

# BAR BULLETIN

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September 12, 2018 • Volume 57, No. 37

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*Fall Aspen*, by Valerie Fladager

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### Meetings

#### September

- 12**  
**Animal Law Section Board**  
Noon, State Bar Center
- 12**  
**Children's Law Section Board**  
Noon, Juvenile Justice Center
- 12**  
**Tax Section Board**  
11 a.m., teleconference
- 13**  
**Public Law Section Board**  
Noon, Legislative Finance Committee, Santa Fe
- 13**  
**Business Law Section Board**  
4 p.m., teleconference
- 14**  
**Prosecutors Law Section Board**  
Noon, State Bar Center
- 17**  
**Solo and Small Firm Section Board**  
11 a.m., State Bar Center
- 18**  
**Senior Lawyers Division Board**  
4 p.m., State Bar Center

### Workshops and Legal Clinics

#### September

- 14**  
**Civil Legal Clinic**  
Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817
- 19**  
**Family Law Clinic**  
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861
- 26**  
**Consumer Debt/Bankruptcy Workshop**  
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

#### October

- 3**  
**Divorce Options Workshop**  
6–8 p.m., State Bar Center, Albuquerque, 505-797-6022
- 3**  
**Civil Legal Clinic**  
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861
- 12**  
**Civil Legal Clinic**  
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

**About Cover Image and Artist:** Valerie Fladager has been an avid photographer, painter and potter for many years. She takes multitudes of images and selects the best for their striking design, light, color, or whimsy and transforms them into paintings or augmented photographic images. Her paintings are done in pastels, watercolor and ink, and colored pencils. Her work has been sold through several galleries and fine art and craft venues. She is a member of the National League of American Pen Women.



# Notices

## COURT NEWS

### Twelfth Judicial District Court Announcements

The Twelfth Judicial District Court would like to extend an invitation to anyone who would like to electronically receive Court announcements and newsletters. To be added to the email distribution list, submit a request to [aladref@nmcourts.gov](mailto:aladref@nmcourts.gov).

### N.M. Bar Attorney General's Office

#### Notice of Disabilities Summit

The Office of New Mexico Attorney General Hector Balderas is sponsoring a day-long opportunity for networking and outreach for organizations that work with the community of people with disabilities. The event is set from 9 a.m.-5 p.m., Oct. 4, on the east side of the Albuquerque Convention Center. The conference is sponsored by the Office of Attorney General, and use of the convention center is arranged through the co-sponsorship of Albuquerque city councilors Isaac Benton and Clarissa Pena. For information, watch the Attorney General's website at [www.nmag.gov](http://www.nmag.gov) or email Amira Rasheed at [arasheed@nmag.gov](mailto:arasheed@nmag.gov)

## STATE BAR NEWS

### Animal Law Section

#### Animal Talk: Animal Cruelty

The Animal Law Section is pleased to host Captain Andi Taylor, a commander with the Bernalillo County Sheriff's Department in Albuquerque, for an Animal Talk on animal cruelty, the evidence of the crime and the proper crime to charge when discovering different types of calls and evidence. The event will be at noon, Sept. 21, at the State Bar Center in Albuquerque. R.S.V.P. to Breanna Henley at [bhenley@nmba.org](mailto:bhenley@nmba.org). A teleconference option is available for those unable to attend in person. Contact Breanna for call-in information.

## Professionalism Tip

### With respect to the courts and other tribunals:

Before dates for hearings or trials are set, or immediately after dates have been set, I will verify the availability of participants and witnesses, and I will also notify the court (or other tribunal) and opposing counsel of any problems.

### 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 Nov. Save the date for 4-6 p.m., Oct. 18, at the State Bar Center in Albuquerque. The event will be live streamed at [www.nmba.org/AppellatePractice](http://www.nmba.org/AppellatePractice) for those who cannot attend in person. Thank you to the New Mexico Trial Lawyers Association, New Mexico Defense Lawyers Association and Albuquerque Bar Association for their co-sponsorship of the event.

### Board of Editors

#### Bar Bulletin Readership Survey

The Board of Editors invites readers of the *Bar Bulletin* to participate in a survey that will help us understand reader preferences and habits. The Board values readers feedback as it plans for the future. The survey will be open until Sept. 21. Visit <https://www.surveymonkey.com/r/YG7Y5LN> to take the survey.

### New Mexico Judges and

#### Lawyers Assistance Program

##### ABA Lawyer Retreat

The New Mexico Judges and Lawyers Assistance Program is proud to sponsor the American Bar Association's 2018 Lawyer Retreat on Oct. 5 at the Four Seasons Resort in Vail, Colo. Each participant will get new tools they can implement right away in order to make their practice and personal life, as a lawyer, even better. The ABA will provide attendees with world class facilitators and attendees will not only learn about having difficult conversations, the importance of emotional intelligence/self-awareness and design thinking, but they will also have the opportunity to learn through collaborative interaction how to put what they are learning into practice back in their own law firms or legal organizations. Learn more and register at [www.abalawyerretreat.org](http://www.abalawyerretreat.org).

### New Mexico Judges and

#### Lawyers Assistance Program

##### ABA Law Mental Health Day

The ABA Law Student Division officially moved Law School Mental Health Day to Oct. 10. American University Washington College of Law will host a YouTube live event featuring Laurie Besden, Pennsylvania Lawyers Concerned for Lawyers executive director, who is in recovery with an incredible story to share. The session will run live from 2-3 p.m. eastern time and then will be available for replay. The YouTube link is <http://auw.cl/tohellandback>. Besden's event is titled To Hell and Back: One Lawyer's Path to Recovery. A YouTube Live Presentation. Besden had a privileged upbringing. She graduated college with a 3.97 GPA, and was in the top 15% of her law school class. On paper, Besden is the definition of success. Laurie is also a drug addict. Listen as Besden candidly shares her story of crippling addiction, and ultimately, redemption. Learn how the district attorney approached the case and her current thoughts about it. Understand what it is like to be approached by a caring individual, with their experience strength and hope, even when you are not ready to accept your state of affairs. It is never too early or late to plant "the seed of hope".

### New Mexico Judges and

#### Lawyers Assistance Program

##### Attorney Support Groups

- Sept 17, 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#.
- Oct. 1, 5:30 p.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (The group normally meets the first Monday of the month.)



- Oct. 8, 5:30 p.m.  
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is 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.

### **Solo and Small Firm Section Fall Speaker Series Opens with U.S. Attorney John Anderson**

U.S. Attorney John Anderson will open the Solo and Small Firm Section fall monthly speaker series with an address on "Life Under the New Federal Justice Administration" on Sept. 17. The Oct. 16 speaker is nationally-respected criminal defense attorney Mike Stout of Las Cruces, who will consider "True Believers and the Road to Hell." Nov. 20 features Robert Huelskamp, who will share his insights from almost forty years working with nuclear weaponry, non-proliferation, and counter terrorism, in "Russia, Iran, and North Korea: What Could Possibly Go Wrong?" Each presentation is open to all members of the State Bar and will take place from noon-1 p.m. at the State Bar Center in Albuquerque. Lunch will be provided. Please R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

## **UNM SCHOOL OF LAW Law Library**

### **Fall 2018 Hours**

Mon. Aug. 20, – Sat., Dec. 15

#### *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.
Saturday & Sunday	No reference

## **OTHER BARS**

### **N.M. Association of Legal Administrators Effective Client Representation Presentation**

The Disciplinary Board and the N.M. Judges and Lawyers Assistance Program have seen ethical violations in law firms in two main areas: competence and diligence as a result of lawyers taking cases not in their areas of expertise, experiencing cog-

nitive impairment and/or mental health or substance abuse issues. Learn how to prevent these issues, both as an individual lawyer and as a responsible member of your firm. The presenters will be Bill Slease and Pamela Moore. Join NMALA on Oct. 11 from 8:45-11:15 a.m., at the State Bar Center for 2.0 EP credits. The cost is \$80. For more information contact kkbapp@pbwslaw.com or visit www.nmala.org.

### **N.M. Criminal Defense Lawyers Association Elevate Your Practice CLE**

Elevate your practice during the week of the Albuquerque International Balloon Fiesta. Including Balloon Fiesta activities exclusive to CLE participants, such as a chance to win a "Balloon Crew" experience and a salsa dance night open to all participants. Nancy Hollander, past president of NCDLA will be moderating, and the seminar schedule includes jury selection, child porn law & technology, building client relations, and government surveillance. There will also be a lunch and Skype interview with Mohammedou Slahi, author of *Guantanamo Diary*. Visit www.nmcdla.org for information.

### **N.M. Defense Lawyers Association Announces 2018 Award Winners**

The New Mexico Defense Lawyers Association is pleased to announce that S. Carolyn Ramos has been selected as the 2018 Outstanding Civil Defense Lawyer of the Year and David Gonzales as the 2018 Young Lawyer of the Year. The awards will be presented at the NMDLA Annual Meeting Awards Luncheon on Friday, Sept. 28, at Hotel Andaluz in Albuquerque. For registration information, visit www.nmdla.org or call 505-797-6021.

### **N.M. Women's Bar Association**

The New Mexico Women's Bar Association invites all attorneys to its "Mugshots and Margaritas" event on Fri., Sept. 28 from 5-8 p.m., at El Pinto located at 10500 4th Street NW 87114. The Association will provide appetizers and one free margarita to all attendees. Photographer Liz Lopez will be available to take professional headshots at the reduced cost of \$60 for members. Non-members may join that day only for a reduced membership price of only \$30. Enjoy getting to know board members and fellow attorneys, while get-



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**www.nmbar.org/JLAP**

ting a current headshot at a great price. If you wish to have your photo taken, please email nmwba1990@gmail.com by Sept. 25 to reserve a time slot. To simply attend and have fun, there is no need to R.S.V.P.

## **OTHER NEWS**

### **Environmental Law Institute 27th Annual Eastern Boot Camp on Environmental Law**

Join ELI for a stimulating three-day immersion in environmental law at Eastern Boot Camp. Designed for both new and seasoned professionals, this intensive course explores the substance and practice of environmental law. The faculty members are highly respected practitioners who bring environmental law, practice, and emerging issues to life through concrete examples, cases and practice concerns in this three-day intensive course for ELI members. The Boot Camp is a great deal, offering up to 20 hours of CLE credit for \$1,100 or less, with special discounts provided to government, academic, public interest employees and students. Designed originally for attorneys, the course is highly useful for environmental professionals such as consultants, environmental managers, policy and advocacy experts, paralegals and technicians seeking deeper knowledge of environmental law. The registration deadline is Oct. 19. Visit <https://www.eli.org/boot-camp/eastern-bootcamp-environmental-law> for more details.

# **New Mexico Supreme Court Committees, Boards, and Commissions Notice of 2018 Year-End Vacancies**

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on the many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

**Appellate Rules Committee** (2 general member positions, 1 Court of Appeals representative)  
**Board Governing Recording of Judicial Proceedings** (1 reporter position, 2 judge positions)  
**Classification Committee** (5 judicial employee positions)  
**Client Protection Fund** (1 general member Supreme Court designee)  
**Commission on Access to Justice** (1 district judge position)  
**Committee for Improvement of Jury Service** (1 magistrate judge position, 1 medium-sized district court judicial employee position, 1 Senate member position, 1 House member position)  
**Disciplinary Board** (1 attorney position, 1 lay member position)  
**Domestic Relations Rules Committee** (2 general member positions)  
**Drug Court Advisory Committee** (1 program coordinator position, 1 Corrections Dept. representative)  
**Judicial Branch Personnel Grievance Board** (1 judicial supervisory employee position)  
**Judicial Branch Personnel Rules Committee** (3 judicial employee positions)  
**Judicial Continuing Legal Education Committee** (district judge position)  
**Judicial Education & Training Advisory Committee** (1 district court administrator position, 1 probate judge position, 1 municipal judge position)  
**Judicial Information Systems Council** (1 municipal judge position)  
**Language Access Advisory Committee** (1 district judge position; 1 spoken language interpreter currently working in NM state courts; 1 signed language interpreter with credentials recognized by NM AOC & currently working in NM state courts; 1 Access to Justice Commission representative)  
**Proactive Attorney Regulation Committee** (1 attorney member position)  
**Rules of Evidence Committee** (2 general member positions)  
**Statewide ADR Commission** (1 district judge position, 1 district court ADR/SRL employee position, 1 general member position)  
**Tribal-State Judicial Consortium** (3 State judge positions, 2 Tribal judge positions)  
**UJI-Civil Committee** (2 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by sending a letter of interest and resume to Joey D. Moya, Chief Clerk, by mail to P.O. Box 848, Santa Fe, New Mexico 87504, by email to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov), or by fax to 505-827-4837. The letter of interest should describe the applicant's qualifications and may prioritize no more than 3 committees of interest.

**The deadline for applications is Friday, Oct. 5.**





# Opinions

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

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

## Effective August 31, 2018

### PUBLISHED OPINIONS

A-1-CA-35677	J Hernandez v. Grandos	Affirm/Reverse/Remand	08/30/2018
A-1-CA-35762	M Wolinsky v. NM Dept of Corrections	Reverse	08/30/2018

### UNPUBLISHED OPINIONS

A-1-CA-35256	State v. B Choate	Affirm/Reverse/Remand	08/27/2018
A-1-CA-36753	Deutsche Bank v. E Lucero	Affirm	08/27/2018
A-1-CA-37003	K Katsch v. Ford Motor Credit	Dismiss	08/27/2018
A-1-CA-37374	CYFD v. Daniel O	Affirm	08/27/2018
A-1-CA-34650	State v. F Garcia	Affirm	08/28/2018
A-1-CA-37069	R Podboy v. In re D Radinsky	Dismiss	08/28/2018
A-1-CA-36870	Wells Fargo Bank v. B Sherman	Affirm	08/29/2018
A-1-CA-35749	State v. E Estrada	Affirm	08/30/2018

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

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## CLERK'S CERTIFICATE OF SUSPENSION

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Effective August 13, 2018:  
**NICOLE A. BAKER.**

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF NAME AND ADDRESS

---

Effective August 13, 2018:  
**Sarah J. Bousman**  
**F/K/A Sarah J. Arellano**  
14426 E. Evans Avenue  
Aurora, CO 80014  
720-990-4168  
sarahbousmanlaw  
@gmail.com

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## CLERK'S CERTIFICATE OF NAME AND ADDRESS CHANGE

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As of August 15, 2018:  
**Larissa Breen**  
**F/K/A Larissa Breen**  
**Callaway**  
Office of the First Judicial  
District Attorney  
PO Box 2041  
327 Sandoval Street (87501)  
Santa Fe, NM 87504  
505-827-5000  
lbreen@da.state.nm.us

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## IN MEMORIAM

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As of May 18, 2018:  
**John L. Hollis**  
PO Box 275  
Edgewood, NM 87015

As of August 11, 2018:  
**Hon. Elizabeth E. Whitefield**  
3612 Mateo Prado, NW  
Albuquerque, NM 87107

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective August 16, 2018:  
**Leslie E. Mansfield**  
228 E. 28th Street  
Tulsa, OK 74114  
918-398-0757  
leslie.mansfield@att.net

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective July 25, 2018:  
**Andrea L. Romero**  
2512 N. 26th Street  
McAllen, TX 78501  
505-980-3725  
avarela84@gmail.com

Effective August 20, 2018:  
**Susan Marie Scott**  
1 University of New Mexico  
MSC 10 5590  
Albuquerque, NM 87131

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF ADDRESS

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Effective August 27, 2018:  
**Bryan M. Street**  
Dawson Parrish, PC  
309 W. Seventh Street,  
Suite 915  
Fort Worth, TX 76102  
817-870-1212  
888-482-2724 (fax)  
bstreet@dawsonparrish.com

Effective August 21, 2018:  
**Mary Irwin Wilson**  
Cowen Rodriguez Peacock  
6243 IH 10 West,  
Suite 801  
San Antonio, TX 78201  
210-941-1301  
956-504-3574 (fax)  
mary@cowenlaw.com



# *Recognizing Excellence*

## **State Bar of New Mexico Presents Annual Awards**

The State Bar of New Mexico presents the Annual Awards to those who have distinguished themselves or made exemplary contributions to the State Bar or legal profession over the last year. On Aug. 10 at the 2018 Annual Meeting, we recognized six individuals and one program for excellence and service.



From left, Charles Vigil, Jim Jackson, Shammara Henderson, President Wesley Pool, Susan E. Page, Justice Charles Daniels, Ruth Pregenzer, and representatives from the Family Support Services Program



**Distinguished Bar Service Award**  
Ruth O. Pregenzer (right)



**Distinguished Bar Service—  
Nonlawyer Award**  
Jim Jackson (left)



**Justice Pamela B. Minzner  
Professionalism Award**  
Charles J. Vigil (left)





**Outstanding Program Award**  
Family Support Services Program



**Seth D. Montgomery Distinguished  
Judicial Service Award**  
Justice Charles W. Daniels  
(second from left)



**Outstanding Young Lawyer  
of the Year Award**  
Shammara H. Henderson (right)



**Robert H. LaFollette Pro Bono Award**  
Susan Page

## *Past Presidents*

We were lucky to have 11 past presidents of the State Bar attend the Annual Meeting!



2018 President Wesley Pool (right) joins past presidents (from left) Charles Vigil, William Stratvert, Robert Hilgendorf, Dan O'Brien, Erika Anderson, Drew Cloutier, Virginia Dugan, Scotty Holloman, David Hernandez, John McCarthy Jr., and Arturo Jaramillo.

## *President's Award*

Each year, the president chooses an individual to honor for service to the State Bar.

President Wesley Pool chose to recognize recently retired Justice Edward L. Chávez.



For more photos and a video of the awards ceremony, visit [www.nmbar.org/annualmeeting](http://www.nmbar.org/annualmeeting).



# Legal Education

## September

- |   |   |   |
|---|---|---|
| <p><b>13 How to Practice Series: Civil Litigation, Pt II – Taking and Defending Depositions</b><br/>4.5 G, 2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>20 The Lifecycle of a Trial, from a Technology Perspective (2017)</b><br/>4.3 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                    | <p><b>22 Best Practices for New Mexico Bankruptcy Practitioners</b><br/>1.0 G<br/>Live at the home of Dan Behles, 709<br/>El Alhambra Cir NW, Los Ranchos,<br/>NM 87107<br/>Albuquerque</p> |
| <p><b>14 29th Annual Appellate Practice Institute (Full Day)</b><br/>5.5 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                | <p><b>20 2017 ECL Solo and Small Business Bootcamp Parts I and II (2017)</b><br/>3.4 G, 2.7 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                   | <p><b>25 2018 Sexual Harassment Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>18 Immigration Law: U Visa Update</b><br/>1.5 G, 0.5 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>20 Bankruptcy Law: The New Chapter 13 Plan (2017)</b><br/>3.1 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>27 2018 Collaborative Law Symposium: The Basics</b><br/>6.0 G, 1.0<br/>Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                     |
| <p><b>18 How to Comply with Disciplinary Board Rule 17-204: Basics of Trust Accounting</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>New Mexico Legal Aid<br/>505-814-6719</p>                             | <p><b>21 2018 Annual Tax Symposium (Full Day)</b><br/>6.0 G, 1.0 EP<br/>Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                  | <p><b>28 2018 Advanced Collaborative Law Symposium</b><br/>7.0 G<br/>Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                             |
| <p><b>19 Income and Fiduciary Tax Issues for Estate Planners, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>21 2018 Annual Tax Symposium - Morning Session: Federal and State Tax Updates</b><br/>3.0 G<br/>Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>    | <p><b>28 The California New Rules Review</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>20 Income and Fiduciary Tax Issues for Estate Planners, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>21 2018 Annual Tax Symposium - Afternoon Session: Tax Law Special Topics</b><br/>3.0 G, 1.0 EP<br/>Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>28 Who's Hacking Lawyers and Why</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>20 Military Retired Pay Primer</b><br/>2.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>FAMlaw LLC<br/>www.famlawseminars.com</p>  |   |   |

## October

4	<b>The Ins-and-Out of Licensing Technology, Part 1</b> 1.0 G Teleseminar Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	18	<b>Ethics for Government Attorneys (2017)</b> 2.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	24	<b>Practice Management Skills for Success (2018)</b> 5.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>
5	<b>The Ins-and-Out of Licensing Technology, Part 2</b> 1.0 G Teleseminar Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	18	<b>Trust and Estate Update: Recent Statutory Changes that are Overlooked and Underutilized</b> 1.0 G Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	24	<b>Oil and Gas: From the Basics to In-Depth Topics</b> 6.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>
5	<b>2018 Employment and Labor Law Institute (Full Day)</b> 5.0 G, 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	18	<b>Reforming the Criminal Justice System (2017)</b> 6.0 G Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	25	<b>Children's Code: Delinquency Rules, Procedures and the Child's Best Interest</b> 1.5 G, 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>
5	<b>Effective Client Representation</b> 2.0 EP Live Seminar, Albuquerque New Mexico Association of Legal Administrators <a href="http://www.nmala.org">www.nmala.org</a>	18	<b>Fourth Annual Symposium on Diversity and Inclusion-Diversity Issues Ripped from the Headlines, II (2018)</b> 5.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	25	<b>Liquidation: Legal Issues When a Client Decides to Close a Business</b> 1.0 G Teleseminar Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>
12	<b>2018 Health Law Symposium</b> 5.5 G, 2.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>	19	<b>2018 Administrative Law Institute (Full Day)</b> 5.0 G, 1.0 EP Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>		
15	<b>Basic Practical Regulatory Training for the Natural Gas Local Distribution Industry</b> 25.2 G Live Seminar, Albuquerque Center for Public Utilities, New Mexico State University <a href="http://business.nmsu.edu">business.nmsu.edu</a>	23	<b>Boilplate Provisions in Contracts: Overlooked Traps in Every Agreement</b> 1.0 G Teleseminar Center for Legal Education of NMSBF <a href="http://www.nmbar.org">www.nmbar.org</a>		
15	<b>Basic Practical Regulatory Training for the Electric Industry</b> 25.2 G Live Seminar, Albuquerque Center for Public Utilities, New Mexico State University <a href="http://business.nmsu.edu">business.nmsu.edu</a>				



## November

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| <p><b>1 A Practical Approach to Indian Law: Legal Writing, 2018 Update and the Ethics of Practicing Indian Law</b><br/>2.0 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>14 Estate Planning for MDs, JDS, CPAs &amp; Other Professionals, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>26 Secured Transactions Practice: Security Agreements to Foreclosures, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>6 Releasing Employees &amp; Drafting Separation Agreements</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>14 2018 Business Law Institute</b><br/>5.0 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>            | <p><b>26 Secured Transactions Practice: Security Agreements to Foreclosures, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>9 Ethics and Changing Law Firm Affiliation</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>20 Ethics of Beginning and Ending Client Relationships</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                 | <p><b>28 Ethics and Dishonest Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>13 Estate Planning for MDs, JDS, CPAs &amp; Other Professionals, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |   |   |

## December

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| <p><b>5 Business Divorce, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                       | <p><b>7 2018 Ethics and Social Media Update</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>    | <p><b>12 Employee v. Independent Contractor: Tax and Employment Law Considerations</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>6 Business Divorce, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                       | <p><b>11 Guarantees in Real Estate Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>13 Drafting Client Letters in Trust and Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                      |
| <p><b>6 Attorney Orientation and the Ethics of Pro Bono</b><br/>2.0 EP<br/>Live Seminar, Albuquerque<br/>New Mexico Legal Aid<br/>505-814-6719</p> |   |  |

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| <p><b>14 Ethics and Virtual Law Offices</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> <p><b>17 Trust and Estate Planning for Pets</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>18 Rights of First Offer, First Refusal in Real Estate</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>21 Ethics, Satisfied Clients &amp; Successful Representations</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |
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Certiorari Granted, August 15, 2018, No. S-1-SC-37077

From the New Mexico Court of Appeals

**Opinion Number: 2018-NMCA-049**

No. A-1-CA-35584 (filed April 30, 2018)

MICHAEL D. LEWIS, as surviving spouse of  
PATRICIA A. LEWIS, deceased,  
Claimant-Appellee/Cross-Appellant,  
v.  
ALBUQUERQUE PUBLIC SCHOOLS,  
Employer-Appellant/Cross-Appellee.

**APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

Leonard J. Padilla, Workers' Compensation Judge

GERALD A. HANRAHAN  
Albuquerque, New Mexico  
for Claimant-Appellee

MATTHEW L. CONNELLY  
MICHAEL D. RUSSELL  
YENSON, ALLEN & WOSICK, P.C.  
Albuquerque, New Mexico  
for Employer-Appellant

**Opinion**

**Henry M. Bohnhoff, Judge**

{1} Patricia Lewis (Worker) sought and obtained an award of workers' compensation disability benefits after she contracted Allergic Bronchopulmonary Aspergillosis (ABPA) as a result of exposure to aspergillus mold while employed with Albuquerque Public Schools (Employer). Following Worker's death, her widower, Michael Lewis (Claimant), sought and the Workers' Compensation Judge (WCJ) awarded workers' compensation death benefits under the Workers' Compensation Act (the Act), NMSA 1978, 52-1-1 to 52-1-70 (1929, as amended through 2017). On appeal, Employer makes four arguments: (1) the WCJ erred in concluding that Worker's death occurred within two years of her compensable work injury, and thus that the death benefits claim was not barred by the applicable statute of limitations; (2) the WCJ erred in excluding medical records and testimony that supported Employer's position that Worker died as a result of cancer unrelated to the ABPA; (3) related to the second issue, the WCJ erred in finding that Claimant's medical evidence regarding the cause of

Worker's death was uncontradicted; and (4) even if Claimant was entitled to death benefits, the amount of benefits that the WCJ awarded was erroneous. Claimant cross appeals, arguing that the WCJ erred by not awarding death benefits at 100% of Worker's compensation rate. We affirm on Employer's first argument, reverse on the second and third arguments, and affirm on the fourth argument. We reverse on Claimant's cross-appeal argument. We remand for a new trial on whether Worker's ABPA caused Worker's death.

**BACKGROUND**

{2} Worker was employed by Employer from 1999 until 2013 and taught at Manzano High School in Albuquerque, New Mexico for a number of years. At the beginning of the 2011-2012 school year, she was assigned to teach classes in a new classroom, Room J-13. Worker complained to Employer about the presence of mold in Room J-13. Her primary care physician, Dr. John Liljestrand, began treating her for difficulty breathing on October 3, 2011. Dr. Liljestrand wrote to Employer in December 2011 advising that Worker's respiratory problems were attributable to her classroom. Thereafter, Dr. Liljestrand referred Worker to Dr. Steven Tolber, an allergist and immunologist who was already treating Worker, to be treated

for her respiratory issues. Dr. Tolber began treating her for respiratory issues related to exposure to mold in Room J-13 on April 18, 2012.

{3} Dr. Tolber wrote a letter to Employer at the end of the 2011-2012 school year that stated Worker could not return to Room J-13. On October 22, 2012, Dr. Tolber diagnosed Worker with ABPA and stated that the ABPA was caused by Worker's exposure to aspergillus mold in her classroom. Worker regularly continued to work and earn her regular salary until December 21, 2012. From December 22, 2012 to March 31, 2013, Worker drew upon available sick leave time and thus did not lose any pay. Worker terminated her employment with Employer by retiring effective March 31, 2013.

{4} During this same general time period, Worker faced another medical condition. She had been treated for breast cancer in 1997, but the disease had been in remission until late 2012 when it was discovered to be metastatic. Worker began chemotherapy in 2013 that continued into 2014. Worker's oncologist was Dr. Richard Giudice of the New Mexico Cancer Center.

{5} Worker filed a claim for workers' compensation disability benefits on March 6, 2013. She alleged that her continued exposure to aspergillus mold after she started working in Room J-13 caused her disability.

{6} Worker's claim for disability benefits was tried over the course of two days in June 2014. The parties stipulated that Worker's employment with Employer ended on March 31, 2013, and that she had not earned her weekly wage since then. During the trial, the WCJ admitted into evidence the depositions and medical records of Dr. Liljestrand and Dr. Tolber. The WCJ also admitted Dr. Giudice's February 21, 2014 deposition.

{7} The WCJ issued his compensation order on December 16, 2014. He made the following findings, among others: (1) Worker was exposed to aspergillus spores while teaching in her classroom at Manzano High School; (2) On October 22, 2012, Dr. Tolber diagnosed Worker with ABPA; and (3) Worker's ABPA was caused by her exposure to aspergillus in Room J-13. The WCJ specifically found that

[t]here is a causal connection between Worker's accidental injury (ABPA) and her resulting disability and the injury is reasonably incident to Worker's exposure to aspergillus



in [Room] J-13 . . . Worker's accidental exposure to aspergillus arose out of, and occurred within the course and scope of, Worker's employment with Employer . . . Worker's ABPA and resulting disability [were] a natural and direct result of her exposure to aspergillus while working for Employer.

{8} Additionally, the WCJ found that "[d]ue to ABPA, Worker [was] unable to perform the duties of high school teacher since April 1, 2013." The WCJ awarded Worker Temporary Total Disability (TTD) benefits from April 1, 2013 to January 15, 2014. The WCJ also found that Worker suffered a compensable injury with permanent impairment and that Worker was entitled to Permanent Partial Disability (PPD) benefits of 99% from January 16, 2014 and continuing for 700 weeks. Employer did not appeal the December 16, 2014 compensation order.

{9} Dr. Liljestrand last saw Worker in March 2014. Dr. Tolber last saw Worker in September 2014. Worker continued, however, to be seen by Dr. Giudice and receive treatment for her cancer.

{10} Dr. Tolber's notes of Worker's appointments with him on May 14, 2014 and May 29, 2014 reflect concern about "fluid overload" and shortness of breath, and whether those issues were attributable to the chemotherapy. On September 23, 2014, Worker was advised by the New Mexico Cancer Center that her white blood cell count was low due to the chemotherapy. Worker had additional appointments at the New Mexico Cancer Center on October on the 4, 7, and 21, 2014 and November 11, 2014. Worker was seen by Dr. Giudice on October 21 and November 11, 2014. On November 11, 2014, Worker complained of shortness of breath, but a chest x-ray taken that day did not reveal pneumonia. Worker was to return to Dr. Giudice the next day for further examination and treatment. While leaving her home to go to the hospital the morning of November 12, 2014, Worker collapsed and died. No autopsy was performed.

{11} Worker's disability benefits terminated upon her death. Section 52-1-47(C).<sup>1</sup> Claimant filed a claim for workers' compensation death benefits on January 22, 2015 alleging that Worker's ABPA was the cause of her death. In its answer to

the death benefits complaint, Employer admitted all of the findings of fact and conclusions of law contained in the first compensation order. Employer further admitted that the findings and conclusions in the first compensation order were binding on the death benefits proceeding. However, Employer disputed the timeliness of the death benefits claim and the cause of death. The WCJ issued a pre-trial order on October 30, 2015 indicating that prior WCA orders entered during the disability benefits proceeding on May 18, 2014 and December 16, 2014 established the law of the case as to the death benefits trial.

{12} The death benefits claim was tried on November 12, 2015. Claimant testified. In addition, the WCJ admitted Claimant's exhibits, which included the additional depositions of Dr. Tolber and Dr. Liljestrand that were taken on October 14 and August 20, 2015, respectively, and Worker's certificate of death, which was prepared by Dr. Liljestrand. The death certificate listed "pneumonia" and "chronic pneumonitis" as the causes of death. Dr. Liljestrand testified that Worker's ABPA was either a direct or a contributing cause of these conditions. Dr. Tolber testified that Worker "most likely died of ABPA."

{13} At the death benefits trial, Employer offered into evidence, among other exhibits, the February 21, 2014 deposition of Dr. Giudice—which had been admitted without objection during the first disability benefits trial. Employer also offered into evidence a second deposition of Dr. Giudice taken after Worker had passed away dated September 14, 2015. Claimant, however, objected to admission of the Giudice depositions and records, arguing that, under Section 52-1-51(C), only a health care provider (HCP) who has provided care for a worker's work-related injury pursuant to Section 52-1-49, or an independent medical examiner identified pursuant to Section 52-1-51(A), could testify as to the cause of death in connection with a claim for death benefits under Section 52-1-46. Because Dr. Giudice was neither an authorized HCP under Section 52-1-49 nor an independent medical examiner under 52-1-51(A), Claimant urged, he could not testify about Worker's cause of death. The WCJ agreed with Claimant and denied admission of the Giudice depositions and the New Mexico Cancer Center records.

{14} In his 2015 deposition, when asked

to identify the documentation that he reviewed to determine Worker's cause of death, Dr. Liljestrand could not verify that he reviewed any documentation. Instead, his cause of death determination was based on a discussion with Claimant. Dr. Liljestrand had not reviewed any information from the New Mexico Cancer Center regarding the treatment Worker had received in the fall of 2014, including on November 11. Similarly, in his 2015 deposition, Dr. Tolber acknowledged that he had not reviewed any of the records of Worker's care and treatment at the New Mexico Cancer Center from March 2014 to November 2014. All of the information that Dr. Tolber had concerning how Worker died was provided by Claimant. When asked what he knew about the circumstances of her death, Dr. Tolber testified only to what he had been told about Worker's shortness of breath and that he had "not seen the [results] on the autopsy, so I don't know."

{15} On April 21, 2016, the WCJ issued his compensation order concerning the death benefits claim. The order makes the following findings: (1) "Worker established a causal connection between the ABPA and her place of employment"; (2) "As a result of a compensable injury, Worker was awarded compensation benefits"; (3) Dr. Liljestrand found that Worker's ABPA was either a direct cause or a contributing cause of what he listed on Worker's death certificate for causes of death; (4) Dr. Tolber testified that Worker "most likely died of ABPA"; (5) "There is a causal connection between Worker's ABPA and her resulting death"; (6) "The medical evidence and testimony establishing causation is uncontradicted"; (7) "Compensation benefits for death are payable to eligible dependents if an accidental injury sustained by a worker proximately results in the worker's death within the period of two years following the worker's accidental injury"; (8) "The two year time limit for bringing a claim for death benefits begins to accrue from the date the compensable injury manifests itself or from when the worker knows or should know [s]he has suffered a compensable injury"; (9) "Due to ABPA, Worker was unable to perform the duties of high school teacher beginning on April 1, 2013"; (10) "Worker's injury manifested itself on April 1, 2013"; and (11) "Worker's death on November 12, 2014, occurred within two years of April 1, 2014."<sup>2</sup>

<sup>1</sup>Section 52-1-47 was amended in 2015, but subsection (C) remains the same as it was in the 1990 version.

<sup>2</sup>We assume the WCJ meant April 1, 2013, in part because in the conclusions of law section the judge writes that Worker's death occurred within two years of April 1, 2013

## ANALYSIS

**I. Worker's Death Occurred Within Two Years of Her Compensable Injury; Claimant's Claims Therefore Are Not Time-Barred****A. Standard of Review**

{16} "All workers' compensation cases are reviewed under a whole record standard of review." *Moya v. City of Albuquerque*, 2008-NMSC-004, ¶ 6, 143 N.M. 258, 175 P.3d 926. "On appeal, to determine whether a challenged finding is supported by substantial evidence, we have always given deference to the fact[-]finder, even when we apply . . . whole record review." *DeWitt v. Rent-A-Center, Inc.*, 2009-NMSC-032, ¶ 12, 146 N.M. 453, 212 P.3d 341 (internal quotation marks and citation omitted). "The reviewing court starts out with the perception that all evidence, favorable and unfavorable, will be viewed in the light most favorable to the agency's decision." *Tallman v. ABF (Arkansas Best Freight)*, 1988-NMCA-091, ¶ 18, 108 N.M. 124, 767 P.2d 363. However, we "may not view favorable evidence with total disregard to contravening evidence." *Id.* ¶ 13 (internal quotation marks and citation omitted). "The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's findings are unsupported by substantial evidence." *Id.* ¶ 15. "Substantial evidence on the record as a whole is evidence demonstrating the reasonableness of an agency's decision . . . and we neither reweigh the evidence nor replace the fact finder's conclusions with our own." *DeWitt*, 2009-NMSC-032, ¶ 12 (citation omitted).

{17} "When our review consists of reviewing a WCJ's interpretation of statutory requirements, we apply a de novo standard of review." *Laughlin v. Convenient Mgmt. Servs., Inc.*, 2013-NMCA-088, ¶ 9, 308 P.3d 992 (internal quotation marks and citation omitted). "We review the WCJ's application of the law to the facts de novo." *Id.*

{18} Section 52-1-46 states in part that, subject to certain limitations enumerated within the statute, death benefits shall be paid "if an accidental injury sustained by a worker proximately results in the worker's death within the period of two years following the worker's accidental injury[.]" For purposes of this case, the key language is the phrase "accidental injury[.]" which is the triggering event for the limitations period. We review de novo the WCJ's interpretation of this phrase as well as the application of the law to the facts to determine when Worker's accidental injury occurred. *Laughlin*, 2013-NMCA-088, ¶ 9.

**B. Worker's Death Occurred Within Two Years of Her Compensable Injury**

{19} Employer argues that Worker's death occurred more than two years after her compensable injury because she either knew or should have known she had a compensable injury on or between August 7, 2011 and October 22, 2012, and thus her compensable injury manifested itself sometime between those two dates. Claimant argues that the WCJ's finding that Worker's death was within two years of her compensable injury is supported by the evidence presented during the death benefits trial. Claimant also argues that the date Worker's compensable injury manifested itself is the same date that the injury became compensable.

{20} Employer's position is not consistent with New Mexico precedent. In *Gambrel v. Marriott Hotel*, 1991-NMCA-100, ¶¶ 12-13, 112 N.M. 668, 818 P.2d 869, this Court addressed when an accidental injury occurs for purposes of applying Section 52-1-46's limitations period for death benefits. We noted that the legislative purpose underlying the provision of disability and death benefits—providing for the financial security of a worker and his family—was the same for both types of benefits. See *Gambrel*, 1991-NMCA-100, ¶ 6 ("[W]e believe the broad policy contours underlying the Act are identical whether worker is disabled or dies as a result of the accidental injury."). Given that common purpose, we determined that the trigger event for the limitation period for death benefits would be given the same construction as the trigger event for disability benefits:

We, therefore, apply the meaning "date when the compensable injury manifests itself" or "date when the work[er] knows or should know he has suffered a compensable injury" to all of the portions of [the Act] where the terms "time of accident," "time of injury," "date of disability," "date of accidental injury," or words of similar import, are used[.]

*Id.* ¶ 12 (citation omitted). We ultimately applied the second definition, the date when the worker knows or should know he or she has suffered a compensable injury, in concluding that the death benefits claim in question was not barred by the two-year limitations period. *Id.* ¶ 15. We follow *Gambrel* here and define the date of Worker's accidental injury as the date that she knew or should have known of her compensable injury.

{21} In this case, Claimant has a death

benefits claim only if Worker died within two years of the date that she knew or should have known that she had suffered a compensable injury due to her exposure to aspergillus mold. Worker died on November 12, 2014. Thus, if Worker knew or should have known that she had a compensable injury before November 12, 2012, Section 52-1-46 bars Claimant's claim for death benefits. On the basis of the WCJ's findings of fact regarding the statute of limitations issue, which Employer does not challenge on appeal, we determine that Worker knew or should have known she had a compensable injury on April 1, 2013, which is within two years of Worker's death on November 12, 2014. Based on the analysis that follows, we affirm the WCJ with respect to the statute of limitations issue raised by Employer.

{22} When Worker's injury became *compensable* is crucial to the determination of when she knew or should have known she had a compensable injury. Within the Act, there are benefits for TTD (Section 52-1-25.1), PPD (Section 52-1-26), Permanent Total Disability (PTD) (Section 52-1-25), and scheduled injuries (Section 52-1-43). See *Torres v. Plastech Corp.*, 1997-NMSC-053, ¶ 14, 124 N.M. 197, 947 P.2d 154 (describing the four different forms of disability under the Act). Therefore, for an injury to be compensable, which is part of the triggering event for Section 52-1-46's limitations period according to *Gambrel*, the worker must know or have reason to know that he or she is entitled to TTD, PPD, PTD, or scheduled benefits. 1991-NMCA-100, ¶¶ 12-13.

{23} *Torres* discusses the limitations period of Section 52-1-31(A), which provides that if an employer fails to pay or refuses to pay a worker compensation to which he or she is entitled under the Act, after the worker has given the employer notice of the accident in a timely fashion, the worker must file a claim for compensation within one year of when the employer failed to pay or refused to pay compensation. *Torres*, 1997-NMSC-053, ¶ 10. The statute further provides that the limitations period will be tolled for up to one year if the worker is still employed by the employer. Thus, an employer "shall begin to pay compensation not later than thirty-one days after the date of the occurrence of the disability and is not deemed to have failed or refused to pay compensation until the expiration of this time period." *Id.* ¶ 7 (internal quotation marks and citation omitted). It is therefore necessary to de-

termine the “date of the occurrence of the disability” to determine when an employer fails or refuses to pay compensation, which failure or refusal then triggers—subject to the possible one-year tolling period—Section 52-1-31(A)’s one-year limitations period for the worker to file a claim for benefits. See *Torres*, 1997-NMSC-053, ¶¶ 7-8.

{24} *Torres* concluded “that the status of disability [either TTD, PPD, or PTD] or the existence of a scheduled injury is a necessary element required to trigger the statute of limitations[.]” *Id.* ¶ 6. *Torres* identified the triggering event for the statutory limitations period to be when it is reasonably apparent, or should be reasonably apparent, that the worker has “an injury on account of which he is entitled to compensation[.]” *Id.* ¶ 11 (internal quotation marks and citation omitted). According to *Torres*, this triggering event has two elements: “(1) an injury entitling the worker to compensation under the Act; and (2) knowledge, or imputed knowledge, by the worker of this injury.” *Id.* (emphasis added).

{25} While *Torres* was applying a different limitations period than the one established by Section 52-1-46 for death benefits, *Torres* informs our analysis here given the holding in *Gambrel*, which equates the limitations period of Section 52-1-46 (triggered by the date of accidental injury) with “the terms ‘time of accident,’ ‘time of injury,’ ‘date of disability,’ ‘date of accidental injury,’ or words of similar import” as used elsewhere in the Act. *Gambrel*, 1991-NMCA-100, ¶ 12. Based on *Torres*, we determine that the limitations period of Section 52-1-46 was not triggered until Worker knew or should have known she had an injury entitling her to TTD, PPD or PTD disability benefits. See *Torres*, 1997-NMSC-053, ¶ 12 (“Therefore, subtracting two years and thirty-one days from the date of filing, we must determine whether there is substantial evidence that [the worker] knew, or should have known, of her injury and that [she] was entitled to compensation before February 26, 1993.” (emphasis added)). Because Worker did not have a scheduled injury, that potential trigger for the running of the death benefits statute of limitations need not be addressed.

{26} Other cases, although decided before 1990 when the Act articulated the different types of disability that exist today, are consistent with *Torres*’ holding that the date of the occurrence of the disability is

when the worker knows or should know that he or she has an injury and is entitled to compensation for that injury. In *Lovato v. Duke City Lumber Co.*, 1982-NMCA-021, ¶ 3, 97 N.M. 545, 641 P.2d 1092, this Court was tasked with deciding when the plaintiff’s disability began in order to apply Section 52-1-48, which at the time stated that benefits “shall be based on, and limited to, the benefits in effect on the date of the accidental injury resulting in disability or death.” *Id.* ¶ 3 (internal quotation marks and citation omitted). According to *Lovato*, “[d]isability begins when a compensable injury manifests itself and wage-earning capacity is [affected].” *Id.* ¶ 5 (emphasis added). The *Lovato* court stated,

“Plaintiff was able to work only three days out of the approximately five months following the accident, and only three and one-half weeks out of the approximately eight months following the accident. It is clear that a compensable injury manifested itself immediately following the accident and continued for a substantial period of time, and that plaintiff’s wage-earning capacity had been [affected] since the date of the accident.”

*Id.*; see also *Martinez v. Darby Constr. Co.*, 1989-NMSC-069, ¶ 12, 109 N.M. 146, 782 P.2d 904 (“A compensable injury requires some legal disability or inability to perform work[.]”).

{27} In *Montell v. Orndorff*, 1960-NMSC-063, 67 N.M. 156, 353 P.2d 680, our Supreme Court considered when a compensable injury occurred for purposes of determining whether an employee had given timely notice of a work-related injury to his or her employer. Our Supreme Court concluded that the Act “does not contemplate the payment of damages for accidental injuries, no matter how painful. It is only the disability or loss of earning power which results from the injuries that calls for compensation. So when the [A]ct speaks of the occurrence of injury it refers to compensable injuries, and these occur when disability appears.” *Id.* ¶ 10 (emphasis added) (internal quotation marks and citation omitted).

{28} Worker stopped working for Employer on December 21, 2012. She continued to receive her regular salary as sick leave benefits through March 31, 2013. Worker terminated her employment with Employer effective March 31, 2013 by retiring. Worker therefore stopped receiving

her regular wage as of March 31, 2013, to which both Worker and Employer stipulated. Worker therefore was not eligible to be compensated by disability benefits under the Act until April 1, 2013. See *Rayburn v. Boys Super Mkt., Inc.*, 1964-NMSC-201, ¶¶ 7-9, 74 N.M. 712, 397 P.2d 953 (holding that the worker was not disabled and right to workers’ compensation did not arise while worker remained employed and earning his regular wage); *Redhouse v. Pub. Serv. Co. of N.M.*, 1988-NMCA-034, ¶¶ 8, 12, 107 N.M. 389, 758 P.2d 803 (holding that employer’s payment of sick leave negated obligation to pay workers’ compensation benefits; workers are not “entitled to both paid accident leave and worker’s compensation”); *De La Torre v. Kennecott Copper Corp.*, 1976-NMCA-108, ¶¶ 8-15, 89 N.M. 683, 556 P.2d 839 (holding that the obligation to pay workers’ compensation benefits did not arise while the worker was paid sick leave). Further, the WCJ concluded that Worker was entitled to TTD benefits from April 1, 2013 through January 15, 2014, an important determination Employer did not appeal and in fact agreed was binding upon the death benefits action.

{29} Worker was first entitled to compensation on April 1, 2013, and therefore knew or should have known that she had a compensable injury on April 1, 2013. The limitations period of Section 52-1-46 was therefore triggered on April 1, 2013, which was within two years of Worker’s death on November 12, 2014. We therefore affirm the WCJ’s conclusion that Section 52-1-46’s limitations period was triggered on April 1, 2013.

## II. The WCJ Erred in Excluding the New Mexico Cancer Center Records and Dr. Richard Giudice’s Testimony From the Death Benefits Trial

{30} As stated above, Section 52-1-46 authorizes payment of death benefits to a deceased worker’s eligible dependents or other persons “if an accidental injury sustained by a worker proximately results in the worker’s death[.]” Section 52-1-51(C) provides that, “[o]nly a health care provider who has treated the worker pursuant to Section 52-1-49... or the health care provider providing the independent medical examination [(IME)] pursuant to this section may offer testimony at any workers’ compensation hearing concerning the particular injury in question.” Section 52-1-49 provides for selection of a health care provider to provide treatment for a worker’s work-



related injury. Only Drs. Liljestrand and Tolber had been selected to treat Worker for her ABPA, and no health care provider had conducted an IME on Worker.

{31} At the beginning of the November 12, 2015 death benefits trial, the WCJ addressed admission of exhibits. Claimant objected to Employer's proffer of Dr. Giudice's February 21, 2014 and September 14, 2015 depositions and the records of the New Mexico Cancer Center. Claimant argued that Section 52-1-51(C) limits testimony at any workers' compensation hearing about the particular work-related injury in question, whether it results in an injury or death, to authorized health care providers and providers who perform an IME. Employer argued that the statute was concerned with the injury and resulting disability, and that death and its proximate cause was a separate question not covered by it. The WCJ agreed with Claimant:

I'm going to rule that the deposition testimony [and] records of Dr. Giudice will be excluded from this hearing as a result of [Section] 52-1-51(C) which indicates that only [a] health care provider [that] has treated Worker or provided an IME may offer testimony at a worker's comp hearing concerning particular injury in question. I think [that is the] case even though it deals with, . . . I guess, the cause of death of Worker still concerns the injury in question[.]

Later in the hearing Employer moved the WCJ to reconsider his ruling regarding the New Mexico Cancer Center records. The WCJ denied the motion: "I am obviously curious about what's in those records but I think given the fact—the wording of [Section 52-1-51(C)], I'm going to deny the request, . . . I've reconsidered it, and my ruling remains the same." Thus, the record is clear that the WCJ's sole basis for excluding the evidence was his construction of Section 52-1-51(C).

#### A. Standard of Review

{32} "With respect to the admission or exclusion of evidence, we generally apply an abuse of discretion standard [when] the application of an evidentiary rule involves an exercise of discretion or judgment, but we apply a de novo standard to review any interpretations of law underlying the evidentiary ruling." *DeWitt*, 2009-NMSC-032, ¶ 13. "In reviewing a WCJ's interpretation of statutory requirements, we apply a de novo standard of review." *Id.* ¶ 14.

#### B. Principles of Statutory Construction

{33} "When interpreting statutes, [the courts'] responsibility is to search for and give effect to the intent of the [L]egislature. . . . Our understanding of legislative intent is based primarily on the language of the statute, and we will first consider and apply the plain meaning of such language." *Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 44, 121 N.M. 821, 918 P.2d 1321 (citation omitted). Courts apply the plain meaning rule to the Act. *See, e.g., Chavez v. Mountain States Constructors*, 1996-NMSC-070, ¶ 23, 122 N.M. 579, 929 P.2d 971.

{34} However, "[i]f the relevant statutory language is unclear, ambiguous, or reasonably subject to multiple interpretations, then [a court] should proceed with further statutory analysis." *State v. Almanzar*, 2014-NMSC-001, ¶ 15, 316 P.3d 183; *accord, United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 16, 148 N.M. 426, 237 P.3d 728 ("Because we cannot definitively interpret the statute by a simple consideration of statutory language that is susceptible to more than one interpretation on its face, we must look to other guides of statutory interpretation."); *Citation Bingo, Ltd. v. Otten*, 1996-NMSC-003, ¶ 21, 121 N.M. 205, 910 P.2d 281 (stating where statutory language is ambiguous or otherwise not determinative, our Supreme Court will resort to principles of statutory construction).

{35} An important principle of statutory construction is to consider statutory context. We "look to other statutes in pari materia." *United Rentals Nw., Inc.*, 2010-NMSC-030, ¶ 22 (internal quotation marks and citation omitted). "We are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole." *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350; *accord, DeWitt*, 2009-NMSC-032, ¶ 14 (stating that provisions of the Act will be construed together to produce a harmonious whole). "We will construe the entire statute as a whole so that all the provisions will be considered in relation to one another." *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 11, 142 N.M. 248, 164 P.3d 947 (internal quotation marks and citation omitted). "[W]hen expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Starko, Inc. v. N.M. Human Servs. Dep't*, 2014-NMSC-033, ¶

35, 333 P.3d 947 (internal quotation marks and citation omitted).

{36} Further, the plain meaning rule is not absolute. The rule "does not require a mechanical, literal interpretation of the statutory language. . . . If the strict wording of the law suggests an absurd result, we may interpret the statute to avoid such a result." *Cummings*, 1996-NMSC-035, ¶ 45 (citations omitted); *accord Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153 (stating that the plain meaning rule "does not require a wooden literal interpretation of all statutory language"). "We will avoid any literal interpretation that leads to an absurd or unreasonable result and threatens to convict the legislature of imbecility." *Chavez*, 1996-NMSC-070, ¶ 24 (internal quotation marks and citation omitted). Stated another way, "principles of statutory construction require that a statute be interpreted with logic and common sense to avoid an absurd result." *State v. Portillo*, 1990-NMSC-055, ¶ 10, 110 N.M. 135, 793 P.2d 265.

#### C. The WCJ Erred in Determining That Section 52-1-51(C) Barred Admission and Consideration of the Cancer Treatment Records and Deposition of Dr. Giudice in Determining the Cause of Worker's Death

{37} Section 52-1-51(C) provides that only a treating health care provider selected pursuant to Section 52-1-49 or a health care provider who has been designated pursuant to the same statute to conduct an IME may testify "at any workers' compensation hearing concerning the particular injury in question." The question before us is whether Section 52-1-51(C) barred all health care providers other than Dr. Liljestrand and Dr. Tolber from testifying about the cause of Worker's death at the death benefits trial. The answer turns on the meaning of the phrase, "hearing concerning the particular injury in question." *Id.*

{38} It is not clear from the plain meaning of the words of Section 52-1-51(C) whether it applies to a Section 52-1-46 hearing. On the one hand, the subject of a Section 52-1-46 death benefits hearing can be characterized as the work-related injury, specifically, whether the death proximately resulted from it. This would suggest that Section 52-1-51(C)'s limitation on health care provider testimony extends to a death benefits hearing. On the other hand, the foregoing phrase can be read to imply negatively that there can be a workers' compensation hearing at

which medical testimony is given where the subject is *not* the particular injury in question. The Legislature did not, for example, broadly provide that Section 52-1-51(C) is applicable to any workers' compensation hearing concerning a *medical issue*. Further, one can characterize the subject of a death benefits hearing as not "the particular injury in question," i.e., the work-related injury itself, but rather the cause of the death. This would suggest that Section 52-1-51(C)'s limitation on health care provider testimony does not extend to a death benefits hearing. Because the applicability of the language of 52-1-51(C) to a Section 52-1-46 hearing is not clear, we turn to other bases of statutory construction.

### 1. Construction with other statutes

{39} Section 52-1-51(C) should be read in conjunction with Section 52-1-49, to which it refers, and the remainder of Section 52-1-51.

{40} First, Section 52-1-49(A) imposes on a worker's employer the general obligation to provide reasonably necessary medical care to treat a work-related injury. The balance of Section 52-1-49 addresses the manner in which the health care provider who delivers that care is selected.

{41} Section 52-1-49 suggests that Section 52-1-51(C) does not apply to a WCJ's cause of death determination pursuant to Section 52-1-46. The focus of Section 52-1-49 is solely on the delivery of care necessary to treat the work-related injury. One would not expect a health care provider who is selected to treat the work-related injury to necessarily also treat or even be aware of other medical conditions the worker may be experiencing. Thus, we cannot assume that Section 52-1-49 would be intended to identify health care providers who would be able to address in any knowledgeable and comprehensive manner contributing causes of a worker's subsequent death.

{42} APS could not possibly have selected Dr. Giudice as Worker's health care provider under Section 52-1-49 prior to her death, because he would not have been treating her work-related injury. And no health care provider could have been selected under Section 52-1-49 after Worker's death, because at that point the provider could no longer treat her. *Cf. Grine v. Peabody Nat. Res.*, 2006-NMSC-031, ¶¶ 25-26, 140 N.M. 30, 139 P.3d 190 (holding that the physician who briefly examined worker on one occasion did not qualify as an HCP selected under Section

52-1-49 and thus was not authorized to testify under Section 52-1-51(C)). This illustrates that under Claimant's construction, Section 52-1-49 is simply not available as a means of permitting an HCP who is treating a worker for a non-work-related medical condition to qualify to testify about causation at a death benefits hearing. {43} Second, Section 52-1-51 articulates the method by which disagreements between the worker and the employer over medical issues are to be resolved. Section 52-1-51(A) allows the parties to either agree on a healthcare provider who will conduct an IME or petition the WCJ for appointment of a healthcare provider and have the worker undergo an IME. Section 52-1-51(B) describes how the workers' compensation judge shall choose the health care provider to conduct an IME. Section 52-1-51(E) provides that the worker "shall travel" to the place at which the IME shall be conducted and receive compensation for his or her travel expenses.

{44} Under Section 52-1-51 independent medical examiners can be appointed only to address concerns relating to the provision of medical care or disability benefits—that is, matters arising while the worker is alive. Section 52-1-51(A) contemplates that the worker will "undergo" an IME, and Section 52-1-51(E) requires that the worker "shall travel" to the IME location. Further, all of the examples of disputed medical issues set forth in Section 52-1-51(A) concern the provision of care or benefits to living workers. *Cf. State v. Alverson*, 2013-NMCA-091, ¶ 11, 308 P.3d 1027 ("The rule of ejusdem generis requires that where general words follow an enumeration of persons or things of a particular and specific meaning, the general words are not construed in their widest extent but are instead construed as applying to persons or things of the same kind or class as those specifically mentioned." (alteration, internal quotation marks, and citation omitted)).

{45} Like Section 52-1-49, these provisions suggest that Section 52-1-51(C) does not apply to a WCJ's cause of death determination pursuant to Section 52-1-46. We note as well for the same reasons that, under Claimant's construction of Section 52-1-51(C), a physician who performs an autopsy could not testify about the cause of death at a death benefits hearing: Section 52-1-51(C) specifically states that only a health care provider who performs an IME "pursuant to this section" may testify

at a hearing. Indeed, in contrast to NMSA 1978, § 52-3-40 (1989), which authorizes autopsies to determine the cause of death in the context of a claim for compensation filed under the New Mexico Occupational Disease Disablement Act, NMSA 1978, §§ 52-3-1 to -60 (1945, as amended through 2015), nowhere in the Act is a provision made for an autopsy.

{46} The particular facts of this case highlight the evidentiary shortcomings that result from limiting testimony about the cause of death to those HCPs who have treated or otherwise addressed only a worker's work-related injury in accordance with Sections 52-1-49 and -51. It is undisputed that Worker was suffering from a recurrence of metastatic breast cancer starting in February 2012, which was within six months of when Worker was exposed to the aspergillus mold in her classroom that ultimately led to the diagnosis of ABPA. Dr. Giudice stated that individuals such as Worker who have metastatic breast cancer have an average life expectancy of two to five years from the time of their diagnosis. Dr. Liljestrand admitted that although he listed the causes of death on Worker's death certificate as pneumonia and chronic pneumonitis, he could not verify that he looked at a single medical record in making that determination. Dr. Liljestrand also could not verify that he relied on sources of information in determining Worker's cause of death other than a verbal recitation from Claimant. Similarly, Dr. Tolber's information about Worker's medical condition after September 2015 and the circumstances of her death was limited to his conversation with Claimant. Dr. Liljestrand last saw Worker eight months before she died, and Dr. Tolber last saw Worker a month and a half before she died. In contrast, Dr. Giudice saw Worker the day before she died. Dr. Giudice's testimony and records concerning Worker's metastatic breast cancer thus would appear to be not only relevant but crucial in determining Worker's cause of death.

### 2. Avoiding an absurd construction

{47} Construing Section 52-1-51(C) to apply to a Section 52-1-46 death benefits hearing can lead to a practical absurdity. Assume a worker dies from a heart attack while at work. Because of the lack of any previous work-related injuries, there are no HCPs who had been selected under Section 52-1-49. Assume as well that the employer contests worker's survivor's death benefits claim that the death

proximately resulted from an on-the-job accidental injury. In this situation, neither the worker nor the employer would be permitted to call any HCPs to testify about the cause of death. But because the worker's survivor would bear the burden of proving causation by expert medical testimony, see *Grine v. Peabody Natural Resources*, 2005-NMCA-075, ¶ 24, 137 N.M. 649, 114 P.3d 329, *rev'd on other grounds by* 2006-NMSC-031, the claim would be denied without any consideration of the evidence that medical professionals might be able to provide regarding the cause of death. Cf. *Mieras v. Dyncorp*, 1996-NMCA-095, 122 N.M. 401, 925 P.2d 518 (presenting factual scenario that parallels this hypothetical; however, applicability of Section 52-1-51(C) to Section 52-1-46 death benefits hearing was not addressed).

{48} This case presents the equally problematic scenario in which at the time of her death, a worker is suffering from two serious medical conditions, only one of which is work-related. Such a scenario, even if not common, is hardly unique. We do not believe that the Legislature intended to limit the WCJ in any resulting Section 52-1-46 death benefits claim that the work-related condition caused the worker's death from hearing only the testimony of health care providers selected under Section 52-1-49 or 52-1-51, who by reason of their limited assignment may have only a partial and incomplete understanding of the entirety of the worker's medical circumstances. Conversely, we do not believe that the Legislature intended to bar the testimony of health care providers who were treating the worker immediately before her death and, as a result, could be expected to have the best understanding of the worker's overall condition and the cause or causes of death simply because they were treating a non-work-related condition. We will not assume that the Legislature would mandate that the WCJ should have only a one-sided or otherwise limited picture of the worker's health at the time of her death.

{49} This hypothetical example and the facts of this case illustrate the fundamental problem with limiting testimony about the cause of death to health care professionals who are either selected pursuant to Section 52-1-49 or appointed to conduct IMEs: there is a disconnect between the work-related injury issues—all arising while the worker is alive—that those professionals are addressing, and the cause of death issue that is the focus of Section 52-1-46. It is precisely because Section 52-1-49's and

Section 52-1-51's provisions for selection of HCPs and IME examiners, respectively, are confined to the treatment and assessment of work-related injuries that it is absurd to identify them as the exclusive universe of witnesses who can testify about the cause or causes of a worker's death.

### 3. Case law precedent

{50} New Mexico case law precedent does not require a contrary construction of Section 52-1-51(C), because no case has addressed the statute's applicability to testimony about the cause of death in a Section 52-1-46 proceeding.

{51} In *Grine*, a worker suffered a heart attack in October 2000 while at work and died in June 2002. 2006-NMSC-031, ¶ 1. He had pursued a claim for workers' compensation disability benefits, and after his death his widow was substituted as plaintiff to continue that claim as well as assert a claim for death benefits. *Id.* There apparently was no dispute that his death was attributable to the heart attack, but the employer vigorously disputed that the underlying heart attack occurred because of his job. *Id.* ¶¶ 12-15; see §§ 52-1-9(C), -28(A). Our Supreme Court concluded that the doctor whom the employer had engaged to examine the worker prior to his death, and who later testified about whether the heart attack was caused by employment conditions, did not qualify under Section 52-1-49 as a selected HCP because he never actually treated the work-related injury. Therefore, the doctor's testimony on that issue was inadmissible pursuant to Section 52-1-51(C). *Grine*, 2006-NMSC-031, ¶¶ 23-25. Further, this issue arose not in the context of whether under Section 52-1-46 the death proximately resulted from the initial heart attack, but rather whether under Section 52-1-28(B) it could be established that the heart attack was an accidental injury arising out of, and in the course of, the worker's employment. *Grine*, 2006-NMSC-031, ¶ 29. Thus, *Grine* provides no guidance on the issue that we address herein.

{52} The reasoning in *DeWitt* in some respects tracks our analysis here. *DeWitt* addressed the selection of a health care provider under Section 52-1-49 and the admissibility of that person's testimony under Section 52-1-51(C), but not in the context of a death. *DeWitt*, 2009-NMSC-032, ¶ 8. A worker with a pre-existing back condition experienced back pain following an accident at work. *Id.* ¶ 2. She underwent surgery and later filed a claim for workers' compensation benefits.

*Id.* ¶¶ 4-5. The worker then selected, as her health care providers under Section 52-1-49, the doctors who previously had treated her and performed the surgery. *DeWitt*, 2009-NMSC-032, ¶ 5. At trial on her claim for disability benefits, the WCJ excluded those doctors' testimony (which the worker proffered) on the theory that Section 52-1-51(C) did not permit testimony that was based on treatment provided before the date on which the doctors became HCPs for workers' compensation purposes. *DeWitt*, 2009-NMSC-032, ¶ 8. Our Supreme Court rejected this reasoning. The Court noted that related statutes must be read together, *id.* ¶ 30, and that the construction given by the WCJ to Section 52-1-51(C) acted absurdly as an impediment to the selection of health care practitioners pursuant to Section 52-1-49, because they could not be called upon to testify about their care, treatment, and examinations of workers before and after their selection. *DeWitt*, 2009-NMSC-032, ¶ 31. Our Supreme Court observed as well that:

Employer's construction would preclude the ability of an HCP, who had treated a worker before the relevant work-related injury, from testifying about the worker's complete medical history. This would inhibit a full analysis of the causation issues that may be so critically important in these cases. In effectuating the intent of the Legislature, we must avoid any interpretations that would lead to absurd or unreasonable results.

*Id.* This language in *DeWitt* indirectly supports a construction of Section 52-1-51(C) that permits a WCJ to consider all the relevant evidence regarding the cause of a worker's death.

{53} We recognize that in these decisions our Supreme Court concluded that in enacting Section 52-1-51, "the Legislature intended to limit the use and number of experts in workers' compensation cases," *Grine*, 2006-NMSC-031, ¶ 19, and that it was "the obvious intent of the Legislature [in enacting Section 52-1-51] to avoid testimony-shopping[.]" *DeWitt*, 2009-NMSC-032, ¶ 35. However, construing the statute in the manner advocated by Claimant here would not advance the apparent underlying legislative purpose of minimizing the cost of treating the worker's work-related injury, *Banks v. IMC Kalium Carlsbad Potash Co.*, 2003-



NMSC-026, ¶ 28, 134 N.M. 421, 77 P.3d 1014, and instead would serve only to bar the WCJ's consideration of potentially highly relevant information in arriving at a correct decision about the truth of what caused a worker's death. We observe as well that Employer's proffer of Dr. Giudice as a causation witness in any event can hardly be criticized as testimony-shopping: at the time of Worker's death he had been her treating doctor (albeit for her cancer as opposed to her ABPA) since 2009.

#### 4. Summary

{54} For these reasons, we conclude that Section 52-1-51(C) does not limit expert testimony regarding the circumstances and cause of a worker's death in connection with a claim for death benefits under Section 52-1-46 to that given by an HCP who has provided care for a worker's work-related injury pursuant to Section 52-1-49, or an independent medical examiner identified pursuant to Section 52-1-51(A). We therefore reverse the WCJ's rulings based on Section 52-1-51(C) that Dr. Giudice's depositions and the records of the New Mexico Cancer Center were inadmissible and the medical evidence of cause of death was uncontradicted, and the WCJ's determination regarding the cause of Worker's death. We also remand this case for retrial of the issue of whether, in the words of Section 52-1-46, Worker's ABPA "proximately result[ed]" in her death. This Court's ruling is made solely on the basis of the WCJ's erroneous statutory analysis. We have not considered, and do not presume to suggest, whether Worker would have a basis for objecting to the admission of this evidence on other grounds or what causation decision the WCJ ultimately might make following consideration of all admitted evidence. On the contrary, resolution of those issues remain for retrial.

#### III. The WCJ Erred in Determining the Amount of Death Benefits Awarded to Claimant

{55} In addition to compensation for medical expenses prior to death, funeral expenses, and attorney's fees, Section 52-1-46 provides for a basic weekly death benefit that tracks a worker's disability benefit. In particular, where the worker is survived by a widow or widower but no minor children, Section 52-1-46(C) (2) provides the widow or widower with a weekly death benefit of "sixty-six and two-thirds percent of the average weekly wage of the deceased[.]" This benefit is to be paid for 700 weeks, Section 52-1-41(D), or until remarriage, Section 52-1-46(C)(2),

whichever comes first. Section 52-1-47(A) establishes a cap of 700 weeks of benefits "for any combination of disabilities . . . or any combination of disability [or] death[.]" which means that if an employer has paid disability benefits to a worker prior to the worker's death, the 700 weeks of death benefits will be reduced by the number of weeks of disability benefits that previously had been paid.

{56} In addition to awarding Claimant compensation for Worker's last medical expenses, funeral expenses, and attorney's fees, the WCJ awarded death benefits in the amount of 99% of two-thirds of Worker's average weekly wage for 700 weeks, subject to a credit for the number of weeks of PPD that Employer had paid to Worker prior to her death.

{57} Employer contends that, if Claimant were entitled to any weekly death benefits at all, the benefits were limited to those that had accrued prior to Worker's death. As we understand it, Employer's argument is based on a joint reading of Sections 52-1-46(G) and 52-1-47(C). Section 52-1-46(G) provides that "no compensation benefits payable by reason of a worker's death shall exceed the maximum weekly compensation benefits as provided in Section[] . . . 52-1-47." Section 52-1-47(C) provides that "in no case shall compensation benefits for disability continue after the disability ends or after the death of the injured worker[.]" Employer urges that, because disability benefits end upon the death of the worker, Section 52-1-46(G) must mean that death benefits, which Employer characterizes as "unaccrued," also must end upon death. See *Holliday v. Talk of the Town, Inc.*, 1985-NMCA-024, ¶ 5, 102 N.M. 540, 697 P.2d 959 (noting that "awarded but unaccrued benefits for disability terminate upon death").

{58} If accepted, Employer's argument would nullify Section 52-1-46's provision of weekly death benefits. The relevant statutory language does not support Employer's argument. Employer is conflating the maximum weekly amount of the death benefit (Section 52-1-46(G)) with the provision that the death of the worker ends disability benefits (Section 52-1-47(C)). That is, Section 52-1-46(G) limits the maximum weekly death benefit amounts to those payable pursuant to Sections 52-1-41 to -43, and -47, which generally is two-thirds of the worker's average weekly wage. While Section 52-1-47(C) provides that disability benefits end upon death, Sections 52-1-41(D), -43(B), and -47(B)

make clear that death benefits are payable upon death even if disability benefits previously had been paid, up to a maximum of 700 weeks of combined disability and death benefits.

{59} In his cross-appeal, Claimant argues that the WCJ erred in awarding weekly death benefits in the amount of 99%, as opposed to 100%, of two-thirds of Worker's average weekly wage. We agree with Claimant. It appears that the WCJ determined that the death benefit should equal the amount of Workers' PPD benefit. In doing so, the WCJ erred. Section 52-1-46(C)(2) provides without qualification for a weekly death benefit to a widow or widower in the amount of sixty-six and two-thirds percent of the worker's average weekly wage. The amount of the benefit does not vary based upon whether the worker, prior to death, was totally or partially permanently disabled. This is logical, given that death can be viewed as entirely terminating a worker's wage-earning capacity, and therefore a death benefit should be the same as a total disability benefit.

#### CONCLUSION

{60} We affirm the WCJ's conclusion that Worker's death occurred within two years of her compensable injury. We reverse the WCJ's exclusion of Dr. Giudice's deposition testimony and the medical records of the New Mexico Cancer Center from the death benefits trial. We also reverse the WCJ's resulting conclusion that the medical evidence concerning Worker's cause of death was uncontradicted. We emphasize that we are remanding to the WCJ for retrial on the causation element of Claimant's death benefit claim. Last, we reverse the WCJ's calculation of weekly death benefits to which Claimant would be entitled assuming Claimant prevails on the causation issue. Only if the WCJ determines that Worker's ABPA "proximately resulted" in her death will it be necessary for the WCJ to recalculate the amount of the weekly death benefit. We vacate the April 21, 2016 compensation order and remand the case for retrial and for further findings consistent with this opinion.

{61} **IT IS SO ORDERED.**  
**HENRY M. BOHNHOFF, Judge**

**WE CONCUR:**  
**M. MONICA ZAMORA, Judge**  
**STEPHEN G. FRENCH, Judge**

Certiorari Granted, August 16, 2018, No. S-1-SC-37139

From the New Mexico Court of Appeals

**Opinion Number: 2018-NMCA-050**

No. A-1-CA-35896 (filed May 22, 2018)

LINDA FILIPPI, ADDIE DRAPER,  
SUSAN OVIATT, and CHARLES OVIATT,  
Appellants-Respondents,  
v.  
BOARD OF COUNTY COMMISSIONERS  
OF TORRANCE COUNTY, NEW MEXICO,  
Appellee-Petitioner,  
and  
JBM LAND & CATTLE, LLC,  
Intervenor-Petitioner.

**APPEAL FROM THE DISTRICT COURT OF TORRANCE COUNTY**

Matthew G. Reynolds, District Judge

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**Opinion**

**Emil J. Kiehne, Judge**

{1} The Board of County Commissioners of Torrance County (the Board) determined that JBM Land & Cattle, LLC (JBM) did not need a conditional use permit under Torrance County's zoning ordinance to grow medical cannabis on property it owned in a rural section of the county. Several of JBM's neighbors challenged that decision in the district court, which overturned the Board's decision and held that JBM's proposed use of the property was a "commercial use" for which

a conditional use permit was required. This court granted and consolidated the Board's and JBM's petitions to review the district court's order. Concluding that JBM's proposed use of its property was a permissive use under the zoning ordinance, we reverse the district court's order and reinstate the Board's decision.

**BACKGROUND**

{2} JBM purchased land in Torrance County for the purpose of growing medical cannabis to harvest and sell in a dispensary outside the county. The land was in a subdivision zoned as a "conservation district" that "protects and preserves areas within the County which are characterized

by their limited access, minimal development, limitations on water resources, natural beauty, fragile environment and native wildlife populations." Torrance County, N.M. Zoning Ordinance (Zoning Ordinance), § 8(A) (1990, amended 2008). {3} The section of the ordinance at issue first sets forth a number of "permissive uses" of land that "are allowed" in a conservation district:

1. Low intensity agricultural operations such as livestock grazing and related ranching activities; . . .
2. Horse breeding, boarding and training;
3. Other low intensity production agriculture;
4. Cultivation and harvesting of plants and croplands;
5. Woodcutting and other activities related to harvesting trees;
6. Singular residential dwelling unit provided it is in compliance with the requirements of the New Mexico Liquid Waste Disposal Regulations; and
7. Accessory uses and structures necessary to carry out the above-listed permissive uses.

Zoning Ordinance, § 8(B).

{4} Second, the section at issue lists "[c]onditional [u]ses" that require a landowner to obtain a conditional use permit from the Torrance County Planning and Zoning Commission (Zoning Commission):

1. Home occupations<sup>1</sup> provided they are confined to the residence or accessory structure, are clearly a secondary use of the structure and present no visual impact to neighbors as viewed from adjoining property or public thoroughfare;
2. Small Bed and Breakfast operations limited to two guest bathrooms;
3. Horseback riding stables, provided sufficient land exists to support the number of animals maintained;
4. Dude ranch or other agricultural work experience operation;
5. Outfitters;
6. Essential public utility distribution structures; . . .
7. Communications structures and facilities; and . . .
8. One supplemental residential dwelling unit allowed on a parcel meeting district minimum standards; 2 supple-

<sup>1</sup>The term "Home Occupation" is defined as "a business, commercial or manufacturing activity that is clearly a secondary use of the premises for a dwelling unit, and which results in a product or service for financial gain." Zoning Ordinance, § 5(B)(16).

mental residential dwelling units allowed on a parcel of at least eighty acres or 1/8 section.

Zoning Ordinance, § 8(C).

{5} Third, the ordinance provides another tier of uses—“[c]ommercial uses”—that are only allowed on a case-by-case basis, and states that when deciding whether the commercial use will be permitted in a conservation district, the zoning commission’s primary concern is “to minimize the environmental impact on the area.” Zoning Ordinance, § 8(A). Although the ordinance does not specifically say that a commercial use requires a conditional use permit, the parties do not seem to dispute this point, and we note that the Board stated in a previous decision that commercial uses in a conservation district require a conditional use permit.

{6} JBM approached the Torrance County Zoning Officer, the individual “designated as the principal administrator and enforcement officer of [the Torrance County Zoning Ordinance,]” to ask whether a conditional use permit would be required for it to grow medical cannabis on the land. Zoning Ordinance, § 5. The Zoning Officer determined that because medical cannabis was “either a plant, a crop, or both[,]” growing it would be considered a permissive use under the ordinance and that no conditional use permit was required. JBM began cultivating 300 cannabis plants, using water it hauled in from outside Torrance County, and sheltering the plants in shade cloth “hoop houses” intended to decrease the amount of water needed to grow the plants.

{7} JBM’s neighbors, Linda Filippi, Addie Draper, Susan Oviatt and Charles Oviatt (Neighbors), challenged the Zoning Officer’s decision, arguing that JBM should be required to obtain a conditional use permit and raising a number of concerns regarding the cultivation of medical cannabis on the property. These concerns included: that a previous decision of the Board was not followed; the amount of water needed to grow the plants would be exorbitant; that crime in the area could increase with the presence of a controlled substance and subject the public to unnecessary risk; that the road leading to the property could be damaged; that the growing of cannabis is pharmaceutical manufacturing, not cultivation of crops; that the use would be commercial; and that the use would be illegal due to the status of cannabis as a Schedule I controlled substance under federal law. Neighbors raised their concerns

with the Zoning Commission, which took no action, and then they appealed to the Board. After a public hearing, the Board denied Neighbors’ appeal, upholding the Zoning Officer’s determination that no conditional use permit was required for JBM to cultivate medical cannabis in a conservation district. The Board noted that the cultivation of medical cannabis was the cultivation of plants or crops, making it a permissive use in a conservation district under the ordinance. It further stated that “[c]ommercial use, as contemplated by Section 8 of the Zoning Ordinance, does not include the production of plants and crops for sale offsite.”

{8} Neighbors next appealed to the Seventh Judicial District Court under Rule 1-074 NMRA. The district court overturned the Board’s decision, stating that “[t]he Commission did not follow the law in its interpretation of commercial use being restricted to onsite sales.” It also stated that “this court determines as a matter of law under de novo review that the sale of marijuana [cannabis] offsite is a commercial use requiring a permit from the Torrance County Commission.” As part of the reasoning for its decision, the district court determined that “[w]hen permissive uses are commercial in nature and require building any structures, the owner of the property must apply to the Planning and Zoning Board for a permit. Then, on a case-by-case basis, the Board can examine all the aspects affecting the Conservation District in deciding whether to grant the permit.” The district court noted that the term “structure,” as defined by the ordinance, did not differentiate between temporary or permanent structures, and thus the district court considered the hoop houses on the property to be “structures.”

{9} The Board and JBM each filed petitions for a writ of certiorari to this Court under Rule 12-505 NMRA, which we granted. We reverse the district court’s order and reinstate the Board’s decision.

## DISCUSSION

### I. Standard of Review

{10} The standard of review that a district court employs to evaluate the decision of an administrative agency is “(1) whether the agency acted fraudulently, arbitrarily or capriciously; (2) whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence; (3) whether the action of the agency was outside the scope of authority of the agency; or (4) whether the action of the agency was otherwise not in accor-

dance with law.” Rule 1-074(R) NMRA. “Upon a grant of a petition for writ of certiorari [under Rule 12-505 NMRA], the Court of Appeals utilizes [this] same standard of review to review the decision of the district court.” *San Pedro Neighborhood Ass’n v. Santa Fe Cty. Bd. of Cty. Comm’rs*, 2009-NMCA-045, ¶ 11, 146 N.M. 106, 206 P.3d 1011 (citation omitted).

{11} This administrative appeal requires us to decide whether the Board properly interpreted the Zoning Ordinance, and thus our standard of review in this case is “whether the action of the [Board] was otherwise not in accordance with law.” Rule 1-074(R)(4). “[T]he interpretation of a zoning ordinance is a question of law that we review de novo, using the same rules of construction that apply to statutes.” *San Pedro Neighborhood Ass’n*, 2009-NMCA-045, ¶ 12; *Alba v. Peoples Energy Res. Corp.*, 2004-NMCA-084, ¶ 14, 136 N.M. 79, 94 P.3d 822. The following three rules apply:

The first rule is that the plain language of a statute is the primary indicator of legislative intent. Courts are to give the words used in the statute their ordinary meaning unless the legislature indicates a different intent. The court will not read into a statute or ordinance language which is not there, particularly if it makes sense as written. The second rule is to give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them. The third rule dictates that where several sections of a statute are involved, they must be read together so that all parts are given effect.

*Id.* ¶ 17 (internal quotation marks and citation omitted).

### II. The District Court Did Not Exceed the Scope of Its Appellate Review

{12} We first address JBM and the Board’s contention that the district court ruled on issues that had not been presented for appellate review. The Board argues that the district court exceeded the proper scope of appellate review because the only issue that Neighbors raised in their statement of appellate issues was a claim that the Board’s decision in this case was contrary to a decision that it had reached in another case. JBM and the Board argue that the district court’s decision was outside the scope of its appellate review because it was based on matters that Neighbors had



not raised in their statement of appellate issues. But neither JBM nor the Board cite any authority stating that the district court may not consider issues not specifically raised in the statement of appellate issues, and therefore we will not consider this argument. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“Issues raised in appellate briefs which are unsupported by cited authority will not be reviewed by us on appeal.”).

{13} The Board also argues that Neighbors did not preserve their argument that JBM’s land use was commercial in nature and therefore required a conditional use permit. Similarly, JBM argues that the Board did not address whether the cultivation of medical cannabis was commercial, and thus the district court erred in deciding whether the use was commercial. Our review of the record, however, indicates that Neighbors adequately preserved their argument. Both JBM and the Board understood Neighbors to have raised the issue, because they both discussed it in their responses to Neighbors’ statement of appellate issues. And the Board ruled on the issue in its findings of fact and conclusions of law when it stated that commercial uses do not include the production of plants or crops for sale offsite. *See Lopez v. Las Cruces Police Dep’t*, 2006-NMCA-074, ¶ 6, 139 N.M. 730, 137 P.3d 670 (holding that an issue was preserved for appellate review where the district court “was alerted to the issue” and “decided” it).

{14} Further, JBM and the Board argue that the district court ruled that JBM needed a building permit for the hoop houses on the property, and that this was improper because no party raised that issue in the district court. However, we interpret the district court’s order not as requiring a building permit, but as requiring a conditional use permit when a proposed use is commercial in nature and requires building any structures. Thus, we consider the debate regarding structures to be intertwined with the question of commercial use.

### III. JBM’s Proposed Land Use Did Not Require a Conditional Use Permit

#### A. The Board’s Decision Was Consistent with the Language of the Zoning Ordinance

{15} The district court’s order stated that “to give effect to the objective and purpose of the Conservation District, give effect to its entire text, and avoid an absurd result” the Zoning Ordinance should be interpreted to mean that “[w]hen permissive

uses are commercial in nature and require building any structures, the owner of the property must apply to the Planning and Zoning Board for a permit. Then, on a case-by-case basis, the Board can examine all the aspects affecting the Conservation District in deciding whether to grant the permit.” The district court’s conclusion is, at the very least, erroneous because the ordinance specifically provides that

“[a]ccessory uses and structures necessary to carry out the above-listed permissive uses” are themselves permissive uses in a conservation district. Zoning Ordinance, § 8(B)(7). Given that the Board’s interpretation of the Zoning Ordinance is consistent with the express wording contained within it, and the district court’s is not, the Board properly determined that JBM’s use of shade cloth hoop houses on the property did not require a conditional use permit.

#### B. The District Court Properly Employed the De Novo Standard But Erred in Its Interpretation of “Commercial Use”

{16} We next consider whether the district court erred in applying a de novo standard of review and by deciding that medical cannabis cultivation is a “commercial use” under the Zoning Ordinance. The district court held that the Board’s definition of “commercial use[,]” which excluded the growing of plants and crops for sale offsite, was improper because it conflicted with this Court’s decision in *San Pedro Neighborhood Ass’n*, 2009-NMCA-045, ¶¶ 18-21. JBM and the Board argue that the district court was limited to conducting a whole record review to determine whether the facts supported the Board’s decision, and that it was improper for the district court to undertake a de novo review of the ordinance. We conclude, however, that it was proper for the district court to apply a de novo standard of review when interpreting the ordinance. That is because the very essence of the appellate role in the context of statutory interpretation—even when undertaken by district courts exercising their limited appellate authority—is based on de novo review. *See State v. Trujillo*, 2009-NMSC-012, ¶ 9, 146 N.M. 14, 206 P.3d 125 (stating principle that questions of statutory interpretation are matters of law and are reviewed de novo).

{17} We also conclude that the district court misinterpreted this Court’s holding in *San Pedro Neighborhood Ass’n*. In that case, a local zoning ordinance prohibited all “commercial uses” except for home-based businesses. 2009-NMCA-045, ¶ 17.

A landowner sought to stockpile gravel from a nearby mine on land subject to the ordinance, and argued that it would not be a “commercial use” because he would not be exchanging goods on the land itself. *Id.* ¶ 19. Because the landowner wanted to stockpile the gravel so that it would be ready whenever his customers wanted it, we held that the proposed stockpiling was a “commercial” use because it was “related to the buying and selling of the mined materials.” *Id.* (internal quotation marks omitted). In reaching this decision, we merely employed the rules of statutory construction, and applied the plain, dictionary-based meaning of the term “commercial.” *Id.* ¶¶ 18-20 (internal quotation marks omitted). However, our decision in *San Pedro Neighborhood Ass’n* does not establish a definition of the term “commercial use” that would apply to every zoning ordinance enacted by every county in the state. *San Pedro Neighborhood Ass’n* did not present the issue of whether applying the plain, dictionary-based meaning of the term “commercial” would render other provisions of the ordinance ineffective, but the present case does.

{18} In this case, we begin by determining whether the plain, generic meaning of “commercial use” applies, because the Zoning Ordinance itself does not define “commercial use[.]” *See* Zoning Ordinance, § 5(B). The “intent” portion of Section 8 of the Zoning Ordinance states that “[c]ommercial uses will not be allowed [in a conservation district] except on a case by case basis in which the primary concern of the Zoning Commission will be to minimize the environmental impact on the area.” Zoning Ordinance, § 8(A). Section 8 of the Zoning Ordinance then specifically enumerates some permissive uses that appear to be commercial in nature, including low intensity agriculture; horse breeding, boarding and training; and woodcutting and other activities related to harvesting trees. Zoning Ordinance, § 8(B). The inclusion of these permitted activities suggests that the term “commercial use” should not be given broad scope, as it was in *San Pedro Neighborhood Ass’n*, because doing so would render ineffective the provision on permissive uses. *See Blue Canyon Well Ass’n v. Jevne*, 2018-NMCA-004, ¶ 9, 410 P.3d 251 (“We interpret statutes to avoid rendering the Legislature’s language superfluous.” (internal quotation marks and citation omitted)). Under Neighbors’ interpretation, landowners would almost always have to apply for a conditional use

permit to engage in some of the tasks that the ordinance lists as permissive uses. Additionally, many of the “conditional uses” listed by the ordinance would involve onsite sales, such as bed and breakfast operations, riding stables, dude ranches, and agricultural work experience operations. Zoning Ordinance, § 8(C). Thus, the Board’s interpretation of the term “commercial use” as not including the cultivation of plants for sale offsite is reasonable, because it harmonizes the “permissive uses” provision with the “conditional uses” and “intent” provisions of the ordinance. See *Blue Canyon Well Ass’n*, 2018-NMCA-004, ¶ 9 (“We consider all parts of the statute together, reading the statute in its entirety and construing each part in connection with every other part to produce a harmonious whole.” (alterations, internal quotation marks, and citation omitted)).

{19} Next we consider the second rule, which is to give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them. *San Pedro Neighborhood Ass’n*, 2009-NMCA-045 ¶ 12; *Alba*, 2004-NMCA-084, ¶ 22. Though the Board argues that it has always interpreted the ordinance to mean that commercial uses do not include sale of crops or plants offsite, the only evidence the Board presents regarding its interpretation of the term is the argument of counsel. With no evidence in the record, we decline to give weight to this factor. See *Chan v. Montoya*, 2011-NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 (“It is not our practice to rely on assertions of counsel unaccompanied by support in the record. The mere assertions and arguments of counsel are not evidence.” (internal quotation marks and citation omitted)).

{20} Finally, when several sections of a statute are involved, we are to read them together so that all parts are given effect. As set forth above, the Board’s interpretation of the ordinance provides the most harmonious reading of the ordinance.

#### CONCLUSION

{21} We hold that the Board’s decision that the cultivation of medical cannabis is a permissive use under the ordinance that did not require a conditional use permit was a reasonable interpretation of its own ordinance. Accordingly, we reverse the decision of the district court.

{22} **IT IS SO ORDERED.**  
**EMIL J. KIEHNE, Judge**

**WE CONCUR:**  
**J. MILES HANISEE, Judge**  
**STEPHEN G. FRENCH, Judge**

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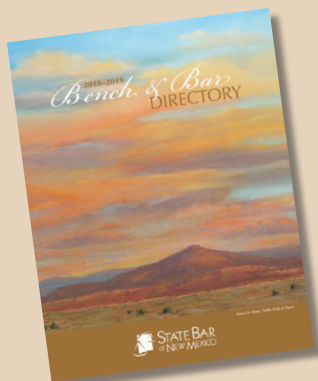


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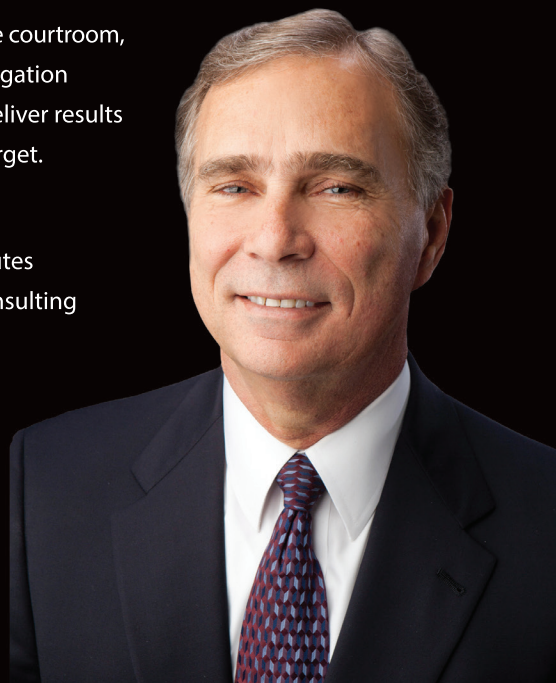
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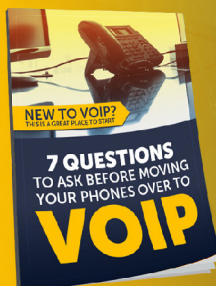
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Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 10 years experience). Associate Attorney will practice in the areas of insurance defense, subrogation, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pretrial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé if interested to [paul@kienzlelaw.com](mailto:paul@kienzlelaw.com).



### Deputy District Attorney

Immediate opening for a Deputy District Attorney. Working with a great team of professionals and a manageable caseload - we have a position available in our Las Vegas, NM office. Requirements include: Must be licensed in New Mexico, plus a minimum of six (6) years of prosecution experience. If you are interested in learning more about the position or wish to apply, please forward your letter of interest and resumé to Richard D. Flores, District Attorney, c/o Mary Lou Umbarger, Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701; e-mail: mumbarger@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

### Trial Attorney

Opportunity for immediate trial experience. If you enjoy the small community feel and working with a great team of professionals, we have a Trial Attorney position available in our Las Vegas, NM office. Must be licensed in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. If you are interested in learning more about the position or wish to apply, please forward your letter of interest and resumé to Richard D. Flores, District Attorney, c/o Mary Lou Umbarger, Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701; e-mail: mumbarger@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

### Attorney

The State of New Mexico is currently seeking a full-time, experienced attorney who will be located at the State Personnel Office ("SPO") in Santa Fe. Incumbent will represent the State of New Mexico and its Executive Branch Agencies in complex and difficult arbitrations, and administrative and judicial proceedings; counsel and advise Agencies, Agency Heads and State Personnel Office ("SPO") employees with employment and labor law matters; negotiate disputes including contract (i.e., collective bargaining agreement) interpretation disputes; facilitate and draft settlements; prepare responses, motions and briefs; and analyze and write legal memos. Incumbent will provide regular legal advice to managers on a variety of matters, including the State Personnel Act and its rules, Americans with Disabilities Act ("ADA"), Family Medical Leave Act ("FMLA"), the Human Rights Act, the Worker's Compensation Act, federal civil rights laws and other federal and state employment laws, in conjunction with SPO Human Resources ("HR") staff. Further description, qualifications, and requirements for this position are available at <https://careers.share.state.nm.us>; search for "SPO #12008".

### 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!

### Full-time Law Clerk

United States District Court, District of New Mexico, Las Cruces, Full-time Law Clerk, assigned to Judge Gregory Fouratt, \$61,218 to \$113,428 DOQ. Approx. two-year term, potential to become career law clerk. See full announcement and application instructions at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov). Successful applicants subject to FBI & fingerprint checks. EEO employer.

### 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](mailto:ksaavedra@da.state.nm.us) or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

### Deputy District Attorney

Immediate opening for Deputy District Attorney in Lordsburg. Salary depends on experience, w/benefits. Please send resume to Francesca Estevez, District Attorney [FMartinez-Estevez@da.state.nm.us](mailto:FMartinez-Estevez@da.state.nm.us) Or call 575-388-1941.

### Litigation Attorney

The Litigation Attorney will attend hearings, trials, draft and review pleadings, assist with task and workflow management, and provide professional legal assistance, advice and counsel with respect to collections and creditor's rights. Moreover, the position may require research and analysis of legal questions. The position will also entail court appearances, often on a daily basis. The position has a high level of responsibility within established guidelines, but is encouraged to exercise initiative. The position is part of a growing team of attorneys across several states, and is located in Albuquerque, New Mexico. Please contact Laura Berry for more information, [Laura.Berry@mjfirm.com](mailto:Laura.Berry@mjfirm.com); Main: 303.830.0075 x143; Direct: 303.539.3184

### Injury Law Firm Seeking a Bilingual (Spanish/English) Associate Attorney

Our Albuquerque personal injury firm seeks a associate to assist senior attorneys and paralegals with: Discovery, depositions, hearings and mediations; Researching and drafting motions, pleadings, memoranda of law and other legal documents; Covering hearings, depositions and mediations; Communicating and meeting with clients; Related duties. Excellent opportunity to grow for the right person! Requirements: You must be a member of the New Mexico Bar; You must be Spanish/English bilingual; You must be enthusiastic; You must be a reliable team player that is willing to learn; You must be client-driven and highly motivated. Benefits offered include medical, dental, vision and life insurance, as well as 401k, paid firm holidays and paid time off. Compensation commensurate with experience. Please send resume to [jobs@mslfirm.com](mailto:jobs@mslfirm.com)

### Liberty Mutual Insurance, Field Counsel

Represent the company and its policyholders in civil litigation with moderately complex legal issues. Requires: Completion of law school with LLB or JD and admission to the bar, a minimum of 1 successful year experience as an attorney, and a general knowledge of insurance law. We value your hard work, integrity and commitment to positive change. We're dedicated to doing the right thing for our employees, because we know that their fulfillment and success leads us to great places. Life. Happiness. Innovation. Impact. Advancement. Whatever their pursuit, talented people find their path at Liberty Mutual. Apply on line at: <https://www.libertymutualgroup.com/careers>

### Join our team at New Mexico Legal Aid!

Check our website for current opportunities: <https://tinyurl.com/NMLAjobs>

### **Associate Litigation Attorney Santa Fe and Albuquerque**

Regional litigation firm with offices in Denver and Santa Fe seeks attorney with 4 - 6+ years of litigation experience, preferably in one or more of the following practice areas: consumer finance, creditors' rights, mortgage lending and servicing, real estate, title, and/or bankruptcy. Candidates should possess strong research and writing skills, have significant courtroom experience, and be well-versed in all local civil rules and practices in New Mexico. We offer competitive benefits and salary, including performance-based bonuses. Please submit your résumé and writing sample and/or any inquiries to [rweiman@msa.legal](mailto:rweiman@msa.legal).

### **Attorney**

Disability Rights New Mexico (DRNM), a statewide non-profit agency promoting and protecting the rights of persons with disabilities, seeks full time Attorney to represent agency clients in informal, administrative and legal proceedings; comment on proposed regulations and legislation; provide technical assistance; and participate in policy advocacy. Please have excellent research and writing skills, demonstrated competence in a range of legal practice skills including litigation, and any combination of advanced education, professional experience or volunteer activities relevant to disability issues. Must be licensed in NM, or eligible for legal services or reciprocity license. Persons with disabilities & minorities strongly encouraged to apply. Bilingual a plus. Competitive salary and benefits. Send letter of interest addressing above qualifications, resume, and three references to DRNM, 3916 Juan Tabo Blvd. NE, Albuquerque, NM 87111, or by email to [mwolfe@DRNM.org](mailto:mwolfe@DRNM.org) by September 21. AA/EEO

### **Assistant City Attorney**

The City of Albuquerque Legal Department is hiring an Assistant City Attorney to provide legal services to the City's Department of Municipal Development ("DMD"). The area of focus includes, but is not limited to: contract drafting, analysis, and negotiations; regulatory law; procurement; general commercial transaction issues; intergovernmental agreements; dispute resolution; and civil litigation. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and must be an active member of the State Bar of New Mexico, in good standing. Please submit resume and writing sample to attention of "Legal Department DMD Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or [amaragon@cabq.gov](mailto:amaragon@cabq.gov).

### **Assistant District Attorney**

The Fifth Judicial District Attorney's office has an immediate position open to a new or experienced attorney. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to [DLuce@da.state.nm.us](mailto:DLuce@da.state.nm.us).

### **Paralegal - Incredible Opportunity w/ New Mexico Legal Group**

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

### **Attorney**

O'Brien & Padilla, P.C., is seeking an energetic attorney with 3+ years of experience to join our growing AV-rated insurance defense law firm. Duties include all aspects of litigation, such as preparing pleadings and motions, taking and defending depositions, participating in mediations and arbitrations, and handling hearings and trials. We handle all types of insurance matters at all stages of the case, but the firm's primary practice areas include defense of bad faith, uninsured motorist, personal injury, and workers' compensation cases. Attorneys with experience in the areas of bad faith and insurance coverage are highly encouraged to apply. We offer a competitive salary and benefits for the right candidate. Please submit your cover letter, resume, references, and writing sample to [rpaddilla@obrienlawoffice.com](mailto:rpaddilla@obrienlawoffice.com).

### **Attorney**

Butt Thornton & Baehr PC seeks an attorney with at least 3 years' legal experience. Our growing firm is in its 59th year of practice. We seek an attorney who will continue our tradition of excellence, hard work, and commitment to the enjoyment of the profession. Please send letter of interest, resume, and writing samples to Ryan T. Sanders at [rt-sanders@btblaw.com](mailto:rt-sanders@btblaw.com).

### **Managing Attorney**

The Moore Law Group, a nationally recognized, multi-state creditor's rights law firm, is looking for a Managing Attorney for its New Mexico office. The New Mexico Managing Attorney will manage our New Mexico office and be responsible for its general work flow. This position would be best filled by someone who wants to build and manage their own "business within a business". Additional responsibilities include court appearances, document review and preparation, suit decisioning, interacting with litigation, post judgment and collection staff, and communicating with consumers, attorneys and clients. The successful candidate must have a thorough knowledge of the litigation process from suit filing through and including judgment enforcement in New Mexico. Experience in creditor's rights law is a plus. Five years of supervisory experience is an asset. Please submit your resume to [hr@collectmoore.com](mailto:hr@collectmoore.com)

### **New Mexico Court of Appeals Attorney- Reporter of Decisions**

The New Mexico Court of Appeals is recruiting for a newly created position called the Reporter of Decisions. The position is located in Albuquerque. Under the direction of the Chief Judge, the Reporter of Decisions will function as the Court's editor-in-chief by providing highly complex and superior legal editing of opinions. The Reporter of Decisions will edit all draft opinions and devote meticulous attention to matters of technical legal detail. Required experience is 7 years in the practice of law, including appellate law and editorial experience in preparing and enhancing legal information for publication. Also required is 3 years supervisory experience in a legal setting. A comprehensive knowledge of substantive and procedural legal principles and applications as related to legal editorial and publishing practices, procedures, and methodology is essential. Pay range is \$32.50 - \$50.78 per hour with a target pay of \$40.62 per hour. More information is available at [www.nmcourts.gov/careers](http://www.nmcourts.gov/careers). Please send resume and writing sample to Agnes Szuber Wozniak, [supasw@nmcourts.gov](mailto:supasw@nmcourts.gov), 237 Don Gaspar, Room 30, Santa Fe, NM 87501. 505-827-4201.

### Multiple Attorney Positions 1st Judicial District Attorney

The First Judicial District Attorney's Office has multiple felony and entry level magistrate court attorney positions. 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.

### Position Announcement Associate Judge Mescalero Apache Tribal Court

**SUMMARY:** The Associate Judge is responsible for fairly and impartially hearing and deciding judicial matters within the jurisdiction of the Mescalero Apache Tribal Court. **DUTIES AND RESPONSIBILITIES:** Hear and determine all types of cases filed in the Tribal Court, including but not limited to: criminal, traffic, civil, juvenile/child welfare; Preside over jury trials; Conduct legal research and issue orders; and Issue search and seizure warrants, arrest warrants, and orders of protection where appropriate. **MINIMUM QUALIFICATIONS:** Applicant must: Have one-quarter (1/4) or more Indian blood; Be a member of a federally recognized Indian tribe (including Eskimo, Aleut and other Alaska Natives); Be between thirty-five (35) and seventy (70) years old; Have no felony convictions or misdemeanor convictions within the past year; Hold a law degree from an ABA accredited law school; and Be licensed and in good standing in the bar of any state. **KNOWLEDGE/SKILLS/ABILITIES:** Demonstrate oral and written communication skills, analytical skills and the ability to perform legal research; Be familiar with general legal principles in all areas listed in "Duties and Responsibilities;" Demonstrate knowledge of Federal Indian Law, tribal self-determination and tribal sovereignty; Exhibit a judicial temperament; and Be familiar with computers and software. **SALARY:** Salary is negotiable and is dependent upon qualifications and budgetary concerns. **CLOSING DATE:** This position is open until filled. Submit resume with copy of certificate of Indian blood to Carol Woods, Director of Human Resources, Mescalero Apache Tribe via: 1) first class mail to P.O. Box 227, Mescalero, NM 88340; 2) facsimile to (575) 464-9292; or 3) email to cwoods@mescaleroapachetribe.com.

### Executive Director: Office of Institutional Equity

New Mexico State University (NMSU) seeks to hire a highly qualified Executive Director for its Office of Institutional Equity. This position serves as NMSU's Title IX Coordinator and is responsible for managing all functions related to investigation and resolution of internal discrimination complaints and working closely with campus administrative offices to ensure compliance with federal and state laws, and NMSU policies regarding equal opportunity, and affirmative action. The position requires performance of highly responsible and complex professional duties, and design, development and management of specialized programs for NMSU's affirmative action, equal opportunity and Title IX programs. NMSU is an equal opportunity and affirmative action employer. Women, minorities, people with disabilities and veterans are strongly encouraged to apply. All applications must be submitted online. The full position posting is available online <http://jobs.nmsu.edu/postings/32366>; Requisition No. 1801102S.

### Litigation Attorney Albuquerque, NM

Ron Bell Injury Lawyers is seeking an experienced Litigation Attorney to advocate and represent our injured clients. Ron Bell Injury Lawyers' culture is proudly molded around exceeding the expectations of the Firm's clients through world-class service. Our Core Values are: Clients First, Respect, Teamwork, Giving Back, Dedication, and Education. We are "Simply the Best!!!" Have you been successful as a first chair litigator for injured clients? Do you have strong negotiation skills and the desire to thrive in a fast-paced, productive environment? Do you have a strong work ethic, excellent research and writing skills, and an ability to work independently? If you are intelligent, confident, and have a passion for helping people, we want you to join us in fighting for our clients who have been wrongfully injured through no fault of their own. We offer a competitive salary with benefits, including medical, dental, vision, and a matching 401k plan. We want professionals who are excited about joining a growing company, while working as part of a team. Must have a valid license to practice law in New Mexico. Please apply at [898HR@898-bell.com](mailto:898HR@898-bell.com).

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# BAR BULLETIN

## SUBMISSION DEADLINES

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@nmbar.org](mailto:mulibarri@nmbar.org)



## Paralegal

Litigation Paralegal with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules, online research, trial preparation, document control management, and familiar with use of electronic databases and related legal-use software technology. Seeking skilled, organized, and detail-oriented professional for established commercial civil litigation firm. Email resumes to e\_info@abrfirm.com or Fax to 505-764-8374.

## New Mexico Counties Administrative Assistant

The New Mexico Counties Legal Bureau is the in-house legal services division of the New Mexico Counties. The Legal Bureau defends New Mexico's counties in a wide variety of civil litigation matters, including federal civil rights litigation, employment matters, and claims brought under the New Mexico Tort Claims Act. We are currently accepting applications for an administrative assistant. The best candidates will have 2+ years' experience in a litigation environment. The successful candidate will manage day-to-day contact with internal and external callers, maintain file organization (both paper and electronic) over many active files, process invoices, and prepare exhibits. We offer an excellent benefits package, which includes a competitive wage, generous health benefits, employer contribution to a retirement account, and a great working environment. Please email your resume, two references, and your salary requirements to Brandon Huss by September 28, 2018 to bhuss@nmcounties.org. All inquiries will be kept confidential.

## New Mexico Counties Opportunity For Experienced Paralegal

The New Mexico Counties Legal Bureau is the in-house legal services division of the New Mexico Counties. The Legal Bureau defends New Mexico's counties in a wide variety of civil litigation matters, including federal civil rights litigation, employment matters, and claims brought under the New Mexico Tort Claims Act. We are currently accepting applications for an experienced litigation paralegal. The best candidates will have 3+ years' experience as a primary civil litigation paralegal. The successful candidate will serve multiple attorneys on a variety of cases in our Albuquerque office. We offer an excellent benefits package, which includes a competitive wage, generous health benefits, employer contribution to a retirement account, and a great working environment. Please email your resume, two references, and your salary requirements to Brandon Huss by September 28, 2018 to bhuss@nmcounties.org. All inquiries will be kept confidential.

## Legal Assistant

GUEBERT BRUCKNER GENTILE P.C. busy litigation firm looking for experienced Legal Assistant to support 9 attorneys. Candidate will coordinate with various members of the staff to accomplish the needs of attorneys. Duties include but are not limited to: Filing, finalizing documents for submission to clients, State and Federal courts. Excellent communication skills required in order to meet deadlines and to comply with various client guidelines. Strong writing, proof reading skills and knowledge of court rules required. Hours 8:30 to 5:30. Firm uses Microsoft Word, Excel, and Outlook. Please submit resume and salary requirement to Kathleen A. Guebert, POB 93880, Albuquerque, NM 87109.

## Paralegal

Little, Gilman-Tepper & Batley, a leading family law firm in Albuquerque, seeks an experienced, full time paralegal to join our professional team. As a team paralegal you will be working primarily for one attorney and dedicated clients with active support from the team. The team participates in weekly case huddles and action planning to best allocate work for deadlines to be met and the client served well. Duties include client relations, support of attorneys, shepherding cases, preparing pleadings, motions, responses, discovery and financial worksheets, processing emails, maintaining files and calendars and case management. Experience with Word, Outlook, Excel, a document management system and multitasking required. Great benefits. If you are interested in contributing your talents to our exceptional team please email your resume and letter of interest to andree@lgtfamilylaw.com or fax to 505 246-9953.

## Seeking Experienced Legal Secretaries

Lewis Brisbois a national firm with 42 offices in 26 states is seeking experienced legal secretaries for our Albuquerque office. Candidates must be proficient in state and federal filing procedures, Word, Excel and have excellent transcription skills. A minimum of two years experience in a legal environment is required. This is a full time position Monday through Friday. We offer a competitive benefits package including medical, dental, life, paid vacation and sick time and a 401K plan. Email your resume to phxrecruiter@lewisbrisbois.com

## Paralegals

Immediate opportunity in downtown Albuquerque for a Paralegal with Real Estate experience. Experience with Home Owners Associations a plus. WordPerfect experience is highly desirable. Send resume and writing sample to: Steven@BESTstaffJobs.com

## Legal Assistant

Small defense firm in search of a self-motivated legal assistant. The right individual must be skilled in using Microsoft applications including Word, Excel and Exchange. Experience in general civil litigation is a must. Competitive pay and benefits. Please fax resumes to (505) 842-5713, attention Hiring Partner.

## 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

### Briefs, Research, Appeals—

Leave the writing to me. Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

## Office Space

### Northeast Heights Office

Professional office available near Academy and Wyoming. Includes high-speed internet, phone, use of high-volume printer/scanner/fax, access to conference room, security, and ample parking for clients. \$550/month. Call, text, or email Mark Allen at 505-750-4190 or mallen@markallenlawoffice.com to inquire.

### Office Space Available

Unique and historic Hudson House now has office space available for an attorney or other working professional. Located downtown just 5 minutes from the court houses, this two-story property is a beautiful re-modeled historic Albuquerque landmark. This property offers access to a private bathroom, 2 separate offices (available together or individually), use of multiple shared conference rooms, and shared use of a spacious private parking lot with two other attorneys. Utilities are included in your rent. Attic, closets, and carriage house available for some storage. Please call (505) 243-3300 or email charles@ljdpc.com for more information.

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THE MAGAZINE



The trial lawyers at Boyd Powers & Williamson are **proudly launching our Hobbs, New Mexico** office as partner, Allen Williamson, is a **Hobbs native**. When Williamson was contacted by a Hobbs High School classmate regarding a serious personal injury it began to plant a seed about helping other friends and colleagues in New Mexico with their litigation needs. Now, our doors are open and we are looking forward to implementing change for our clients and their families as well as saving tragic events from occurring in the future.

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