3)

Janice St. Marie Fine Art, Satna Fe

Inside This Issue

Notices	4
Save the Date - Appellate Practice Section Court of Appeals Candidate Forum.....	4
New Mexico Black Lawyers Association Annual Poolside Brunch	4
Clerk Certificates	9

From the New Mexico Supreme Court

2018-NMSC-032, S-1-SC-35515: Estate of Charles Anthony Saenz v. Ranack Constructors, Inc.	15
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From the New Mexico Court of Appeals

2018-NMCA-039, A-1-CA-35001: Morga v. Fedex Ground Package System, Inc.	21
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-STATE BAR OF NEW MEXICO-

2018 ANNUAL MEETING

Hyatt Regency
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Santa Ana Pueblo
Aug. 9-11

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now!*

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August 1, 2018 • Volume 57, No. 31

Table of Contents

Notices	4
Calendar of Continuing Legal Education.....	7
Clerk Certificates.....	9
Rule Making Activity Report.....	14
Opinions	

From the New Mexico Supreme Court

2018-NMSC-032, S-1-SC-35515: Estate of Charles Anthony Saenz v. Ranack Constructors, Inc.	15
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From the New Mexico Court of Appeals

2018-NMCA-039, A-1-CA-35001: Morga v. Fedex Ground Package System, Inc.....	21
Advertising	31

Meetings

August

1 Employment and Labor Law Section Board

Noon, State Bar Center

7 Health Law Section Board

9 a.m., teleconference

8 Children's Law Section Board

Noon, Juvenile Justice Center

8 Tax Law Section Board

11 a.m., teleconference

9 Business Law Section Board

4 p.m., teleconference

9 Public Law Section Board

Noon, Legislative Finance Committee, Santa Fe

14 Appellate Practice Section Board

Noon, teleconference

14 Bankruptcy Law Section Board

Noon, USBC

15 Trust and Estate Division Section Board

Noon, teleconference

Workshops and Legal Clinics

August

1 Divorce Options Workshop

6–8 p.m., State Bar Center, Albuquerque, 505-797-6022

1 Civil Legal Clinic 10 a.m.–1 p.m.,

Second Judicial District Court, Albuquerque, 1-877-266-9861

10 Civil Legal Clinic

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

15 Family Law Clinic

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

22 Consumer Debt/Bankruptcy Workshop

6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

September

5 Divorce Options Workshop

6–8 p.m., State Bar Center, Albuquerque, 505-797-6022

About Cover Image and Artist: Along with a successful career in graphic design, based in Santa Fe Janice St. Marie paints and draws traditional, representational landscapes. View more of her work at www.janicest.marie.com.

Notices

COURT NEWS

New Mexico Supreme Court Supreme Court Law Library Hours and Information

The Supreme Court Law Library is open to anyone in the legal community or public at large seeking legal information. The Library has a comprehensive legal research collection of print and online resources, and a staff of professional librarians is available to assist. Search the online catalog at <https://n10045.eos-intl.net/N10045/OPAC/Index.aspx> Call 505-827-4850, Click <https://lawlibrary.nmcourts.gov> or email libref@nmcourts.gov for more information. Visit the Law Library at the Supreme Court Building, 237 Don Gaspar, Santa Fe NM 87501. The Library is open Monday-Friday, 8 a.m.-5 p.m. Reference and circulation is open Monday-Friday 8 a.m.-4:45 p.m.

Second Judicial District Court Destruction of Tapes

In accordance with 1.17.230.502 NMAC, taped proceedings on domestic matters cases in the range of cases filed in 1972-1990 will be destroyed. To review a comprehensive list of case numbers and party names or attorneys who have cases with proceedings on tape and wish to have duplicates made should verify tape information with the Special Services Division at 505-841-6717 from 8 a.m.-5 p.m. Monday-Friday. The aforementioned tapes will be destroyed after Sept. 22.

Bernalillo County Metropolitan Court Court Closure Notice:

Bernalillo County Metropolitan Court will be closed from 11 a.m.-5 p.m. on Aug. 24 for the Court's annual employee conference. Misdemeanor Custody Arraignments will commence at 8:30 a.m. and will be immediately followed by Felony First Appearances. Traffic Arraignments and Preliminary Hearings will not be held that day. The outside Bonding Window will be open from 11 a.m.-5 p.m. for the filing of emergency motions and for posting bonds. The conference is sponsored by the New Mexico Judicial Education Center and paid for by fees collected by state courts.

Professionalism Tip

With respect to the courts and other tribunals:

I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation.

STATE BAR NEWS

Appellate Practice Section Court of Appeals Candidate Forum

The Appellate Practice Section will host a Candidate Forum for the eight candidates running for the New Mexico Court of Appeals this November. Save the date for 4-6 p.m., Oct. 18, at the State Bar Center in Albuquerque.

New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- Aug. 6, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- Aug. 13, 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#.
- Aug. 20, 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.

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.

UNM School of Law Not For Profit Art Gallery Call for University of New Mexico Connected Artists

The University of New Mexico School of Law Not for Profit Art Gallery invites all artists connected to UNM to submit their New Mexico images for consideration for our 2019 exhibition. The UNM School of Law Not for Profit Art Gallery provides a space for artists affiliated with UNM as faculty, staff, students, alumni and immediate relatives of this group to display and sell their work. For the 2019 exhibition, the Art Committee is looking for approximately 30 images on canvas, print work or photographs. The selected artists will become 2019 Artists in Residence and must provide art throughout the year. Contact Professor Sherri Burr, chair of the Art Committee, 505-277-5650, burr@law.unm.edu, or Cheryl Burbank, 505-277-0609, burbank@law.unm.edu

OTHER BARS New Mexico Black Lawyers Association Annual Poolside Brunch

The New Mexico Black Lawyers Association invites members to attend its annual poolside brunch on Aug. 25, 11 a.m.-2 p.m. at 1605 Los Alamos Ave. SW, Albuquerque, N.M., 87104. Join NMBLA for food, drinks and fun! Tickets are only \$35 and can be purchased on our New Mexico Black Lawyers Association Facebook page or by emailing nmblacklawyers@gmail.com. Each brunch ticket comes with an entry into our raffle for \$500! There will only be 100 tickets sold, act fast. NMBLA also accepting sponsorships for this event. If you are interested in sponsoring, please email us at nmblacklawyers@gmail.com.

New Mexico Defense Lawyers Association Save the Date—Women in the Courtroom VII CLE Seminar

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

New Mexico Criminal Defense Lawyers Association Defending Sex Offense Cases: Tips, Trials and Legal Update

This comprehensive seminar will teach attendees how to successfully litigate cases involving sexual assault and related allegations. On the schedule: state

and federal law updates on sex offenses, exploitation and human trafficking; dissecting safehouse interviews and sane exams; sex offenders supervision and the first amendment; and trial tips. A special defender wellness presentation will help prepare you for handling trial and these kinds of cases. A membership party will follow. The event will be held Aug. 17, in Las Cruces for 5.5 G, 1.0 E.P., CLE credits. Visit www.nmcdla.org for more info.

OTHER NEWS Center for Civic Values Albuquerque High School Seeks Mock Trial Attorney Coach

The Albuquerque High School is looking for an attorney coach for its Gene Franchini High School Mock Trial Team. Contact Kristen Leeds at mocktrial@civicvalues.org to express interest. To learn more about Mock Trial, visit www.civicvalues.org.



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www.nmbar.org/JLAP



16th Annual Art Contest

The pieces that make up our



Save the Date
for the Art Contest
Reception!
Oct. 24 at the
South Broadway
Cultural Center

Through the years, the Children's Law Section Art Contest has demonstrated that communicating ideas and emotions through art and writing fosters thought and discussion among youth on how to change their lives for the better. This year's theme is designed to encourage youth from around the state who have come into contact with the juvenile justice system to think about how they will make contributions to the world during their lifetime. Using materials funded by the Section's generous donors, contestants will decorate flip flops to demonstrate their idea.

How can I help? Support the Children's Law Section Art Contest by way of a donation that will enable contest organizers to purchase supplies, display artwork, provide prizes to contestants and host a reception for the participants and their families. Art supplies and contest prize donations are also welcome.

To make a tax deductible donation, visit www.nmbar.org/ChildrensLaw or make a check out to the New Mexico State Bar Foundation and note "Children's Law Section Art Contest Fund" in the memo line. Please mail checks to:

State Bar of New Mexico
Attn: Breanna Henley
PO Box 92860
Albuquerque, NM 87199

For more information contact
Alison Pauk at alison.pauk@lopdm.us.

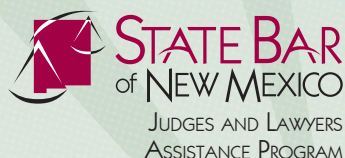
New Service for Members!

EMPLOYEE ASSISTANCE PROGRAM

*Get help and support for yourself, your family and your employees.
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Services include up to four **FREE** counseling sessions/issue/year for ANY mental health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other **FREE** services include management consultation, stress management education, critical incident stress debriefing, video counseling, and 24X7 call center. Providers are located throughout the state.

To access this service call 855-231-7737 and identify with NMJLAP. All calls are **CONFIDENTIAL**.
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Legal Education

August

1	Charitable Giving Planning in Trusts and Estates, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	14	Joint Ventures Agreements in Business, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	21	Trust and Estate Update: Recent Statutory Changes that are Overlooked and Underutilized 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
1	Advanced Custody and Support Issues 5.0 G, 1.0 EP Live Seminar, Albuquerque NBI, Inc. www.nbi-sems.com	15	Joint Ventures Agreements in Business, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	21	Selling to Consumers: Sales, Finance, Warranty & Collection Law, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
2	Charitable Giving Planning in Trusts and Estates, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	15	Discover Hidden and Undocumented Google Search Secrets 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org	22	Technology: Time, Task, Document and Email Management 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org
7	Defending Against IRS Collection Activity, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	17	Practice Management Skills for Success (2018) 5.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	22	Selling to Consumers: Sales, Finance, Warranty & Collection Law, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
8	Defending Against IRS Collection Activity, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	17	Where the Rubber Meets the Road: The Intersection of the Rules of Civil Procedure and the Rules of Professional Conduct (2017) 1.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	22	Gross Receipts Tax Fundamentals and Strategies 6.0 G Live Seminar, Albuquerque NBI, Inc. www.nbi-sems.com
9-11	2018 Annual Meeting 12 G, with Possible 7.5 EP Live Seminar, Hyatt Regency Tamaya Resort and Spa Center for Legal Education of NMSBF www.nmbar.org	17	Lawyers' Duty of Fairness and Honesty (Fair or Foul: 2016) 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	24	Advanced Google Search for Lawyers 1.0 G Live Webinar Center for Legal Education of NMSBF www.nmbar.org
10	New Mexico Defense Lawyers Association and west Texas TADC Joint Seminar 4.0 G, 1.0 EP Live Seminar, Ruidoso New Mexico Defense Lawyers Association www.nmdla.org	17	Women in the Courtroom 5.0 G, 1.0 EP Live Seminar, Albuquerque New Mexico Defense Lawyers Association www.nmdla.org	24	Women's Leadership Summit 5.0 G Live Seminar, Albuquerque New Mexico Society of CPAs 505-246-1699

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|--|---|--|
| <p>28 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 2017 Real Property Institute
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Risky Business: Avoiding Discrimination When Completing the Form I-9 or E-Verify Process
1.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>29 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 New Mexico Liquor Law for 2017 and Beyond
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 The Ethical Issues Representing a Band-Using the Beatles
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>29 The Exclusive Rights (and Revenue) You Get With Music
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

September

- | | | |
|---|---|---|
| <p>5 Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 Planning with Single Member, LLCs, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 How to Practice Series: Civil Litigation, Pt II – Taking and Defending Depositions
4.5 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 Ethics Issues of Moving Your Practice Into the Cloud
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Income and Fiduciary Tax Issues for Estate Planners, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 Attorney Orientation and the Ethics of Pro Bono
2.0 EP
Live Seminar, Albuquerque
New Mexico Legal Aid
505-814-6719</p> | <p>12 Planning with Single Member, LLCs, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Income and Fiduciary Tax Issues for Estate Planners, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 Microsoft Word's Styles: A Guide for Lawyers
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 Boundary Issues and Easement Law
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI, Inc.
www.nbi-sems.com</p> | <p>20 Military Retired Pay Primer
2.0 G, 1.0 EP
Live Seminar, Albuquerque
FAMlaw LLC
www.famlawseminars.com</p> |

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
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Effective August 1, 2018

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:				
		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
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		

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

From the New Mexico Supreme Court

Opinion Number: 2018-NMSC-032

No. S-1-SC-35515 (filed April 30, 2018)

ESTATE OF CHARLES ANTHONY SAENZ,
by and through his personal representative,
VIRGINIA SAENZ, individually and as
next friend of ROBIN BRANDY SAENZ,
minor child, MARCUS ANTHONY SAENZ,
and JASON RAY SAENZ,

Plaintiffs-Respondents and Cross-Petitioners,

v.

RANACK CONSTRUCTORS, INC.,
Defendant-Petitioner and Cross-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

Manuel I. Arrieta, District Judge

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Opinion

Petra Jimenez Maes, Justice

{1} In this wrongful death action, the jury returned a special verdict that awarded damages to the individual loss-of-consortium claimants but not to the decedent's estate. The decedent's surviving spouse and children (collectively Plaintiffs) filed a motion for a new trial, arguing that the award of zero damages to the estate was not supported by substantial evidence. The issue before this Court is whether Plaintiffs waived the right to challenge the jury verdict on appeal by failing to object to the verdict prior to the jury's discharge. We conclude that they did.

{2} A party is deemed to have waived a challenge to an ambiguous, inconsistent, or incomplete jury verdict if the party had an opportunity to raise the objection before

the jury was discharged but failed to do so. In this case, Plaintiffs created ambiguity in the verdict by modifying the uniform jury instruction on wrongful death damages and drafting the special verdict form in a way that failed to advise jurors how to allocate damages between the individual loss-of-consortium claimants and the decedent's estate. During its deliberations, the jury submitted a question to the district court which confirmed that the jury was confused about how to allocate damages on the special verdict form. As a result of this confusion, it is unclear whether the jury deliberately intended to award zero wrongful death damages to the estate or whether the jury mistakenly included wrongful death damages in its award to the individual claimants. We hold that Plaintiffs waived the right to challenge the verdict on appeal because they contributed to ambiguity in the verdict and failed to object to the verdict prior to the jury's discharge.

I. FACTS AND PROCEDURAL HISTORY

{3} Charles Anthony Saenz (Tony), an ironworker, was killed while working on a construction project to build a new movie theater in Las Cruces. Defendant Ranack Constructors, Inc. (Ranack) was the general contractor for the project. Tony fell off a thirty-foot wall while erecting the steel framework for the theater, hitting the ground head first. Tony was transported to the hospital by ambulance and was pronounced dead a few minutes later.

{4} Tony's spouse, Virginia Saenz, filed this wrongful death lawsuit against Ranack in three different capacities: individually, as the personal representative for Tony's estate, and as next friend of the couple's minor daughter Robin Saenz. The couple's adult sons, Marcus and Jason Saenz, also joined as plaintiffs. Plaintiffs asserted claims of negligence and premises liability and sought damages for wrongful death and loss of consortium.

{5} At the jury trial, the parties presented conflicting evidence concerning damages. Plaintiffs presented evidence that Tony was devoted to his immediate and extended family, advised and counseled his daughter and sons, helped with housework and cooking, was building an addition to the family home, was a talented amateur artist, had a good sense of humor, and liked to sing and dance at family events. Virginia testified that Tony was in excellent health, and a stipulated jury instruction advised the jury that Tony, who was forty-eight years old when he died, could have been expected to live for another thirty years. Virginia testified that Tony's take-home wages averaged \$400 a week and that if Tony had continued to work in his construction job for the next twenty-two years with no time off, until he reached the age of seventy, his total after-tax wages would have been approximately \$450,000.

{6} Ranack, on the other hand, presented evidence of Tony's history as a habitual criminal offender; his often strained relationship with Virginia, including a divorce in 1986 before they remarried; his failure to continually support the family; and his absences from the family home. Ranack elicited testimony from Virginia that her husband had worked erratically during the early years of their marriage and that Virginia was the sole source of the family's support when Tony was in prison.

{7} Plaintiffs drafted a jury instruction on wrongful death damages, based on UJI 13-1830 NMRA (2008) (UJI 13-1830), which

was given to the jury as Instruction No. 17. Instruction No. 17 provided that if the jury found Ranack liable, then the jury must then fix the amount of money which you deem fair and just for the life of Charles Anthony Saenz, including in your award compensation for any of the following elements of damages proved by the evidence:

1. The reasonable expenses of necessary medical care and treatment and funeral and burial;¹
2. The lost earnings, the earning capacity and the value of the lost household services of the deceased considering the deceased's age, earning capacity, health, habits, and life expectancy. In considering loss of earnings or earning capacity, deductions must be made for income taxes, social security taxes, other taxes, and personal living expenses of the deceased. The damages set forth in this paragraph are damages for future loss of money and are paid in a lump sum. Therefore, a reasonable discount must be made for the future earning power for the damages awarded;
3. The value of the deceased's life apart from his earning capacity;
4. The mitigating or aggravating circumstances attending the wrongful act, neglect or default;
5. The emotional distress to the children of the decedent caused by the loss of society, guidance, and companionship, enjoyed with the deceased; and the emotional distress to the spouse of the decedent caused by the loss of society, guidance, companionship, and sexual relationship enjoyed with the deceased;
6. The loss of guidance and counseling to the deceased's minor child.
7. You may also consider the loss to the beneficiaries of other expected benefits that have a monetary value. While the presence or absence of a measurable monetary loss to beneficiaries is a factor for consideration, damages may be awarded even where monetary loss to the surviving beneficiaries cannot be shown.

{8} Plaintiffs made two modifications to

UJI 13-1830 that have been at issue on appeal. First, the manner in which Instruction No. 17 identified the Plaintiffs differed from the standard language set forth in UJI 13-1830. UJI 13-1830 provided that the plaintiffs in a wrongful death case should be identified as follows:

This lawsuit has been brought by _____ (plaintiff) [individually and] on behalf of the surviving beneficiaries of _____ (name of decedent) who is now deceased. The surviving beneficiaries are _____ (names of surviving beneficiaries).

UJI 13-1830. In Instruction No. 17, Plaintiffs replaced "on behalf of the surviving beneficiaries" with "on behalf of the estate," as follows:

The lawsuit has been brought by Virginia Saenz, Individually and *on behalf of the estate* of Charles Anthony Saenz, who is now deceased. The surviving spouse is Virginia Saenz. The surviving beneficiaries are Robin Brandy Saenz, Marcus Anthony Saenz, and Jason Ray Saenz.

(Emphasis added.)

{9} Second, Instruction No. 17 erroneously included two inconsistent provisions concerning loss-of-consortium damages. One of those, the fifth numbered provision, was included as an element of damages the jury could award if proved by the evidence. See UJI 13-1830, ¶ 6 (permitting the jury to award damages for "emotional distress . . . caused by the loss of [society,] [guidance,] [companionship] and [sexual relations] enjoyed with the deceased"). The other provision was located at the end of the last sentence of the instruction and directed the jury that the amount of damages "*must not . . . be influenced by . . . the loss of the deceased's society to the family.*" (Emphasis added.) In UJI 13-1830, these two conflicting provisions were set forth in brackets, and the Use Note explained that the provisions should be used in the alternative depending on the circumstances of the case. See UJI 13-1830, Use Note (explaining that if the personal representative is also the surviving spouse, the instruction should include the paragraph describing loss-of-consortium damages and should exclude the bracketed language at the end of the last sentence).

{10} Plaintiffs' proposed wrongful death damages instruction included both of these conflicting provisions, but during a jury instruction conference, Plaintiffs' counsel asked the district court to remove the loss-of-consortium provision from the end of the last sentence. Plaintiffs' counsel argued that the provision stating that the amount of damages must not be influenced by "the loss of the deceased's society to the family" was inconsistent with the numbered provision that permitted the jury to award damages for loss of consortium. In making this argument, Plaintiffs did not refer the district court to the Use Note for UJI 13-1830. The district court denied Plaintiffs' request to remove the provision because it was "part of the stock instruction."

{11} Plaintiffs also drafted the special verdict form that was given to the jury. The special verdict form provided five separate lines for jury findings of total damages suffered by (1) "Virginia Saenz, Individually"; (2) "Robin Brandy Saenz"; (3) "Marcus Anthony Saenz"; (4) "Jason Ray Saenz"; and (5) "the Estate of Charles Anthony Saenz." The special verdict form did not break out the various elements of damages enumerated in Instruction No. 17. See UJI 13-1830, Use Note (explaining that "various elements of damages can be broken out separately on the special verdict form if the court determines that there is a need to do so in order to identify damages recoverable by the estate, by the statutory beneficiaries and by the surviving spouse . . . for loss of consortium").

{12} During its deliberations, the jury sent a note to the district court, indicating that the jury was unsure how to fill out the special verdict form. The jury asked, "Does 'total amount of damages to the Estate of Charles Saenz' include all amounts awarded to Virginia, Robin and sons, or is it meant to be a separate amount?" The district court judge discussed the note with counsel. Plaintiffs' counsel explained that the estate line on the verdict form was "obviously . . . asking for the value of the life of Charles Saenz, which is a different damage amount than the other individual plaintiffs," and suggested that the district court could answer "Yes." The district court judge responded, "Well, the problem is another question will probably come back, and that will be, What is the estate

¹During closing argument, Plaintiffs' counsel told the jury that the amount of medical and funeral expenses were no longer at issue because the parties had stipulated to an amount. The stipulated amount, reduced for comparative fault, was later included in the judgment as an award to the decedent's estate.

entitled to? I'm looking at the damages instruction for wrongful death, and I am not quite sure if it itemizes the damages for the estate." The district court suggested answering that "it is separate and please refer back to the damages instruction." The parties stipulated that the district court should answer, "The 'total amount of damages to the Estate of Charles Saenz' is separate."

{13} About fifty minutes later, the jury returned a special verdict in Plaintiffs' favor that awarded compensatory and punitive damages. The district court read the special verdict form aloud in open court. The jury assigned 45% of the fault to Ranack; 30% of the fault to Tony's employer, a steel erection subcontractor that is not a party to this appeal; and 25% of the fault to Tony himself. Regarding compensatory damages, the jury awarded \$482,000 to Virginia Saenz, individually; \$50,000 to Tony's minor daughter Robin; and \$25,000 each to Tony's adult sons Marcus and Jason. The jury entered "\$0" on the line for "damages suffered by the Estate of Charles Anthony Saenz." The jury also awarded \$10,000 in punitive damages to each of the individual plaintiffs, but the jury entered "\$0" on the line for punitive damages to the estate. The district court polled the jury at Plaintiffs' request, and the jurors indicated that the verdict was unanimous. The district court discharged the jury without objection from either party.

{14} About two weeks later, Plaintiffs filed a motion seeking a new trial on the ground that the jury's award of zero dollars to the estate was not supported by substantial evidence. At a post-trial motion hearing, Plaintiffs suggested that the jury may have been confused by Instruction No. 17's use of the phrase "Estate of Charles Anthony Saenz." The district court judge agreed that the jury may have been confused, noting that Instruction No. 17 and the verdict form appeared to refer to two different things. Specifically, Instruction No. 17 directed the jury to assign a value to the decedent's *life*, while the special verdict form provided a line for the jury to award damages to the decedent's *estate*. The judge concluded that although Instruction No. 17 may have been confusing or incorrect, Plaintiffs may have waived the right to object because Plaintiffs submitted the instruction. The judge observed that when the jury asked a question about the special verdict form, the parties failed to explain how to award damages for the value of the decedent's life. The judge concluded

that although the jury may have "felt, for whatever reason, that the value of life was zero[,] . . . I can't, as a Judge, go back behind the mind of the jury and try to figure out what it was that they were thinking." The district court denied Plaintiffs' motion for a new trial, explaining that "the issue about the estate and the value of life" would need to be resolved on appeal.

{15} On appeal to the Court of Appeals, Plaintiffs argued that "jury confusion arising from conflicting instructions as to loss of consortium may have led the jury to mistakenly award to [Virginia Saenz] and to Saenz's children damages that should have been awarded to the estate." *Estate of Saenz ex rel. Saenz v. Ranack Constructors, Inc.*, 2015-NMCA-113, ¶ 14, 362 P.3d 134, cert. granted 2015-NMCERT-010. The Court of Appeals recognized that Instruction No. 17 erroneously included the two conflicting loss-of-consortium provisions, contrary to the Use Note for UJI 13-1830. *Saenz*, 2015-NMCA-113, ¶¶ 44-46. But the Court of Appeals declined to reverse based on this error because Plaintiffs had failed to demonstrate prejudice. *Id.* ¶¶ 46-49.

{16} Alternatively, Plaintiffs argued in the Court of Appeals "that the zero damages award to the estate was not supported by substantial evidence." *Id.* ¶ 14. Ranack countered that Plaintiffs had waived their claim of insufficient evidence by failing to raise it before the jury was discharged. *See id.* ¶ 50. The Court of Appeals relied on case law from other states to conclude that the waiver rule "applies only to challenges of a jury verdict based on inconsistency, ambiguity, or indefiniteness" and not "to motions for a new trial based on a lack of substantial evidence under Rule 1-059 NMRA." *Id.* ¶¶ 50-53. The Court of Appeals held that the award of zero damages to the estate was not supported by substantial evidence and remanded this case to the district court "for a new trial as to damages to the estate only." *Id.* ¶ 58. Judge Jonathan B. Sutin dissented on this issue, concluding that Plaintiffs waived the opportunity to challenge the award of zero dollars to the estate because their "litigation approach or failures" caused the alleged error in the verdict and they failed to raise their claim of error prior to the jury's discharge. *Id.* ¶ 74 (Sutin, J., concurring in part and dissenting in part).

{17} Ranack filed a petition for writ of certiorari, asking this Court to consider whether the Court of Appeals erred by granting Plaintiffs a new trial on dam-

ages to the estate after Plaintiffs brought about and failed to resolve an ambiguity in the verdict concerning the allocation of damages between individual loss-of-consortium claimants and the personal representative of the wrongful death estate. We granted certiorari under NMSA 1978, Section 34-5-14(B) (1972) and Rule 12-502 NMRA, and we reverse the Court of Appeals on this issue.

II. DISCUSSION

{18} The sole issue on appeal is whether the district court abused its discretion by denying Plaintiffs' motion for a new trial. This issue requires us to determine whether Plaintiffs should be permitted to challenge the jury verdict on substantial evidence grounds or whether Plaintiffs waived the right to challenge the verdict.

A. Standard of Review

{19} The district "court has broad discretion in granting or denying a motion for new trial, and such an order will not be reversed absent clear and manifest abuse of that discretion." *Rhein v. ADT Auto., Inc.*, 1996-NMSC-066, ¶ 18, 122 N.M. 646, 930 P.2d 783 (internal quotation marks and citation omitted). Although we defer to the district court's ruling on a motion for a new trial, the district court does not have unrestricted authority to grant a new trial. *See id.* ¶¶ 18, 23. If a party seeks a new trial based on a claim of insufficient evidence, the district court may grant the motion only "when [the] jury's verdict is so against the weight of evidence that it would be a grave injustice to allow the verdict to stand." *Id.* ¶ 24.

{20} To evaluate whether the district court abused its discretion in this case, we must determine whether Plaintiffs waived their claim of error, which is a legal question that we review de novo. *See Mem'l Med. Ctr., Inc. v. Tatsch Constr., Inc.*, 2000-NMSC-030, ¶ 20, 129 N.M. 677, 12 P.3d 431 ("When reviewing the decision of a district court, this Court must be deferential to findings of fact by the court, but we review conclusions of law de novo."). In considering whether the district court has abused its discretion, we consider the entire record and all of the circumstances surrounding the district court's decision. *See Martinez v. Ponderosa Prods., Inc.*, 1988-NMCA-115, ¶¶ 4-5, 108 N.M. 385, 772 P.2d 1308.

B. Plaintiffs Waived Their Claim of Insufficient Evidence by Contributing to Ambiguity in the Verdict and Failing to Object to the Verdict or Seek Clarification of the Jury's Intent Prior to the Jury's Discharge

{21} Ranack argues that the district court properly denied Plaintiffs' motion for a new trial. Ranack asserts that Plaintiffs' litigation approach created ambiguity in the verdict with respect to the allocation of damages between Virginia Saenz's individual loss-of-consortium damages and the wrongful death damages she received as personal representative for the estate. Ranack contends that Plaintiffs waived their right to challenge the verdict on appeal because they failed to resolve the ambiguity before the jury was discharged. Finally, Ranack argues that by upholding the individual damages but remanding for a new trial on damages to the estate, the Court of Appeals set up a situation that likely will result in Plaintiffs receiving duplicate damages.

{22} Plaintiffs, on the other hand, contend that the jury was adequately informed of the nature of the damages sought and the distinctions between the loss-of-consortium damages, which should have been awarded to the individual plaintiffs, and the wrongful death damages, which should have been awarded to the estate. Plaintiffs argue that the district court abused its discretion by denying their motion for a new trial, relying on *Jones v. Pollock*, 1963-NMSC-116, ¶ 12, 72 N.M. 315, 383 P.2d 271 ("[W]here it is shown . . . that the verdict of the jury on the question of damages is clearly not supported by substantial evidence adduced at the trial of the case, a motion for a new trial should be granted, and not to do so is an abuse of discretion by the court").

{23} As a general rule, "the right to object to an improper verdict is waived when not made at the time of the return of the verdict and cannot be reclaimed and revived by resorting to a motion for a new trial or on appeal." *Thompson Drilling, Inc. v. Romig*, 1987-NMSC-039, ¶ 11, 105 N.M. 701, 736 P.2d 979. Our appellate courts have applied this waiver rule in situations where the jury verdict was indefinite, inconsistent, or ambiguous and the complaining party had an opportunity to challenge the verdict prior to the jury's discharge but failed to do so. *See id.* ¶¶ 5, 11 (applying the waiver rule to party's claim that the verdict was ambiguous and indefinite); *see also Helena Chem. Co. v. Uribe*, 2013-NMCA-017, ¶ 29, 293 P.3d 888 (declining to apply the waiver rule because the parties lacked "notice of and an opportunity to object to any perceived inconsistencies in the verdicts"); *Guest v. Allstate Ins. Co.*, 2009-NMCA-037, ¶ 36,

145 N.M. 797, 205 P.3d 844 (concluding that Allstate waived the right to challenge inconsistencies in the verdict because the verdict was "read aloud by the judge," the jury was "polled at Allstate's request," and Allstate failed "to bring the matter to the trial court's attention before the jury was discharged"), *rev'd in part on other grounds*, 2010-NMSC-047, 149 N.M. 74, 244 P.3d 342; *G & G Servs., Inc. v. Agora Syndicate, Inc.*, 2000-NMCA-003, ¶ 41, 128 N.M. 434, 993 P.2d 751 ("A litigant who fails to object to an alleged inconsistency in a jury's verdict before the jury is dismissed may be held to have waived any further challenge to the alleged inconsistency").

{24} Where a party contributes to ambiguity in the verdict and fails to take steps to cure the ambiguity before the jury is discharged, it is appropriate to apply the waiver rule. For example, in *Ramos v. Rodriguez*, the Court of Appeals applied the waiver rule to reject a third-party plaintiff's argument that an inadequate special verdict form resulted in an inconsistent jury verdict. *See* 1994-NMCA-110, ¶ 13, 118 N.M. 534, 882 P.2d 1047. The district court read the jury verdict aloud in open court and polled the jurors at the third-party plaintiff's request to confirm their agreement. *Id.* ¶ 6. The district court then entered judgment denying the third-party plaintiff's claims. *Id.* ¶ 7. Six days later, the third-party plaintiff filed a motion for a new trial, arguing that there was an inconsistency in the verdict. *Id.* ¶ 6. The district court denied the motion. *Id.* On appeal, the third-party plaintiff complained that the district court caused inconsistency in the verdict by omitting necessary instructions from the special verdict form. *See id.* ¶¶ 9-10. The Court of Appeals held that the third-party plaintiff waived any objection to the verdict by failing to object to the perceived inadequacies in the verdict form before it was submitted to the jury and failing to request that the jury resolve the alleged inconsistency at the time the verdict was returned. *Id.* ¶¶ 12-13.

{25} The waiver rule similarly precluded a party's challenge to an ambiguous jury verdict in *Diversey Corp. v. Chem-Source Corp.*, 1998-NMCA-112, ¶¶ 36-40, 125 N.M. 748, 965 P.2d 332. The jury awarded the defendants "\$128,500 for tortious interference with . . . contractual relations 'and/or' \$385,500 for violation of the Unfair Practices Act." *Id.* ¶ 1 (emphasis added). On appeal, the plaintiff argued that the "and/or" language on the verdict

form rendered the jury's verdict ambiguous and resulted in the defendant receiving double recovery for a single injury. *Id.* ¶ 36. Although there appeared to be an error in the verdict form, the Court of Appeals declined to reverse the jury's award because the parties stipulated to the inclusion of the "and/or" language on the verdict form and the plaintiff failed to object to the verdict at trial. *Id.* ¶¶ 36-37.

{26} In this case, Plaintiffs acknowledged in the district court and the Court of Appeals that Instruction No. 17 may have been confusing, resulting in an unclear verdict. But in this Court, Plaintiffs advance only their claim of insufficient evidence, which they argue was properly raised by motion for a new trial. Plaintiffs argue that there is an important distinction between a defect on the face of the verdict, which can be corrected if brought to the district court's attention before the jury is discharged, and a substantive error indicating that the jury has disregarded the instructions and evidence, which may be raised in a motion for a new trial.

{27} Ranack agrees with Plaintiffs that New Mexico law does not require a party to challenge the sufficiency of the evidence underlying a damages award before the jury is discharged, and Ranack does not ask this Court to adopt such a rule. Ranack argues, however, that the waiver rule articulated in *Thompson Drilling* and subsequent cases should apply to Plaintiffs' claim of insufficient evidence in this case because Plaintiffs' actions and inaction at trial culminated in an ambiguous jury verdict. We agree.

{28} First, Plaintiffs submitted a wrongful death damages instruction and a special verdict form that were likely to confuse the jury about how to allocate damages between the individual loss-of-consortium claimants and the wrongful death estate. Plaintiffs modified this Court's wrongful death damages instruction, UJI 13-1830, to provide that Virginia Saenz was bringing this case individually *and on behalf of the estate*. As a result, a reasonable jury could have interpreted Instruction No. 17 "to say that Virginia Saenz was entitled to one recovery encompassing both her individual and representative capacities." *Saenz*, 2015-NMCA-113, ¶ 78 (Sutin, J., concurring in part and dissenting in part). Compounding the potential for confusion, the special verdict form did not break out the elements of damages enumerated in Instruction No. 17, as suggested in the Use Note for UJI 13-1830, and neither Instruction No. 17 nor the

special verdict form explained how the jury should allocate the enumerated elements of damages between the individual claimants and the estate.

{29} Second, when the jury asked a question during deliberations indicating that the jury was confused about the special verdict form, Plaintiffs failed to suggest a response that would assist the jury in allocating damages.

{30} And third, Plaintiffs had an opportunity to object to the verdict or to seek clarification of the jury's intent before the jury was discharged but failed to do so. As in *Ramos*, 1994-NMCA-110, ¶ 6, the district court read the ambiguous jury verdict aloud in open court and polled the jury at Plaintiffs' request. If Plaintiffs had raised their claim of error before the jury was excused, the district court could have clarified the jury's intent through further instruction and interrogatory. See *Diversey*, 1998-NMCA-112, ¶ 39 (explaining that a timely objection allows the district "court to send the jury back to the jury room to clarify its verdict, thereby correcting any error"). Additionally, a timely "objection would have developed the record (by adding argument of counsel, by sending the jury back to clarify the verdict, or by allowing the court to poll the jurors concerning the verdict), so that this Court could perform an informed review." *Id.*

{31} As the district court recognized at the post-trial motion hearing, the verdict was susceptible to more than one interpretation. One possibility is that the jury intentionally awarded zero damages for the value of the decedent's life and his future earning capacity. Another possibility is that the jury "concluded from the instructions, the special verdict form, and the lack of any explanation to the jury by Plaintiff, that its award of \$482,000 properly included all of the compensation for 'Virginia Saenz, Individually and on behalf [of] the estate.'" *Saenz*, 2015-NMCA-113, ¶ 78 (Sutin, J., concurring in part and dissenting in part). This second possibility appears to be more consistent with the evidence of wrongful death damages at trial, including Virginia's testimony that Tony was in excellent health and could have earned \$450,000 if he had worked at his current job until the age of seventy. But on appeal we can only speculate about what the jury intended.

{32} We conclude that Plaintiffs waived their claim of error by contributing to ambiguity in the verdict and by failing to

object or seek clarification of the jury's intent prior to the jury's discharge. Because the jury verdict was ambiguous, the district court could not fairly evaluate whether the verdict was "so against the weight of evidence that it would be a grave injustice to allow the verdict to stand." *Rhein*, 1996-NMSC-066, ¶ 24. We hold, based on all of the circumstances surrounding the district court's decision, that the district court did not abuse its discretion by denying Plaintiffs' motion for a new trial.

C. The Out-of-State Cases on Which the Court of Appeals Majority Relied Are Inapplicable to this Case

{33} The Court of Appeals majority relied on several opinions from other states to explain why it declined to apply the waiver rule to Plaintiffs' claim of insufficient evidence. See *Saenz*, 2015-NMCA-113, ¶¶ 51-53. The out-of-state cases cited by the Court of Appeals are distinguishable from this case. In each of those cases, the jury returned a complete, unambiguous verdict that included awards of zero damages for some claimants or elements despite evidence of damages at trial, and the plaintiff raised a substantive objection to the amount awarded. None of the out-of-state cases involved a verdict that was susceptible to more than one reasonable interpretation due to ambiguity created and perpetuated by the plaintiff.

{34} For example, in *State ex rel. Valley Radiology, Inc. v. Gaughan*, 640 S.E.2d 136, 137 (W. Va. 2006), the estate of a deceased patient brought a wrongful death action alleging that Valley Radiology failed to timely diagnose blood clotting, resulting in the patient's untimely death. The jury, which had exhibited signs of bias during voir dire, awarded zero damages for sorrow, mental anguish, and lost income. *Id.* at 138-39. Within two weeks after the verdict, the estate moved for a new trial on the ground that the verdict was inadequate. *Id.* at 139. The trial court granted the motion, finding that the verdict was the result of juror prejudice and that it would not be "practical to send the same jurors back to consider the issue of damages because there was almost no chance they could return a fair verdict." *Id.* at 139, 141. Valley Radiology argued in the Supreme Court of Appeals of West Virginia that the estate waived the right to challenge the verdict by failing to object prior to the jury's discharge. *Id.* at 139-40. The appellate court disagreed and declined to apply the waiver rule because "there was no confusion as to what the jury intended

to award." *Id.* at 140. The appellate court explained that

the objective that underlies the general rule of requiring that an objection to the verdict form must be made prior to the jury's discharge is to provide the trial court with an opportunity to "cure" any alleged defect or irregularity in the form prepared by the jury. No similar opportunity to cure is required for an inadequate award of damages. This is because a request for a new trial based on the inadequacy of damages is not a procedural objection to the verdict form, but a substantive objection to the amount of damages awarded in view of the evidence presented and the findings of the jury as to fault.

Id. at 141 (footnote omitted).

{35} In *Kava v. American Honda Motor Co.*, 48 P.3d 1170, 1173 (Alaska 2002), the jury awarded damages to two beneficiaries of a wrongful death estate but awarded zero damages to the remaining three beneficiaries. After the jury had been dismissed, the estate moved for a new trial. *Id.* The trial court viewed the evidence in the light most favorable to the defendant and denied the estate's motion. See *id.* at 1176. The Alaska Supreme Court reversed, explaining that the trial court had applied the wrong standard and that "[o]n remand, the trial court should use its discretion and independently weigh the evidence to determine whether the verdict is against the weight of the evidence." *Id.* at 1177. The appellate court rejected the defendant's contention "that the estate waived any right to a new trial by failing to challenge the jury verdict as legally inconsistent before the jury was discharged." *Id.* The appellate court explained that the waiver rule does not preclude a party from moving "for a new trial on the discretionary ground that the verdict was against the weight of the evidence" or "from arguing the apparent inconsistency of the verdicts as a factor that the trial court could consider" when ruling on the motion. *Id.*

{36} In *Clay v. Choctaw Nation Care Center, LLC*, 2009 OK CIV APP 35, ¶ 1, 210 P.3d 855, 856-57, the jury found a nursing home liable for a resident's death but awarded zero damages to the resident's estate. The estate filed a motion for a new trial on damages, which the district court granted. *Id.* ¶ 8. On appeal, the Court of Civil Appeals of Oklahoma held that the

district court properly granted a new trial because the award of zero damages was inconsistent with uncontroverted evidence of damages at trial and was therefore inadequate as a matter of law. *Id.* ¶¶ 17-21. The appellate court rejected the nursing home's argument that the estate should have challenged the verdict before the jury was discharged. *Id.* ¶¶ 18, 20. The appellate court made a distinction between a challenge to a confusing, irregular, or incorrect verdict, which must be raised prior the jury's discharge, and a challenge to the substance of a verdict, which may be raised in a motion for a new trial. *Id.* ¶ 20.

{37} Finally, in *Cooper v. Fultz*, 812 S.W.2d 497, 498 (Ky. 1991), *abrogated on other grounds by Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), the jury found the defendant partly liable for injuring the plaintiff in a vehicle collision but awarded zero damages for pain and suffering. The trial court denied the plaintiff's motion for a new trial on the ground that the plaintiff had failed to object when the verdict was returned. *Id.* On appeal, the Supreme Court of Kentucky held that the waiver rule does not apply to a complete verdict that specifies the jury's "deliberate intention to make no award for one (or more) elements of damages." *Id.* at 499. The appellate court explained that if a jury "has flatly decided that the claimant's pain and suffering is worth nothing," it would be a "booby trap" to ask the jury to reconsider and to replace the zero with a dollar amount. *Id.* at 499-500. The appellate court concluded that if a hostile jury deliberately awards zero damages, the verdict "should be subject to a motion for a new trial which should be granted unless there is countervailing evidence such that

the jury's verdict, taken as a whole, withstands the test of inadequacy." *Id.* at 500. {38} These out-of-state cases stand for the proposition that if the jury returns a complete, unambiguous verdict, a party may raise a substantive objection to the size of the damages award in a motion for a new trial. See *Kava*, 48 P.3d at 1177; *Cooper*, 812 S.W.2d at 500-01; *Clay*, 2009 OK CIV APP 35, ¶ 20; *Valley Radiology*, 640 S.E.2d at 141. As the courts recognized in *Valley Radiology*, 640 S.E.2d at 140-41, and *Cooper*, 812 S.W.2d at 499-500, if the verdict clearly reflects the jury's deliberate intention to award zero damages despite evidence to the contrary, it does not advance judicial economy or fundamental fairness to ask the jury to correct the verdict. But when the jury verdict is confusing, ambiguous, or incomplete, the parties have an obligation to timely object so that the trial court can take steps to cure any errors in the verdict and clarify the jury's intent before the jury is discharged. See *Valley Radiology*, 640 S.E.2d at 141.

{39} In this case, the verdict was ambiguous. It is unclear whether the jury's award of zero damages to the estate accurately reflected the jury's intent or whether the jury mistakenly awarded wrongful death damages to the individual claimants. It is appropriate to apply the waiver rule to Plaintiffs' claim of insufficient evidence because Plaintiffs contributed to ambiguity in the verdict and failed to object or seek clarification of the jury's intent prior to the jury's discharge.

D. The Appeal Before This Court Does Not Present a Claim of Jury Instruction Error

{40} To avoid any implication to the contrary, we emphasize that neither party raises a claim of jury instruction error before this Court. Plaintiffs do not chal-

lenge the Court of Appeals conclusion that Plaintiffs were not prejudiced by the erroneous inclusion of inconsistent loss-of-consortium provisions in Instruction No. 17. The unchallenged jury instructions are therefore the law of the case. See *Haaland v. Baltzley*, 1990-NMSC-086, ¶ 14, 110 N.M. 585, 798 P.2d 186.

{41} Although the appeal before this Court does not present a claim of jury instruction error, it appears that the jury instructions and special verdict form in this case contributed to juror confusion. We request that the Uniform Jury Instructions-Civil Committee consider whether amendments to the current version of UJI 13-1830 are warranted to ensure that jurors understand how to allocate damages between the personal representative for the wrongful death estate and the individual claimants, if any. We also ask the Committee to consider whether a new special verdict form should be adopted for use in wrongful death cases.

III. CONCLUSION

{42} We reverse the Court of Appeals' holding that Plaintiffs are entitled to a new trial on the issue of damages to the estate. We affirm the district court's denial of Plaintiffs' motion for a new trial, and we affirm the district court judgment.

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

PETRA JIMENEZ MAES, Justice

WE CONCUR:

JUDITH K. NAKAMURA, Chief Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice

Certiorari Granted, June 4, 2018, No. S-1-SC-36918

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-039

No. A-1-CA-35001 (filed February 6, 2018)

ALFREDO MORGA, Individually and on behalf of the
Estate of YLAIRAM MORGA, Deceased; and as Next
Friend of YAHIR MORGA, Minor Child,
and

RENE VENEGAS LOPEZ, Individually and as the
Administrator of the Estate of MARIALLY RUBY VENEGAS MORGA
Deceased; and GEORGINA LETICIA VENEGAS, Individually,
Plaintiffs-Appellees,

v.

FEDEX GROUND PACKAGE SYSTEM, INC., RUBEN'S
TRUCKING, LLC a/k/a RUBEN REYES a/k/a SHOOTER'S
EXPRESS TRUCKING, INC., the Estate of ELIZABETH SENA
QUINTANA, and M&K'S TRUCKING, INC.,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Francis J. Mathew, District Judge

L. HELEN BENNETT
L. HELEN BENNETT, P.C.
Albuquerque, New Mexico
for Appellee the Estate of Ylairam
Morga

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K. JOSEPH CERVANTES
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Daniel Anchondo
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Ruby Venegas Morga

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JOCELYN DRENNAN
JEFF CROASDELL
BRENDA M. SAIZ
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ROBB, P.A.

Albuquerque, New Mexico
for Appellants

Opinion

**Timothy L. Garcia, Judge pro
tem**

{1} This appeal is before us following a jury verdict for more than \$165 million to Plaintiffs for wrongful death, personal injury, and loss of consortium claims that arose from a catastrophic automobile accident between a small pickup truck and

a FedEx transport tractor-trailer. Defendants assert that the district court erred in denying their motion for a new trial or a remittitur of the damages awarded by the jury. Specifically, Defendants argue that (1) the verdict was not supported by substantial evidence; and (2) the jury's verdict was tainted by passion, prejudice, partiality, sympathy, undue influence, or a mistaken measure of damages. In addition, Defendants argue that the district court erred in awarding prejudgment

interest. This case presents an opportunity to address important issues faced by the judicial system—how do appellate courts measure the outer limits of a jury's discretion to award compensatory damages and whether we should utilize mathematic ratios as an acceptable basis to reduce damage awards in large verdict cases. We decline to utilize mathematic ratios as the basis for establishing error by the district court. We affirm the district court's denial of Defendants' two post-trial motions, and accordingly, we affirm the jury's verdict. We also affirm the award of prejudgment interest.

BACKGROUND

{2} On June 22, 2011, at approximately 1:30 a.m., on the interstate between Las Cruces and Deming, New Mexico, a combination tractor-trailer vehicle (the FedEx truck) struck a small pickup truck driven by Marialy Ruby Venegas Morga (Ms. Morga). Accompanying Ms. Morga was her four-year-old daughter, Ylairam Morga (Ylairam), and nineteen-month-old son, Yahir Morga (Yahir). The FedEx truck was operated by FedEx Ground Package System, Inc. (FedEx) through independent FedEx contractors, and the actual driver for the FedEx contractors was Elizabeth Quintana (Quintana) (FedEx, the FedEx contractors, and Quintana are collectively referred to as Defendants). Ms. Morga was either stopped or barely moving on the right-hand side of her traffic lane when the FedEx truck struck her vehicle from behind at sixty-five miles per hour without slowing. The impact and its resulting injuries were severe, with multiple fatalities occurring. Ms. Morga and Ylairam died, and Yahir was seriously injured. Quintana also died as a result of the accident.

{3} Alfredo Morga, Ms. Morga's spouse, brought suit against Defendants, individually and as personal representative for his daughter, Ylairam, and as next friend for his son, Yahir. Mr. Morga also asserted claims against Defendants for personal injury and wrongful death. Ms. Morga's father, Rene Venegas Lopez, as her personal representative, brought suit against Defendants for wrongful death (Mr. Morga individually and in his representative capacity for both of his children, as well as Mr. Lopez in his capacity as personal representative for Ms. Morga are referred to in this opinion as Plaintiffs). Mr. Lopez and his wife, Georgina Leticia Venegas, also intervened in the lawsuit (Intervenor) and asserted personal claims for loss of consortium resulting from the death of

their daughter Ms. Morga. Prior to trial, FedEx stipulated that it would “pay for any damages attributed to [FedEx] and the other named [D]efendants.”

{4} At trial, Plaintiffs presented evidence of damages related to the wrongful death, personal injury claims by Plaintiffs and also the loss of consortium claims by Mr. Morga and Intervenor. Plaintiffs also asked the jury to award punitive damages against Defendants. The jury found all Defendants negligent and liable for Plaintiffs’ claims. The jury apportioned fault for the accident as follows: FedEx (65 percent), the FedEx contractors and Quintana (10 percent each for a total of 30 percent), and Ms. Morga (5 percent). The jury awarded compensatory damages as follows:

For the wrongful death of Ylaim \$61,000,000

For the wrongful death of Ms. Morga \$32,000,000

For personal injury and the loss of consortium or his mother, to Yahir \$32,000,000

For emotional distress, resulting from physical

and psychological injury, and the loss of consortium for his spouse and child, to Mr. Morga \$40,125,000

For the loss of consortium of his daughter, to Mr. Lopez \$208,000

For the loss of consortium for her daughter, to Ms. Venegas \$200,000

No punitive damages were awarded by the jury.

{5} After the verdict was entered on January 24, 2015, the district court judge presiding over the case was involved in an ex parte conversation with Plaintiffs’ counsel regarding potential counsel on appeal. Recognizing that the ex parte conversation could be perceived as improper, the district court judge recused herself. The case was reassigned to Judge Mathew to preside over all the post-trial proceedings.

{6} Defendants moved for a new trial or remittitur of the damages award and argued that the verdict was excessive. The district court denied both motions. The court concluded that there was substantial evidence to support the verdict, that it was not the result of passion, prejudice, a mistaken measure of damages, or other improper factors, and that it would be in-

appropriate to substitute its judgment for that of the jury. Plaintiffs then proposed a form of judgment that included an award of prejudgment interest. The district court held an evidentiary hearing on the motion and subsequently ruled that, under NMSA 1978, Section 56-8-4(B) (2004), prejudgment interest was warranted at an annual rate of 5 percent. Defendants filed a timely appeal. While the appeal was pending before this Court, Intervenor settled their loss of consortium claims. As a result, we do not address any appellate arguments regarding Intervenor’s damage awards and loss of consortium claims.

DISCUSSION

{7} On appeal, Defendants do not assert any issues related to the jury’s determination of liability, but only contested the jury’s award of compensatory damages and the district court’s award of prejudgment interest.

I. Denial of Defendants’ Motions for New Trial or Remittitur

A. Standard of Review

{8} We review the district court’s denial of Defendants’ motions for a new trial or remittitur for an abuse of discretion. *See State v. Mann*, 2002-NMSC-001, ¶ 17, 131 N.M. 459, 39 P.3d 124 (“[The appellate courts] will not overturn a trial court’s denial of a motion for a new trial unless the trial court abused its discretion.”); *Hanberry v. Fitzgerald*, 1963-NMSC-100, ¶ 2, 72 N.M. 383, 384 P.2d 256 (applying an abuse of discretion standard for the review of an appellant’s “claim that the verdict [was] excessive, requiring a remittitur or a new trial”); *Sandoval v. Baker Hughes Oilfield Operations, Inc. (Jose Sandoval)*, 2009-NMCA-095, ¶ 13, 146 N.M. 853, 215 P.3d 791 (“The applicable standard in reviewing the denial of a motion for a new trial or remittitur is [an] abuse of discretion.”). “[The] trial court abuses its discretion when its decision is contrary to logic and reason.” *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M. 654, 986 P.2d 450 (internal quotation marks and citation omitted); *see Talbott v. Roswell Hosp. Corp.*, 2008-NMCA-114, ¶¶ 29-30, 144 N.M. 753, 192 P.3d 267 (recognizing that a trial court does not abuse its discretion in denying a motion for a new trial unless its decision was “arbitrary, capricious, or beyond reason” (internal quotation marks and

citation omitted)). However, even when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo. *Id.* ¶ 9.

{9} Our appellate courts defer to the jury in awarding damages and also to the trial court in its assessment of a motion for new trial or a motion to remit the amount of damages awarded by the jury. *See Ennis v. Kmart Corp.*, 2001-NMCA-068, ¶ 27, 131 N.M. 32, 33 P.3d 32 (“When a trial court denies a motion for a remittitur, we defer to the trial court’s judgment. When the jury makes a determination and the trial court approves, the amount awarded in dollars stands in the strongest position known in the law.” (internal quotation marks and citations omitted)); *see also Coates v. Wal-Mart Stores, Inc.*, 1999-NMSC-013, ¶ 49, 127 N.M. 47, 976 P.2d 999 (recognizing the appellate court’s reliance on the trial court because of its unique position “to observe the witnesses and their demeanor as well as the jurors’ attitude during the trial” whereas we review the record cold); *Salopek v. Friedman*, 2013-NMCA-087, ¶ 30, 308 P.3d 139 (“In determining whether a jury verdict is excessive, we do not reweigh the evidence but determine whether the verdict is excessive as a matter of law. The jury’s verdict is presumed to be correct.” (internal quotation marks and citation omitted)).

{10} Defendants argue that such deference to the district court should not be afforded in this particular case because Judge Mathew did not have the opportunity to observe the proceedings first hand. Defendants therefore contend that a de novo standard of review should apply. Defendants cite no authority to support their contention that a judge duly appointed to proceed with an ongoing case, pursuant to Rule 1-063 NMRA,¹ is not entitled to the same discretion given to other trial judges presiding over a case. We decline to deviate from this established precedent—recognizing an abuse of discretion standard of review—for four reasons. First, this Court will not consider propositions that are unsupported by citation to authority. *See ITT Educ. Servs., Inc. v. N.M. Taxation & Revenue Dep’t*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969. Second, although this standard of review argument was presented as one based on inherent logic, this Court is bound by Supreme

¹Stating that “[i]f a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.

Court precedent, including the appropriate standard of review to be applied. *See State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶¶ 20-22, 135 N.M. 375, 89 P.3d 47 (stating that although the Court of Appeals is bound by Supreme Court precedent, we may explain “any reservations [this Court] might harbor over its application of [Supreme Court] precedent so that we will be in a more informed position to decide whether to reassess prior case law”). We can only note the potential logic of Defendants’ argument regarding applying a different standard of review in the present case, but any change to the standard of review must be implemented by our Supreme Court. Third, although Judge Mathew was not in the “unique position to observe the witnesses and their demeanor as well as the jurors’ attitude during the trial[.]” *Coates*, 1999-NMSC-013, ¶ 49, he does have “experience with juries in the community,” which this Court stated is “an indispensable safeguard built into our American civil jury system.” *Sandoval v. Chrysler Corp. (James Sandoval)*, 1998-NMCA-085, ¶ 14, 125 N.M. 292, 960 P.2d 834. Fourth, Defendants made no objection below regarding Judge Mathew’s capacity or ability to fully preside over the hearing for remittitur or a new trial.

{11} In reviewing the actual evidence presented at trial, “we review the sufficiency of the evidence to support the verdict by examining whether the verdict is supported by such relevant evidence that a reasonable mind would find adequate to support a conclusion.” *Jose Sandoval*, 2009-NMCA-095, ¶ 12 (internal quotation marks and citation omitted). “We review all evidence in the light most favorable to the verdict and resolve all conflicts in the light most favorable to the prevailing party.” *Id.* (internal quotation marks and citation omitted).

B. Analysis of the Evidence to Support the Jury’s Award

{12} “The purpose of compensatory damages is to make the injured party whole by compensating it for losses.” *Cent. Sec. & Alarm Co. v. Mehler*, 1996-NMCA-060, ¶ 11, 121 N.M. 840, 918 P.2d 1340. “A jury’s damages award will be upheld unless it appears that the amount awarded is so grossly out of proportion to the injury received as to shock the conscience.” *Salopek*, 2013-NMCA-087, ¶ 31 (internal quotation marks and citation omitted).

This Court is required to consider two factors in making the determination of whether a jury award is excessive. First, we consider “whether the evidence, viewed in the light most favorable to the plaintiff, substantially supports the award.” *Wachocki v. Bernalillo Cnty. Sheriff’s Dep’t.*, 2010-NMCA-021, ¶ 48, 147 N.M. 720, 228 P.3d 504 (alterations, internal quotation marks, and citation omitted), *aff’d*, 2011-NMSC-039, 150 N.M. 650, 265 P.3d 701. If any portion of the award is supported by substantial evidence, we must next consider “whether there is an indication of passion, prejudice, partiality, sympathy, undue influence or a mistaken measure of damages on the part of the fact[-]finder.” *Id.* If the award does not satisfy either of these tests, then all or some portion of the award is deemed excessive. *See Jose Sandoval*, 2009-NMCA-095, ¶ 16. In the present case, Defendants argue that the evidence did not support the award of damages and that passion, prejudice, or sympathy affected the jury’s determination of the amount of damages it awarded. However, even if the jury’s award is higher than the court would have given, this is not sufficient to disturb a verdict. *Id.* ¶ 17. An award of damages will be disturbed only in extreme circumstances. *See Salopek*, 2013-NMCA-087, ¶ 30. “The proper approach is to examine the plaintiff’s evidence related to damages and determine whether that evidence could justify the amount of the verdict, or determine whether the verdict amount was grossly out of proportion to the evidence of the plaintiff’s [injury].” *Id.* ¶ 31 (alterations, internal quotation marks, and citation omitted).

{13} Although Defendants concede that the evidence at trial supported an award for compensatory damages, they argue that the amounts awarded to Plaintiffs were excessive for two reasons.² First, Defendants argue that the awards for wrongful death, bodily injury, and loss of consortium “far exceed any previous awards in this state” and the evidence was insufficient to support such an excessive award. Second, Defendants argue that because the awards for the economic injury make up such a small portion of the total award (between 1 and 3 percent), the damage awards are “grossly disproportionate to the injury” and constitute legal error requiring a new trial on the issue of damages. We recognize that Defendants’ arguments are both

primarily directed at whether the amount of the jury’s award for non-economic damages “is so grossly out of proportion to the injury received as to shock the conscience” of this Court. *Id.* (internal quotation marks and citation omitted).

1. Substantial Evidence Was Presented to Support the Award of Economic and Non-Economic Damages to Plaintiffs

{14} In the present case, Defendants do not dispute that the jury was properly instructed regarding its duty to review the evidence and calculate Plaintiffs’ damages. The jury was instructed as follows:

The guide for you to follow in determining fair and just damages is the enlightened conscience of impartial jurors acting under the sanctity of your oath to compensate the beneficiaries with fairness to all parties to this action. Your verdict must be based on evidence, not on speculation, guess or conjecture. You must not permit the amount of damages to be influenced by sympathy or prejudice, or by the grief or sorrow of the family, or the loss of the deceased’s society to the family.

They were further instructed to consider neither the property or wealth of the beneficiaries nor that of Defendants in arriving at a verdict. We summarize the compensatory damages evidence related to each Plaintiff separately.

a. Alfredo Morga

{15} The jury awarded Mr. Morga \$40.125 million for compensatory damages. The jury was instructed that if they should decide in favor of Mr. Morga, they must “fix the amount of money which will reasonably and fairly compensate him” for injuries related to the following elements of damages: past and future medical expenses; the “nature, extent[,] and duration of the injury[;]” pain and suffering experienced as a result of the injury; loss of enjoyment of life; aggravation of a pre-existing ailment or condition; and emotional distress resulting from the death of his wife, Marialy, his daughter, Ylairam, and the injuries to his son Yahir.

{16} The evidence established that, prior to the accident, Mr. Morga suffered from epilepsy which was controlled by medication. Mr. Morga’s epilepsy intensified after the accident and became more frequent.

²This concession only applied to the damages claimed by, or on behalf of, Alfredo, Yahir, Ylairam and Marialy Morga. The concession did not apply to the settled loss of consortium claims by Rene and Georgina Venegas.

Additionally, expert testimony established that Mr. Morga suffered from posttraumatic stress disorder, major depressive disorder, and that he would need at least a year of intensive psychotherapy and psychiatric care. Dr. Angelo Romagosa, a medical doctor specializing in physical medicine and rehabilitation, testified that Mr. Morga would need \$250,068 in physician care, medications, and rehabilitation services in the future due to the injuries suffered as a result of the accident.

{17} With regard to the emotional distress of Mr. Morga due to the loss of society and companionship for the injuries and death of his family members, the jury heard substantial evidence about this close young family and the irreparable personal loss that resulted from the accident. Mr. Morga testified about meeting Ms. Morga as a freshman in high school. The Morgas began dating and had their daughter, Ylairam, during their senior year. Mr. Morga testified about the details of their early lives—high school, his work at various part-time jobs to support the family—as well as Ms. Morga’s background in high school, youthful activities, and eventually taking care of the home and their new baby, Ylairam. In October 2009 they had their second child, Yahir. Mr. Morga also provided numerous details about their daily lives, close relationship, buying a home, advancements at work, and plans for the future after Yahir was born. Mr. Morga then testified to his recollection of when he went to the scene on the night of the accident. He was told not to approach the vehicle where his wife and daughter were still located. He then went to the hospital in El Paso, Texas, where his son was taken following the accident and where he stayed for several days. Mr. Morga testified that he was unable to return to work for months after the accident. Mr. Morga also described how the accident severely affected him emotionally.

b. Yahir Morga

{18} The jury compensated Yahir \$32 million for past and future damages for injuries he suffered as a result of the accident. The jury was instructed that should they decide in favor of Yahir, they must “fix the amount of money which will reasonably and fairly compensate [him]” for injuries related to the following elements of damages: past and future medical expenses; the “nature, extent[,] and duration of the injury”; pain and suffering experienced; loss of enjoyment of life; and emotional distress resulting from the death of his mother, Ms. Morga.

{19} At trial, the evidence showed that Yahir suffered a distal tibial metaphyseal fracture, traumatic brain injury, a liver laceration, a right pulmonary contusion, and other traumatic injuries. Yahir incurred \$58,444.68 in medical treatment. Dr. Romagosa testified that Yahir would need \$417,926.47 in future medical care. Additionally, Dr. King testified that Yahir would be at an “increased risk for psychological difficulties down the road due to the early loss of his mother and sister.” After the accident, Yahir regressed in his use of speech and had to see a psychologist. Additionally, Mr. Morga testified that Yahir would wake up at night afraid and crying. Ms. Morga’s older sister, Rebecca Brown, also testified regarding the relationship between Yahir and his mother prior to the accident.

c. Ylairam Morga

{20} The jury compensated the Estate of Ylairam \$61 million for her wrongful death. The jury was instructed that if it were to find for the Plaintiffs, it “must then fix the amount of money which you deem fair and just for the life of Ylairam,” for the following elements of damages: “reasonable expenses of funeral and burial[;] lost earning capacity, and the lost value of household services; [t]he value of her lost life; and the mitigating or aggravating circumstances attending the wrongful act, neglect, or default.”

{21} Ylairam was only four years old at the time of the accident. At trial, Plaintiffs presented evidence regarding several aspects of Ylairam’s life and her relationship with her family for the jury to consider in determining the amount of damages to be awarded for her death, including testimony by her father, Mr. Morga and various family photographs.

d. Marialy Morga

{22} The jury awarded the Estate of Ms. Morga \$32 million for her wrongful death. The jury was instructed that it “must . . . fix the amount of money which you deem fair and just for [her] life,” including the following elements of damages: “[t]he reasonable expenses for the funeral and burial; [t]he lost earning capacity and the [lost] value of household services; [t]he value of [her] life apart from her earning capacity; aggravating or mitigating circumstances attending the wrongful act, neglect or default; [and t]he loss of guidance and counseling to the deceased’s minor child.”

{23} At trial, specific evidence was presented regarding Ms. Morga’s life so that the jury could make its determination of

the damages incurred as a result of Ms. Morga’s death. Ms. Brown testified about Ms. Morga’s early life, her family and home in El Paso, Texas, as well as her personality and interests. Ms. Brown also testified regarding the closeness of their relationship. She presented Ms. Morga as a good mother, as well as an attentive daughter and wife. Mr. Morga also testified about his relationship with his wife, buying their first home, raising their two children, and their plans to put their children through college. He also testified that Ms. Morga had been planning to get her graduate equivalency degree, and someday obtain her cosmetology degree.

e. The Evidence Supports the Jury Award

{24} Defendants’ arguments regarding the sufficiency of the evidence are, at their core, solely objections to the jury’s large awards for non-economic injuries to Plaintiffs. Defendants did not target any specific component of Plaintiffs’ evidence as insufficient or erroneous. Defendants do not dispute that the non-economic injuries and damages incurred by Plaintiffs are unique, intangible, and difficult to quantify in financial terms. As such, our judicial system relies on juries and trial courts, as the representatives of their local community, to best evaluate and determine the monetary value of these non-economic injuries, including pain and suffering, and the loss of life. *See James Sandoval*, 1998-NMCA-085, ¶¶ 13-14 (“The amount of awards necessarily rests with the good sense and deliberate judgment of the tribunal assigned by law to ascertain what is just compensation, and, in the final analysis, each case must be decided on its own facts and circumstances. . . . In addition, the trial judge’s experience with juries in the community provides an indispensable safeguard built into our American civil jury system.” (internal quotation marks and citation omitted)).

{25} In this case, Defendants made a strategic decision to entrust the jury with the decision of how to determine the value of a life from the evidence presented, even going so far as to exclude Plaintiffs’ economist from providing testimony regarding “specific damages for the value of a statistical life[.]” including “any numbers offering a benchmark value as to human life.” Defendants’ counsel specifically told the jury, “I am not going to submit to you a number, because I agree the value of life—I don’t want to insult anybody about the value of life in this case. But you have

to rely on you[r] own conscious[] when you're looking at [the] value of life." We agree that the damage awards in this case were very large. However, when an experienced district court judge, who is familiar with juries in his community, properly reviews the record and evaluates a motion for new trial and a motion for remittitur; the fact that Plaintiffs' awards are large does not transform Plaintiffs' undisputed evidence into something illogical or insufficient. Furthermore, although Defendants were afforded an opportunity to present evidence or testimony at trial to guide the jury in their determination of the value of life and other non-economic damages, Defendants specifically chose not to do so. Under our discretionary standard of review, Plaintiffs presented sufficient evidence to support the jury's right to perform its unique function—award all compensatory damages, including any non-economic damages for pain and suffering and loss of life that were incurred by Plaintiffs. Proper instructions were given that describe the factors a jury must consider in making its compensatory damage awards. We can only interpret Defendants' appellate argument to effectively require the appellate courts to establish a threshold or an absolute financial limit on the value of life, despite the district court and the jury's best efforts to fulfill their assigned duty to quantify something that is legally unique, intangible, and difficult to measure. We refuse to implement such a legal threshold or limit. Based upon the evidence presented at trial and the arguments presented for post-trial review, the district court did not abuse its discretion in denying Defendants' motions for a new trial or remittitur on the grounds of insufficient evidence to support the damage awards for Plaintiffs' non-economic injuries.

2. Comparison to Similar Verdicts in Other Cases Will Not be Applied to Develop Defendants' Sufficiency of the Evidence Argument

{26} Defendants' argument centers on the awards for wrongful death, pain and suffering, and emotional distress damages, all of which are non-economic and cannot be determined by any fixed standard. See *Baca v. Baca*, 1970-NMCA-090, ¶ 28, 81 N.M. 734, 472 P.2d 997 ("There is no fixed standard for measuring the value of a life, and, as in personal injury cases, wide latitude is allowed for the exercise of the judgment of the jury in fixing the amount of such an award."). Instead, a jury is given

wide latitude in fixing the amount of such awards. See *id.*; see also *James Sandoval*, 1998-NMCA-085, ¶ 13 (recognizing that "there can be no standard fixed by law for measuring the value of pain and suffering" (omission, internal quotation marks, and citation omitted)).

{27} Defendants ask this Court to compare the amount of damages awarded in this case to other similar cases and cite to our Supreme Court's analysis in *Vivian v. Atchison, Topeka & Santa Fe Railway Co.*, to support their argument that such comparisons are "helpful" to determine whether a verdict is excessive. 1961-NMSC-093, ¶ 11, 69 N.M. 6, 363 P.2d 620 (emphasizing "that each case must be determined upon its own facts and circumstances[,] nevertheless, . . . a consideration of other verdicts and a comparison of the facts and circumstances is helpful"). We do not consider *Vivian* helpful toward providing guidance in the present case. First, it is very difficult for this Court to apply the analysis in *Vivian* to the facts in this case. *Vivian* involved a workplace injury where, after a review of the evidence, our Supreme Court ultimately determined that "[i]t would serve no useful purpose to review other verdicts" in order to grant the plaintiff the option between remittitur and a new trial limited solely to the issue of damages. *Id.* ¶¶ 1-2, 25-26. Second, Defendants have failed to cite to any authority where a court conducted an actual comparison of other verdicts in order to grant a new trial or remit the jury's damage award to a lesser amount. Third, Defendants conceded at oral argument that they failed to identify in the record and did not otherwise provide the district court or this Court with any evidence of comparable jury awards that would support their argument for conducting a comparative analysis with those cases alleged to be "similar." Defendants' counsel specifically stated that they were only "obligat[ed]" to come forward with an argument and a basis to argue that the verdict is excessive under common community standards, and if the court is looking for numbers, [the courts bear the obligation to] look to the court's own case law and see . . . the wrongful death damages and verdicts that have been reported [over the last ten years.]" Fourth and finally, Defendants do not dispute or attack any of Plaintiffs' evidence regarding both economic and non-economic damages.

{28} Instead, this Court has continued to emphasize that "each case must be decided

on its own facts and circumstances." *James Sandoval*, 1998-NMCA-085, ¶ 13 (internal quotation marks and citation omitted). We have also questioned the usefulness of comparing non-economic damage awards in one case with the awards in other cases. See *Jose Sandoval*, 2009-NMCA-095, ¶ 18 (noting that "[w]e are skeptical about the usefulness of comparing awards for pain and suffering in other cases"); *Robinson v. Mem'l Gen. Hosp.*, 1982-NMCA-167, ¶ 20, 99 N.M. 60, 653 P.2d 891 (stating that the defendant's request that the court compare the verdict awarded to other cases was improper because "the question of excessive damages must be determined from the evidence in [each] case"); *Sweitzer v. Sanchez*, 1969-NMCA-055, ¶ 5, 80 N.M. 408, 456 P.2d 882 (stating that what this Court may have done in other cases was of "no consequence [because] the question of prejudice and . . . the measure of damages must be determined from the evidence in [each] case" (internal quotation marks, and citation omitted)). We recognize that our Supreme Court has upheld a district court's discretion in granting a substantial remittitur to a jury's damages verdict, for a claim of emotional distress, when no economic damages were offered into evidence. See *Nava v. City of Santa Fe*, 2004-NMSC-039, ¶¶ 16-20, 136 N.M. 647, 103 P.3d 571 (holding that the remittitur of the amount awarded to a plaintiff for emotional distress was upheld on a comparative basis where very specific factual findings were issued by the district court, there was a lower amount requested by the plaintiff at trial, and due to the lack of any evidence of physical harm). However, this case is very distinguishable from *Nava*, both factually and procedurally. In the present case, undisputed economic damages were presented and awarded to Plaintiffs, and this Court is now being asked to reverse, not affirm, the remittitur decision issued by the district court—a completely opposite analysis.

{29} Defendants simply argue that the damage awards for wrongful death are "tens of millions of dollars greater than any awards in similar cases and far exceed any previous award in this [S]tate for wrongful death or comparable loss" and "far outstrips any prior verdict." Yet Defendants concede that they did not bring any evidence of other non-economic damage award cases to the attention of the district court for comparison. Even if a comparative verdicts analysis would be helpful to this Court in assessing excessive damages,

Defendants have elected not to offer such an analysis or to make any connection to the evidence in this case. This Court is under no obligation to go outside the record to investigate and develop Defendant's argument about greatly exceeding all prior damage awards in this State. See *Santa Fe Expl. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 11, 114 N.M. 103, 835 P.2d 819 (stating that where a party fails to cite any portion of the record to support its factual allegations, the appellate courts need not consider its argument on appeal); *Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed."); see also Rule 12-318(A)(3) NMRA (requiring briefs in chief to contain "a summary of proceedings, briefly describing the nature of the case, the course of proceedings, and the disposition in the court below, and including a summary of the facts relevant to the issues presented for review[, which] summary shall contain citations to the record proper, transcript of proceedings, or exhibits supporting each factual representation" (emphasis added)). Defendants have neither identified any of Plaintiffs' evidence deemed insufficient to support the jury's award of non-economic damages nor suggested the type of additional evidence that is necessary to support such an award. As a result, this Court will not undertake Defendants' offer to search the entire record and then search the existing universe of severe injury cases in an attempt to compare the substantive evidence and damage awards in other cases with Plaintiffs' substantive evidence and damage awards in the present case. See *Kepler v. Slade*, 1995-NMSC-035, ¶ 13, 119 N.M. 802, 896 P.2d 482 ("Matters outside the record present no issue for review." (internal quotation marks and citation omitted)).

3. A Comparison of Non-Economic to Economic Damages is Unsupported by our Case Law

{30} Next, Defendants argue that because the economic damages proven at trial make up a "minuscule part" of the total amount of damages awarded, the total amounts awarded to Plaintiffs are grossly disproportionate to the measurable injuries that occurred. We begin by recognizing that this Court has specifically rejected any fixed, mathematical formula as the best way to arrive at a damage award for pain and suffering—one aspect of non-economic damages—because "there can be no standard fixed by law for measuring

the value of pain and suffering." *James Sandoval*, 1998-NMCA-085, ¶ 13 (omission, internal quotation marks, and citation omitted). Instead, we have concluded time and again that, although it may be frustrating to assess non-economic damages without "a fixed, mathematical formula[,] . . . the best way to arrive at a reasonable award of damages is for the trial judge and the jury to work together, each diligently performing its respective duty to arrive at a decision that is as fair as humanly possible under the facts and circumstances of a given case." *Id.* ¶ 16.

{31} We leave any continuing concerns about the use of mathematical formulas to establish a legal basis for addressing excessive jury verdicts to the public and its ongoing debate with the legislative branch about the American judicial system and any major policy changes in New Mexico. See *id.* ¶ 17 (recognizing the public criticism and ongoing debate regarding excessive jury verdicts). Even in *James Sandoval* where "[t]he [trial] judge acknowledged that the jury verdict shocked the conscience of the court" we remanded for further consideration rather than undertake our own calculation of damages. *Id.* ¶¶ 7, 12-18. At this time, we see no support for Defendants' argument that the appellate courts should use fixed mathematical formulas to establish legal error and as the proper basis for reversing a jury's non-economic damage award.

B. The Verdict is Not the Result of Jury's Passion or Prejudice

{32} Defendants argue that we may simply "infer" that the jury was improperly influenced by passion or prejudice from the verdict itself and that it is "not necessary to point to trial error as a cause." However, we disagree that our case law allows us to infer improper passion or prejudice simply because the verdict is large and therefore "speaks for itself as to the existence of passion or prejudice." In *Vivian*, our Supreme Court stated that a verdict was "so grossly excessive as to require an inference that it resulted from passion, prejudice, partiality, [and] sympathy[.]" 1961-NMSC-093, ¶ 14. However, our Supreme Court made this statement only after having undertaken a "careful review of the evidence of pain, suffering, loss of earnings, and physical injuries" and holding that there was "no substantial evidence to support [the] verdict[.]" *Id.* Defendants have failed to present any type of evidentiary review for this Court to analyze in the present case, and we shall not undertake such a review

or consider such an argument that is not developed on appeal. See *Santa Fe Expl. Co.*, 1992-NMSC-044, ¶ 11 (stating that where a party fails to cite any portion of the record to support its factual allegations, the appellate courts need not consider its argument on appeal); *Corona*, 2014-NMCA-071, ¶ 28 ("This Court has no duty to review and argument that is not adequately developed.").

{33} We also disagree with Defendants' argument that because the jury awarded sums "far greater" than requested by Plaintiffs, we may legally infer that passion and prejudice played an improper role in the jury's determination of damages. This argument mischaracterizes Plaintiffs' statements during closing argument as a request for a specific amount of monetary damages. Counsel for Ms. Morga's estate proposed to the jury that when considering damages for the loss of Ms. Morga's life, it could consider placing a value on a person's individual days of life. Counsel hypothetically stated, "[i]sn't it worth \$500 a day for the enjoyment of your life, for the enjoyment of life that [Ms. Morga] has been deprived of? When you value life, I ask you to give those considerations of her life expectancy as an appropriate way for you to try and measure and place a value on something that we recognize . . . can't be valued." We perceive this hypothetical suggestion to be general guidance to the jury for developing its own method for arriving at a valuation for Ms. Morga's life. The fact that the jury chose its own method or a higher daily value for the enjoyment of life when it awarded damages different from the hypothetical example suggested by counsel, does not establish error by the jury. We reject such a hypothetical inference that the jury's damage awards were the result of passion and prejudice.

{34} We now turn to the specific incidences occurring during trial that Defendants argue provoked passion or prejudice in the jury. These incidences include Mr. Morga's trial testimony and what Defendants characterize as "misconduct by Plaintiffs' counsel" in closing argument.

1. Mr. Morga's Testimony

{35} Defendants argue that Mr. Morga's testimony was "emotionally wrenching" when it addressed the sequence of events involving when he was informed of the accident, arrived at the scene, and observed the vehicle. Defendants concede that Mr. Morga's testimony was "an unavoidable aspect of the trial" but insist that the testimony "easily could have moved the

jury” to award excess damages based on improper passion or prejudice.

{36} Mr. Morga’s testimony was not objected to by Defendants. Counsel elicited testimony from Mr. Morga concerning his wife and children, as well as his description of the week leading up to the accident. Mr. Morga became visibly upset when asked how he learned about the accident and the district court ordered a recess break for the jury. Plaintiffs’ counsel was then allowed to use leading questions on direct examination regarding when Mr. Morga arrived at the scene of the accident. When Mr. Morga again began crying, the district court took a second recess, and it ordered counsel to move on to another subject. Defendants’ counsel commented, “[i]t’s not necessary to make [Mr. Morga] cry to the jury, I’m sorry.” Although the district court expressed concern with Mr. Morga’s health and the impact of the testimony, there is no indication in the record that the district court believed improper prejudice had occurred from his testimony. Mr. Morga returned to the stand and completed the direct and cross-examination without any further breaks.

{37} Throughout Mr. Morga’s testimony, Defendants did not ask the district court to strike any of his testimony, and Defendants never requested any kind of limiting instruction or admonition to the jury. Prior to deliberations, the jury was properly instructed that sympathy was not to play a role in the jury’s determination. Without more than a witness crying during testimony that both parties expect to be visibly emotional, we cannot presume that the jury violated its oath and failed to follow the jury instructions. See *Norwest Bank N.M., N.A. v. Chrysler Corp.*, 1999-NMCA-070, ¶ 40, 127 N.M. 397, 981 P.2d 1215 (stating that the appellate courts “assume the jury followed such instructions absent evidence to the contrary”). Mr. Morga’s testimony was understandably emotional, but there is no indication in the record that the testimony incited improper passion or prejudice within the jury. See *State v. Finnell*, 1984-NMSC-064, ¶ 23, 101 N.M. 732, 688 P.2d 769 (noting that the introduction of evidence that allegedly caused a witness to become very emotional and cry during her testimony was neither prejudicial nor sufficient to arouse the passion of the jury and require a mistrial); *State v. Garnenez*, 2015-NMCA-022, ¶¶ 25-26, 344 P.3d 1054 (holding that a pause in trial and the removal of a member of the courtroom gallery who became emotional and cried during upsetting testimony did not mandate a mistrial be declared or prevent

the jury from rendering a fair and impartial verdict).

2. Closing Argument

{38} Next, Defendants argue that Plaintiffs’ closing argument caused the jury to be infected by improper passion or prejudice. Defendants point to three incidences in Plaintiffs’ closing argument: (1) a photograph admitted into evidence, but previously unused by any witness at trial, depicting the crushed vehicle in which Ms. Morga’s body was partially visible; (2) what Defendants characterize as Plaintiffs arguing to the jury that FedEx was attempting to “shift responsibility for the accident to its contractors”; and (3) Plaintiffs’ “justice needs to be ignited” comment related to punitive damages. Defendants argue that the above incidents during closing arguments, individually or in combination, provide the legal basis for establishing improper passion or prejudice by the jury and causing an “excessive award of damages.”

{39} We begin our review by emphasizing that a defendant must make “a timely and specific objection[, one] that apprised the district court of the nature of the claimed error and that allows the district court to make an intelligent ruling thereon” in order to preserve an issue for appeal. *Jose Sandoval*, 2009-NMCA-095, ¶ 56; see Rule 12-321(A) NMRA (requiring that “it must appear that a ruling or decision by the trial court was fairly invoked” in order to preserve a question for review). The purpose of the preservation rule is “to specifically alert the district court to a claim of error so that any mistake can be corrected at that time, . . . to allow the opposing party a fair opportunity to respond to the claim of error and to show why the court should rule against that claim, and . . . to create a record sufficient to allow this Court to make an informed decision regarding the contested issue.” *Jose Sandoval*, 2009-NMCA-095, ¶ 56. Defendants now ask us to distinguish the analysis we employed in *Jose Sandoval*. {40} In *Jose Sandoval*, this Court declined to consider alleged instances of misconduct by the plaintiff that were argued to be the cause of improper passion or prejudice because the defendant did not make a proper objection at trial. *Id.* ¶¶ 60-72. However, this Court noted that

[i]n cases involving improper closing argument, as when counsel go outside the record[,] we reserve the right in a proper case to reverse the judgment and award a new trial even if objection be not made. However, this rule is

to only be applied as a last resort and is not to be applied unless we are satisfied that the argument presented to the jury was so *flagrant and glaring in fault and wrongdoing as to leave the bounds of ethical conduct*, such as going outside the record.

Id. ¶ 57 (emphasis added) (internal quotation marks and citations omitted). Defendants argue that the specific instances it has cited satisfy this *Jose Sandoval* exception because they are “so flagrant and glaring in fault . . . as to leave the bounds of ethical conduct[.]” Defendants also argue that our *Jose Sandoval* decision represents an outlier in our case law that should not be perpetuated. These arguments are not compelling. A formal Court of Appeals opinion is controlling authority. See *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, ¶ 13, 148 N.M. 585, 241 P.3d 183. Our reasoning in *Jose Sandoval* is in line with the well-established rule on preservation. 2009-NMCA-095, ¶ 57 (noting that “other than in Florida, no other courts in this country allow improper argument to be raised for the first time on appeal in civil cases, but noting that in *Griego v. Conwell*, 1950-NMSC-047, ¶ 17, 54 N.M. 287, 222 P.2d 606 our Supreme Court warned that it would [reserve the right to] do so, but it has never carried out its threat” (internal quotation marks and citations omitted)); see Rule 12-321(A) (requiring that “it must appear that a ruling or decision by the trial court was fairly invoked” in order to preserve a question for review); see also *Berkstresser v. Voight*, 1958-NMSC-017, ¶ 10, 63 N.M. 470, 321 P.2d 1115 (per curiam) (stating that our Supreme Court has “held numerous times that to preserve a question for review[,] a litigant must invoke a ruling thereon”).

{41} Finally, we disagree with Defendants that the alleged incidents of misconduct by Plaintiffs, either individually or collectively, are “so flagrant and glaring in fault and wrongdoing as to leave the bounds of ethical conduct” or rise to the level of flagrant or fundamental error. *Jose Sandoval*, 2009-NMCA-095, ¶ 57; see *Estate of Gutierrez ex rel. Jaramillo v. Meteor Monument, L.L.C.*, 2012-NMSC-004, ¶¶ 32-33, 274 P.3d 97 (“The fundamental error doctrine is codified in Rule [12-321(B)(2)]. . . . This rule shall not preclude the appellate court from considering in its discretion, questions involving . . . fundamental error. [T]his Court has applied the doctrine in civil cases under the most extraordinary

and limited circumstances.” (alterations, internal quotation marks, and citation omitted)). Despite Defendants’ failure to preserve an objection to these particular closing arguments by Plaintiffs, we shall also discuss the merits of each allegation of misconduct and explain why we conclude that no legal error was established by Defendant.

a. The Photograph

{42} The district court ruled that the photograph of the crash site could be used at trial if a “yellow sticky” note was placed to cover what appeared to be a human arm in the photo. The “yellow sticky” note purportedly fell off before closing argument. However, Defendants made no objection to the error and counsel for Defendants acknowledged that he chose not to object to this error during the closing argument. After Plaintiffs rested and the jury was excused for a recess break, Defendants’ counsel mentioned the absence of the “yellow sticky” note. The district court acknowledged the missing note covering the designated portion of the photo and assured the parties that the photo would not go to the jury during deliberations as a solution to the issue now being brought to the court’s attention. No further objection was made to this decision by the district court to address the “yellow sticky” note issue.

{43} Defendants argue that Plaintiffs’ use of the photograph is an example of “flagrantly improper conduct” that could not be cured by an instruction from the district court. However, Defendants have failed to show that Plaintiffs’ use of the photograph was so glaring in fault as to leave the “bounds of ethical conduct” or that the district court’s ruling to address the issue rose to the level of fundamental error. See *Grammar v. Kohlhaas Tank & Equip. Co.*, 1979-NMCA-149, ¶ 38, 93 N.M. 685, 604 P.2d 823. There is no indication in the record that: (1) Plaintiffs’ use of the photograph without the “yellow sticky” note was intentional; (2) any comment was made to the jury by Plaintiffs’ counsel regarding the portion of the photograph that was intended to be covered and excluded by the “yellow sticky” note; or (3) the photograph was so gruesome and inflammatory that, without the “yellow sticky” note, it inflicted flagrant and incurable prejudice upon the jury. See *Allen v. Tong*, 2003-NMCA-056, ¶¶ 35, 39, 133 N.M. 594, 66 P.3d 963 (holding that counsel’s statement in closing argument, “if the jury found [the d]efendant was not

negligent, then that will be the end of this trial and your job will be over, and you will get back to your jobs and families[.]” was not “a flagrant or glaring wrongdoing that requires [this Court] to invoke fundamental error” (internal quotation marks omitted)). Furthermore, the district court addressed the issue on the record and recognized that any potential harm appeared very minor at that point, stating “I seriously doubt [the jury] recognized that as an arm. If you hadn’t told me it was an arm when we first discussed it, I don’t think I would’ve known that.” Despite Defendants’ assertion at oral argument that this highly prejudicial photograph is part of the record on appeal, it was not provided as part of the record for our independent review. As a result, we have no independent basis to question the district court’s analysis and resolution of the issue at trial. See *Williams v. Mann*, 2017-NMCA-012, ¶ 19, 388 P.3d 295 (“Upon a doubtful or deficient record, every presumption is indulged in favor of the correctness and regularity of the trial court’s decision, and the appellate court will indulge in reasonable presumptions in support of the order entered.” (internal quotation marks and citation omitted)). Without any further indication of unethical conduct or fundamental error, the use of this photograph will not be recognized as causing the jury to render an improper verdict based on passion or prejudice.

b. Comments Related to Allocation of Fault

{44} Defendants argue that Plaintiffs’ counsel made improper comments in closing argument related to FedEx’s fault and responsibility for the damages incurred by Plaintiffs. First, Defendants argue that Plaintiffs’ counsel tried to shift responsibility for the accident to its contractors, even though FedEx had agreed to pay for any damages attributed to its contractors or Quintana. Second, Defendants contend that Plaintiffs’ comment—“it’s happened before”—regarding other FedEx accidents defied Defendants’ motion in limine to exclude all reference to other accidents involving Defendants. However, after reviewing the complete record of Plaintiffs’ closing argument, we interpret Plaintiffs’ comment differently. Comparative fault was a specific issue at trial and the parties disagreed about how the jury should allocate fault between the various Defendants. Plaintiffs argued that FedEx was attempting to allocate fault to their contractors and had used similar arguments in the past. Although FedEx assumed liability for all

Defendants in this matter, the jury was still required to apportion fault amongst each Defendant. Defendants did not object to the jury verdict form that listed all four Defendants separately, as well as Ms. Morga, for the allocation of comparative liability. Because Defendants did not object to Plaintiffs’ comments in closing or the jury instructions, we must apply a fundamental error standard of review. See *Allen*, 2003-NMCA-056, ¶¶ 33-34 (noting that a failure to properly object to issues regarding the instructions tendered to the jury will only be reversed on a basis of fundamental error). Defendants have again failed to convince this Court that Plaintiffs’ comments were so glaring in fault as to leave the “bounds of ethical conduct” or that the error rose to the level of fundamental error. *Grammar*, 1979-NMCA-149, ¶ 38. Where the allocation of comparative fault was a proper function to be decided by the jury, Plaintiffs’ comments would not be unethical or otherwise create any inference that the jury rendered an improper verdict.

c. Plaintiffs’ Closing Argument Regarding the Need to Ignite Justice

{45} Defendants objected to one fragment of Plaintiffs’ closing argument in particular, the statement that “they don’t want to show the pictures to inflame the [j]ury. Well, sometimes justice needs to be ignited.” Defendants argue that this type of comment encouraged the jury to follow their passion and misled the jury by implying that Defendants sought to suppress photographic evidence. Again, when read in the full context of closing argument, Plaintiffs’ statements were not outside the scope of proper argument, especially where Plaintiffs asked the jury to punish Defendants for their conduct and punitive damages were an issue the jury was properly required to decide. In addition, the jury was properly instructed that all arguments made by counsel in closing were not “to be considered by you as evidence or as correct statements of the law, if contrary to the law given to you in [the jury] instructions.” We conclude that if Defendants believed that Plaintiffs’ closing arguments were clearly illegal, unethical, or going outside the record, they should have timely and specifically objected at trial, requested an appropriate curative instruction or admonishment, and given the district court the opportunity to correct any error. See *Jose Sandoval*, 2009-NMCA-095, ¶ 58 (“We believe that if defense counsel had timely and specifically objected and had requested and received

an appropriate curative instruction and/or admonition, the issue would not now be in this Court.”); *Grammar*, 1979-NMCA-149, ¶ 34 (“The objection to alleged improper argument must be specified and made known to the [trial] court so that the court may intelligently rule thereon. When that is not done, the proposition is not properly reviewable on appeal.”). Without giving the district court an opportunity to evaluate Plaintiffs’ “justice needs to be ignited,” closing argument in the context of a potential award of punitive damages, we neither view such an argument as being so glaring in fault as to leave the “bounds of ethical conduct” nor do we recognize it to rise to the level of fundamental error. See *Grammar*, 1979-NMCA-149, ¶ 38 (stating that this Court will only consider the narrow exception to the preservation requirement as a “last resort” and only if the plaintiff’s lawyer goes outside the actual record in a flagrant and glaring manner so as to “leave the bounds of ethical conduct”).

C. The Jury’s Award Was Not the Result of a Mistaken Measure of Damages

{46} Finally, Defendants argue again that we may infer from the size of the jury’s verdict that it applied a mistaken measure of damages. See *Hanberry*, 1963-NMSC-100, ¶ 32 (stating that after a careful review of the evidence, the award was so extremely excessive “that it is not truly supported by the evidence and therefore must indicate that the jury was mistaken in the measure of damages”). Defendants assert that “the jury mistakenly applied a punitive measure of damages in awarding compensatory damages.” We disagree that such an appellate inference can be drawn exclusively from the size of a damages verdict or the evidence presented for an award of punitive damages. We emphasize that Defendants have the burden, as the appellants, to demonstrate from the record that the jury was mistaken in its award. See *Coates*, 1999-NMSC-013, ¶ 51 (stating that in appealing a denial of a remittitur, the appellant “bears the burden of showing that the record supports its contention that there was error in the verdict” or “that the verdict (i.e., damage awards) was infected with passion, prejudice, partiality, sympathy, undue influence, or some corrupt cause or motive” (internal quotation marks and citation omitted)).

{47} Plaintiffs asked the jury to award 2 percent of FedEx’s \$7 billion net worth as punitive damages in this case. Defendants argue that although the jury awarded no punitive damages, the amount in com-

pensatory damages awarded—\$165 plus million—is close to what was requested for punitive damages—\$140 million. In the review of the special verdict form submitted to the jury, Judge Mathew specifically noted, “[t]he special verdict form indicates clearly that the jury understood that they were returning a verdict for compensatory damages.” Furthermore, there are indications from the poll conducted of the jury following the actual verdict that several jurors wanted to give additional punitive damages, in addition to the amount awarded for compensatory damages. Defendants even stated on the record, “probably a couple of them wanted [to give] punitives” and the trial court agreed with Defendants’ observation of the issue and comment. Based upon this clear record, Defendants’ argument that the jury mistakenly applied a punitive measure of damages to award compensatory damages is not supported. See *id.* ¶ 52 (recognizing that the defendants had not “borne [their] burden of proving error”); *Baxter v. Ganaway*, 1991-NMCA-120, ¶ 18, 113 N.M. 45, 822 P.2d 1128 (recognizing that when “a jury makes an award which covers each element of damages,” it is not our place to “say as a matter of law the jury verdict is founded upon a mistaken measure of damages”).

II. Prejudgment Interest

{48} The district court had the discretion to award prejudgment interest. Section 56-8-4(B); *Coates*, 1999-NMSC-013, ¶ 55 (“The trial court has the discretion to award prejudgment interest.”); *Smith v. McKee*, 1993-NMSC-046, ¶ 7, 116 N.M. 34, 859 P.2d 1061 (stating that when the trial court’s decision to award prejudgment interest is discretionary, any award shall be reviewed for an abuse of discretion and reversed only where its decision “is contrary to logic and reason”). Section 56-8-4(B) allows the trial court, in its discretion, to award interest of up to 10 percent after considering, among other factors, the following:

(1) if [Plaintiffs were] the cause of unreasonable delay in the adjudication of [Plaintiffs’] claims; and

(2) if [Defendants] had previously made a reasonable and timely offer of settlement to [Plaintiffs].

“Prejudgment interest serves two purposes, promoting early settlements and compensating persons[.]” *Coates*, 1999-NMSC-013, ¶ 55. “Interest is awarded to make the tort victim whole, and has no

bearing on the question of punishing the tortfeasor[.]” *Id.*

{49} On March 31, 2015, the district court held its hearing on the issue of prejudgment interest and specifically limited the evidentiary presentation to factors within the elements of Section 56-8-4(B). Plaintiffs presented evidence of the possibility for a significant damage award resulting from the death and injury to Plaintiffs and that Defendants made one offer for settlement during the only mediation prior to trial. Defendants offered no witnesses at the hearing but relied upon the evidence that was attached to their motion to deny prejudgment interest. Defendants’ motion argued that because Plaintiffs refused to accept a provision for confidentiality as part of any settlement agreement, “there was no point to trying to negotiate a potentially mutually acceptable settlement amount.” Based upon the evidence presented, the district court concluded that there was “no evidence of delay in this case by any party” but that “Defendants did not make reasonable or timely offers of settlement.” The district court’s order further concluded that “the refusal on the part of . . . Plaintiff[s]’ counsel to engage in settlement discussions which involved any form of confidentiality agreement was not reasonable.” The district court then balanced Plaintiffs’ refusal to settle on a confidential basis with what it termed as Defendants’ “complete lack of appreciation or concern about the potential result of a trial,” to conclude that prejudgment interest was warranted in the amount of 5 percent per annum—half the allowable rate under the statute. See § 56-8-4(B) (giving the district court the discretion to allow interest up to 10 percent from the date of the complaint).

{50} Defendants now assert that their “liability was not a foregone conclusion” and that “the facts were not clear-cut in Plaintiffs’ favor.” Defendants also argue that the trial court abused its discretion in granting prejudgment interest by ignoring “[d]ifficult legal issues” and “thorny issues of causation, comparative fault, and [damages].” *Sunnyland Farms, Inc. v. Cent. N.M. Elec. Co-op., Inc.*, 2013-NMSC-017, ¶ 62, 301 P.3d 387. We disagree. Defendants’ argument that its right to dispute liability and the complexity of the case precluded its obligation to make a reasonable and timely settlement offer is not a proper reading of the statute. Although the complexity of a case may preclude reaching a settlement, Section 56-8-4(B) requires De-

fendants to make a reasonable and timely offer of settlement in order to avoid an award of prejudgment interest, irrespective of complexity. Furthermore, at the hearing to address prejudgment interest, Defendants conceded that they recognized the potential for a large verdict in favor of Plaintiffs.

{51} Finally, Defendants argue that Plaintiffs' refusal to make a settlement offer that included a provision for confidentiality was unreasonable and the district court's acknowledgment of Plaintiffs' unreasonableness should control the issue of prejudgment interest. In fact, Defendants argue that it was pointless for Defendants to make a reasonable settlement offer despite the district court's additional ruling that Defendants showed a "complete lack of appreciation or concern about the potential results of a trial." We disagree and emphasize that the statute does not require

the parties to actually reach a settlement, it only requires that Defendants make a reasonable settlement offer. *See* § 56-8-4(B). If no reasonable settlement offer was made by Defendants, other settlement conditions imposed by Plaintiffs are just one of many discretionary matters for the district judge to consider. *Id.* The district court's discretion in awarding prejudgment interest allowed the court to evaluate both parties' actions that caused any failure by Defendants to make a reasonable settlement offer and then allocate an appropriate level of prejudgment interest accordingly. Here, the district court's conclusion that Defendants' sole settlement offer was unreasonable and their "complete lack of appreciation or concern about the potential results of a trial" is a logical conclusion that is supported by the record. Selecting an intermediate level of prejudgment interest—5 percent—is also a reasonable

and logical accommodation under the circumstances where Plaintiffs refused to accept confidentiality as a settlement condition. As a result, the district court did not abuse its discretion by awarding 5 percent prejudgment interest under the circumstances presented in this case.

CONCLUSION

{52} For the foregoing reasons, we affirm the district court's denial of Defendants' motions for a new trial or remittitur. We also affirm the district court's grant of prejudgment interest.

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

TIMOTHY L. GARCIA, Judge Pro Tem

WE CONCUR:

MICHAEL E. VIGIL, Judge

M. MONICA ZAMORA, Judge



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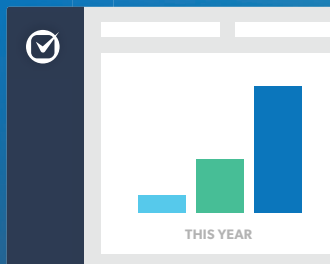


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All advertising must be submitted via e-mail by 4 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Wednesday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set 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@nmba.org

Positions

Multiple Civil and Criminal Attorney Positions Available in the Arizona and New Mexico Area

DNA-People's Legal Services is seeking entry level as well as experienced attorneys. Positions available in Flagstaff, Keams Canyon, AZ and Farmington, NM, where you will enjoy the convenience of working near a metropolitan area while gaining valuable experiences in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact HResources@dnalegalservices.org or <https://dnalegalservices.org/career-opportunities-2/>, for an application. Apply as soon as possible. These positions will fill up fast!

Experienced Family Law Attorneys

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking two experienced family law attorneys for immediate openings in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

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.

Lawyer Position

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

Position Announcement Research and Writing Attorney - Albuquerque 2018-09

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced Research and Writing Attorney for the main office in Albuquerque. More than one vacancy may be filled from this announcement. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Research and Writing Attorney is an attorney position that provides advanced research and writing services to staff attorneys on trial and appellate cases, performs computer assisted legal research, aids in the development of legal strategies, writes briefs, motions, petitions for certiorari, and legal memoranda for review by the Defender and staff attorneys. General duties include examining, analyzing and researching records and issues, performing legal research and preparing legal documents, assisting AFD staff with all aspects of case preparation, training, continuing legal education and supervision of legal interns as appropriate. The Research and Writing Attorney does not ordinarily sign pleadings or make court appearances. Minimum qualifications include graduation from an accredited law school, admission to practice in good standing before the highest court of a state, and a working knowledge of federal criminal law and procedure. Candidates must be able to analyze legal issues from lengthy, complex records, write clearly and concisely, and have strong computer automation skills. Prior appellate writing experience, law review membership or a judicial law clerkship are desirable. This is a full-time position with federal salary and benefits based upon qualifications and experience. Starting pay ranges from a JSP 9-15, \$50,769 to \$121,690 annually depending on experience. Research and Writing Attorneys may not engage in the private practice of law. All employees are subject to mandatory electronic fund transfer (direct deposit) for payment of net pay. The selected candidate will be subject to a background check as a condition of employment. The Federal Public Defender is an equal opportunity employer. In one PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Stephen P. McCue, Federal Public Defender, FDNM-HR@fd.org. Reference 2018-09 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by August 10, 2018. Positions will remain open until filled and are subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Position Announcement Investigator - Albuquerque 2018-08

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced investigator for the main office in Albuquerque. More than one vacancy may be filled from this announcement. This position is a graded position ranging from a JSP 11-14. Federal salary and benefits apply. Position Description: An investigator must be able to perform duties and responsibilities such as: conducting interviews to corroborate reports and facts already contained or presented in records, discovery material or various other formats; locating fact witnesses and experts; conducting open ended interviews with witnesses and other sources of information to explore and develop new facts and information; initiating new areas of investigation after being assigned the case and discussing it with the attorney; gathering records; locating, viewing and retrieving tangible evidence, personal property and other relevant items; photographing crime scenes and evidence; maintaining filing and information reference systems; writing comprehensive descriptive reports of work done; and testifying effectively in federal court proceedings. An investigator must have the ability and willingness to accept responsibility, use initiative, ingenuity and resourcefulness. Knowledge of computer applications is required. Working knowledge of the criminal justice system is required. Regular, out-of-town, overnight travel throughout the State of New Mexico is required. An investigator also must perform all other duties as assigned. Qualifications: Applicants must have a high school degree or equivalent and the requisite experience. Qualified applicants must possess a minimum of six years (three years general plus three years specialized) investigative experience. Education above the high school level in accredited institutions may be substituted for general experience. Spanish proficiency preferred. Applicants may be given a Spanish proficiency test. The selected candidate will be subject to a background check as a condition of employment. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Melissa Read, Administrative Officer, FDNM-HR@fd.org. Reference 2018-08 in the subject. Applications must be received by August 10, 2018. Positions will remain open until filled and are subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Attorney

Attorney wanted for uptown law firm that strongly emphasizes the quality of life for its employees. General civil practice with primary focus on domestic relations. Willing to consider new attorneys or individuals with an established practice. If you are tired of dealing with the administrative side of running a business and want to get back to focusing on your clients, this is the position for you. Excellent benefits including health, dental, life, disability, and 401(k). Partnership track opportunities available. Salary DOE. Send resume and salary requirements to bryanf@wolfandfoxpc.com.

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office is currently seeking immediate resumes for two (2) Assistant Trial Attorneys and one (1) Senior Trial Attorney. Former position is ideal for persons who recently took the NM bar exam and persons who are in good standing with another state bar. Senior Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence. Persons who are in good standing with another state bar or those with New Mexico criminal law experience in excess of 5 years are welcome to apply. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Enjoy the spectacular outdoors in the adventure capital of New Mexico. Salaries are negotiable based on experience. Submit letter of interest and resume to Paula Pakkala, District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to PPakkala@da.state.nm.us by 5:00 p.m. August 30, 2018.

Trial Attorney and Senior Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Trial Attorney. Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. Salary Range: \$57,688-\$72,110. Senior Trial Attorney: Requirements: Licensed attorney to practice law in New Mexico plus a minimum of four (4) years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. Salary Range: \$63,743-\$79,679. Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Submit Resume to Whitney Safranek, Human Resources Administrator at wsaf-ranek@da.state.nm.us. Further description of this position is listed on our website <http://donaanacountyda.com/>.

Position Announcement Administrative Assistant to CJA Resource Counsel 2018-11

The Federal Public Defender for the District of New Mexico is seeking a full-time administrative assistant to the CJA Resource Counsel for the District of New Mexico. The CJA Resource Counsel works closely with the Courts, the Federal Public Defender and the Defender Services Office to improve the quality of representation and the efficient management of the CJA Panel. The assistant will work closely with the CJA Resource Counsel in designing and presenting training and assistance to CJA Panel attorneys; assisting CJA Panel attorneys and the Court with the efficient processing of vouchers for reimbursement and authorizations for service providers, travel and other case-related expenses; preparing and assisting in the preparation of various CJA forms, and verifying their compliance with requirements; contacting CJA counsel to determine availability for appointment in criminal cases; monitoring court dockets to determine changes in representation of CJA clients; assisting in the maintenance of lists of service providers to assist CJA counsel; disseminating and receiving information involved in panel management; assisting in the expeditious assignment of counsel in criminal cases; maintaining updated information regarding the CJA Guidelines, federal travel guidelines, local rules of the court for the District of New Mexico; assisting with coordination of travel for panel attorneys and service providers in accordance with federal travel regulations; and other duties as assigned consistent with the mission of the position. Applicants must have a positive work ethic, a reputation for personal and professional integrity and an ability to work well with the CJA Resource Counsel, the Federal Public Defender, the Court and members of the CJA panel. Preferred qualifications of any Applicants for this position include substantial experience with federal criminal practice; and substantial experience with various computer programs, including word processing, spreadsheets, PACER and CM/ECF and billing and timekeeping programs. There is a preference for applicants with a working knowledge of the electronic eVoucher system, either as an administrator or from the perspective of attorney filers. Applicants must have a high school degree or equivalent and the requisite experience. Selected applicants will be subject to a background investigation. Salary commensurate with experience. This position is a graded position with a salary range of JSP 9, 11-12 on the pay table. The Federal Public Defender operates under the authority of the Criminal Justice Act, 18 U.S.C. § 3006A. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience with three references to: Melissa Read, Administrative Officer, FDNM-HR@fd.org. Reference 2018-11 in the subject

line. Applications must be received by August 10, 2018. The position will remain opened until filled and is subject to the availability of funding. No phone calls please. Only those selected for an interview will be contacted.

Position Announcement Assistant Federal Public Defender- Albuquerque 2018-10

The Federal Public Defender for the District of New Mexico is seeking a full time, experienced trial attorney for the main office in Albuquerque. More than one position may be filled from this posting. Federal salary and benefits apply. Applicant must have three years minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. ' 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, FDNM-HR@fd.org. Reference 2018-10 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by August 10, 2018. Position will remain open until filled and is subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Associate Attorney

Geer Wissel & Levy, P.A., a family law firm, seeks an experienced family law attorney for an immediate opening in its downtown Albuquerque office. Willing to consider an attorney with an established practice. Excellent benefits including health, dental, life insurance, and 401(k) plan. Must be licensed to practice law in New Mexico. If interested, please send resume and salary requirement to GWLH, P.O. Box 7549, Albuquerque NM 87194 or email to chwilliams@gwlpa.com. All replies are kept confidential.

New Mexico Legal Aid Seeks Staff Attorney in Hobbs

Legal Aid seeks a staff attorney to be based in Hobbs, NM. The attorney will handle a variety of cases in Hobbs and Lea County in southeastern New Mexico. Case work will include family law, housing law, consumer issues, public benefits cases and other issues. The attorney will be active in local bar and community activities, and will participate in community education and outreach to eligible clients. This position is supported by funding from the J.F. Maddox Foundation in Hobbs. The attorney also will be part of an innovative partnership between New Mexico Legal Aid and Legal Aid of Northwest Texas to build a regional advocacy team that will include attorneys based in Roswell NM and in Odessa-Midland TX as well as in Hobbs. The project will focus on common issues, cases and individual clients from Hobbs and nearby Texas communities. The project hopes to create a nationally replicable model for building collaborative regional capacities for litigation and community advocacy in neighboring rural communities divided by one or more state borders. We are looking for highly motivated candidates who are passionate and strongly committed to helping NMLA better serve clients in the Hobbs area, including development of effective team strategies to handle complex advocacy and extended representation cases. Requirements: Candidates must be licensed in New Mexico or eligible for admission by examination or licensed in another state and eligible for reciprocity admission or for a New Mexico legal aid providers limited license. Dual licensing in New Mexico and Texas is a plus. Candidates must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a significant caseload and build collaborative relationships within the staff and the community. Must be willing to travel. Must be willing to travel. Proficiency in Spanish is a strong plus. Send a current resume and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org Salary: DOE, NMLA is an EEO Employer. Deadline: August 31, 2018

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!

NMLA Staff Attorney Position Available in Roswell

New Mexico Legal Aid is seeking a Staff Attorney for our regional office in Roswell. The Staff Attorney will represent clients throughout southeastern and east central New Mexico, including in Roswell, Hobbs, Carlsbad, Clovis, Portales and other surrounding communities. The Staff Attorney will handle cases for low-income individuals and families in a wide variety of poverty law areas including family law, housing, public benefits, and consumer issues. The Staff Attorney will be active in local bar and community activities. The work will include participating in community education and outreach to eligible clients; and recruitment of and collaboration with pro bono attorneys. The NMLA offices in Roswell, Hobbs and Clovis handle a wide range of creative, challenging and complex work. We are looking for highly motivated candidates who are passionate and strongly committed to helping NMLA better serve our client communities, including development of effective team strategies to handle complex advocacy and extended representation cases. Requirements: Three years' experience as a licensed attorney preferred but will consider exceptionally well qualified entry level candidates. Candidates must be licensed in New Mexico or eligible for admission by examination or licensed in another state and eligible for reciprocity admission or for a New Mexico legal aid providers limited license. Candidates must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a significant caseload and build collaborative relationships within the staff and the community. Must be willing to travel. Must be willing to travel. Must be able to effectively use computer technology and remote communications systems, including shared on-line workspaces and web meeting and videoconferencing software, to effectively collaborate and co-counsel with staff located in multiple offices. Candidates also must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a caseload and build collaborative relationships within the staff and the community. Proficiency in Spanish is a plus. Send a current resume, and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org Salary: DOE, NMLA is an EEO Employer. Application Deadline: August 24, 2018.

Associate Attorney – AV Rated Estate Planning Firm

Albuquerque Law Firm seeks an attorney who is licensed and in good standing with 3-5 years of experience preferably in estate planning, probate law and transactional law. Please Email resume to resume@kcleachlaw.com.

New Mexico Court of Appeals Term/Full-Time Law Clerk in Albuquerque or Santa Fe

The New Mexico Court of Appeals is recruiting for an at-will Law Clerk to work directly with judges on assigned cases. Must be a graduate of an ABA accredited law school and have one year of experience performing legal research, analysis, writing and editing while employed or as a student. Law Clerks are essential to the work of the Court and outstanding legal writing is paramount. This is a temporary, full-time position with benefits. Continued employment beyond the set term may be possible with excellent performance. Current salary is \$28,313 per hr. Please send resume and writing sample to Agnes Szuber Wozniak, supasw@nmcourts.gov, 237 Don Gaspar, Room 30, Santa Fe, NM 87501. 505-827-4201. The New Mexico Judicial Branch is an equal opportunity employer.

Attorney Position - for New Mexico Legal Group

Contact: Anita Foster 505-843-7303; afoster@newmexicolegalgroup.com. 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!

Village of Taos Ski Valley Request for Proposals Legal Services

RFP# 2018-04; DUE: August 22, 2018 AT 4:00 P.M. (MST). Sealed Proposals will be received at the OFFICE OF THE FINANCE DIRECTOR, PO BOX 100, 7 FIREHOUSE ROAD, Taos Ski Valley, NM 87525. Scope of Work available at www.vtsv.org or contact: Nancy Grabowski, Finance Director/Certified Purchasing Officer; Nancy@VTSV.org

Supreme Court Chief Counsel

The Supreme Court of New Mexico is accepting applications to serve as its Chief Counsel, which is a full-time, at-will position located in Santa Fe, New Mexico. Applications will be accepted until the position is filled. Under the administrative direction of the Chief Justice, the Supreme Court's chief counsel manages the operations of the Supreme Court's Office of Legal Counsel and serves as a member of the Court's management team working in a close, collaborative environment with the Clerk of Court to provide advice and support to the Chief Justice and Justices of the Supreme Court on all aspects of the Supreme Court's caseload and administrative responsibilities as the highest court in the state with superintending control over the New Mexico bench and bar. The successful candidate will demonstrate an exceptional breadth and depth of legal knowledge, excellent legal research and writing skills, superior management and supervisor skills, fluency with the Court's rulemaking and committee processes, the ability to manage a substantial workload involving a wide variety of complex matters under tight deadlines, and the highest ethical standards. The position requires a law degree from an ABA-accredited law school, a license to practice law, a minimum of 7 years of experience in the practice of law, including appellate law experience, and at least 3 years of supervisory experience. To apply, interested applicants should submit a Letter of Interest, Resume, Writing Sample, and New Mexico Judicial Branch Application for Employment to Agnes Szuber Wozniak, NM Supreme Court, 237 Don Gaspar, Santa Fe, NM 87501. The full job description and the New Mexico Judicial Branch Application for Employment form can be accessed online at <https://www.nmcourts.gov/careers.aspx>

Underwriter

First American is looking for an Underwriter for the state of New Mexico. This position provides underwriting support and expertise to company personnel, agents, and customer(s), related to the issuance of real estate title insurance commitments and policies. They will utilize underwriting standards and guidelines within delegated authority limits, to underwrite the issuance of title insurance and provide guidance to company personnel in the performance of real estate settlement services. Experience: 5-7 years of title underwriting experience or related field. Must be familiar with real estate law. Must be a NM licensed attorney or have NM underwriting experience. Email resumes to ttruce@firstam.com

Supreme Court Law Library Reference Attorney

The Supreme Court of New Mexico is seeking applicants to serve as a Law Library Reference Attorney in the Supreme Court Law Library, which is a full-time, at-will position. The position is located in Santa Fe, New Mexico, in the historic Supreme Court Building. Applications will be accepted until the positions are filled. The successful candidate will be a person of high ethical standards, with strong legal research and writing skills, who will bring a service-first orientation to the New Mexico Supreme Court Law Library. Our law library reference attorneys will be thorough and responsive to requests for legal research assistance from judges and court staff throughout New Mexico. The successful candidate will demonstrate the ability to take initiative and exercise independent judgment when appropriate, to work in a collaborative, courteous, diplomatic, and organized manner, and to provide prompt and courteous service to all library patrons who call or visit the Supreme Court Law Library. The position requires law degree from an ABA-accredited law school and a license to practice law. A Master's Degree in Library/Information Science from an American Library Association accredited college or university is desirable. One (1) year of experience in the practice of law or as a law clerk is required. Experience as a librarian is highly desirable. To apply, interested applicants should submit a Letter of Interest, Resume, Writing Sample, and New Mexico Judicial Branch Application for Employment to Agnes Szuber Wozniak, NM Supreme Court, 237 Don Gaspar, Santa Fe, NM 87501. The full job description and the New Mexico Judicial Branch Application for Employment form can be accessed online at <https://www.nmcourts.gov/careers.aspx>

Assistant Trial Attorney to Deputy District Attorney

The Office of 11th Judicial District Attorney, Division I, in Farmington, NM is Equal Opportunity Employer and is accepting resumes for positions of Assistant Trial Attorney to Deputy District Attorney. Salary DOE, please send resume to: Jodie.Gabehart@jgabehart@da.state.nm.us

PT/FT Attorney

PT/FT attorney for expanding law firm in Albuquerque/Corrales. Email resume to xc87505@gmail.com. All inquiries are maintained as confidential.

Attorney

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.

Child Support and Domestic Relations Hearing Officer (FT At-Will)

The Eleventh Judicial District Court is accepting applications for a full-time, At-Will Child Support and Domestic Relations Hearing Officer. This position is under the supervision of the presiding Chief District Court Judge. Successful candidate will be assigned caseloads to include child support matters, domestic violence and domestic relations, consistent with Rule 1-053.2. Qualifications: Juris Doctorate from an accredited law school, New Mexico licensed attorney in good standing. Minimum of (5) five years of experience in the practice of law, with at least 20% of practice having been in family law or domestic relations matters. Ability to: establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing. Extensive knowledge of: New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis. Must be able to demonstrate a work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills. A post-offer background check will be conducted. SALARY: \$46,902 hourly, plus a full benefits package. Wages are set by the Supreme Court and are not negotiable. Please send an application with your resume, and proof of education to the Eleventh Judicial District Court, Human Resources Office, 103 S. Oliver Drive, Aztec, NM 87410, or email to 11thjdchr@nmcourts.gov, or fax to 505-334-7761. A complete application can be found on the Judicial Branch web page at www.nmcourts.gov. Resumes will not be accepted in lieu of application. Incomplete applications, without all required documentation will not be considered. CLOSING: Friday, August 17, 2018; 5:00 p.m.

1st Judicial District Attorney Multiple Positions

Legal Secretary: The First Judicial District Attorney's Office has an opening available for a legal secretary. This position provides assistance to DA staff by preparing documents, assisting in trial preparation, performing data entry, maintaining calendars, as well as other related job duties. **Victim Witness Specialist:** The Office also has an opening available for a Victims of Crime Act (VOCA) grant funded victim witness specialist to provide services to victims and witnesses of crime. This is a mid-level position, 2 to 5 years experience required. Applicant must be fluent in Spanish. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

Intake Specialist

Intake Specialist: Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. Parnall Law is seeking an Intake Specialist to talk to prospective clients when they call for help. You will be talking to people who have experienced a recent injury and are looking for help. You must possess confidence, intelligence, and genuine compassion and empathy. You must care about helping people. Keys to success in this position: A successful Intake Specialist requires outstanding interpersonal communication skills. You must have experience in customer service, inside sales or personal injury law. Spanish fluency is a plus. Strong organizational skills, attention to detail, and basic computer and data entry skills are required. You must be able to track and monitor the progress of each Inquiry. This job requires that you do more than just follow a script: you must be able to identify and ask the important questions, and convey care and concern to our clientele. The Intake Specialist will also be providing other types of assistance in the office. Barriers to success: Lack of drive and confidence, inability to ask questions, lack of fulfillment in role, procrastination, not being focused, too much socializing, taking shortcuts, excuses. Being easily overwhelmed by information, data and documents. 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.

Part Time Paralegal or Legal Assistant

Las Cruces general civil practitioner focusing on real estate, business and family law seeks a part time (20-30 hours per week) paralegal or legal assistant. Top wage for the right individual. Please forward resume and salary expectations to: Email: lcnmllaw@gmail.com

Paralegal Position - for New Mexico Legal Group

Contact: Anita Foster 505-843-7303; afoster@newmexicolegalgroup.com; 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 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. 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!

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 position will be considered. Please email a resume and cover letter with salary requirements to corralesfirm@gmail.com. All inquiries will be kept strictly confidential.

Junior to Mid-Level Associate Attorney

Ray McChristian & Jeans, P.C. is seeking a hard-working junior to mid-level associate attorney with strong academic credentials and 2-5 years of experience in medical malpractice, insurance defense, insurance law, and/or civil litigation, to join our expanding insurance defense firm. Excellent writing and communication skills required. Competitive salary, benefits, and a positive working environment provided. Please submit resume, writing sample and transcripts to palvarez@rmjfirm.com.

Paralegal

Paralegal. Team, Talent, Truth, Tenacity, Triumph. These are our values. (Please read below concerning how to apply.) We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. 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.

Paralegal or Legal Assistant

Paralegal or Legal Assistant for Santa Fe Firm Busy and growing commercial litigation and intellectual property firm seeks full or part-time paralegal or legal assistant to assist our clients around the world. You are: motivated, reliable, organized, highly proficient in MS Office. Salary commensurate with experience. Email resume w/references to nancy@bardackeallison.com.

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

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

620 Roma N.W.

The building is located a few blocks from Federal, State and Metropolitan courts. Monthly rent of \$550.00 includes utilities (except phones), fax, copiers, internet access, front desk receptionist, and janitorial service. You'll have access to the law library, four conference rooms, a waiting area, off street parking. Several office spaces are available. Call 243-3751 for an appointment with David Duhigg.

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

2040 4th St., N.W.

Three large professional offices for rent at 4th and I-40, Albuquerque, NM. Lease includes on site tenant and client parking, two (2) conference rooms, security, kitchen and receptionist to greet clients and answer phone. Call or email Gerald Bischoff at 505-243-6721 and gbischoff@dcbf.net.

New Offices For Rent

New offices for rent in an established firm walking distance to the courthouse. Office includes parking, shared receptionist, copier, fax, telephone system, conference rooms and internet. Contact Lucia Erickson at billing@roybalmacklaw.com and (505)288-3500.

Office Space

Office space for rent with an established law firm at 20 First Plaza downtown Albuquerque. Space consists of one large office, one medium size office with outside area that is perfect for an assistant's desk/office. Prefer to rent total space. Convenient location that includes parking, receptionist, high speed internet, copier, fax, telephone system, office furniture (optional). Call Carol at 505-243-1733.

Business Opportunities

Seeking Established Practice to Purchase

Las Cruces general civil practice focusing on real estate, business and family law seeks an established practice to purchase, take over by an attorney retiring or focusing on other areas. Please email: lcnmLaw@gmail.com with inquiries.

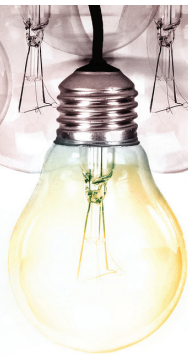
Miscellaneous

Want To Purchase

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

Searching for Last Will and Testament

Montgomery & Andrews, P.A. is searching for a Last Will and Testament of Richard S. Evans. Anyone with knowledge of such an instrument, please contact John S. Campbell at (505) 884-4200 or email jcampbell@montand.com.



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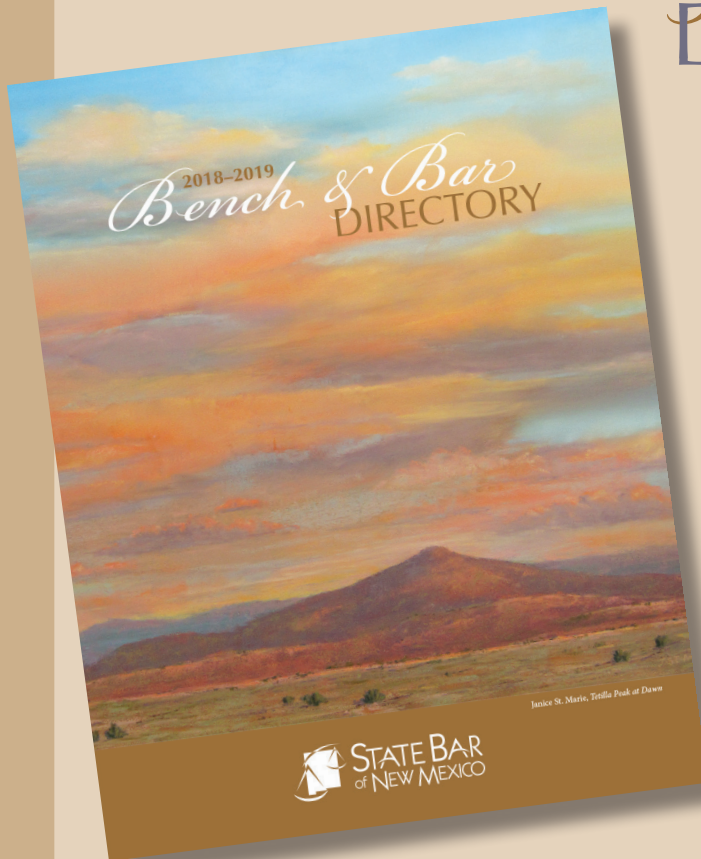


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