

BAR BULLETIN

October 17, 2018 • Volume 57, No. 42



From the Treehouse II by Christopher Owen Nelson

www.chrisnelsonfineart.com

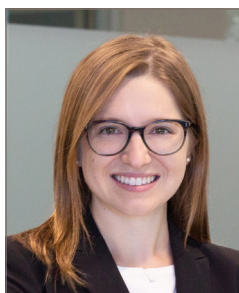
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WELCOME TO OUR NEW ASSOCIATES



Nicole Russell



Laura Unklesbay

Modrall Sperling is pleased to announce that Nicole Russell and Laura Unklesbay have joined our firm's Albuquerque office.

As a member of our Natural Resources Department, Nicole, a graduate of the Georgetown University Law Center, centers her practice on matters involving Native American law and natural resources law. She interned at the Department of the Interior, Office of the Solicitor, in the Division of Land Resources. She also participated in the full-year Harrison Institute Public Policy Clinic in Washington, D. C.

Laura, a *magna cum laude* graduate of the University of Arizona James E. Rogers College of Law, joins our Litigation Department where she works on employment, personal injury, commercial disputes, and insurance matters. She served as a Judicial Extern for the Arizona Superior Court, clerked for the U.S. Attorneys' Office, and represented veterans in court and before the Army Review Board as part of the Veteran's Advocacy Law Clinic.

PROBLEM SOLVING. GAME CHANGING.



MODRALL SPERLING

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Santa Fe



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Meetings

October

19

Family Law Section Board

9 a.m., teleconference

23

Intellectual Property Law Section Board

Noon, Lewis Roca Rothgerber Christie LLP

24

NREEL Section Board

Noon, teleconference

25

Trial Practice Section Board

Noon, State Bar Center

26

Immigration Law Section Board

Noon, teleconference

November

6

Health Law Section Board

9 a.m., teleconference

Workshops and Legal Clinics

October

18

Common Legal Issues for Senior Citizens Workshop Presentation

10-11:15 a.m., Mary Esther Gonzales Senior Center, Santa Fe, 1-800-876-6657

18

Common Legal Issues for Senior Citizens Workshop Presentation

10-11:15 a.m., Taos County Senior Program, Taos, 1-800-876-6657

24

Consumer Debt/Bankruptcy Workshop

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

November

7

Divorce Options Workshop

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

7

Civil Legal Clinic

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

About Cover Image and Artist: Christopher Owen Nelson's work has been strongly focused in the greater southwestern region. As a Colorado native, he studied fine arts at Rocky Mountain College of Art and Design. He combines elements of his skills like painting, construction and song writing to tell his story. Recently, Nelson's achievements in the arts have been featured in several national publications including: *Western Art Collector*, *Luxe Interiors and Design*, *Western Art and Architecture*, *Santa Fe* magazine and *American Art Collector*. To view more of his work, visit www.chrisnelsonfineart.com.

Notices

COURT NEWS

New Mexico Supreme Court Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has a comprehensive legal research collection of print and online resources, and law librarians are available to assist. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe.

Building Hours:

Mon.-Fri. 8: a.m.-5 p.m.

Reference & Circulation Hours:

Mon.-Fri. 8 a.m.-4:45 p.m.

Commission on Access to Justice

The next meeting of the Commission is from noon- 4 p.m. Nov. 2 at the State Bar of New Mexico. Commission goals include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness and encouraging and supporting pro bono work by attorneys. Interested parties from the private bar and the public are welcome to attend. More information about the Commission is available at www.accesstojustice.nmcourts.gov

Judicial Performance Evaluation Commission

2018 Election Recommendations

The New Mexico Judicial Performance Evaluation Commission, the nonpartisan volunteer commission established by the New Mexico Supreme Court to make recommendations to voters on judges standing for retention, has published its voter's guide online at www.nmjpec.org. In addition to its recommendations, the website contains information on how the commission reached its recommendation on each justice or judge, along with their educational background and experience. NMJPEC is made up of 15 volunteer members from throughout New Mexico, including seven lawyers and eight non-lawyers, who spend hundreds of hours conducting evaluations. Judges standing for retention are rated on legal ability, fairness, communication skills, preparation, attentiveness, temperament and control over proceedings.

Professionalism Tip

With respect to the public and to other persons involved in the legal system:

With respect to the public and to other persons involved in the legal system:

I will be mindful of my commitment to the public good.

Second Judicial District Court Children's Court Abuse and Neglect Brown Bag

The Second Judicial District Court Children's Court Abuse and Neglect Brown Bag will be held at noon on Oct. 19, in the Chama Conference Room at the Juvenile Justice Center, 5100 2nd Street NW, Albuquerque. Attorneys and practitioners working with families involved in child protective custody are welcome to attend. Call 505-841-7644 for more information.

Bernalillo County Metropolitan Court Announcement of Vacancy

A vacancy on the Bernalillo County Metropolitan Court will exist as of January 1, 2019, due to the retirement of the Hon. Judge Sharon Walton, effective Monday, December 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Sergio Pareja, chair of the Bernalillo County Metropolitan Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <http://lawschool.unm.edu/judsel/application.php>, or emailed to you by contacting the Judicial Selection Office at 505-277-4700. The deadline for applications has been set for Dec. 13, by 5 p.m. Applications received after that time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Bernalillo County Metropolitan Court Nominating Commission will meet beginning at 9 a.m. on Thursday, January 17, 2019, to interview applicants for the position at the Metropolitan Courthouse, located at 401 Lomas NE, Albuquerque. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

STATE BAR NEWS Board of Bar Commissioners Client Protection Fund Commission

The Board of Bar Commissioners will make two appointments to the Client Protection Fund Commission for three-year terms. Active status attorney in New Mexico who would like to serve on the Commission should send a letter of interest and brief résumé by Nov. 26 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

New Mexico Access to Justice Commission

The Board of Bar Commissioners will make one appointment to the NM Access to Justice Commission for a three-year term. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico who would like to serve on the Commission should send a letter of interest and brief resume by November 26 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Historical Committee Rio Arriba Raid: Lonesome Dave and the Tiger of the North

Join the Historical Committee for their annual historical presentation from noon-1 p.m., Nov. 14, at the State Bar Center. Deputy State Historian Rob Martinez will present "Lonesome Dave and the Tiger of the North," an intriguing account of the professional and public relationship between then Governor of New Mexico Dave Cargo and land activist Reies Lopez Tijerina who went on to defend himself in trial. At the heart of the dynamic interaction was the dramatic 1967 Courthouse Raid at Tierra Amarilla. Those nostalgic, curious and with personal memories are encouraged to attend. Lunch will be provided. R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

Indian Law Section

2018 Indian Law Section Attorney Achievement Award

The Indian Law Section has opened nominations for its annual Attorney Achievement Award. The Attorney Achievement Award gives the Section an opportunity to recognize the amazing accomplishments of its members. Section membership includes some of the foremost Indian law practitioners in the country who have made important contributions to our profession and to our communities. The nominee for the Attorney Achievement Award must be a member of the Indian Law Section and the nomination must explain, in one page or less, the nature of the nominee's extraordinary achievements in Indian law and the nominee's contributions to the community. The deadline for nominations is 5 p.m., Oct. 28. Send nominations to Breanna Henley at bhenley@nmbar.org. Visit www.nmbar.org/IndianLaw to view a roster of Section members. Recent recipients include Rosalie "Lisa" Chavez, Michael P. Grossman and C. Bryant Rogers.

Intellectual Property Law Section

Volunteers Needed for IP Pro Bono Fair

The Intellectual Property Law Section seeks volunteer attorneys for its first Pro Bono IP Fair from 9 a.m.-1 p.m. on Saturday, Nov. 10, at the UNM School of Law. Many creatives and inventors in our community need our help to get their journey started. Attorneys will provide free consultations (limited to the time spent at the Fair) in all areas of IP law and/or business law. To volunteer, email Justin Muehlmeier at JRM@PeacockLaw.com with 1) the time you are available and 2) the type of subject matter you want to receive (e.g., "Trademark and Copyright only," "all IP including Patent," "corporate formation," etc.). Even an hour of your time may make a difference in the success of a fellow New Mexican's endeavor and your time will count towards your annual pro bono hours. Malpractice insurance is provided by the State Bar and continental breakfast and parking is free. Direct inquiries from creatives to <https://form.jotform.com/sbnm/IPprobonofair> to register.

The Board Governing the Recording of Judicial Proceedings A Board of the Supreme Court of New Mexico

Expired Court Reporter Certifications

The following list for publication are the certification numbers and names of those court monitors whose New Mexico certifications expired as of July 31, 2018.

Name	CCR CCM No.	City, State
Acereto, Lorrie	CCM# 559	Albuquerque, N.M.
Apodaca, Bridget	CCM# 83	Albuquerque, N.M.
Archuleta, Tiffany	CCM# 552	Albuquerque, N.M.
Barela, Alexandra	CCM# 576	Grants, N.M.
Bazan, Debbie	CCM# 122	Albuquerque, N.M.
Benavidez, Heather	CCM# 192	Los Lunas, N.M.
Bomgardner, Jared	CCM# 516	Albuquerque, N.M.
Campbell, Katrina	CCM# 363	Farmington, N.M.
Charley, Alberta	CCM# 303	Farmington, N.M.
Crosson, Irah	CCM# 333	Alamogordo, N.M.
Diaz, Renee	CCM# 38	Bernalillo, N.M.
Duplissey, Kathleen	CCM# 290	Carlsbad, N.M.
Edwards, Amanda	CCM# 487	Alamogordo, N.M.
Fitzgerald, Ollie	CCM# 481	Carlsbad, N.M.
Garmon-Martinez, Raven	CCM# 403	Santa Fe, N.M.
Garza, Caliana	CCM# 500	Santa Fe, N.M.
Gomez, Edgar	CCM# 560	Silver City, N.M.
Grajeda, Jesse	CCM# 521	Alamogordo, N.M.
Griego, Annette	CCM# 512	Albuquerque, N.M.
Henson, Stephanie	CCM# 218	Farmington, N.M.
Hernandez, Veronica	CCM# 531	Alamogordo, N.M.
Kaltenbach, Avalita	CCM# 554	Santa Fe, N.M.
Lindsey, Felicia	CCM# 510	Aztec, N.M.
Montano, Linda	CCM# 114	Albuquerque, N.M.
Montoya, Peggy	CCM# 458	Los Lunas, N.M.
Montoya, Renee	CCM# 358	Santa Fe, N.M.
Olivares, Alejandra	CCM# 135	Santa Fe, N.M.
Olivas, Christopher	CCM# 496	Roswell, N.M.
Paris-Chesnut, Loressa	CCM# 201	Aztec, N.M.
Rodriguez, RonLarry	CCM# 397	Santa Fe, N.M.
Romero, Vanessa	CCM# 409	Albuquerque, N.M.
Sanchez, Desirae	CCM# 450	Santa Fe, N.M.
Sanchez, Virginia	CCM# 127	Las Cruces, N.M.
Segura, Robert	CCM# 438	Las Cruces, N.M.
Solis, Alexandra	CCM# 411	Albuquerque, N.M.
Sours, Kathy	CCM# 583	Albuquerque, N.M.
Trew, Michelle	CCM# 75	Carlsbad, N.M.
Trujillo, Demetria	CCM# 540	Albuquerque, N.M.
Tullar, Staci	CCM# 3	Albuquerque, N.M.
Ulibarri, Joseph	CCM# 569	Albuquerque, N.M.

New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

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

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

Natural Resources, Energy and Environmental Law Section Nominations Open for 2018 Lawyer of the Year Award

The NREEL Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 21. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. More detailed criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations are due by Nov. 16 to Breanna Henley at bhenley@nmbar.org.

RPTE Section: Real Property Division Seeking the Best and Brightest: 2018 Real Property Attorney of the Year

The Real Property, Trust and Estate Section's Real Property Division is seeking nominations for an outstanding lawyer who has demonstrated professionalism, exemplary contributions and made a difference in their legal community. The Division Board will select the honoree to be presented with a plaque and awarded free registration for the 2019 Real Property Institute during

a special lunch at the 2018 Real Property Institute on Dec. 5. Nominations should be no more than 350 words and submitted by email to Division Chair Denise Archuleta Snyder at dasnyder@aldridgepate.com by 5 p.m. on Nov. 6 with "Nomination for Best Real Property Lawyer" in the subject line. Nominees must be lawyers in good standing, based in New Mexico and be a Real Property, Trust and Estate Section member.

Senior Lawyers Division Attorney Memorial Scholarship Reception

Three UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The reception will be held from 5:30-7:30 p.m., Nov. 13, at the State Bar Center. All State Bar members, UNM School of Law faculty, staff, and students and family and colleagues of the deceased are welcome to attend. A list of attorneys being honored can be found at www.nmbar.org/SLD under "Attorney Memorial Scholarship." Contact Breanna Henley at bhenley@nmbar.org to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.

Solo and Small Firm Section Fall Speaker Features Robert Huelskamp

Robert Huelskamp will share his insights from almost 40 years working with nuclear weaponry, non-proliferation, and counter terrorism in "Russia, Iran, and North Korea: What Could Possibly Go Wrong?" from noon-1 p.m. on Nov. 20 at the State Bar Center in Albuquerque. The presentation is open to all State Bar members and lunch will be provided free by the section to those who 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 New Mexico Criminal Defense Lawyers Association Little Cases, Big Consequences

Do you occasionally get asked to represent a client on a DWI or domestic violence charge? If so, it's important that you get the information in NMCDLA's upcoming "Little Cases, Big Consequences" seminar. Featuring experienced attorneys and a segment by retired N.M. Court of Appeals Judge Roderick Kennedy, this CLE is packed with the latest information needed to step up misdemeanor practice. This seminar will be held in Albuquerque on Oct. 26 and includes 6.0 G and 0.5 EP CLE credits. Visit nmcdla.org to join NMCDLA and register for this seminar today.

The Defender's Role in Trial Advocacy

NMCDLA is coming to Roswell this fall with an information-packed seminar to help lawyers become a stronger advocates for their clients. Join NMCDLA on Nov. 9 for "The Defender's Role in Trial Advocacy" CL, and get the latest updates on pre-trial detention, technology, search and seizure, immigration and more. This seminar is worth 6.0 total CLE credits, including 1.0 ethics credit. Visit nmcdla.org to register today!

OTHER NEWS Christian Legal Aid Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a training seminar from noon-5 p.m. on Friday, Oct. 26, at 4700 Lincoln Road NE Albuquerque. Join them for free lunch, free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 243-4419 or Jen Meisner at 610-8800 or christianlegalaids@hotmail.com.



Jules Angelley augments Holland & Hart's commercial litigation team with her significant complex litigation experience representing public and private business entities and individuals in an administrative setting and in state and federal courts. She has joined the firm's Santa Fe office as of counsel in the Commercial Litigation practice group.



Modrall Sperling Shareholder **Anna Indahl** has been selected to the Varsity D Association Hall of Fame Class of 2018 at Denison University, where she was a national champion swimmer.



Sarah Bennett of Walther Bennett Mayo Honeycutt PC has been named *Best Lawyers*® Santa Fe Family Law Lawyer of the Year. Bennett's WBMH colleagues **David Walther** and **Michael Golden** have also been named *Best Lawyers* in 2019.



Michael A. Aragon, from Mora, N.M. and a 1996 graduate of NMHU, was recently reappointed by the NMHU Board of Regents to serve on the NMHU Local Labor Management relations board. Aragon has served on the board since 2012.



Bardacke Allison LLP is pleased to announce the addition of **Victor Grafe III** as an associate attorney. Grafe focuses his practice on trademark, copyright, and commercial litigation matters. He assists clients with complex issues of copyright protection, trademark protection and registration, and infringement disputes both in courts and before the Trademark Trial and Appeal Board. He also assists clients in litigation involving breach of contract, fraud and other

business torts, and employment discrimination.



Modrall Sperling is pleased to announce that **Nicole Russell** and **Laura Unklesbay** have joined the firm's Albuquerque office.

Nicole Russell, a graduate of the Georgetown University Law Center, centers her practice on matters involving Native American law and natural resources law. She interned at the Department of the Interior, Office of the Solicitor, in the Division of Land Resources. She also participated in the full-year Harrison Institute Public Policy Clinic in Washington, D. C.



Modrall Sperling is pleased to announce that **Chris Killion** has joined the firm as a shareholder. Killion's practice is focused on issuing drilling, division order, and acquisition title opinions for clients seeking to develop lands for oil and gas in New Mexico and Texas. He has extensive experience in determining mineral and leasehold ownership and in determining the most effective and cost efficient means to cure title defects. His practice includes issuing title opinions

for lands in the Permian and San Juan Basins.



Laura Unklesbay, a *magna cum laude* graduate of the University of Arizona James E. Rogers College of Law, works on employment, personal injury, commercial disputes, and insurance matters. She served as a judicial extern for the Arizona Superior Court, clerked for the U.S. Attorneys' Office, and represented veterans in court and before the Army Review Board as part of the Veteran's Advocacy Law Clinic.

Jennifer Anderson, shareholder at Modrall Sperling has been selected by *Benchmark Litigation* as one of the Top 250 Women in Litigation in the United States.

Martha L. King PC announces that **Martha L. King** has been recognized in the *Best Lawyers of America* 2019.

Jay F. Stein and **James C. Brockmann** of Stein & Brockmann, PA have been named to *Best Lawyers in America* in the practice area of water law for 2019. Stein was recognized as a *2019 Lawyer of the Year*.

The following Rodey lawyers have been named *Best Lawyers of the Year* for 2019:

Jeffrey M. Croasdell—Albuquerque mass tort litigation/class actions-defendants “lawyer of the year”

Nelson Franse—Albuquerque product liability litigation-defendants “lawyer of the year”

Bruce Hall—Albuquerque appellate law “lawyer of the year”

Richard C. Minzner—Albuquerque administrative/regulatory law “lawyer of the year”

Donald B. Monnheim—Albuquerque mergers and acquisitions “lawyer of the year”

W. Mark Mowery—Santa Fe arbitration “lawyer of the year”

Charles (Kip) Purcell—Albuquerque legal malpractice law-defendants “lawyer of the year”

John P. Salazar—Albuquerque land use and zoning law “lawyer of the year”

Charles A. Seibert III—Albuquerque real estate law “lawyer of the year”

Thomas L. Stahl—Albuquerque employment law – management “lawyer of the year”

Robert M. St. John—Albuquerque banking and finance law “lawyer of the year”

Jazmine Ruiz has joined Adler Law Firm, P.C. as an associate. Ruiz graduated from the University of New Mexico School of Law with honors in 2006. She then served as a judicial law clerk to Justice Edward L. Chávez (ret.) of the New Mexico Supreme Court. Ruiz’s practice focuses on civil and administrative appeals and on other litigation matters involving complex legal questions.

Modrall Sperling Shareholders **Anna Indahl**, **Nathan Nieman** and **Tiffany Roach** Martin have been named to *Benchmark Litigation’s* 2018 “Under 40 Hot List.”

Loza & Loza LLP, an intellectual property law firm announced that the New Mexico-based law firm of Ortiz & Lopez, PLLC has joined Loza & Loza. Together with their team of assistants and paralegals, partners **Luis Ortiz**, **Kermit Lopez**, **Richard Krukar** and **Kevin Soules** will combine their experience and service offerings in intellectual property law with that of the firm.

Sutin, Thayer & Browne law firm welcomes six attorneys to its Albuquerque office this fall: **Liliana Benitez De Luna** in commercial litigation and creditor rights; **Stefan R. Chacón** in commercial litigation, healthcare and hospital law; **Oscar Cobos** in commercial litigation and Indian law; **Jesse D. Hale** in commercial litigation and healthcare law; **David H. Johnson** in healthcare and hospital law; and **Deborah E. Mann** in healthcare and hospital law.

In Memoriam

www.nmbar.org

William Vann Kastler, Sr. passed away on April 6, after complications from a fall. Bill, as he was known, was born in Raton, N.M. on Feb. 12, 1919. He was the son of Joseph R. Kastler and Agnes D. (VanDeventer) Kastler. Kastler led an exciting and accomplished life, from his service as a Navy fighter pilot to working for the Bureau of Indian Affairs, and finally retiring after 26 years as an oil and gas attorney for Chevron/Gulf Oil Corporation. Aside from being a true gentleman, Kastler was widely known for his exceptional vocabulary and his paronomastic sense of humor. He was a real pun guy. He will be remembered as a wonderful, caring father, grandfather and great-grandfather. His children learned respect, honesty and responsibility by his example. Kastler spent most of his high school years at St. Patrick Academy in Raton and graduated from Albuquerque High School in 1936. He went on to graduate with a BA from the University of New Mexico where he was a member of the Pi Kappa Alpha social fraternity, president of the intra-fraternity council, and played violin in the N.M. Symphony Orchestra. During the summers, he fondly recalled working as a motor boat driver at Eagle Nest Lake, N.M. He then attended the University of Colorado Law School. When the U.S. actively entered World War II, Kastler took a leave of absence from law school to become a Navy pilot. He started as a flight instructor and went on to become a fighter pilot, flying a Corsair F4U off the USS Shangri-La aircraft carrier in the South Pacific. Once WWII ended, he returned to Colorado University Law School in Boulder and completed his law degree. He continued service in the Naval Reserves, retiring as commander. While working as an attorney in Santa Fe, Kastler met Marjorie Cooper, and they married Dec. 26, 1948. Under President Eisenhower, Kastler was appointed to serve as an attorney for the Bureau of Indian Affairs in Washington, D.C. In 1956, Kastler took employment with Chevron/Gulf Oil Corporation and moved his young family to Roswell. Working in the oil and gas division of the legal department, Gulf Oil eventually transferred him to Midland, Texas then to Los Angeles. During his tenure in California, he successfully argued a case before the Supreme Court of the U.S. Subsequently, he was transferred to Houston, where he retired at the end of 1987. Upon his wife's death that year, he returned to Albuquerque. Kastler is survived by his older sister, Maxine Jackson, and his four children: Janning Kastler Kennedy, Karen Kastler Swim, William V. Kastler, Jr., and Shelley Kastler Davis. He has 11 grandchildren and seven great grandchildren. The family wishes to express their gratitude to the staff of La Vida Llena for their kind, compassionate and professional care and attention over the past nine years.

Marcia J. Wilson, Sept. 13, 1946 - March 26. During her college years, Wilson heard Eldridge Cleaver say, "If you're not part of the solution, you're part of the problem." From then on, she always tried to be on the side of the solution. After receiving her B.A. from Lawrence University in Appleton, WI in 1969, she earned a J.D. from Boalt Hall at the University of California at Berkeley, finishing her last academic year at University of New Mexico School of Law. During the first half of her legal career, Wilson worked primarily with and for Native Americans, beginning at the National Indian Youth Council and later becoming the executive director of Indian Pueblo Legal Services. Wilson spent the second half of her career as a staff attorney for the New Mexico Court of Appeals Prehearing Division. In retirement she worked with many others for the successful repeal of the death penalty in New Mexico in 2009 and most recently with the New Mexico Women's Justice Project on issues affecting incarcerated women. Wilson died comfortably after many years of struggle with COPD. To the end, she said, "Life is good." She was preceded in death by her adoptive parents, John L. and Natalie S. Wilson, and brother, John S. Wilson. She is survived by her brother, Douglas H. Wilson of Wilsonville, OR; her nephew, Spencer Wilson (Rachael, and their daughter Anisa) of Oakland, CA; her son, Burrell L. Nickeson (Young Ha) of Anchorage, AK; her daughter, Zita Nickeson (Darius Nichols) of Spokane, WA; her grandchildren: Jihyeon Ha Nickeson, Kiara Hildner, Rhylan Hildner, and AyveBelle Nichols and her great granddaughter, Kaleana Magee; her aunt, Virginia Pond of Chatham, MA; and her cousins: Kathy Wilson of Salem, OR, Bill Wilson (Anne) of Grand Rapids, MI, and Marilyn Pond Brigham (Paul) of Northborough, MA.

Legal Education

October

- | | | |
|---|--|--|
| <p>18 Ethics for Government Attorneys (2017)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Immigration Law: Assisting Human Trafficking Survivors
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Cybersleuth Investigative Series: How to be Your Own Private Investigator With Pay Investigative Research Databases
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Trust and Estate Update: Recent Statutory Changes that are Overlooked and Underutilized
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 Practice Management Skills for Success (2018)
5.0 G, 1.0 EP
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Navigating Changes to the Adult Guardianship and Conservatorship Statutes and Rules
5.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Reforming the Criminal Justice System (2017)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 Oil and Gas: From the Basics to In-Depth Topics
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Social Media as Investigative Research and Evidence
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Fourth Annual Symposium on Diversity and Inclusion-Diversity Issues Ripped from the Headlines, II (2018)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Children's Code: Delinquency Rules, Procedures and the Child's Best Interest
1.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 The Ethics of Social Media Research
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 2018 Administrative Law Institute (Full Day)
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Liquidation: Legal Issues When a Client Decides to Close a Business
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |
| <p>23 Boilerplate Provisions in Contracts: Overlooked Traps in Every Agreement
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

November

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| <p>2 ADR Across the Spectrum
4.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Abuse and Neglect Case in Children's Court (2018)
3.0 G
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 The Defender's Role in Trial Advocacy
5.0 G, 1.0 EP
Live Seminar, Roswell
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> |
| <p>6 Releasing Employees & Drafting Separation Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Legal Malpractice Potpourri (2018 Annual Meeting)
1.0 EP
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 2018 Employment and Labor Law Institute
5.0 G, 1.0 EP
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Speaking to Win: The Art of Effective Speaking for Lawyers (2018)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 Estate Planning for MDs, JDs, CPAs & Other Professionals, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 Bankruptcy Fundamentals for the Non-Bankruptcy Attorney (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 The Cyborgs are Coming! The Cyborgs are Coming! The Latest Ethical Concerns with the Latest Technology Disruptions (2017)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 Estate Planning for MDs, JDs, CPAs & Other Professionals, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 Where the Rubber Meets the Road: The Intersection of the Rules of Civil Procedure and the Rules of Professional Conduct (2017)
1.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Children's Code: Delinquency Rules, Procedures and the Child's Best Interest (2018)
1.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 2018 Business Law Institute
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 Basic Guide to Appeals for Busy Trial Lawyers (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Ethics and Changing Law Firm Affiliation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 2018 Probate Institute
6.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>8 What Starbucks Teaches Us about Attracting Clients the Ethical Way (2018 Annual Meeting)
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

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| <p>20 Ethics of Beginning and Ending Client Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Zen Under Fire: Mindfulness for the Busy Trial Lawyer (2018 Annual Meeting)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 2018 Family Law Institute: Hot Topics in Family Law Day 2
6.0 G
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>26 Secured Transactions Practice: Security Agreements to Foreclosures, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Add a Little Fiction to Your Legal Writing (2017)
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Litigation and Argument Writing in the Smartphone Age (2017)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>27 Secured Transactions Practice: Security Agreements to Foreclosures, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics (2017)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 2018 Animal Law Institute: Updates, Causes of Action, and Litigation
6.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>27 2018 Family Law Institute: Hot Topics in Family Law Day 1
5.0 G, 1.5 EP
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Ethics and Dishonest Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |
| <p>27 29th Annual Appellate Practice Institute (2018)
5.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

December

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| <p>5 Business Divorce, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Business Divorce, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Intellectual Property in Tech Transfer, Estate and Business Opportunities
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>5 2018 Real Property Institute
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Attorney Orientation and the Ethics of Pro Bono
2.0 EP
Live Seminar, Albuquerque
New Mexico Legal Aid
505-814-6719</p> | |

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| <p>7 2018 Ethics and Social Media Update
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 Ethics and Virtual Law Offices
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Gain the Edge! Negotiation Strategies for Lawyers
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>10 A Practical Approach to Indian Law: Legal Writing, 2018 Update and the Ethics of Practicing Indian Law
2.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Trust and Estate Planning for Pets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Ethics, Satisfied Clients & Successful Representations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>11 Guarantees in Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Practice Management Skills for Success
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Recent Developments in New Mexico Natural Resource Law
5.2 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>11 2018 Ethicspalooza (Full Day)
6.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Rights of First Offer, First Refusal in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>12 Employee v. Independent Contractor: Tax and Employment Law Considerations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Ethical Puzzles: The Wrongful Death Act, Negligent Settlement Claims, and the Search for the Silver Bullets
3.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | |
| <p>12 Advanced Mediation Skills Workshop
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |
| <p>13 Drafting Client Letters in Trust and Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

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

Opinions

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

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

Effective October 5, 2018

PUBLISHED OPINIONS

A-1-CA-35904	State v. J Sanchez	Affirm	10/03/2018
A-1-CA-35904	State v. J Sanchez	Affirm	10/04/2018

UNPUBLISHED OPINIONS

A-1-CA-33977	State v. C Freeman	Remand	10/01/2018
A-1-CA-37185	J Vickers v. S Porter	Dismiss	10/01/2018
A-1-CA-37247	City of Gallup v. P Hart	Dismiss	10/01/2018
A-1-CA-36836	State v. C Harvey	Affirm	10/02/2018
A-1-CA-36992	U.S. Bank v. M. Sanchez	Affirm	10/02/2018
A-1-CA-35458	State v. L Lindsey	Affirm	10/03/2018
A-1-CA-34925	State v. D Escovedo	Affirm	10/04/2018
A-1-CA-37082	US Bank v. D Slade	Dismiss	10/04/2018

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
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CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective October 1, 2018:
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CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF ADDRESS

Effective September 26, 2018:
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CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective July 1, 2018:
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CLERK'S CERTIFICATE OF PLACEMENT ON INACTIVE STATUS

Effective September 28, 2018:
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CLERK'S CERTIFICATE OF ADMISSION

On September 25, 2018:
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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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NOTICE OF OUT-OF-CYCLE PUBLICATION FOR COMMENT

PROPOSED AMENDMENTS TO SUPREME COURT RULES OF PRACTICE AND PROCEDURE

In accordance with Rule 23-106.1(C), the Supreme Court has approved out-of-cycle publication for comment of proposed amendments to the rules of practice and procedure summarized below. If you would like to view and comment on the proposed amendments summarized below before they are submitted to the Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's website at <http://supremecourt.nmcourts.gov/openforcomment.aspx>, by email to nmsupremecourtclerk@nmcourts.gov, by fax to 5058274837, or by mail to

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New Mexico Supreme Court

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Your comments must be received by the Clerk on or before November 29, 2018, to be considered by the Court.

Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Ad hoc Guardianship and Conservatorship Rules and Forms Committee

Proposal 2018-032 - Certification of Professional Guardians and Conservators

[New Rule 1-142 NMRA]

The Ad hoc Guardianship and Conservatorship Rules and Forms Committee proposes to adopt new Rule 1-142 NMRA in response to the recommendation of the New Mexico Adult Guardianship Study Commission to require certification of professional guardians and conservators. The proposed rule sets forth a definition of a "professional guardian or conservator" and requires proof of certification by the Center for Guardianship Certification as a mandatory qualification of a professional guardian or conservator appointed by a court. The proposed rule requires proof within ninety days of the appointment of a professional guardian or conservator that the individual who has been assigned the duties of guardian or conservator is certified. The proposed rule further requires a professional guardian or conservator appointed before the rule takes effect to submit proof of certification within six months of the rule's effective date.

Proposal 2018-033 - Notice of Hearing and Rights of Alleged Incapacitated Person

[New Form 4-999 NMRA and Rule 1-140 NMRA]

The Supreme Court has provisionally approved new Form 4-999 NMRA and amendments to Rule 1-140 NMRA, effective October 15, 2018. The provisionally approved rule and form are intended to address the new notice requirements under the 2018 amendments to NMSA 1978, Sections 45-5-309 and -405. The amended statutes prescribe the contents of the notice that must be personally served on the alleged incapacitated person when the court sets a hearing on a petition to appoint a guardian or conservator. The statutes also prohibit the district court from granting a petition if the prescribed notice is not served on the alleged incapacitated person. New Form 4-999 is the form provisionally approved by the Supreme Court to meet these new statutory requirements, and amended Rule 1-140 mandates the use of Form 4-999 in guardianship and conservatorship proceedings.

The Supreme Court provisionally approved the rule and form on an emergency basis to comply with the new requirements of Sections 45-5-309 and -405, which took effect on July 1, 2018. *Accord* Rule 23-106.1(C) NMRA (providing for out-of-cycle rule-making under "emergency circumstances," including a change in statute). Due to the expedited approval process, the Court is now publishing the rule and form for comment and has ordered the Ad hoc Guardianship and Conservatorship Rules and Forms Committee to review any comments submitted during the comment period and to recommend any necessary revisions before the rule and form are approved on a non-provisional basis.

Children's Court Rules and Forms Committee

Proposal 2018-034 - Sealing of Records in Proceedings Commenced Under the Delinquency Act

[Rule 10-166 NMRA]

The Children's Court Rules and Forms Committee proposes to amend Rule 10-166 NMRA to require the automatic sealing of court records in proceedings commenced under the Delinquency Act. The proposed amendments incorporate and supplement the amendments to Rule 10-166 that were adopted on November 1, 2017 and suspended pending further review on January 9, 2018. See Supreme Court Order No. 18-8300-002.

Code of Professional Conduct Committee

Proposal 2018-035 - Succession Planning Requirements for Practicing Lawyers

[New Rule 16-119 NMRA]

The Code of Professional Conduct Committee proposes to adopt new Rule 16-119 NMRA, which would require a practicing lawyer to create a succession plan to protect the interests of clients in the event of sudden, unexpected circumstances, such as death or incapacity, that would prevent the lawyer from continuing the practice of law. A prior rule proposal for lawyer succession planning was published for comment in March 2018, and the current proposal was revised by the committee in light of the comments received. At the recommendation of the committee, the Court is publishing the revised proposal for additional public comment.

Proposal 2018-036 - Attorney Misconduct to Include Harassment or Discrimination

[Rule 16-804 NMRA and Withdrawn Rule 16-300 NMRA]

The Code of Professional Conduct Committee proposes to amend Rule 16-804 NMRA to recognize that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law." The proposal follows the ABA's 2016 amendment to the Model Rules of Professional Conduct and would also withdraw Rule 16-300 NMRA to broaden the scope of the prohibited conduct beyond that which may occur before a tribunal as currently provided in Rule 16-300.

Rules for Cameras in the Courts

Proposal 2018-031 - Cameras in Magistrate Courts

[Rule 23-107 NMRA and Rules 2-114 and 6-116 NMRA]

The Supreme Court is considering amendments to Rules 23-107, 2-114, and 6-116 NMRA, which would authorize the broadcasting, televising, photographing, and recording of proceedings in the magistrate courts subject to the same procedures and conditions that currently govern the appellate, district, and metropolitan courts.

Rules and Forms Governing Pretrial Release and Detention

Proposal 2018-037 - Pretrial Detention

[Rule 5-409 NMRA]

The Supreme Court is considering a variety of proposed amendments to Rule 5-409 NMRA, which governs pretrial detention proceedings in the district courts. First, proposed new Subparagraph (B)(3) addresses a motion for pretrial detention that fails to allege sufficient facts. Subparagraph (B)(3) gives the court discretion either to require the prosecution to supplement the motion within twenty-four hours or to deny the motion without prejudice. Second, proposed amendments to Paragraph F provide that upon the request of the prosecution, a preliminary examination shall be held concurrently with the pretrial detention hearing. If the prosecution elects this procedure, the court may grant a three-day extension to hold the hearing. Third, proposed new Subparagraph (F)(1)(c) requires the court to promptly schedule the pretrial detention hearing and to notify the parties of the setting within one business day after the filing of the motion. Fourth, revisions are proposed to the discovery provisions set forth in Subparagraph (F)(2). Fifth, proposed new Subparagraph (F)(6) describes the factors that the court must consider at a pretrial detention hearing. Sixth, amendments to Paragraphs G and H would extend the court's deadline for filing a written order from two days to three days after the conclusion of the pretrial detention hearing. Seventh, proposed amendments to Paragraph K would permit the court to reopen the detention hearing based on changed circumstances that have a material bearing on the court's previous ruling. And finally, proposed amendments to the commentary (1) affirm the court's inherent authority to regulate its docket, promote judicial efficiency, and deter frivolous filings; and (2) summarize some of the legal principles set forth in recent precedential opinions issued by the Supreme Court.

Proposal 2018-038 - Revocation of Pretrial Release

[Rules 5-403, 6-403, 7-403, and 8-403 NMRA]

Amendments are proposed for Rules 5-403, 6-403, 7-403, and 8-403 NMRA, which address violations of conditions of pretrial release and the revocation of pretrial release. First, amendments to Subparagraph (D)(1) would extend the time limit for holding an initial hearing from three days to five days if the defendant is not being held in the local detention center. The proposed amendments to Subparagraph (D)(1) are modeled on the rules governing the time limits for arraignment in the limited jurisdiction courts. *See, e.g.*, Rules 6-401(A)(1)(a) and 6-506(A)(2) NMRA. And second, amendments to Subparagraph (F)(3) would restructure and revise the standard that must be met for revocation of pretrial release. The structure of the proposed new revocation standard is based on the federal revocation statute, 18 U.S.C. § 3148.

Proposal 2018-039 - Pretrial Release by Designee

[Rules 5-301, 5-408, 6-203, 6-408, 7-203, 7-408, 8-202, and 8-408 NMRA]

The Ad hoc Pretrial Release Committee proposes amendments to Rules 5-301, 5-408, 6-203, 6-408, 7-203, 7-408, 8-202, and 8-408 NMRA. The amendments are intended to facilitate early release under the -408 rules in jurisdictions that lack a designee to implement the rules. The amendments provide that, in the absence of a designated person, the judge determining probable cause under Rule 5-301, 6-203, 7-203, or 8-202 shall act as the designee under the applicable -408 rule and shall release an eligible defendant pending the defendant's first appearance in court.

Proposal 2018-040 - Bench Warrant Forms

[Forms 9-212, 9-212A, and 9-212C NMRA]

Amendments are proposed for the bench warrant form for district court, Form 9-212 NMRA; the bench warrant form for metropolitan court, Form 9-212A NMRA; and the bench warrant form for magistrate and municipal courts, Form 9-212C NMRA. The proposed amendments provide checkboxes for the court to direct the arresting officer either to book and release the defendant on recognizance, unsecured bond, or secured bond; or to book and hold the defendant pending further order of the court.

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

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-056

No. A-1-CA-36153 (filed July 17, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSE CHAVEZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY

Jennifer E. DeLaney, District Judge

HECTOR H. BALDERAS,
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for Appellee

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for Appellant

Opinion

M. Monica Zamora, Judge

{1} Defendant appeals his convictions for driving while under the influence of intoxicating liquor (DWI), pursuant to NMSA 1978, Section 66-8-102 (2016), and for following too closely, pursuant to NMSA 1978, Section 66-7-318 (1978). Defendant raises a single issue on appeal—that Section 66-7-318 is unconstitutionally vague and therefore void. We issued a notice of proposed summary disposition proposing to affirm, in response to which Defendant filed a memorandum in opposition. After due consideration of Defendant’s arguments we affirm Defendant’s convictions for the reasons discussed below.

BACKGROUND

{2} New Mexico State Police Officer Bobbie Terrazas observed Defendant’s vehicle following another vehicle and initiated a traffic stop. Officer Terrazas testified that she stopped the vehicle for following too closely based on a “highway standard” that for “every ten[-]miles[-]per hour] you are going, it’s a car length.” According to Officer Terrazas, she observed no sky between the vehicles, leading her to believe that the

distance between Defendant’s vehicle and the vehicle he was following was less than a car length. As a result of the stop Officer Terrazas obtained evidence leading to Defendant’s DWI conviction.

{3} Defendant moved to suppress the evidence obtained after the stop, claiming that Officer Terrazas lacked reasonable suspicion to stop his vehicle. He indicates that at the suppression hearing he argued that the following-too-closely statute lacks specificity, making it difficult to enforce and providing no objective standard to which the public can conform its behavior. The motion was denied, Defendant was convicted of the traffic offenses, and he appealed to this Court.

DISCUSSION

{4} Defendant claims that Officer Terrazas had no reasonable suspicion to stop his vehicle because the following-too-closely statute is unconstitutionally vague. Section 66-7-318 prohibits a driver of a motor vehicle from “follow[ing] another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.” According to Defendant the “reasonable and prudent” standard is constitutionally unenforceable for two reasons: first, it provides officers

with too much discretion in deciding when the statute has been violated, and second, it provides insufficient guidance to the motoring public in determining how closely they may follow another vehicle without violating the statute.

{5} When a defendant contends that a statute is unconstitutionally vague, we review the claim “in light of the facts of the case and the conduct which is prohibited by the statute.” *State v. Laguna*, 1999-NMCA-152, ¶ 24, 128 N.M. 345, 992 P.2d 896 (internal quotation marks and citation omitted). There is a “strong presumption of constitutionality[.]” and a defendant “has the burden of proving [that] a statute is unconstitutional beyond all reasonable doubt.” *Id.* A statute is unconstitutionally vague if:

- (1) it fails to provide persons of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their conduct is prohibited; or
- (2) it fails to create minimum guidelines for the reasonable police officer, prosecutor, judge, or jury charged with enforcement of the statute, and thereby encourages subjective and ad hoc application.

State v. Jacquez, 2009-NMCA-124, ¶ 6, 147 N.M. 313, 222 P.3d 685.

{6} We have already addressed the constitutionality of the “reasonable and prudent” standard of Section 66-7-318 in a non-precedential opinion. *State v. Sanchez*, No. A-1-CA-34170, 2016 WL 1546619, mem. op. ¶ 8 (N.M. Ct. App. Mar. 2, 2016) (non-precedential) (internal quotation marks and citation omitted). In *Sanchez* we held that the provision’s “reasonable and prudent” standard provides adequate notice to drivers of what driving behavior is proscribed by the statute. *Id.* ¶¶ 6-9. We also held that the provision does not invite ad hoc application or inconsistent enforcement, and that the possibility of flexibility in applying the statute does not overcome the presumption that a given statute is constitutional. *Id.* ¶ 10. In doing so we discussed *United States v. Hunter*, 663 F.3d 1136 (10th Cir. 2011), which rejected a void-for-vagueness challenge to a Kansas statute containing language identical to that found in Section 66-7-318. The *Hunter* court points out that “imprecision in statutes such as the one here simply build in needed flexibility while incorporating a comprehensible, normative standard easily understood by

the ordinary driver, and giving fair warning as to what conduct on his or her part is prohibited.” *Id.* at 1142 (footnote omitted). {7} In addition to *Hunter*, a number of opinions from other jurisdictions have come to the same conclusion as we did in *Sanchez*, regarding the constitutionality of the “reasonable and prudent” standard in the context of following too closely. *See, e.g., State v. Harper*, 415 P.3d 948, 952-53 (Idaho Ct. App. 2018) (stating that a violation of the statute “not need to be reduced to an exact mathematical equation,” and that the statute that instructs officers to make judgments based on a reasonable and prudent standard and provides other factors to consider affords drivers notice of the prohibited conduct and guides the discretion of the officers); *Nolan v. State*, 2014-KM-01647, 182 So. 3d 484, ¶¶ 33-34, 37 (Miss. Ct. App. 2016) (referring to multiple other jurisdictions that have reviewed statutes prohibiting following too closely and have decided those statutes are constitutional, and holding that the statutory language coupled with rules of the road are sufficiently definite to allow an ordinary person to understand the prohibited conduct and avoid arbitrary enforcement from officers); *State v. Harton*, 108 S.W.3d 253, 259-60 (Tenn. Crim. App. 2002) (referring to decisions from other states refusing to find following-too-closely statutes unconstitutionally vague, and concluding that the Tennessee statute gives “fair warning of prohibit[ed] conduct and provides sufficient guidance to prevent arbitrary and discriminatory enforcement”). Our research has not uncovered a single case invalidating a following-too-closely statute on the basis that the “reasonable and prudent” standard is unconstitutionally vague. We note also that the Uniform Vehicle Code, which appears to be the source for many if not all of the following-too-closely statutes in various jurisdictions,

contains exactly the same “reasonable and prudent” language as Section 66-7-318. *See* Nat’l Comm. on Unif. Traffic Laws and Ordinances, *Uniform Vehicle Code & Model Traffic Ordinance* ch. 11, art. III, § 11-310(a) (2000), <http://iamtraffic.org/wp-content/uploads/2013/01/UVC2000.pdf>.

{8} We see no reason to depart from the overwhelming weight of precedent addressing this issue. We do note that in our notice of proposed summary disposition we challenged Defendant to locate even one case in which the “reasonable and prudent” standard was held to be constitutionally vague. In response, Defendant cited two cases involving speeding statutes, one decided in 1963 and one decided in 1912, which did indeed invalidate the statutes in question because they provided no numerical speed limit but instead prohibited driving at a speed greater than was reasonable and prudent or reasonable and proper. *State v. Campbell*, 196 A.2d 131, 132 (R.I. 1963); *Hayes v. State*, 75 S.E. 523, 523 (Ga. Ct. App. 1912). This result might be more defensible in the speeding context (although we express no opinion on that subject), where it is possible to establish firm, enforceable numerical standards governing the speed at which a vehicle may be driven under normal driving conditions. However, in the context of the various factors that must be taken into account in deciding whether a driver is following another vehicle too closely, such as the condition of the road, the amount of traffic in the vicinity, and the speed at which the vehicles are traveling, the analyses set out in *Sanchez*, *Hunter*, and the many out-of-state authorities mentioned above are more persuasive.

{9} We note finally that Defendant’s docketing statement argued that we should depart from the federal and out-of-state authorities addressing this issue because our state Constitution has been construed

to provide greater protection than that granted by the Fourth Amendment to the United States Constitution. In our notice of proposed summary disposition we pointed out that this argument seems irrelevant to the void-for-vagueness argument made in this case. We also stated that we are aware of no authority indicating that our application of constitutional vagueness principles is, or should be, more exacting than the federal courts’ or any other state’s application of those principles. In response, Defendant refers briefly to a “right to locomotion” and the federal courts’ willingness to restrict that right, as exemplified by the *Hunter* opinion. This summary statement is not sufficient to explain Defendant’s theory that the state Constitution provides greater protection in the void-for-vagueness and traffic-laws context than does the federal Constitution, and we therefore do not address the argument. *See State v. Gonzales*, 2011-NMCA-007, ¶ 19, 149 N.M. 226, 247 P.3d 1111 (stating that “this Court has no duty to review an argument that is not adequately developed”).

CONCLUSION

{10} Based on the foregoing, we conclude that the district court did not err in denying Defendant’s motion to suppress, and we affirm Defendant’s convictions.

{11} IT IS SO ORDERED.
M. MONICA ZAMORA, Judge

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

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-057

No. A-1-CA-35498 (filed July 19, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JIM ARIAS,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Fred T. Van Soelen, District Judge

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Opinion

J. Miles Hanisee, Judge

{1} Defendant Jim Arias appeals his conviction for possession of synthetic cannabinoids in violation of NMSA 1978, Section 30-31-23(B) (2011) of the Controlled Substances Act (CSA), NMSA 1978, §§ 30-31-1 through -41 (1972, as amended through 2018). Defendant contends that there was insufficient evidence to support his conviction because the State failed to meet its burden of proving that the substance in his possession was a “synthetic cannabinoid” within the meaning of the term as used in the CSA. We agree and reverse.

BACKGROUND

{2} During a routine visit to Defendant’s home, Defendant’s probation officer, Isabelle Lucero, noticed that Defendant’s appearance and behavior were different than what she was used to, that he “was not in his usual manner.” According to Ms. Lucero, Defendant had bloodshot, dilated eyes, difficulty walking, and was slurring

his speech. Upon conducting a standard walkthrough of Defendant’s house, Ms. Lucero located a “green, leafy substance” sitting on top of a receipt on Defendant’s bedroom dresser. Ms. Lucero suspected the substance was a synthetic cannabinoid, or “spice.”¹

{3} Officer Travis Loomis of the Clovis Police Department was called to Defendant’s home, took possession of the substance, and field tested it for tetrahydrocannabinol (THC), the psychoactive ingredient in marijuana. The substance tested negative for THC. Officer Loomis, who interacted with Defendant and described him as “lethargic” and having “slurred speech[,]” also suspected that the substance was “synthetic cannabis.” Based on Officer Loomis’s belief that Defendant was in possession of a controlled substance in violation of the CSA, Defendant was arrested and charged with a single count of possession of synthetic cannabinoids, contrary to Section 30-31-23(B).

{4} The only witnesses who testified at Defendant’s bench trial were Ms. Lucero, Ms. Lucero’s supervisor who also participated in the visit to Defendant’s home, and

Officer Loomis. Ms. Lucero and Officer Loomis both offered lay opinions, based on their training and experience, that the substance found on Defendant’s dresser was a synthetic cannabinoid. With respect to training, both testified that they received training regarding synthetic cannabinoids in their respective academies, Ms. Lucero describing her academy training as “just a short, little class.” Ms. Lucero also testified that she receives email notices from her department several times a year with pictures of “synthetics” and “what’s new out there on the streets.” With respect to experience, Ms. Lucero testified that in her work as a probation officer, she had come into contact with substances—later confirmed through laboratory testing—that she believed to be synthetic cannabinoids on at least ten occasions. Officer Loomis testified to having come into contact with synthetic cannabinoids fewer than ten times during his time as a police officer.

{5} Neither offered any testimony regarding the chemical composition of the substance found on Defendant’s dresser, and both conceded that they had no training in forensic chemistry and had never personally obtained a positive identification of a synthetic cannabinoid through field or laboratory testing. Officer Loomis had no recollection of sending the substance found on Defendant’s dresser to the state crime lab for further testing and confirmation of what the substance was. He conceded that the only thing he could “testify to . . . for sure” is that the substance was not marijuana. When asked on cross-examination if she could identify a synthetic cannabinoid just by looking at it, Ms. Lucero responded, “You can, just, yeah, it’s, it’s a green, leafy substance.” She then conceded that the “green, leafy substance” found on Defendant’s dresser could also be marijuana, oregano, or an imitation substance and that without testing the substance, she could only suspect what the substance was. On redirect examination, when asked whether the substance was synthetic cannabinoids, Ms. Lucero stated, “Yes[,]” without offering any further explanation.

{6} In addition to eliciting Ms. Lucero’s lay testimony as to the identity of the substance, the State moved to qualify Ms. Lucero as an expert on “whether or not . . .

¹“Spice” is a common name for “synthetic cannabinoids.” See Office of Nat’l Drug Control Policy, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited June 11, 2018). The term “synthetic cannabinoids”—which is the statutory term, see § 30-31-6(C)(19)—will be used throughout this opinion in this Court’s discussion. The term “spice” will be used to reflect that term’s original use by the parties in the record, at trial, and in their briefs.

Defendant's behavior was consistent with [Ms. Lucero's] observations of other people who are under the influence of synthetic cannabinoids." As to her qualifications to testify as an expert on that issue, Ms. Lucero explained that she had received training from Norchem, the laboratory that does "further confirmation" of various substances for state agencies, and that Norchem had "given us lists of signs, of symptoms of what each substance can cause an individual, how they react." The training included information about symptoms for someone under the influence of various controlled substances, such as cocaine, methamphetamine, and "spice," as well as alcohol. Ms. Lucero also testified that in her experience, people who are under the influence of "spice" behave differently than people who are under the influence of other controlled substances, including marijuana.

{7} Over Defendant's objection, the district court allowed Ms. Lucero to testify as an expert "on the issue of whether or not a person is under the influence of a synthetic cannabinoid versus other substances." Ms. Lucero then testified that she believed that the substance on Defendant's dresser was "the synthetic 'spice' " based on Defendant's "behavior and past issues with past tests on probation." She further opined that with regard to the way Defendant was behaving when she saw him, she believed Defendant was under the influence of synthetic cannabinoids. Specifically, based on her past experience, Ms. Lucero testified that people under the influence of "spice" are "very, very out of it, their eyes are very bloodshot and very dilated, they have a hard time walking, . . . they say off the wall things, . . . their mind . . . is not right, they start just saying different things that don't make sense, you can hardly understand the way they speak, their speech is slurred." Regarding Defendant's behavior on the night in question, Ms. Lucero testified that "his speech was in and out, his speech was very slurred, he was unable to make full sentences that evening."

{8} After the State rested, Defendant moved for a directed verdict, arguing that the State had failed to meet its burden of proving that the substance alleged to be a synthetic cannabinoid was, in fact, a synthetic cannabinoid. Specifically, Defendant noted that Section 30-31-6(C)(19) of the CSA designates specific chemical compounds as "synthetic cannabinoids" and pointed out that the State presented no evidence regarding the chemical makeup of

the substance. Defendant argued that Ms. Lucero's and Officer Loomis's lay opinions that the substance was a synthetic cannabinoid and Ms. Lucero's expert opinion that Defendant was under the influence of synthetic cannabinoid were insufficient on their own to prove that the substance found on Defendant's dresser was a synthetic cannabinoid as the term is defined under the CSA. The State argued that the following evidence supported the inference that the substance was a synthetic cannabinoid: (1) Defendant was "clearly under the influence[;]" (2) Ms. Lucero's opinion that Defendant was under the influence of synthetic cannabinoids; (3) "the effect that the drug had on . . . Defendant[;]" (4) the substance was found in Defendant's bedroom; and (5) the opinions of Ms. Lucero and Officer Loomis that the substance was a synthetic cannabinoid.

{9} The district court denied Defendant's motion and proceeded to evaluate the evidence presented. Regarding Ms. Lucero's opinion that Defendant was under the influence of a synthetic cannabinoid, the district court noted that it was "not giving [that opinion] as much credence maybe as [the State] would hope." The district court explained that Ms. Lucero's "testimony was . . . general enough in nature . . . [and] could describe someone under the influence of alcohol . . . [or] other controlled substances" and that it "was not sure that [it] view[s] that as being synthetic-cannabinoids specific." Nevertheless, the district court found that "[t]here is *some* circumstantial evidence to support the officers' opinions" and stated that it was "basically basing this off of the officers' opinions itself." Responding to Defendant's arguments that the State failed to present any evidence of the chemical makeup of the substance and that the court could not rely on the officers' opinions, alone, to support conviction, the district court concluded that under New Mexico law, "officers still can identify [a controlled substance] without having a lab test. It goes to the weight of the evidence, not whether it's admissible." The district court then found that "the weight of the evidence is enough here." The district court further reasoned that all of the substances listed in the CSA—and specifically marijuana, cocaine, and methamphetamine—are made up of a specific chemical compound, even if not "spelled out" in the CSA, and that New Mexico case law "tells us that they can be identified without a lab test." The district court explained that it was

finding Defendant guilty "based upon the way [the substance] was found, based upon the surrounding circumstances, and based upon the opinions of the officers[.]"

DISCUSSION

{10} We begin by observing, as this Court did in *State v. Maldonado*, 2005-NMCA-072, ¶ 16, 137 N.M. 699, 114 P.3d 379, that "[t]he concept of substantial evidence is meaningless unless it is linked to a specific definition of a crime." The reason for this is simple: "Expand the definition of the crime and evidence that might otherwise be insufficient becomes 'substantial.'" *Id.* Thus, "[a] court cannot decide whether the [s]tate has come forward with substantial evidence of [an alleged crime] without expressly or implicitly engaging in statutory construction of the [subject] statute." *Id.*; see, e.g., *State v. Stephenson*, 2017-NMSC-002, ¶ 13, 389 P.3d 272 (explaining that "to determine whether [the d]efendant's conviction [under NMSA 1978, Section 30-6-1(B) (2009) for '[a]bandonment of a child'] was supported by sufficient evidence, [the court] must first examine the scope of Section 30-6-1(B), and in particular, must for the first time ascertain the definitions of 'leaving' and 'abandoning' as they are used in Section 30-6-1(B)"); *State v. Olguin*, 1995-NMSC-077, ¶¶ 4-5, 120 N.M. 740, 906 P.2d 731 (construing, first, the bribery and solicitation statute to determine the Legislature's intended meaning of the term "person" as used in that statute, and determining, second, whether the state had met its burden of proving the crime of soliciting a bribe); *State v. Gonzales*, 2011-NMCA-081, ¶¶ 10-32, 150 N.M. 494, 263 P.3d 271 (construing at length the child abuse by endangerment statute, then determining whether the evidence supported every element of the crime as construed).

{11} Here, we must determine whether the evidence was sufficient to convict Defendant of possession of synthetic cannabinoids, a task that depends on what the Legislature intended the term "synthetic cannabinoids" as used in the CSA to mean and include. We begin, then, by construing the term "synthetic cannabinoids."

I. Construing the Term "Synthetic Cannabinoids" as Used in the CSA

A. Standard of Review and Applicable Rules of Statutory Construction

{12} "Statutory construction is a matter of law we review de novo." *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182, 218 P.3d 868. "The primary goal in interpreting a statute is to give effect to the Legislature's

intent.” *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. “To do this, we look to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” *State v. Goodman*, 2017-NMCA-010, ¶ 10, 389 P.3d 311 (internal quotation marks and citation omitted). Additionally, our construction may be “informed by the history, background, and overall structure of the statute, as well as its function within a comprehensive legislative scheme.” *State v. Almanzar*, 2014-NMSC-001, ¶ 15, 316 P.3d 183 (internal quotation marks and citation omitted).

B. Section 30-31-6(C)(19) and the Parties’ Respective Readings Thereof

{13} Section 30-31-6(C)(19) identifies as one type of hallucinogenic substance controlled under Schedule I of the CSA:

(19) synthetic cannabinoids, including:

- (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-naphthoyl)indole];
- (b) 1-butyl-3-(1-naphthoyl)indole;
- (c) 1-hexyl-3-(1-naphthoyl)indole;
- (d) 1-pentyl-3-(1-naphthoyl)indole;
- (e) 1-pentyl-3-(2-methoxyphenyl-acetyl) indole;
- (f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(g) 6aR, 10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(h) dexamabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl) indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol[.]

{14} Defendant argues that Section 30-31-6(C)(19) “defines prohibited synthetic cannabinoid substances as any substance containing a particular chemical designation[.]” specifically and only the eleven enumerated chemical compounds listed in the statute. According to Defendant,

because Section 30-31-6(C)(19) “focuses [on] the chemical compounds, there must be proof of those chemical compounds being present” in order to sustain Defendant’s conviction. Defendant thus contends that because the State failed to offer any evidence regarding the chemical makeup of the substance found on Defendant’s dresser, it could not meet its burden of proof on all elements of the crime charged. The State argues that it “was not required to prove that the green[,] leafy substance found in Defendant’s bedroom contained one of the specific chemical compounds listed” in Section 30-31-6(C)(19) and that the eleven enumerated compounds are merely “examples of synthetic cannabinoids; they are not a definition.” According to the State, Section 30-31-6(C)(19) “bans all forms of synthetic cannabinoids[.]” a term that the State contends “include[s] all chemical formulations that mimic compounds found in the Cannabis plant.” {15} The parties are each partially correct: the State that the eleven compounds are neither a definition nor an exhaustive list of banned substances, and Defendant that the State failed to meet its burden of proof even under a more expansive reading of the term “synthetic cannabinoids.” We explain.

C. What Substances Qualify as “Synthetic Cannabinoids” Under the CSA

{16} In 2011 the Legislature amended the CSA by, among other things, adding to the list of Schedule I controlled substances “synthetic cannabinoids” and making the distribution of, intent to distribute, and/or possession of “synthetic cannabinoids” crimes. See 2011 N.M. Laws, ch. 16, § 1. Importantly, the Legislature did not then, nor has it since, expressly defined the term “synthetic cannabinoids” as it has done with other types of controlled substances. See, e.g., § 30-31-2(N) (defining “marijuana” as “all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus *Cannabis*, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds”); 30-31-2(P) (defining “opiate” as “any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability”).

“When a term is not defined in a statute, we must construe it, giving those words their ordinary meaning absent clear and express legislative intention to the contrary.” *State v. Tsosie*, 2011-NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34 (internal quotation marks and citation omitted). We must consider what the Legislature intended “synthetic cannabinoids” to mean at the time the Legislature added that term to the list of Schedule I controlled substances. See *State v. Phillips*, 2009-NMCA-021, ¶ 17, 145 N.M. 615, 203 P.3d 146 (“A statute is to be interpreted as the Legislature understood it at the time it was passed.” (internal quotation marks and citation omitted)). Additionally, “our interpretation of technical language in a statute can and should be informed by evidence concerning how those technical terms are interpreted by experts in the pertinent field.” *Dynacon, Inc. v. D & S Contracting, Inc.*, 1995-NMCA-071, ¶ 21, 120 N.M. 170, 899 P.2d 613.

{17} In 2008 when “synthetic cannabinoids” were first reported in the United States, only a small number of chemical compounds classified as “synthetic cannabinoids” were known. See *supra*, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)* (describing “synthetic cannabinoids” as “man-made chemicals that are applied (often sprayed) onto plant material and marketed as a ‘legal’ high” and explaining that in 2009, there were just two identified “synthetic cannabinoids”). Within a matter of years, the number of such chemicals increased exponentially and has continued to increase ever since. See *id.* (explaining that “[fifty-one] new synthetic cannabinoids were identified in 2012”); Office of Nat’l Drug Control Policy, *New Psychoactive Substances*, <https://www.whitehouse.gov/ondcp/key-issues/psychoactive-substances> (last visited June 11, 2018) (explaining that “[a]s of August 2016, the United Nations estimated there were over 700 identified [new psychoactive substances²] available on the global market”).

{18} Congress and state legislatures across the country, including New Mexico’s, responded to the “rapidly emerging threat” presented by synthetic cannabinoids by banning such substances via legislative and/or regulatory action. See *supra*, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)* (explaining that Congress passed

²Synthetic cannabinoids are one type of “new psychoactive substances.” See Nat’l Inst. on Drug Abuse, <https://www.drugabuse.gov/publications/drugfacts/synthetic-cannabinoids-k2spice> (“Synthetic cannabinoids are part of a group of drugs called new psychoactive substances (NPS).”).

[t]he Synthetic Drug Abuse Prevention Act as part of the FDA Safety and Innovation Act of 2012a); National Conference of State Legislatures, *Emerging Drug Threats*, <http://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx#synthetic%20drugs> (last visited June 11, 2018) (“Since 2011, all [fifty] states have banned two types of synthetic drugs—cannabinoids . . . and cathinones . . . —with the majority doing so via legislation.”). Importantly, the way in which synthetic cannabinoids are regulated has evolved and continues to evolve because of the evolving nature of the substances themselves. *See id.* As explained by the National Conference of State Legislatures:

Initially, state legislative action targeted specific versions of these drugs with individual bans. Minor changes to the chemical composition of these substances, however, can create new, but very similar, drugs not previously covered by law. In response, legislation in subsequent years has been more general in nature, targeting entire classes of substances or using broad language to describe the prohibited drugs and their effects.

Id.

{19} In New Mexico, the regulation of synthetic cannabinoids has evolved in just this way. At the time the Legislature added “synthetic cannabinoids” to the list of Schedule I controlled substances, it deemed the aforementioned list of eleven chemical compounds to be “synthetic cannabinoids.” *See* § 30-31-6(C)(19)(a)-(k). That list was never intended to be exclusive or exhaustive. *See State v. Salazar*, 2018-NMCA-030, ¶ 33, ___ P.3d ___ (holding that “‘synthetic cannabinoids’ is not limited to those [chemical compounds] that are listed in [S]ubsections (a) through (k) of Section 30-31-6(C)(19)” and explaining that “[t]he word ‘including’ following the term ‘synthetic cannabinoids’ expresses a clear legislative intent that the listing of specific examples of ‘synthetic cannabinoids’ that follows is not exclusive”), *cert. denied*, (No. S-1-SC-36939, Apr. 13, 2018). That is evidenced not only by the language used by the Legislature in

the statute itself but also by the fact that shortly after “synthetic cannabinoids” were added to Schedule I, the state Board of Pharmacy—exercising the authority delegated to it by the Legislature, *see* § 30-31-3(A) (providing that the Board “may add by regulation substances to the list of substances enumerated in Schedules I through IV”)—added by regulation new substances to the list of “synthetic cannabinoids” and has done so on four other occasions since. *See* 16.19.20.65(C)(32)(a)-(o) NMAC (11/27/2011); 16.19.20.65(C)(32)(p) NMAC (6/15/2012); 16.19.20.65(C)(32)(q)-(s) NMAC (12/19/2013); 16.19.20.65(C)(35)(t)-(ii) NMAC (10/16/2016); 16.19.20.65(E)(35)(jj)-(tt) NMAC (6/26/2018).

{20} In its first addition of substances deemed “synthetic cannabinoids,” the Board not only added fifteen specific chemicals to the list but also included a functional definition of “synthetic cannabinoids”: “any material, compound, mixture or [r] preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity[.]” 16.19.20.65(C)(32) NMAC (11/27/2011). This definition closely resembles the neurochemical definition adopted in other jurisdictions and used by the United Nations Office on Drugs and Crime (UNODC). *see* Colo. Rev. Stat. Ann. § 18-18-102(34.5)(a) (West 2014) (defining “synthetic cannabinoid” as “any chemical compound that is chemically synthesized and either: (I) [h]as been demonstrated to have binding activity at one or more cannabinoid receptors; or (II) [i]s a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors”); UNODC *Recommended Methods for the Identification and Analysis of Synthetic Cannabinoid Receptor Agonists in Seized Materials* 5, (2013) http://www.unodc.org/documents/scientific/STNAR48_Synthetic_Cannabinoids_ENG.pdf (defining “synthetic cannabinoids” as “substances with structural features which allow binding to one of the known cannabinoid receptors, i.e. CB₁ or CB₂, present in human cells”). In its next addition the following year, the Board

added a new subsection containing seven *classes* of chemicals rather than individual chemical compounds. 16.19.20.65(C)(32)(p)(i)-(vii) NMAC (6/15/2012). In its most recent additions, the Board has continued to add individual chemicals to the list of “synthetic cannabinoids.” *See* 16.19.20.65(C)(32)(q)-(s) NMAC (12/19/2013); 16.19.20.65(C)(35)(t)-(ii) NMAC (10/16/2016); 16.19.20.65(E)(35)(jj)-(tt) NMAC (6/26/2018).

{21} Presently, there are no fewer than fifty-six specific chemical compounds—the eleven enumerated in Section 30-31-6(C)(19)(a)-(k) and forty-five additional compounds identified in 16.19.20.65(E)(35)(a)-(o), (q)-(tt) NMAC—as well as seven classes of compounds, *see* 16.19.20.65(E)(35)(p)(i)-(vii) NMAC, that are considered to be “synthetic cannabinoids” in New Mexico. Additionally, “any material, compound, mixture or preparation . . . which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity” is also a “synthetic cannabinoid” under New Mexico law. 16.19.20.65(E)(35) NMAC. As a limiting principle to this last point, we note that the Legislature has provided that “[t]he [B]oard shall place a substance in Schedule I if it finds that the substance: (1) has a high potential for abuse; and (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.” Section 30-31-5(A). In other words, to qualify for placement in Schedule I, a substance must have certain characteristics, i.e., high potential for abuse and no accepted medical use. *See Montoya v. O’Toole*, 1980-NMSC-045, ¶ 7, 94 N.M. 303, 610 P.2d 190 (explaining that the Legislature has “established strict statutory standards and directed the Board to apply them in categorizing substances”); *cf.* § 30-31-5(B)-(E) (establishing different standards and criteria for placing substances in Schedules II, III, IV, and V).

{22} From the foregoing, then, we conclude the following: (1) the Legislature did not intend to limit the meaning of “synthetic cannabinoids” to only the eleven chemical compounds enumerated in Section 30-31-6(C)(19); (2) the list of “synthetic cannabinoids” contained in, and occasionally added to³, 16.19.20.65 NMAC—both

³The most recent additions to 16.19.20.65 NMAC occurred immediately prior to issuance of this opinion, increasing the number of prohibited compounds listed in the regulation from thirty-four to forty-five. And while the 2018 update to the regulation affects neither our analysis nor the disposition of this case, it reinforces both the ever-evolving nature of regulating this particular controlled substance and the need for litigants, experts, and courts to stay apprised of recent scientific developments and regulatory activity related to synthetic cannabinoids.

those identified by individual chemical compound and those provable to fall within any class of chemicals listed—must be understood as an extension of the list of substances prohibited under Section 30-31-6(C)(19); and (3) any substance that has a high potential for abuse, has no accepted medical use in treatment, and “demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity[.]” 16.19.20.65(E)(35) NMAC, also qualifies as a “synthetic cannabinoid” under the CSA, even if its specific chemical compound has not as yet been expressly added to either the statute or the regulation. See *Salazar*, 2018-NMCA-030, ¶¶ 30, 35 (concluding that sufficient evidence supported the defendant’s conviction for possession of synthetic cannabinoids where an expert in forensic chemistry testified that the substances—which contained chemicals that were not listed as controlled substances—were “synthetic cannabinoids” because “the chemicals mimic the effects of cannabis”). Thus, we further conclude that in order to sustain a conviction for an offense involving a substance alleged to be “synthetic cannabinoids,” the State must prove beyond a reasonable doubt one of the following: that the substance (1) is one of the chemical compounds enumerated in either the statute or the regulation; (2) falls into one of the classes of chemicals listed in the regulation; or (3) has a high potential for abuse, has no accepted medical use in treatment, and demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity. We next address whether the State met its burden in this case.

II. Proving the Identity of a Substance Suspected of Being a Synthetic Cannabinoid

{23} What becomes apparent from the process of defining “synthetic cannabinoids” is that such substances are inherently complex and not uniformly identifiable by visual inspection alone. Certainly, not every “green, leafy substance” that tests negative for THC and is found atop a bedroom dresser as opposed to, say, on a kitchen spice rack is necessarily a “synthetic cannabinoid.” In light of our interpretation of what the Legislature intended the term “synthetic cannabinoids” to mean and include, the conclusion we reach is that the State must introduce scientific evidence to prove the identity of a substance suspected of being a synthetic cannabinoid.

{24} The State contends that under New

Mexico law, it was not required to do so and argues that lay opinion testimony and circumstantial evidence were sufficient to identify the substance in this case as a synthetic cannabinoid. The State—like the district court—relies on certain cases in which both this Court and our Supreme Court have held that identification of a substance by lay opinion may be used to help prove a substance’s identity and that “the [s]tate need not introduce scientific evidence to prove the identity of a controlled substance.” *State v. Stampley*, 1999-NMSC-027, ¶ 42, 127 N.M. 426, 982 P.2d 477; *State v. Godoy*, 2012-NMCA-084, ¶ 14, 284 P.3d 410 (explaining that “[a]lthough the [s]tate failed to present a laboratory analysis authenticating the substance found in [the d]efendant’s car as crack cocaine, it was able to provide other evidence to support a conviction for drug possession, such as lay opinions”); *State v. Gerald B.*, 2006-NMCA-022, ¶ 23, 139 N.M. 113, 129 P.3d 149 (stating that “expert testimony is not required to identify illegal drugs”); *State v. Rubio*, 1990-NMCA-090, ¶ 8, 110 N.M. 605, 798 P.2d 206 (“The identity of a controlled substance *may further* be established by persons having lay experience with the drug through prior use, trading, or law enforcement.” (emphasis added)). However, those cases—and more to the point the substances at issue in those cases—are all distinguishable from the instant case and substance here at issue, something the district court failed to appreciate and the State fails to address or attempt to reconcile. We explain.

A. No New Mexico Case Has Held That the State May Prove the Identification of a Suspected Synthetic Cannabinoid Based on Lay Opinion and Circumstantial Evidence Alone

{25} None of the cases cited by the district court or the State—including an out-of-jurisdiction case cited by the State in its answer brief—involved synthetic cannabinoids. Rather, they involved other controlled substances, including crack cocaine, marijuana, methamphetamine, and cocaine. See *Stampley*, 1999-NMSC-027, ¶¶ 12, 42 (addressing a challenge to the sufficiency of the evidence supporting a conviction for trafficking crack cocaine); *Godoy*, 2012-NMCA-084, ¶ 14 (same for possession of crack cocaine); *Gerald B.*, 2006-NMCA-022, ¶ 1 (involving a charge of possession of marijuana); *State v. Ataway*, 1992-NMCA-043, ¶¶ 5, 23-24, 114

N.M. 83, 835 P.2d 81 (involving a challenge to the admissibility of a lay witness’s testimony that the substance that the defendant is seen injecting into her arm in a videotape admitted into evidence was methamphetamine); *Rubio*, 1990-NMCA-090, ¶¶ 4, 8 (involving a challenge to the sufficiency of the evidence supporting a conviction for possession of cocaine); *State v. Watson*, 437 N.W.2d 142, 143 (Neb. 1989) (per curiam) (involving charges of distribution and possession of methamphetamine and cocaine). This factual distinction is important because, as discussed previously, the CSA does not identify and define all substances in the same way. Specifically, neither “cocaine” nor “methamphetamine” is, in fact, defined at all in the CSA, nor is either described by its chemical composition even though each substance is, as the district court noted, identifiable by a particular chemical compound. See § 30-31-2 (containing no definition of “cocaine” or “methamphetamine”); § 30-31-7(A)(1)(d) (identifying “coca leaves and any . . . derivative . . . of coca leaves” as a type of Schedule II controlled substance but containing no chemical description of the coca-leaf derivative known as “cocaine”); § 30-31-7(A)(3)(c) (identifying “methamphetamine” as a type of Schedule II controlled substance but containing no definition or chemical description of that substance); *Webster’s Third New Int’l Dictionary* 434 (Unabridged ed. 1986) (defining “cocaine” as “a bitter crystalline alkaloid $C_{17}H_{21}NO_4$ obtained from coca leaves and synthesized from ecogine”); *Id.* 1422 (defining “methamphetamine” as “an amine $C_6H_5CH_2CH(CH_3)NHCH_3$ used in the form of its crystalline hydrochloride as a stimulant for the central nervous system”). And while “marijuana” is defined in the CSA, that definition does not refer to or identify any particular chemical compound derived from “marijuana” as being a controlled substance. See § 30-31-2(N). Thus, the chemically invariable substances at issue in the relied-upon cases are legally distinguishable from synthetic cannabinoids, a critical distinction overlooked by the district court and the State.

{26} Moreover, while those cases *allow* for lay identification of particular controlled substances to help support the identification of the substance, none stands for the proposition that lay identification of a substance constitutes sufficient evidence in every case. In any case where the State foregoes laboratory testing or does

not seek to introduce scientific evidence of a substance's identity, it does so at the risk of a challenge to the sufficiency of the evidence. The relied-upon cases merely stand for the proposition that in certain cases, the State may still be able to meet its burden even in the absence of scientific evidence. Notably, in none of the aforementioned cases did a law enforcement officer's lay opinion identifying a substance based solely upon visual inspection serve as the sole, or even primary, evidence of the substance's identity. In *Rubio*, not only did the dealer who sold the substance to the defendant testify that the substance was cocaine but also there was evidence that the transaction took place in a "secretive manner" and that the substance was sold at a price of \$200-225 for only one-eighth of an ounce. 1990-NMCA-090, ¶¶ 4, 9. In *Attaway*, though no chemical analysis of the substance was introduced, an expert testified that the substance was methamphetamine. See 1992-NMCA-043, ¶ 21.⁴ In *Stampley*, the substance was identified by two witnesses: the person who stole the substance from the defendant, and by a subsequent user of the stolen substance who testified to the effects that the substance had on her once taken. 1999-NMSC-027, ¶ 42. In *Gerald B.*, the child-defendant admitted to having "some marijuana," initially handed over "a small plastic sandwich bag from his pocket[.]" and upon being asked by the investigating officer if child-defendant had any more marijuana, "produced eight more sandwich bags." 2006-NMCA-022, ¶ 4. In *Godoy*, the substance was "field-tested for the presence of cocaine" and came back "positive." 2012-NMCA-084, ¶ 14. In that case, the defendant also admitted to being "a user and that the substance was for his personal use." *Id.* In other words, in all of the cases in which it has been held that the State need not introduce scientific evidence of a substance's identity to support a controlled substance conviction, there was significant circumstantial evidence from which the substance's identity could be reasonably inferred beyond a reasonable doubt.

{27} In light of the material factual and legal distinctions between the instant case and cases cited by the State and the district

court, we conclude that we are not bound by the statements in those cases to the effect that the state need not introduce scientific evidence to prove the identity of a controlled substance. See *State v. Holt*, 2015-NMCA-073, ¶ 17, 352 P.3d 702 ("The established rule is that cases are not authority for propositions not considered." (alterations, internal quotation marks, and citation omitted)).

B. Even Under *Godoy*, *Stampley*, and *Rubio*, the Evidence Adduced in this Case Is Insufficient to Support Defendant's Conviction

{28} Even were we to agree—and we do not—that the rule that "the [s]tate need not introduce scientific evidence to prove the identity of a controlled substance" applies or should be extended to apply in cases involving synthetic cannabinoids, we would still hold that there is insufficient evidence to support Defendant's conviction in this case. *Stampley*, 1999-NMSC-027, ¶ 42. Here, the State contends that the following pieces of evidence constitute sufficient circumstantial evidence to support Defendant's conviction:

Defendant admitted to using 'spice.' The green[,] leafy substance was found on top of a piece of paper on a dresser in Defendant's bedroom. Defendant could barely stand up or walk. He could not comprehend what was being said to him. He was 'out of it.' His speech was slurred, his eyes were bloodshot, and his pupils were dilated. [Ms.] Lucero testified to her experience in dealing with people under the influence of synthetic cannabinoids, and that, in her opinion, Defendant was under the influence of synthetic cannabinoids.

Even viewed in the light most favorable to supporting the verdict, this evidence fails to support a reasonable inference that the substance on Defendant's dresser was a synthetic cannabinoid.

{29} First, Ms. Lucero's testimony that Defendant "self-admitted to using 'spice'" fails as sufficient circumstantial evidence in this case for three reasons: (1) because Ms. Lucero admitted that she could not say when Defendant admitted to having used

"spice," (2) because even if Defendant had admitted that he used "spice" on or about the date charged in the indictment, such an admission still fails to prove that the substance found in Defendant's possession was a "synthetic cannabinoid," and (3) because there is no evidence that Defendant's admission to using "spice" was in any way a reference to or connected his impaired state with the "green, leafy substance" found on his dresser that served as the basis for his conviction. While "spice" is a common name for "synthetic cannabinoids," "spice" is not listed as a controlled substance under the CSA, and Defendant's admission to having used "spice" is not, without more, evidence that the "green, leafy substance" found on Defendant's dresser—a substance of unknown chemical makeup—was a synthetic cannabinoid. Cf. *State v. Romero*, 1964-NMSC-245, ¶¶ 3, 14, 74 N.M. 642, 397 P.2d 26 (rejecting the defendant's argument that proof that he was in possession of "marijuana" was insufficient to prove that he possessed "cannabis sativa L." and reasoning that "[m]arijuana" is the name by which cannabis is popularly known, and is neither chemically nor physically distinguishable" (emphasis added)); *Gerald B.*, 2006-NMCA-022, ¶¶ 4, 24 (noting that the child-defendant's admission that the substance found on his person was marijuana could be used as evidence supporting an inference that the substance was, in fact, marijuana). Additionally, any inference that could be drawn between Defendant's admission to using "spice" at some indeterminate point in the past, even along with Ms. Lucero's description of Defendant's appearance and behavior as being consistent with someone "under the influence of spice," and the chemical composition of the "green, leafy substance" would be speculative at best, rendering it insufficient. See *State v. Trossman*, 2009-NMSC-034, ¶ 24, 146 N.M. 462, 212 P.3d 350 ("Although a [fact-finder] is certainly entitled to draw reasonable conclusions from the circumstantial evidence produced at trial, it must not be left to speculate in the absence of proof." (citation omitted)).

{30} Second, the State fails to explain the significance of the fact that "[t]he green[,] leafy substance was found on top of a piece

⁴Notably, in *Attaway* the defendant challenged not the sufficiency of the evidence supporting his convictions but primarily evidentiary rulings. See *id.* ¶ 1. Regarding the testimony of the woman seen in a video where the defendant was injecting a substance into her arm that the substance was methamphetamine, the defendant attacked the admissibility of such testimony, arguing that the witness was not qualified to identify the substance. *Id.* ¶ 23.

of paper on a dresser in Defendant's bedroom." Particularly in light of Ms. Lucero's testimony that synthetic cannabinoids are "packaged in, like, little, they, they have like little packages of 'em, almost kind of like, they've got like colors and different things on 'em, . . . almost like, kind of like a foil, they come in, like, a foil baggie[.]" we fail to see how the fact that the substance was found on top of a receipt, not in any type of special packaging, somehow supports the conclusion that the substance was a synthetic cannabinoid. *Cf. Rubio*, 1990-NMCA-090, ¶ 8 ("In deciding whether the evidence was sufficient to show the substance in this case was cocaine, we may consider such circumstances as the appearance and packaging of the substance[.]"). Because the State offers no explanation or argument as to the import of that evidence, we consider it no further. *See State v. Murillo*, 2015-NMCA-046, ¶ 17, 347 P.3d 284 (explaining that where a defendant fails to develop requisite aspects of an argument, this Court "will not construct" an argument for him).

{31} Finally, Ms. Lucero's testimony that Defendant was behaving in a manner that she believed was consistent with the behavior of someone who is under the influence of synthetic cannabinoids—specifically that Defendant had bloodshot eyes and dilated pupils, was slurring his speech, and was "very out of it"—also fails to supply the necessary evidence to establish the identity of the substance. As the district court described it, Ms. Lucero's testimony "was general enough in nature that it could have described someone under the influence of alcohol . . . or other substances."⁵ (Emphasis added.) The district court even stated that it was not giving Ms. Lucero's testimony regarding Defendant's behavior "as much credence maybe as [the State] would hope" and that it was "not sure that [it] view[s] that testimony] as being synthetic-cannabinoids specific." In light of the district court's own doubt regarding that evidence, we can hardly say that Ms. Lucero's testimony regarding Defendant's physical appearance and behavior supplies the necessary evidence to support the inference beyond a reasonable doubt that the substance found on Defendant's dresser was a synthetic cannabinoid. Particularly in the absence of any evidence causally connecting Defendant's appearance and behavior to ingestion of the substance

found on his dresser, any conclusion that the substance was a synthetic cannabinoid is based on inferential speculation rather than permissible inference.

C. Synthetic Cannabinoids Are Sui Generis, and Proof That a Substance Is a Synthetic Cannabinoid Requires Scientific Evidence

{32} Synthetic cannabinoids are a type of controlled substance innately different than substances such as marijuana, cocaine, and methamphetamine because of the nearly innumerable possible chemical formulas that may—but also may not—qualify the substance as a synthetic cannabinoid. This point bears emphasizing because the way in which New Mexico regulates synthetic cannabinoids—albeit broadly and comprehensively—stops short of criminalizing artificially-produced substances that do not either bear one of the chemical structures enumerated in the statute or regulation or demonstrate binding activity to the cannabinoid receptor.

{33} As the State itself explains, "Synthetic drug manufacturers continually change their formulas[] and make slight alterations to known compounds in order to avoid formulations that are specifically outlawed." And here again, many such substances sold in the same place and manner and with similar packaging are completely legal. *See supra, Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)* (explaining that "[s]ynthetic drugs are often sold at small retail outlets and are readily available via the Internet" and that "[t]he chemical compositions of synthetic drugs are frequently altered in an attempt to avoid government bans"). Despite this acknowledgment, the State in this case failed to present any competent evidence that would allow the district court to draw the specific inference that the substance found on Defendant's dresser was a "synthetic cannabinoid" as defined under the CSA. We note that Ms. Lucero conceded that she has "never positively identified a substance as a synthetic cannabinoid" and that confirmation of substances she suspected were synthetic cannabinoids had always occurred through scientific testing. Yet here, absent just such testing, when asked whether the substance was a synthetic cannabinoid, she responded affirmatively. Officer Loomis also testified that he typically sends substances he suspects of being

controlled substances for further testing at the state crime lab, though he could not recall whether he had done so in this case and confirmed that he had never seen a laboratory report in this case. Notably also, the State neither explains why it presented no scientific evidence in this case nor cites a single case—in New Mexico or elsewhere—where a conviction related to synthetic cannabinoids was sustained in the absence of scientific evidence of the substance's identity. Through our research, we were unable to find such a case.

{34} Our research instead indicates that scientific evidence and expert testimony in this context are the unstated rule—possibly without exception—in cases involving synthetic cannabinoids, which makes good sense in light of the inherently complex nature of these substances. *See, e.g., Salazar*, 2018-NMCA-030, ¶ 35; *see also United States v. Qattoun*, 826 F.3d 1062, 1064 (8th Cir. 2016) (explaining, in a case involving withdrawal of a guilty plea to charges of possession with intent to distribute synthetic cannabinoids, that the basis for the charges was law enforcement's seizure of substances that were "confirmed" through "lab analysis" to be synthetic cannabinoids or analogues); *United States v. Ramos*, 814 F.3d 910, 912-13 (8th Cir. 2016) (explaining that the substance contained in a packet purchased from the defendant's smoke shop and labeled "100% Cannabinoid Free/DEA Compliant" was "later test[ed] at a DEA laboratory [and that the testing] revealed that the packet contained organic plant material sprayed with the Schedule I controlled substance XLR-11, a synthetic cannabinoid" and further noting that the government "also called expert witnesses to testify regarding the synthetic cannabinoids"); *State v. Rizal*, 389 P.3d 1006, 2017 WL 658708 **1, 10, 389 P.3d 1006 (Kan. Ct. App. 2017) (per curiam) (unpublished table decision) (explaining that "even the police did not know that the packages they confiscated contained naphthoylindole [(a synthetic cannabinoid)] until the crime lab tested the packages"); *State v. Goggin*, 333 P.3d 112, 114-15 (Idaho 2014) (explaining that in a case involving charges related to "synthetic cannabinoids," "[t]esting showed that one of these containers contained plant material treated with JWH-019 and the other

⁵We note that there was testimony that no alcohol was found in Defendant's home, but that fact does not dispose of the matter given that the district court found that Defendant's behavior could also be consistent with someone under the influence of "other substances."

two containers contained plant material treated with AM-2201” and that “[b]oth JWH-019 and AM-2201 are synthetic cannabinoids”); *State v. Toben*, 2014 SD 3, ¶¶ 5-6, 842 N.W.2d 647, 648-49 (S.D. 2014) (noting that after a controlled buy of substances labeled “non cannabinoid[,]” a state chemist analyzed the products and testified that “laypersons would not know the chemical structure of these substances: the determination requires a chemist, lab equipment, and expert knowledge”).

{35} We note that oftentimes, the process of proving a substance to be a synthetic cannabinoid involves not one but two steps. The first step, as illustrated in the cited cases, consists of scientifically testing the substance to determine what chemical compound it consists of or, more accurately, has been applied to it. In cases where the chemical makeup of the substance matches an enumerated chemical compound listed in a statute or regulation, no additional evidence establishing the substance as a “synthetic cannabinoid” may be needed. *See Goggin*, 333 P.3d 112, 114-15. In cases where the chemical identified is not specifically listed, however, a second step is required in which additional evidence is presented to try to establish that the chemical comes within the definition of “synthetic cannabinoids.” Typically, this comes in the form of expert testimony by a forensic scientist who can explain both the structure of the chemical compound and its effects, i.e., whether it fits within either a controlled class of chemicals or the neurochemical definition of “synthetic cannabinoids.” *See Salazar*, 2018-NMCA-030, ¶ 35; *State v. Beaudette*, 2012-0871 (La. App. 1 Cir. 7/13/12; 97 So. 3d 600, 602-603 (per curiam) (considering a challenge to a conviction for possession with intent to distribute synthetic marijuana (JWH-018) or its analogue (JWH-210) on the basis that neither JWH-210, the substance the defendant possessed, nor “analogues” were listed as “synthetic cannabinoids” at the time the defendant possessed it, and relying on the expert testimony of an organic chemist to conclude that it was

illegal to possess JWH-210 at the time the crimes allegedly occurred).

{36} Here, the State failed to complete even the first step necessary to proving that the “green, leafy substance” was a “synthetic cannabinoid.” The State introduced no evidence that scientific testing was ever done to determine what chemicals were present in or applied to the substance found on Defendant’s dresser, let alone the results of any such testing. Therefore, there can be no doubt that the State failed to prove that the “green, leafy substance” contained a chemical compound enumerated in Section 30-31-6(C)(19) or 16.19.20.65 NMAC. Absent any evidence of the chemical composition of the substance, it is impossible—and unnecessary—to consider whether the State met its alternative burden through the second step, i.e., by proving that the substance contained a chemical that falls either into one of the classes of chemicals listed in 16.19.20.65 NMAC, or within the neurochemical definition of “synthetic cannabinoid.” Because the record is devoid of evidence proving that the “green, leafy substance” was a “synthetic cannabinoid” as defined in the CSA, we hold that there is insufficient evidence to support Defendant’s conviction.

CONCLUSION

{37} Today’s opinion should not be construed as allowing those who illegally possess, manufacture, and/or distribute synthetic cannabinoids to flout the law and contribute to a growing scourge on society. Rather, it is a reminder to prosecutors that they bear the burden of proving every essential element of a crime charged beyond a reasonable doubt. The dangers presented by synthetic drugs, including synthetic cannabinoids, are widely recognized and understandably of considerable concern to legislatures and law enforcement officials. *See supra, Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)* (explaining that “[t]he effects of synthetic cannabinoids include severe agitation and anxiety, nausea, vomiting, tachycardia (fast, racing heartbeat), elevated blood pressure, tremors and

seizures, hallucinations, dilated pupils, and suicidal and other harmful thoughts and/or actions”). We also recognize that the regulation and the enforcement of laws aimed at controlling synthetic cannabinoids present a significant challenge because of the ongoing efforts of manufacturers to avoid government bans by constantly altering chemical formulas in order to fall outside of existing laws and regulations. *See Tiplick v. Indiana*, 43 N.E.3d 1259, 1261 (Ind. 2015) (explaining that “[r]egulation of ‘spice’ is a particularly challenging pursuit, as minor variants in chemical structure can place the substances beyond the reach of criminal statutes without diminishing their psychotropic effects”). New Mexico’s approach to regulating synthetic cannabinoids recognizes both the dangers and challenge of regulating synthetic cannabinoids as reflected by the comprehensive way in which such substances are banned, i.e., by individual chemical compound, classes of compounds, and neurochemical definition. Despite the Legislature’s clear intention to regulate these dangerous substances as broadly and comprehensively as possible, the State is not relieved of its burden of proving that a substance believed to be a synthetic cannabinoid is, in fact, such a substance.

{38} Because our Legislature has not criminalized and subjected to control under the CSA all “green, leafy substances,” the district court’s conviction of Defendant for possession of synthetic cannabinoids based on little more than Defendant’s possession of a “green, leafy substance” and two witnesses’ unconfirmed lay opinions that the “green, leafy substance” was a synthetic cannabinoid cannot stand. As such, we reverse Defendant’s conviction and remand this case to the district court for entry of a judgment of acquittal.

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

J. MILES HANISEE, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge
HENRY M. BOHNHOFF, Judge



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Positions

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.

Full Time Associate Attorneys

Miller Stratvert PA, with offices in Albuquerque, Santa Fe, Farmington and Las Cruces, is seeking 2 full time associate attorneys with 3-5 years' litigation experience. All qualified candidates should possess strong research and writing skills, have some courtroom experience, and be well-versed in all local, State and Federal civil rules and procedures. Miller Stratvert PA provides competitive compensation, a generous benefits package, and a congenial work-place environment. Please submit a letter of interest and resume to info@mstlaw.com.

Staff Attorney

The Southwest Women's Law Center is seeking a staff attorney with 1-5 years' experience who is passionate about advancing economic security and social justice issues for women and girls in New Mexico. The position will remain open until filled. Please mail your resume and a letter of interest to Southwest Women's Law Center, 1410 Coal Avenue, SW, Albuquerque, NM 87104. For a full job description, please visit our website at www.swwomenslaw.org. We are an equal opportunity employer.

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; Main: 303.830.0075 x143; Direct: 303.539.3184

Litigation Attorney Positions

DNA-People's Legal Services, Inc. is hiring entry-level and experienced Managing and Staff Attorney's in the State of Arizona and New Mexico. Positions available in Flagstaff, Keams Canyon, AZ and Farmington, NM, where you will enjoy the convenience of working near a metropolitan area while gaining valuable experiences in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices and live the experience on Navajo/Hopi reservation, apply quickly. Salary commensurate with experience. Send resume, cover letter, writing sample, and references to Hresources@dnalegalservices.org. These positions will fill up fast!

Full-Time Associate

New Mexico's leading Trusts and Estates law firm seeks hard-working, dedicated, full-time associate for its Litigation Team. The Litigation Team handles all aspects of fiduciary and beneficiary representation, contested guardianships and conservatorships and trust and estate litigation. The ideal candidate will possess dedication; integrity; strong work ethics; a strong sense of compassion; the ability to work independently on some projects and as a good team player on others; strong research and writing skills; and a desire to assist clients in navigating difficult cases and family crisis. LLM in estate planning is a plus, but not a requirement. Qualified candidates should be interested in long-term development of skills in this area of law. We look forward to developing a long-term and successful relationship with the ideal candidate. Please submit curriculum vitae and writing sample to abqlawfirmjob@gmail.com

Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is seeking applications for a full-time permanent Associate Staff Attorney or Assistant Staff Attorney. The position may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. Beginning salary for the Associate Staff Attorney position is limited to \$69,000, plus generous fringe benefits. Beginning salary for the Assistant Staff Attorney is limited to \$64,000, plus generous fringe benefits. Eligibility for the Associate Staff Attorney position requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant Staff Attorney position requires one year of practice or judicial experience plus New Mexico Bar admission. The Associate Staff Attorney or Assistant Staff Attorney position requires management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Application for Employment, along with a letter of interest, resume, law school transcript, and short writing sample of no more than 5-7 double-spaced pages, to Michelle Haubert, Interim Chief Staff Attorney, 237 Don Gaspar Ave., Santa Fe, New Mexico 87501, no later than 4:00 p.m. on Friday, October 19, 2018. The materials may also be submitted by email to coamrh@nmcourts.gov. To obtain the application please call 827-4875 or visit www.nmcourts.gov. The New Mexico Judicial Branch is an equal-opportunity 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 or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Attorney

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

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**Counseling Operations Manager
(FT-Term) #10106776
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The Second Judicial District Court is accepting applications for a Counseling Operations Manager. Under direction of the Director, manage the work and supervise the staff of Problem Solving Court Programs. Duties shall include, but aren't limited to: Management, oversight and technical writing of grants, implementing best practices and policies for Problem Solving Court Programs. Ensure all Problem Solving Court Programs are meeting best practices by following national drug court standards, provide clinical oversight for treatment services provided by community providers to ensure needs of participants are being met and are appropriate for target population. Provide recommendations and clinical insight for participants to assist programs in meeting treatment needs. Qualifications and a complete job description can be found at www.nmcourts.gov. SALARY: \$30.387 to \$37.984 hourly, plus benefits. Send application or resume supplemental form with proof of education to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested on the employment application will be rejected. Application and resume supplemental forms may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSES: October 24, 2018 at 5:00 p.m.

Trial Attorney

Trial Attorney wanted for immediate employment with the Ninth Judicial District Attorney's Office, which includes Curry and Roosevelt counties. Employment will be based in either Curry County (Clovis) or Roosevelt County (Portales). Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Email resume, cover letter, and references to: Steve North, snorth@da.state.nm.us.

Associate Attorney

The Santa Fe law firm of Katz Herdman MacGillivray & Fullerton PC is seeking a full-time associate to assist in all areas of our practice, including real estate, water law, estate planning, zoning, business, finance, employment, construction, and related litigation. Please send resumes to ctc@santafelawgroup.com. Please state "Associate Attorney Position" in email subject line.

**General Counsel:
Department of Health
(GOVEX, pay band 34,
approximately \$94,000)**

Job Summary: This position is for the General Counsel for the Department of Health. Position is responsible for management of the day to day operations of the Office of General Counsel (OGC) including the direct supervision of attorneys, paralegals and administrative staff. The management of staff includes evaluation of performance, and assessment of workload to assure deadlines and Department goals are met. The position also provides legal services and advice to the DOH Cabinet Secretary, executive and management staff and all programs and facilities. **Primary Responsibilities:** Plans, organizes and directs the day-to-day operations of the Office of General Counsel. Establishes and implements OGC policies and procedures, to ensure best practices in OGC. Supervises and advises OGC staff to assure that OGC is responsive to DOH management and staff requests for legal services. Identifies and/or maintains systems in the OGC to track legal requests and responses. Identifies manners to improve service and support effective communication of advice to DOH management and staff; Advises the Cabinet Secretary on a variety of legal issues. The position necessitates that the General Counsel become familiar with DOH responsibilities and authorities as an entity and as they specifically relate to the Cabinet Secretary; Advises the Secretary and Management on necessary policies, procedures, and other internal practices that would lower risk and improve how the DOH meets its legal and other obligations. Advises on consumer quality of care by evaluating that services provided by the Department are consistent with law, regulation, licensing, accreditation and other relevant standards; Supports efforts to comply with audit and budget requirements by advising Executive staff, preparing necessary audit letters and information and assuring OGC processes follow relevant procedures. Exercises fiscal responsibility in carrying out all facility responsibilities; Speaks on behalf of OGC and the Department and its agents in court, in public hearings and meetings, in legislative hearings, in the DOH Governing Board meetings, in Executive staff meetings and in other forums; Interacts with representatives of internal and external groups in a professional manner to advocate for the DOH and its interests including but not limited to, interaction with the Governor's office, with Risk Management, interaction with other state agencies, interaction with advocacy groups, interaction with legislators, interaction with Executive staff and others. **Requirements:** Juris Doctorate and License to Practice in the State of New Mexico. **Experience:** Fifteen (15) years in the practice of law, to include (5) years of supervision of staff and/or (5) years at an executive level is required for this position. Please submit your resume to Teresa Padilla @ teresa.padilla@state.nm.us

Paralegal

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

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

Paralegal

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Legal Executive Assistant – Santa Fe

Leger Law & Strategy, LLC in Santa Fe is seeking a full-time legal executive assistant to comprehensively assist the principal attorney of the firm and provide support to the other members of the office. This position requires a mastery of Microsoft Office programs (particularly Word, PowerPoint and Excel), a detail-oriented approach to proofreading, an ability to work with minimal supervision, excellent organizational skills, and a willingness/enthusiasm to learn new skills. Prior legal experience is welcomed, but not required. Pay ranges from \$18.00-\$25.00 per hour, depending on experience. To apply for this position, submit a cover letter, resume and three references to sue@legerlawandstrategy.com. No phone calls please.

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Thursday, October 25, 2018
Seven-Thirty to Ten-Thirty o'clock a.m.

Contact Amy Winn at 505.832.6363
or by email to winn@spencelawyers.Com
For more information

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