

# BAR BULLETIN

March 20, 2019 • Volume 58, No. 6



*Aspen in Snow 2*, by Valerie Fladger (see page 3)

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—SPECIAL INSERT—  
**2019 Board of Bar  
Commissioners**

# MODRALL SPERLING WELCOMES TWO RETURNING ATTORNEYS.



**Emil Kiehne**  
Shareholder



**Kevin Pierce**  
Of Counsel

Modrall Sperling is pleased to welcome two attorneys as they return to our firm.

Emil Kiehne has re-joined Modrall Sperling as a Shareholder. Based on the strength of his experience as an appellate lawyer, he was appointed to the New Mexico Court of Appeals, where he served from 2017 - 2018. Now back with our firm, Emil helps clients at all stages of the litigation process to maximize the potential of success on appeal. He received his B.A. in History, *cum laude*, from Harvard University, his M.A. in Political Philosophy, *sobresaliente cum laude*, from the Universidad de Navarra in Pamplona, Spain, and his J.D., *cum laude*, from Notre Dame Law School.

Kevin Pierce returns to Modrall Sperling as Of Counsel, focusing his practice in healthcare, employment, commercial litigation, products liability, professional liability, and personal injury. Kevin's experience includes serving as General Counsel and Chief Administrative Officer for one of New Mexico's largest child- and family-focused behavioral health providers. In that capacity, he advised on healthcare compliance issues, complex employment issues, contracting, and general governance. Kevin earned his B.A. in Political Science from University of New Mexico, graduating *summa cum laude*, and his J.D., *magna cum laude*, from University of New Mexico School of Law.

**PROBLEM SOLVING. GAME CHANGING.**



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[www.modrall.com](http://www.modrall.com)

**Albuquerque**

**Santa Fe**



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

505-797-6000 • 800-876-6227 • Fax: 505-828-3765  
address@nmbar.org • [www.nmbar.org](http://www.nmbar.org)

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## Meetings

### March

21

#### Public Law Section Board

Noon, Cuddy & McCarthy, Santa Fe

22

#### Cannabis Law Section Board

10 a.m., State Bar Center

22

#### Immigration Law Section Board

Noon, teleconference

26

#### Intellectual Property Law Section Board

Noon, Lewis Rocca Rothgerber Christie, Albuquerque

27

#### NREEL Section Board

Noon, teleconference

28

#### Elder Law Section Board

Noon, State Bar Center

28

#### Trial Practice Section Board

Noon, State Bar Center

30

#### Young Lawyers Division Board

10 a.m., State Bar Center

## Workshops and Legal Clinics

### March

27

#### Consumer Debt/Bankruptcy Workshop

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

### April

3

#### Divorce Options Workshop

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

3

#### Civil Legal Clinic

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

5

#### Civil Legal Clinic

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

12

#### Civil Legal Clinic

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

**About Cover Image and Artist:** Valerie Fladager was an avid photographer, painter and potter for many years. She took multitudes of images and selected the best for their striking design, light, color or whimsy and transformed them into paintings or augmented photographic images. Her paintings are done in pastels, watercolor and ink, and colored pencils. Her work has been sold through several galleries and fine art and craft venues. She was a member of the National League of American Pen Women. She passed away unexpectedly last December 2018.



# 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 an extensive legal research collection of print and online resources, including Westlaw, LexisNexis and HeinOnline. 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.

For more information:

Call: 505-827-4850

Email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov)

Click: <https://lawlibrary.nmcourts.gov>

### New Mexico Commission on Access to Justice

The next meeting of the Commission is April 12 from noon- 4 p.m. 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. The Commission will be engaged in a strategic planning process at this meeting and would like to strongly encourage interested members of the public and bar to attend. More information about the Commission is available at [www.accesstojustice.nmcourts.gov](http://www.accesstojustice.nmcourts.gov).

### Administrative Office of the Courts

#### Notice of Online Dispute Resolution

The New Mexico Judiciary plans to implement online dispute resolution in debt and money due cases. Courts piloting ODR are: Second Judicial District Court; Bernalillo County Metropolitan Court; district and magistrate courts in Silver City, Deming and Lordsburg; Bayard Magistrate Court in the Sixth Judicial District; and district and magistrate courts in Clovis and Portales in the Ninth Judicial District. The free service allows the parties to negotiate online to quickly resolve debt and money due cases without appearing in court. If a resolution is reached, the ODR system will prepare a stipulated settlement agreement and electronically file it in court. Participation in ODR is required. If no agreement is reached after 30 days, the case will move

## Professionalism Tip

With respect to parties, lawyers, jurors, and witnesses:

I will do my best to ensure that court personnel act civilly and professionally.

forward in court. The plaintiff's attorney or a self-represented plaintiff will receive an email notification to begin ODR after the defendant files an answer to the complaint. Additional information about ODR is available on the Judiciary's alternative dispute resolution web page: <https://adr.nmcourts.gov>.

### Second Judicial District Court Appointment of Judge Daniel E. Ramczyk

Gov. Michelle Lujan Grisham has announced the appointment of Daniel E. Ramczyk to fill the vacancy of Division VI of the Second Judicial District Court, effective March 18. Judge Ramczyk will be assigned Criminal Court cases previously assigned to Judge Briana H. Zamora. Attorneys and members of the public will be afforded an opportunity to exercise a peremptory challenge of the newly appointed judicial officer in accordance with the local and Supreme Court rules of criminal and civil procedure that applies to district courts.

### Third Judicial District Court Volunteer Attorneys

Self-Help Center in Need of Volunteers for Legal Clinics

The Self-Help Center at the Third Judicial District Court in Las Cruces seeks volunteer attorneys with specialties in any area of civil law to provide brief legal assistance at its award-winning monthly pro bono legal clinics. Every Wednesday, there is a legal clinic for pro se litigants with family law issues, and on the second and last Tuesday of each month there are clinics for pro se litigants with other civil legal issues. All clinics take place from 1-4 p.m. and are limited to maximum of ten clients per clinic. Volunteering for the clinics are an excellent way to contribute pro bono hours as part of the New Mexico Supreme Court's Access to Justice Initiative in the Third Judicial District. For more information and to volunteer, call or email Liz Vasquez, chief of the Self-Help Center, at 575-528-8399 or [lcrdexv@nmcourts.gov](mailto:lcrdexv@nmcourts.gov).

### Eight Judicial District Court Notice of Mass Case Reassignment

Due to the retirement of Judge Sarah C. Backus, Division II a mass reassignment of all Taos County Division II cases will be assigned to Judge Emilio J. Chavez, Division I effective March 1. Colfax and Union County cases in Division II will remain in Division II. All Union and Colfax County cases assigned to Judge Emilio J. Chavez, Division I will be reassigned to Division II (vacant). Taos County cases in Division I will remain in Division I. Upon appointment of a judge to Division II, all Division II cases will then be reassigned to the appointed judge. The assignments are pursuant to NMSC Rule 23-103. Parties who have not previously exercised their right to challenge or excuse will have ten days from March 27 to challenge or excuse Judge Emilio J. Chavez pursuant to NMRA 1-088.1.

### Eleventh Judicial District Court

#### Notice of Mass Reassignment

Under the authority of Rule 23-109 NMRA, the Chief Judge of the Eleventh Judicial District Court has directed a mass reassignment of cases in San Juan County effective Feb. 20 as follows:

1. All cases of every type pending in Division 4 (currently vacant) are reassigned to Division 6.
2. Cases pending in Division 6 are reassigned as follows:
  - a. Domestic cases are reassigned to Division 1, with the exception of two cases.
  - b. All other civil cases are reassigned to Division 4, with the exception of ten cases.
3. Probate cases pending in Division 1 are reassigned to Division 4, with the exception of eight cases. Division 1 is relocated to the District courthouse in Farmington at 851 Andrea Drive. Division 6 is relocated to the District courthouse in Aztec at 103 So. Oliver Dr. A list of the cases referred to herein that have been excepted from this mass reassignment is available on the court's website at <https://eleventhdistrictcourt.nmcourts.gov>. Parties who have not yet exercised a peremptory excusal in a case being reassigned in



this mass reassignment will have up to ten business days after March 6 to excuse the judge in the newly assigned division.

### **Bernalillo County Metropolitan Court Judicial Investiture Ceremonies**

Members of the legal community and the public are invited to attend the investiture of the Hon. Brittany Maldonado Malott, Division X; Hon. Felicia Blea-Rivera, Division XV; and Hon. David A. Murphy, Division XVI. The ceremony will be held at 5:15 p.m. on April 12 in the Bernalillo County Metropolitan Court Rotunda. Judges who wish to participate in the ceremony are asked to bring their robes and report to the first floor viewing room by 5 p.m.

### **STATE BAR NEWS 2019 State Bar of New Mexico Annual Awards Call for Nominations**

Nominations are being accepted for the 2019 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2018 or 2019. The awards will be presented during the 2019 Annual Meeting, Aug. 1-3 at Hotel Albuquerque at Old Town. View the award descriptions, previous recipients and nomination instructions at [www.nmbar.org/AnnualMeeting](http://www.nmbar.org/AnnualMeeting). The deadline for nominations is May 1. For more information, contact Kris Becker at 505-797-6038.

### **ADR Committee ADR Superpower Skills Workshop**

The ADR Committee invites State Bar members to a skills workshop for those who are new as well as for those who are experienced with the practice of ADR. It is an opportunity to identify and develop the core skills for success in facilitating communication, collaboration and constructive conflict management. Attendees will work in small groups, with a coach, to experience the profound and positive impact of skillful listening and acknowledgement. Join JoEllen Ransom, Jon Lee and Anne Lightsey from UNM Ombuds for Staff from noon-1 p.m. on April 25 at the State Bar Center for this free workshop. R.S.V.P. to Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org). Attendees are welcome to join the ADR Committee meeting from 11:30 a.m.-noon in advance of the presentation.

### **Appellate Practice Section Brown Bag Lunch with Judge Vanzi**

State Bar members are invited to a brown bag lunch discussion with Judge Linda M. Vanzi of the New Mexico Court of Appeals from noon-1 p.m. on March 29 at the State Bar Center. The Section's brown bag lunches are intended to create an opportunity for attorneys to learn more about the work of the Court. In 2004, Judge Vanzi was appointed to the Second Judicial District Court where she served in the civil division until joining the Court of Appeals in 2008. She is now the senior judge on the Court and the Section looks forward to having her at its first brown bag guest of the year. R.S.V.P. to Jazmine Ruiz at [jjr@arlterfirm.com](mailto:jjr@arlterfirm.com).

### **Access to Justice Fund Grant Commission Request for Proposals**

The State Bar of New Mexico Access to Justice Fund Grant Commission is pleased to announce that the 2019-20 grant process opened on Feb. 19 at 11 a.m. Applications are due no later than April 19, at noon. The Grant Commission shall be responsible for reviewing the applications and awarding grants to civil legal service organizations consistent with the current State Plan for the Provision of Civil Legal Services to Low Income New Mexicans. For more information on the application process, visit [www.nmbar.org/atjfundgrant](http://www.nmbar.org/atjfundgrant).

### **Board of Bar Commissioners Appointments**

The Board of Bar Commissioners will make appointments to the groups below. Qualified candidates should send a letter of interest and brief résumé by May 1 to Kris Becker at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765.

#### **Young Lawyer Delegate to ABA House of Delegates**

The BBC will make one appointment of a young lawyer delegate to the American Bar Association (ABA) House of Delegates (HOD) for a two-year term, which will begin at the conclusion of the 2019 ABA Annual Meeting in August and expire at the conclusion of the 2021 ABA Annual Meeting. The delegate must be willing to attend ABA mid-year and annual meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; how-

ever, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members wishing to serve as the young lawyer delegate to the HOD must have been admitted to his or her first bar within the last five years or be less than 36 years old at the beginning of the term; be an ABA member in good standing throughout the tenure as a delegate; and report to the NM YLD Board during the YLD Board's scheduled board meetings throughout the tenure as a delegate.

#### **DNA – People's Legal Services, Inc.**

The BBC will make two appointments to the DNA – People's Legal Services, Inc., Board for four-year terms. Active status attorneys in New Mexico may apply.

#### **Civil Legal Services Commission**

The BBC will make one appointment to the Civil Legal Services Commission for a three-year term. All members of the Commission must have experience with the civil legal matters affecting low-income persons. Active status attorneys in New Mexico may apply.

### **Commissioner Vacancy First Bar Commissioner District (Bernalillo County)**

A vacancy exists in the First Bar Commissioner District, representing Bernalillo County. The appointment will be made prior to the May 17 Board of Bar Commissioners meeting to fill the vacancy until the next regular election of Commissioners, and the term will run through Dec. 31, 2019. Active status members with a principal place of practice located in the First Bar Commissioner District are eligible to apply. The remainder of the 2019 Board meetings are scheduled for May 17, Aug. 1 (Hotel Albuquerque, in conjunction with the State Bar of New Mexico Annual Meeting), Oct. 25, and Dec. 11 (Santa Fe). Members interested in serving on the Board should submit a letter of interest and resume to Kris Becker, at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765, by April 15.

### **ATJ Fund Grant Commission Vacancy**

One vacancy exists on the State Bar of New Mexico ATJ Fund Grant Commission. The term for the position is for the remainder of 2019 along with two optional three-year terms. The ATJ Fund Grant Commission will solicit and review grant applications and award grants to civil legal services organizations consistent with the State Plan for the provision of civil legal

services to low income New Mexicans. Active status attorneys in New Mexico, not affiliated with a civil legal service organization which would be eligible for grant funding from the ATJ Fund, who are interested in serving on the Commission should send a letter of interest and brief resumé by April 15 to Kris Becker at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765.

## Minimum Continuing Legal Education

### New Phone Number

The Minimum Continuing Legal Education program has a new phone number. Members can contact MCLE at 505-797-6054, [mcle@nmbar.org](mailto:mcle@nmbar.org) or [www.nmbar.org/MCLE](http://www.nmbar.org/MCLE).

## New Mexico State Bar Foundation

### Call for CLE Proposals

The New Mexico State Bar Foundation Center for Legal Education invites all State Bar members; sections, divisions and committees; and voluntary bar members to submit proposals for CLE programs that could be presented at the State Bar Annual Meeting or at other times during the year. We are looking for hot topics in your areas of law. This year's annual meeting will be held Aug. 1-3 at Hotel Albuquerque in Old Town, Albuquerque. Breakout sessions will be one hour in length and 12 spots are available. Complete and submit this form <https://form.jotform.com/90175355209154> with a hot topic program in your area of law by close of business March 29.

## Public Law Section

### Accepting Award Nominations

The Public Law Section is accepting nominations for the Public Lawyer of the Year Award, which will be presented at the state capitol at 4 p.m. on May 3. Visit [www.nmbar.org/publiclaw](http://www.nmbar.org/publiclaw) to view previous recipients and award criteria. Nominations are due no later than 5 p.m. on April 5. Send nominations to Geraldine Garduno at [Geraldine.Garduno@state.nm.us](mailto:Geraldine.Garduno@state.nm.us). The selection committee will consider all nominated candidates and may nominate candidates on its own.

## New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- April 1, 5:30 p.m.  
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (The group normally meets the first Monday of the month.)
- April 8, 5:30 p.m.  
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- April 15, 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.

## Monitor Training

The NMJLAP will be hosting a monitor training for those interested in volunteering as a monitor or already serving as a monitor; Monitors are crucial in the NMJLAP Monitoring Program success as they are attorneys and judges who have lived experiences with recovery and mental health conditions. They have the desire to assist and support a peer who is going through a similar struggle. The second monitor training will take place at the State Bar Center on 11 a.m.-12 p.m., April 6. For more information or to sign up, contact Erica Candelaria at [ecandelaria@nmbar.org](mailto:ecandelaria@nmbar.org) or 505-797-6093.

## Committee Meeting

The NMJLAP will be having its second quarter Committee meeting at 10-11 a.m., on April 6, at the State Bar Center. All JLP Committee members are encouraged to attend. For those that cannot be there in person, a teleconference will be provided. Coffee and a continental breakfast will be provided. R.S.V.P. with Erica Candelaria at [ecandelaria@nmbar.org](mailto:ecandelaria@nmbar.org) or 505-797-6093 no later than April 2. For questions, contact Pam Moore at 505-797-6003 or [pmoore@nmbar.org](mailto:pmoore@nmbar.org).

## UNM SCHOOL OF LAW Law Library Hours Spring 2019

Jan. 14-May 11

### 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.

### Exceptions

March 10-17: During Spring Break the library will be open to the public from 8 a.m.-6 p.m.

### Reference

Monday–Friday	9 a.m.–6 p.m.
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## Tribal Law Journal 20th Anniversary Symposium

The *Tribal Law Journal* presents “20th Anniversary Symposium” entitled “Tribal Justice: Honoring Indigenous Dispute Resolution” with speakers Rep. Deb Haaland (Laguna) and Hon. Robert Yazzie (Navajo). The symposium will include a screening of the award winning documentary: *Tribal Justice*. Film panelists include Hon. Abby Abinanti (Yurok Tribe), Hon. Claudette White (Quechan Tribe) and local indigenous dispute resolution peacemakers. The program is at 11:30 a.m. (lunch at noon), on March 29 at the UNM School of Law. The program has been approved for 3.0 general and 1.0 ethics/professionalism credits by MCLE. For more information, email [chavezis@law.unm.edu](mailto:chavezis@law.unm.edu).

## OTHER BARS

### New Mexico Criminal Defense Lawyers Association

#### Capturing the Best Defense for Clients with Mental Health Issues: Advanced Strategies in Litigation

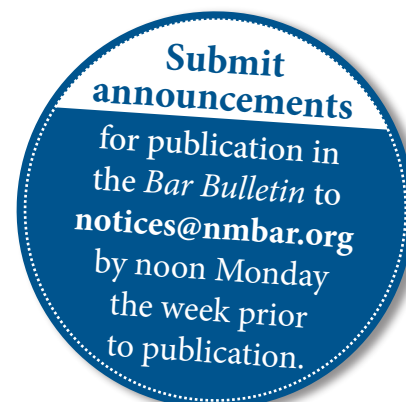
On March 29 NMCDLA will present “Capturing the Best Defense for Clients with Mental Health Issues: Advanced Strategies in Litigation”. Persons accused of crime face incredible difficulty in our justice system, doubly so when such persons are already struggling with mental illness. Learn how to deconstruct the prejudicial psychiatric language wielded by the prosecution; familiarize yourself with the good and bad changes to the new competency rules; understand differences between psychoses and how they relate to intent; advocate better for those with developing brains (children/young adults); and develop your client's history for use in raising insanity defenses. Visit [www.nmcdla.org](http://www.nmcdla.org) to register.

## Using Law Enforcement Techniques as a Sword and Shield

On March 29 NMCDLA will present "Using Law Enforcement Techniques as a Sword and Shield". If you've never had the opportunity to pick the brain of a New Mexico law enforcement instructor, now's your chance! Retired officer Craig Martin, of Martin's Consulting, will share the techniques taught for investigations, from interviews to evidence collection to report writing. He'll be joined by experienced trial attorney Mark Earnest and others. We'll conclude the CLE with an hour for any questions you may have for our presenters. Visit [www.nmcdla.org](http://www.nmcdla.org) to register.

## New Mexico Women's Bar Association Annual Henrietta Pettijohn Reception

The New Mexico Women's Bar Association invites members to attend its Annual Henrietta Pettijohn Reception Honoring the Hon. Nan Nash (Ret.) The 2019 Rising Star Award, honoring an outstanding young attorney, will be presented to: Jazmin Irazoqui-Ruiz. The event will start at 6 p.m. on April 18, at Hotel Albuquerque, 800 Rio Grande Blvd. NW. Join the Women's Bar Association for hors d'oeuvres, to recognize our honorees, and to support law student bar review scholarships. Ticket prices \$25 for students; \$50 for members; \$60 for non-members. Visit [www.nmwba.org](http://www.nmwba.org) to purchase tickets. There will be on-site child care provided for Women's Bar Association members. Contact Barbara Koenig at [bkoenig617@gmail.com](mailto:bkoenig617@gmail.com) by no later than April 11 to R.S.V.P. for childcare.



### How Are We Doing?

It is the goal of the *Bar Bulletin* and the State Bar of New Mexico staff to provide a relevant and useful publication for our members to read. You may direct feedback and suggestions at any time to [notices@nmbar.org](mailto:notices@nmbar.org) or *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.



# Legal Education

## March

- |  |  |  |
|--|--|--|
| <p>21    <b>Appraisals in Commercial Real Estate Finance and Development</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p>26    <b>Abuse and Neglect Case in Children's Court</b><br/>3.0 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                       | <p>28    <b>Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                   |
| <p>21    <b>2018 Probate Institute</b><br/>6.5 G, 1.0 EP<br/>Webcast/Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p>27    <b>A 2018 Administrative Law Institute</b><br/>5.0 G, 1.0 EP<br/>Webcast/Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                       | <p>28    <b>Navigating Changes to the Adult Guardianship and Conservatorship Statutes and Rules</b><br/>5.5 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p>21    <b>Immigration Law and General Civil Practice: Representing Clients in and Age of Increased Enforcement (2018)</b><br/>5.5 G, 1.5 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p>27    <b>Immigration Law: Assisting Human Trafficking Survivors (2018)</b><br/>2.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>             | <p>28    <b>The Fear Factor: How Good Lawyers Get Into Ethical Trouble (2018)</b><br/>3.0 EP<br/>Webcast/Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  |
| <p>21    <b>A Practical Approach to Indian Law: Legal Writing, 2018 Update and the Ethics of Practicing Law (2018)</b><br/>2.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>      | <p>27    <b>Immigration Law: U-Visa Training (2018)</b><br/>1.0 G, 0.5 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                           | <p>28    <b>2018 Mock Meeting of the Ethics Advisory Committee</b><br/>2.0 EP<br/>Webcast/Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                 |
| <p>21    <b>Advanced Mediation Skills Workshop (2018)</b><br/>3.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p>27    <b>Recent Developments in Civil Procedure (2018)</b><br/>2.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                             | <p>28    <b>2018 Real Property Institute</b><br/>5.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p>22    <b>Drafting Indemnity Agreements in Business and Commercial Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p>27    <b>2018 Health Law Symposium</b><br/>5.5 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p>28    <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>TWebcast/ Live Seminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                |
| <p>26    <b>Children's Code: Delinquency Rules, Procedures and the Child's Best Interest</b><br/>1.5 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                       | <p>27    <b>Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p>29    <b>Ethics in Drafting Claims</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |

*CLE Calendar continues  
on page 11.*

## CALL FOR NOMINATIONS

# STATE BAR OF NEW MEXICO 2019 *Annual Awards*

Nominations are being accepted for the **2019 State Bar of New Mexico Annual Awards** to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2018 or 2019. The awards will be presented during the 2019 Annual Meeting, Aug. 1-3 at Hotel Albuquerque at Old Town. Nominees may be nominated for more than one award category. Previous recipients for the past three years are listed below. To view the full list of previous recipients, visit [www.nmbar.org/Awards](http://www.nmbar.org/Awards).

### { Distinguished Bar Service Award–Lawyer }

Recognizes attorneys who have provided valuable service and contributions to the legal profession and the State Bar of New Mexico over a significant period of time.

*Previous recipients: Ruth O. Pregenzer, Scott M. Curtis, Hannah B. Best*

### { Distinguished Bar Service Award–Nonlawyer }

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

*Previous recipients: Jim Jackson, Cathy Ansheles, Tina L. Kelbe*

### { Justice Pamela B. Minzner\* Professionalism Award }

Recognizes attorneys and/or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

*Previous recipients: Charles J. Vigil, Hon. Elizabeth E. Whitefield, Arturo L. Jaramillo*

\*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

### { Outstanding Legal Organization or Program Award }

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

*Previous recipients: Family Support Services Program, Young Lawyers Division Wills for Heroes Program, Self Help Center at the Third Judicial District Court*

### { Outstanding Young Lawyer of the Year Award }

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

*Previous recipients: Shammara Haley Henderson, Spencer L. Edelman, Denise M. Chanez*

### { Robert H. LaFollette\* Pro Bono Award }

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

*Previous recipients: Susan E. Page, Stephen C. M. Long, Billy K. Burgett*

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\*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

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### { Justice Seth D. Montgomery\* Distinguished Judicial Service Award }

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar; generally given to judges who have or soon will be retiring.

*Previous recipients: Justice Charles W. Daniels,  
Judge Michael D. Bustamante, Justice Richard C. Bosson*

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\*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

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A letter of nomination for each nominee should be sent to Kris Becker, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email [kbecker@nmbar.org](mailto:kbecker@nmbar.org). Please note that we will be preparing a video on the award recipients, which will be presented at the awards ceremony during the Annual Meeting. Please include in the nomination letter the names and contact information of three or four individuals who would be willing to participate in the video project.

### Deadline for Nominations: May 1

For more information or questions, please contact Kris Becker at 505-797-6038.





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| <p><b>29 Making Your Case with a Better Memory</b><br/>6.0 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>29 Capturing the Best Defense for Clients with Mental Health Issues: Advanced Strategies in Litigation</b><br/>6.0 G<br/>Live Seminar, Albuquerque<br/>New Mexico Criminal Defense<br/>Lawyers Association<br/>www.nmcdla.org</p> | <p><b>29 Using Law Enforcement Techniques as a Sword and Shield</b><br/>6.0 G<br/>Live Seminar, Albuquerque<br/>New Mexico Criminal Defense<br/>Lawyers Association<br/>www.nmcdla.org</p> |
| <p><b>29 Tribal Law Journal 20th Anniversary Symposium</b><br/>3.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>The UNM School of Law<br/>chavezis@law.unm.edu</p> |   |  |

## April

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|---|---|---|
| <p><b>2 Drafting Sales Agreements: UCC Issues and More</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>17 Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics (2017)</b><br/>3.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>26 2019's Best Law Office Technology, Software and Tools- Improve Client Service, Increase Speed and Lower Your Costs</b><br/>5.0 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>11 Due Diligence in Business Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>17 Criminal Rules Hot Topics (2018)</b><br/>2.5 G, 0.5 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>26 Undue Influence and Duress in Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>12 Fifth Annual Symposium on Diversity and Inclusion</b><br/>5.0 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                | <p><b>18 How to Practice Series: Estate Planning</b><br/>5.0 G, 2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                              | <p><b>26 Veterans disability Law Bootcamp</b><br/>5.7 G<br/>Live Seminar, Albuquerque<br/>Vet Defender</p>  |
| <p><b>17 Speaking to Win: The Art of Effective Speaking for Lawyers (2018)</b><br/>5.0 G, 1.0 EP<br/>Webcast/Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>18 Beneficiary Designations in Retirement Accounts: Protecting a Lifetime of Savings</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  | <p><b>26 Surviving White Collar Cases – Prosecution and Defense Perspectives</b><br/>5.5 G, 1.5 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>17 29th Annual Appellate Practice Institute (2018)</b><br/>5.5 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                           | <p><b>19 Lawyer Ethics and Investigations for and of Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>26 Surviving White Collar Cases – Prosecution and Defense Perspectives</b><br/>5.5 G, 1.5 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
|   | <p><b>23 Mother Nature and Leases: Drafting Issues to Protect Against Storm and Other Damage</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                |   |



Modrall Sperling is pleased to welcome two attorneys as they return to the firm.

**Emil Kiehne** has re-joined Modrall Sperling as a shareholder. Based on the strength of his experience as an appellate lawyer, he was appointed to the New Mexico Court of Appeals, where he served from 2017 - 2018. Now back with the firm, Kiehne helps clients at all stages of the litigation process to maximize the potential of success on appeal.

Named a Tenth Circuit Litigation Star in *Benchmark Appellate Litigation* and a New Mexico Future Star by *Benchmark Litigation*, Kiehne has also received recognition from *Southwest Super Lawyers*®. He received his B.A. in History, cum laude, from Harvard University, his Master's degree in Political Philosophy, *sobresaliente cum laude*, from the Universidad de Navarra in Pamplona, Spain, and his J.D., *cum laude*, from Notre Dame Law School.



**Kevin Pierce** returns to Modrall Sperling as of counsel, focusing his practice in health-care, employment, commercial litigation, products liability, professional liability, and personal injury. Pierce's experience includes serving as general counsel and chief administrative officer for one of New Mexico's largest child- and family-focused behavioral health providers. In that capacity, he advised the company on healthcare compliance issues, complex employment issues,

contracting, and general governance. He has been recognized as a Southwest Rising Star by *Southwest Super Lawyers*®. Pierce earned his B.A. in Political Science from University of New Mexico, graduating *summa cum laude*, and his J.D., *magna cum laude*, from University of New Mexico School of Law.



**Charles J. Vigil**, president and managing director of the Rodey Law Firm, has been elected to serve on the Board of Governors of the American Bar Association. A member of Rodey's Litigation Department, Vigil practices in the areas of labor and employment law, commercial litigation, insurance coverage/bad faith and products and professional liability defense.

**Lorena Hutton** has joined Brownstein Hyatt Farber Schreck as an associate in the Albuquerque office. Hutton brings deep skills in legal research and a keen understanding of court procedure to her litigation practice at Brownstein. Before Brownstein, Hutton most recently served as a judicial law clerk for Judge Henry M. Bohnhoff of the New Mexico Court of Appeals, where she was responsible for drafting appellate opinions and assisting with other drafting and research assignments. She was also previously a judicial extern for Judge Bobby Baldock of the Tenth Circuit Court of Appeals and Judge James Browning of the U.S. District Court for the District of New Mexico as well as an intern in Sen. Patty Murray's office in Spokane, Washington. While in law school, she was the note and comment editor of the *Arizona Journal of International and Comparative Law* and worked as conference coordinator for the Global Mining Law Conference. She was also a Supreme Court teaching fellow and a student attorney for the Veterans' Advocacy Law Clinic.

The **Cuddy & McCarthy LLP** law firm, with offices in Albuquerque and Santa Fe, is proud to announce a new area of practice and a new partner. Cuddy & McCarthy is now offering corporate and institutional internal investigations and independent risk assessment ranging from discrimination complaints, patterns of organizational dysfunction, whistleblower claims, conflict of interest issues, organized labor challenges and claims of executive misfeasance or malfeasance. **David A. Maestas** is leading our new practice area after a decades long career at a Department of Energy national laboratory, a Fortune 500 telecommunications corporation, private law practice and the New Mexico Attorney General's Office. Services will be offered in N.M., Colorado and Washington.

## In Memoriam

**Richard V. Gose**, age 91 of Dewey, Ariz., passed away on Jan. 12 Prescott, Ariz.

**Robert Bussian** passed away on Dec. 1, 2018, in Houston, Texas. He was 92 years old. Born in Chicago, IL. Bussian enlisted in the Army Air Corps in 1944 and served in Europe in 1945 and 1946. He was a graduate of the University of Colorado, the University of Colorado School of Law and New York University School of Law for his Master's Degree in Taxation. Bussian began his law career in Roswell. He moved to New York where he served as vice president and general counsel of The American Independent Oil Company and in that same position for Aminoil, Inc. in Houston. Following his retirement from Aminoil, Bussian was of counsel for the law firm Haynes and Boone and practiced later as an international and domestic arbitrator concentrating in oil and

gas law. He enjoyed golf and travel and will be missed very much by his family and many friends. Bussian is survived by his wife of 54 years, Sally; his son, David Bussian; daughter and son-in-law, Jenny and Jay Kempner, son and daughter-in-law, Jim and Anne Bussian; grandchildren, Poppy and Grace Bussian, Jack, Robert, and Mary Kempner, and Sally and Mary Jane Bussian; and numerous nieces and nephews.

# In Memoriam

www.nmbar.org

**Joseph Byrne, Jr.** was born on June 21, 1923. He passed away on June 20, 2018, at Atterdag Village where he has lived since July 2012. He born at St. Vincent's Hospital in Santa Fe. His parents were Joseph Byrne and Nelle (Laird) Byrne. He had two brothers, Verne and Bill, and two sisters, Lillian (Bunny) and Lydia; Byrne was the last surviving sibling. Byrne was raised on a small ranch 18 miles southwest of Santa Fe and went to public schools and graduated Valedictorian in 1940 at the Santa Fe High School. After graduating, he attended Stanford University and in 1944 received a BS in Physical Science with Distinction and then went to MIT for his graduate work and received a Doctor of Science in Chemical Engineering. Then he was appointed assistant professor at MIT and taught for three years. He was the director of Oak Ridge National Laboratory Engineering Practice School at Lackawanna, NY at Bethlehem Steel. While he was at college, he developed a love of flying and owned four airplanes in his lifetime. After teaching, he went to work at Union Oil Company (later Unocal) of California at Oleum Refinery in San Francisco, Cali. in Sept. 1953. While there, he met his future wife Nancy Jean Jennings and was married in April 23, 1955 and were together until her death on May 11, 2012. Byrne and Nancy had three children, Laurie Nelle (deceased on Oct.16, 2009 from ALS), Elizabeth (Lisa) Anne (two grand children Mary Elisabeth Stewart and Christopher Ross Stewart), and John Laird. Joe excelled at Unocal and was moved to main headquarters in Los Angeles, Cali. and was promoted to vice president, Western Region Marketing in Sept. 1968. During his career at Union Oil he retained the title of vice president until retirement at the age of 65. At that time, Byrne was vice president, human resources. After retiring, Byrne fulfilled a longstanding desire to attend law school and he received his Doctor's in Jurisprudence through Southwestern University's 2-year SCALE program. After graduation, he passed the California Bar and was sworn in as an attorney in Dec. 1990; he then passed the New Mexico Bar and was sworn in May of 1991. As an attorney he used his knowledge for volunteer work and also helped at teen court. He continued to live at his home Santa Ynez until his wife's death and then moved to Atterdag Village where he remained until his death.

**Frank Nevin Cremer Jr.**, 56, of Midland, Texas, passed away on May 1, 2018. Cremer was born on Aug. 2, 1961, to Fran and Cremer Sr. in San Francisco, Cali. Cremer was raised all over the world from San Francisco, to Germany, to West Point due to his father's position in the U.S. Army. The Cremer family eventually settled in El Paso, Texas when Cremer was a sophomore in high school. Cremer graduated from Burgess High School and went on to attend Baylor University to study geology and law. Cremer met the love of his life Kimberley while attending Baylor and they were married in 1984. Cremer and Kim moved to Midland shortly after, started a family, and have lived there since 1985. In addition to practicing law with his beloved partners and associates at Davis, Gerald & Cremer, in Midland, Cremer was a loving father and husband. Cremer loved being with his family. He loved taking his children camping with the YMCA Indian Guides and Princesses, coaching little league sports, and attending orchestra and band concerts. Cremer also loved his dogs and could often be seen sitting in the front yard in his red chairs watching the dogs run around entertaining the neighbors and their children. Cremer loved attending any live sporting event or music event including MOSC. He also enjoyed cooking and all the things that made life rich, including his grandmother's lasagna. Cremer was

also a devoted philanthropist. He was passionate about serving High Sky Children's Ranch which is an organization that helps abused and neglected children. In addition to his time spent with High Sky, Cremer was a faithful member of First Baptist Church serving as a Deacon, Sunday School director, and a member of the church orchestra. Cremer is survived by his mother, Fran, his sisters, Cathy Larson and Lori Anaya, his wife, Kim, his sons, Paul and Joey, his daughter, Abbye, his daughter-in-law, Isabella as well as four nieces and nephews. He is preceded in death by his father, Cremer Sr.

With deep sorrow the partners at Cuddy & McCarthy, LLP announce the death of **C. Emery (Buck) Cuddy, Jr.** on Feb. 13. He is survived by his wife, Martha Davis; daughters, Erin Foy Cuddy and Reese Foy Cuddy; stepdaughters, Sarracina Littlebird, Kay Tredwell, Gracie Schild; and stepson Victor Tredwell. Cuddy was born and raised in Virginia and earned his undergraduate and law degrees at the University of Virginia. Cuddy moved to Santa Fe in 1969 and started his career as a law clerk for the N.M. Supreme Court. He served as General Counsel for the then N.M. State Department of Education. In 1974, Cuddy entered private practice with the law firm of White, Koch, Kelly & McCarthy; in 1981, he became a founding partner of Simons, Cuddy & Friedman, and later a partner at Cuddy & McCarthy. His law practice focused on the representation of school boards and school districts throughout New Mexico. He was the founding President of the New Mexico Association of School Board Attorneys and served on the Board of Directors of the National School Boards Association's Council of School Attorneys. In 1987-1988, he served as President of the New Mexico State Bar. Cuddy served as visiting professor of the school of law at the University of New Mexico, College of Education. He authored several articles for the NSBA Council of School Attorneys and was a frequent lecturer in education law, personnel law, and civil rights law in the public sector, and was involved in much of the significant reported education and civil rights litigation in New Mexico. Cuddy retired from Cuddy & McCarthy in 2011. Everyone at Cuddy & McCarthy extends their heartfelt condolences to his wife Martha and family.

**Jim Hart** Oct.7, 1932-Feb. 7 passed away , after a lengthy battle with Parkinson's Disease, James Frederick Hart took his infectious laugh and vibrant smile to his next gathering of amigos. With his warm personality and joy for life, he was always the life of the party. He loved the Cardinals baseball team, the Dallas Cowboys and never met a 'pun' he didn't like! He enjoyed a variety of outdoor activities, from tennis to scuba diving to skiing to camping. From traveling to board games and Frank Sinatra ranked high among his favorites. He is now playing dominos with a higher authority and listening to his brother's fishing stories. Hart was born in Des Moines Iowa, Oct. 7, 1932, to Irene and Byron Hart. Hart grew up in Little Rock, AK. He attended Little Rock High School where he excelled in academics and sports, especially basketball. He attended Hendrix College his freshman year on a basketball scholarship. He graduated from the University of Arkansas Law School in 1955. He was a member of Kappa Sigma Fraternity. In 1955 he was admitted to the Arkansas Bar Association, later becoming a member of the Texas (1963) and New Mexico (1967) Bar Associations. In 1960 he was admitted to the U.S. Supreme Court, the U.S. Tax Court and the Military Court of Appeals. He



became a member of the Texas Bar in 1963 and the New Mexico Bar in 1967. In 1956, Hart was commissioned as a First Lieutenant in the U.S. Air Force, serving as a Staff Judge Advocate General for four years. He retired from the Air Force Reserves as a Major. In 1967 Hart moved to Clovis to practice law in partnership with Lyle Walker and John Laflin. For many years he practiced tax and estate law with friend and associate Max Best. He carried his strong faith into adulthood as an active and dedicated member of numerous church communities, including serving as an deacon in the Presbyterian Church. Hart is survived by his wife, Sharon of Clovis, daughter Silky Hart Michero, McKinney, Texas (Tom), son Jim Hart, Jr., son Brett Hart, Seattle, WA (Michelle), Nicole Tate Hahn, Clovis, (Richard), Jason Tate, Chandler, AZ (Kari), six grandchildren, Ethan Gallegos, Dalton Hahn, Abigail Hahn, Dane Tate, Reese Tate, and Isabel Burris, sister-in-law, Gloria Hart, Dallas, TX, and numerous nieces and nephews. He was predeceased by his parents and brother, Richard M. Hart.

**Nelson Henderson's** 78 years here on earth were a blessing to so many, and he has begun eternity in Heaven, a destination promised in Romans 10:12-13, "For there is no difference between Jew and Gentile â€" the same Lord is Lord of all and richly blesses all who call upon him, for Everyone who calls upon the name of the Lord will be saved." If you knew Bill as a youngster in Amarillo, Texas, you would have admired his steadfast climb up the Scout ladder to the highest rank of Eagle Scout. If you knew him at Highlands University in Las Vegas, N.M., you would have admired him as the President of the Student Senate his senior year and enjoyed his performances as he participated in dramatic and musical productions and achieved a Bachelor of Arts Degree. If you played handball or racquetball with him you probably got beat, and if you played golf with him, you might be surprised to know that he owns trophies for shooting Three Holes in One! And after six years in Management at the Manned Spacecraft Center in Houston and earning a Juris Doctor degree at the University of Utah School of Law, you would have admired his honorable and genteel manner of practicing law in Albuquerque, during which time he wrote three books important to the practice of Law â€" Law Office Management, New Mexico Probate Manual and New Mexico Divorce Manual. If you received pre-marital or marriage counseling from Bill and Elaine, you will remember that Bill made certain to leave you with a relationship with Jesus Christ if you didn't already have one. William Theodore (Ted) Henderson remembers his Dad as fisherman, coach, a member of the lawyers "Bad Guys" softball team, outdoorsman, athlete and Esquire. Darla Marie (Darla) Henderson believes her Dad's courage, sense of humor and witticisms were beyond compare. She will miss playing gin rummy with him but will hold forever in her heart their special bond. Donald Joseph Henderson (Don) especially admires his Dad for following Christ and being an honest lawyer who was appointed guardian ad litem to dozens of children. Bill's spiritual journey began in 1980 when he surrendered his life to Christ, a decision that changed his life. He lived the remainder of his years committed to Jesus Christ and became a Biblical scholar. His marriage to Elaine and acceptance of Dad-hood to William Wesley and Marshall McLaury Monroe on May 21, 1981, was the beginning of a 39 year excursion into a beautifully blended family adventure. He embraced Granddad-hood for Jordan Aaron Henderson, Skylar Liam Henderson, Brooke Henderson, and Levi William Henderson, and Papa-hood for Jeremy Jacob, Spencer Salomon and Benjamin Bartlett Monroe of Austin, TX and Mason McLaury, Graham Geoffrey and Hannah Elaine Monroe of Corrales.

**Frederick Turner Hensley** was born Oct. 11, 1936, in Portales, and died Oct. 1, 2018 in Austin, Texas, where he had been living for the past few years. Hensley was a 1954 graduate of Portales High School where he played football and basketball. He began his college career at Oklahoma State University and joined Sigma Nu Fraternity. His education was interrupted by a car accident, and he completed his bachelor's degree in accounting at Eastern New Mexico University in 1960. He went on to study law at the University of New Mexico in 1961. Hensley completed his law degree at Chicago-Kent College of Law in 1964. While in law school, he was a member and president of the Delta Theta Phi legal fraternity and president of Chicago-Kent College of Law Student Bar Association from 1963 to 1964. Following his graduation, Hensley moved to Santa Fe, where he was court clerk for Justice David Chavez, Jr. in the New Mexico Supreme Court. From 1966 to 1967 he was special assistant attorney general for the Office of the State Engineer in Santa Fe. When his father was appointed as Chief Justice of the Court of Appeals, Hensley returned to Portales to enter private practice. In 1972 he was elected as district attorney for the Ninth Judicial District, and he served in that capacity until he was elected as District Judge in 1976. Judge Hensley was a graduate of the National College of District Attorneys in Houston, Texas. He also completed courses at the National Judicial College in Reno, N.V. and served as a faculty advisor in the summer of 1983. Hensley also taught criminal law courses for a number of years at both Clovis Community College and Eastern New Mexico University. Hensley retired in 1996 after serving as District Judge for two decades, but he continued to act as Judge Pro Tem and also oversaw domestic violence cases for several more years. He retired fully in the early 2000's. On Aug. 15, 1964 in Chicago, IL, Hensley married Linda Mueller. The couple has three children. For many years Hensley served as Sunday School teacher and board member for Living Stones Community Nazarene Church in Clovis. Hensley was a member of Rotary International and served as President of the Portales Rotary Club in 1969. He was also very active with the United Way and the American Cancer Society. Hensley was an avid runner and handball player. Hensley is survived by his wife of 54 years, Linda, of Austin, TX; his three children, Susan (Tom) Stone of Austin, Texas, Amy (Jack) Ingram of Austin, TX, and Rick (Shelly) Hensley of Franktown, CO; eight grandchildren, Olivia, Charlie, and Will Stone, Ava, Eli, and Hudson Ingram, and Hagan and Cate Hensley; and two brothers, Jackson Hensley of Springfield, IL and Bill Hensley of Albuquerque, NM. He was preceded in death by both of his parents.

# 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 March 1, 2019

### PUBLISHED OPINIONS

A-1-CA-36833	State v. H Hildreth Jr	Reverse/Remand	02/27/2019
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### UNPUBLISHED OPINIONS

A-1-CA-37456	R Mills v. Bancroft & Son's Trucking	Affirm	02/25/2019
A-1-CA-37470	State v. S Herman	Affirm	02/25/2019
A-1-CA-36193	State v. A Manzanares	Reverse/Remand	02/26/2019
A-1-CA-36213	Wells Fargo v. D Ramirez	Reverse/Remand	02/26/2019
A-1-CA-37240	CYFD v. Franklin C	Affirm	02/26/2019
A-1-CA-37579	M Lucero v. Los Alamos County	Affirm	02/26/2019
A-1-CA-37537	B Franklin v. State of NM	Affirm	02/27/2019
A-1-CA-37374	CYFD v. Daniel O	Affirm	02/28/2019

## Effective March 8, 2019

### PUBLISHED OPINIONS

A-1-CA-36122	State v. M Benally	Reverse/Remand	03/06/2019
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### UNPUBLISHED OPINIONS

A-1-CA-34592	State v. K Vigil	Affirm	03/04/2019
A-1-CA-37326	CYFD v. Veronica G.	Affirm	03/04/2019
A-1-CA-37329	M. Grano v. RKI	Dismiss	03/04/2019
A-1-CA-37494	El Castillo v. G Martinez	Affirm	03/04/2019
A-1-CA-37536	B Franklin v. C Bearden	Affirm	03/04/2019
A-1-CA-35508	State v. R Fuentes	Dismiss	03/05/2019
A-1-CA-37686	State v. T Lewis	Affirm	03/06/2019
A-1-CA-35099	State v. J Gallegos	Affirm	03/07/2019
A-1-CA-35560	State v. W Martinez	Affirm	03/07/2019
A-1-CA-35827	State v. T Cheung	Reverse	03/07/2019
A-1-CA-36672	State v. P Joe	Affirm	03/07/2019

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 ADDRESS AND/OR TELEPHONE CHANGES

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# Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective March 20, 2019

## PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

*Please see the summary of proposed rule amendments published in the March 6, 2019 issue of the Bar Bulletin. The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for the proposed rule amendments is April 3, 2019.*

## RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2018 NMRA:

Effective Date

### Rules of Civil Procedure for the District Courts

1-003.2	Commencement of action; guardianship and conservatorship information sheet	07/01/2018
1-004.1	Guardianship and conservatorship proceedings; process	01/14/2019
1-047	Jurors	12/31/2018
1-079	Public inspection and sealing of court records	07/01/2018
1-079.1	Public inspection and sealing of court records; guardianship and conservatorship proceedings	07/01/2018
1-088.1	Peremptory excusal of a district judge; recusal; procedure for Exercising	03/01/2018
1-104	Courtroom closure	07/01/2018
1-140	Guardianship and conservatorship proceedings; mandatory use forms	01/14/2019
1-141	Guardianship and conservatorship proceedings; determination of persons entitled to notice of proceedings or access to court records	07/01/2018
1-142	Guardianship and conservatorship proceedings; proof of certification of professional guardians and conservators	07/01/2019

### Rules of Procedure for the Probate Courts

1B-101	Scope of rules; probate court jurisdiction; title; citation form	12/31/2018
1B-102	Probate definitions	12/31/2018
1B-201	Commencement of a probate proceeding	12/31/2018
1B-202	Probate court pleadings; identification of party and lawyer	12/31/2018
1B-203	Notice of minors or persons under legal disability	12/31/2018
1B-204	Use of approved probate forms	12/31/2018
1B-205	Unsworn affirmations under penalty of	

perjury	12/31/2018	
1B-301	Probate court forms; short title; limited purpose of forms; cautions regarding use of forms	12/31/2018
1B-302	General instructions for probate forms	12/31/2018
1B-303	General instructions for probates (no will)	12/31/2018
1B-304	Explanation of forms and how to complete; specific steps (no will)	12/31/2018
1B-305	General instructions for probates (will)	12/31/2018
1B-306	Explanation of forms and how to complete; specific steps (will)	12/31/2018
1B-401	Notice; filing required	12/31/2018
1B-501	Inventories and accountings	12/31/2018
1B-601	Closing probate; verified statement	12/31/2018
1B-602	Compensation	12/31/2018
1B-701	Transfer from probate court to district court	12/31/2018

### Rules of Civil Procedure for the Magistrate Courts

2-102	Conduct of court proceedings	12/31/2018
2-114	Courtroom closure	12/31/2018
2-202	Summons	12/31/2018
2-603	Jurors	12/31/2018

### Rules of Civil Procedure for the Metropolitan Courts

3-102	Conduct of court proceedings	12/31/2018
3-603	Jurors	12/31/2018

### Civil Forms

4-602D	Juror questionnaire privacy and destruction certification	12/31/2018
4-950	Tribal court order for initial involuntary commitment of an adult for mental health evaluation and treatment not to exceed 30 days	12/31/2018
4-992	Guardianship and conservatorship information sheet; petition	07/01/2018
4-993	Order identifying persons entitled to notice and access to court records	07/01/2018
4-994	Order to secure or waive bond	07/01/2018
4-995	Conservator's notice of bonding	07/01/2018
4-995.1	Corporate surety statement	07/01/2018
4-996	Guardian's report	07/01/2018
4-997	Conservator's inventory	07/01/2018
4-998	Conservator's report	07/01/2018
4-999	Notice of hearing and rights	10/15/2018

## Probate Court Forms

4B-101	Opening and closing a probate court case (flow chart)	12/31/2018
4B-201	Affidavit of poverty and indigency	12/31/2018
4B-202	Order allowing free process	12/31/2018
4B-301	Application for informal appointment of personal representative (no will)	12/31/2018
4B-302	Application for informal probate of will and for informal appointment of personal representative (will)	12/31/2018
4B-303	Order of informal appointment of personal representative (no will)	12/31/2018
4B-304	Order of informal probate of will and appointment of personal representative	12/31/2018
4B-305	Acceptance of appointment as personal representative (no will) (will)	12/31/2018
4B-306	Letters of administration (no will)	12/31/2018
4B-307	Letters testamentary (will)	12/31/2018
4B-401	Notice of informal appointment of personal representative	12/31/2018
4B-402	Proof of notice	12/31/2018
4B-501	Notice to creditors by publication and notice to creditors by written notice (mailing or other delivery)	12/31/2018
4B-503	Withdrawn	12/31/2018
4B-504	Withdrawn	12/31/2018
4B-601	Inventory	12/31/2018
4B-602	Accounting	12/31/2018
4B-701	Verified closing statement of the personal representative	12/31/2018
4B-702	Verified small estate closing statement of the personal representative	12/31/2018
4B-801	Proof of authority	12/31/2018
4B-802	Certificate acknowledging receipt of documents related to proof of authority	12/31/2018
4B-901	Application for informal appointment of special administrator	12/31/2018
4B-902	Order appointing special administrator	12/31/2018
4B-903	Acceptance for appointment of special administrator	12/31/2018
4B-904	Letters of special administration	12/31/2018
4B-1001	Order transferring case from probate court to district court	12/31/2018

## Rules of Criminal Procedure for the District Courts

5-103.2	Electronic service and filing of pleadings and other papers	01/14/2019
5-123	Public inspection and sealing of court records	02/01/2019
5-301	Arrest without warrant; probable cause determination; first appearance	02/01/2019

5-302A	Grand jury proceedings	04/23/2018
5-403	Revocation or modification of release orders	02/01/2019
5-409	Pretrial detention	02/01/2019
5-602	Insanity; lack of capacity	02/01/2019
5-602.1	Competency	02/01/2019
5-602.2	Proceedings after a finding of incompetency	02/01/2019
5-602.3	Incompetency due to mental retardation	02/01/2019
5-606	Jurors	12/31/2018

## Rules of Criminal Procedure for the Magistrate Courts

6-102	Conduct of court proceedings	12/31/2018
6-116	Courtroom closure	12/31/2018
6-203	Arrests without a warrant; probable cause determination	02/01/2019
6-302	Pleas allowed	02/01/2019
6-403	Revocation or modification of release orders	02/01/2019
6-501	Arraignment; first appearance	02/01/2019
6-507	Insanity; transfer to district court	02/01/2019
6-507.1	Competency; transfer to district court	02/01/2019
6-605	Jurors	12/31/2018

## Rules of Criminal Procedure for the Metropolitan Courts

7-102	Conduct of court proceedings	12/31/2018
7-203	Probable cause determination	02/01/2019
7-302	Pleas allowed	02/01/2019
7-403	Revocation or modification of release orders	02/01/2019
7-501	Arraignment; first appearance	02/01/2019
7-507	Insanity; transfer to district court	02/01/2019
7-507.1	Competency	02/01/2019
7-605	Jurors	12/31/2018

## Rules of Procedure for the Municipal Courts

8-202	Probable cause determination	02/01/2019
8-302	Pleas allowed	02/01/2019
8-403	Revocation or modification of release orders	02/01/2019
8-501	Arraignment; first appearance	02/01/2019
8-507	Insanity; transfer to district court	02/01/2019
8-507.1	Competency; transfer to district court	02/01/2019

## Criminal Forms

9-404	Transfer order; insanity defense	02/01/2019
9-404A	Order on motion for competency evaluation; transfer	02/01/2019
9-513D	Juror questionnaire privacy and destruction	

# Rule-Making Activity

<http://nmsupremecourt.nmcourts.gov>

certification	12/31/2018	13-847 Withdrawn	12/31/2018
9-514 Order on motion for a competency evaluation	02/01/2019	13-848 Withdrawn	12/31/2018
9-514A Defendant information sheet	02/01/2019	13-849 Withdrawn	12/31/2018
		13-860 Mitigation of damages	12/31/2018
<b>Children's Court Rules and Forms</b>		<b>Uniform Jury Instructions – Criminal</b>	
10-103 Service of process	12/31/2018	14-141 General criminal intent	12/31/2018
10-166 Public inspection and sealing of court records	12/31/2018	14-210 Second-degree murder; voluntary manslaughter lesser included offense; essential elements	12/31/2018
10-261 Probation	12/31/2018	14-211 Second-degree murder; voluntary manslaughter not lesser included offense; essential elements	12/31/2018
10-324 Conduct of hearings	12/31/2018	14-301 Assault; attempted battery; essential elements	12/31/2018
10-515 Notice of pendency of action by publication	12/31/2018	14-606 Abandonment of a child resulting in great bodily harm or death	12/31/2018
10-605 Tribal court order for involuntary placement for treatment or habilitation of a child not to exceed 60 days	12/31/2018	14-607 Abandonment of a child without great bodily harm or death	12/31/2018
10-719 Probation order and agreement	12/31/2018	14-623 Child abuse resulting in death; intentional act; child under 12; essential elements	12/31/2018
<b>Rules of Appellate Procedure</b>		14-626 Intentionally, defined for crimes against children	12/31/2018
12-201 Appeal as of right; when taken	12/31/2018	14-902 Criminal sexual contact; use of physical force or physical violence; essential elements	12/31/2018
12-318 Briefs	12/31/2018	14-903 Criminal sexual contact; threats of force or coercion; essential elements	12/31/2018
12-505 Certiorari from the Court of Appeals regarding district court review of administrative decisions	12/31/2018	14-904 Criminal sexual contact; victim unconscious, asleep, physically or mentally helpless; essential elements	12/31/2018
12-601 Direct appeals from administrative decisions where the right to appeal is provided by statute	12/31/2018	14-905 Criminal sexual contact; force or coercion; essential elements	12/31/2018
<b>Uniform Jury Instructions – Civil</b>		14-906 Criminal sexual contact; use of physical force or physical violence; personal injury; essential elements	12/31/2018
Chapter 8 Introduction	12/31/2018	14-907 Criminal sexual contact; threats of force or coercion; personal injury; essential elements	12/31/2018
13-807 Acceptance; definition	12/31/2018	14-908 Criminal sexual contact; victim unconscious, asleep, physically or mentally helpless; personal injury; essential elements	12/31/2018
13-808 Acceptance; terms of the offer	12/31/2018	14-909 Criminal sexual contact; force or coercion; personal injury; essential elements	12/31/2018
13-809 Withdrawn	12/31/2018	14-910 Criminal sexual contact; use of physical force or physical violence; aided or abetted by another; essential elements	12/31/2018
13-812 Acceptance; performance as acceptance; notification of the offeror; partial performance	12/31/2018	14-911 Criminal sexual contact; threats of force or coercion; aided or abetted by another; essential elements	12/31/2018
13-817 Modification of contract; definition	12/31/2018	14-912 Criminal sexual contact; victim unconscious, asleep, physically or mentally helpless; aided or abetted by another; essential elements	12/31/2018
13-824 Breach of contract; repudiation of contractual obligation	12/31/2018	14-913 Criminal sexual contact; force or coercion; aided or abetted by another; essential elements	12/31/2018
13-826 Custom in the trade	12/31/2018	14-914 Criminal sexual contact; deadly weapon; essential elements	12/31/2018
13-827 Course of dealing	12/31/2018	14-915 Criminal sexual contact in the fourth degree; force or coercion; essential elements	12/31/2018
13-828 Course of performance	12/31/2018		
13-831 Reasonable time	12/31/2018		
13-832 Good faith and fair dealing	12/31/2018		
13-840 Impossibility or impracticability of performance	12/31/2018		
13-843 Contracts; measure of damages; general instruction	12/31/2018		
13-843ASpecial or consequential damages	12/31/2018		
13-844 Withdrawn	12/31/2018		
13-845 Withdrawn	12/31/2018		
13-846 Withdrawn	12/31/2018		



14-921 Criminal sexual contact of a minor in the fourth degree; use of physical force or physical violence; essential elements	12/31/2018	14-2810B Multiple conspiracies; distinct agreements	12/31/2018
14-922 Criminal sexual contact of a minor in the fourth degree; threats of force or coercion; essential elements	12/31/2018	14-3107 Drug paraphernalia; possession; essential elements	12/31/2018
14-923 Criminal sexual contact of a minor in the fourth degree; victim unconscious, asleep, physically or mentally helpless; essential elements	12/31/2018	14-5022 Impeachment of defendant; wrongs; acts or conviction of a crime	12/31/2018
14-924 Criminal sexual contact of a minor in the fourth degree; force or coercion; essential elements	12/31/2018	14-5028 Evidence of other wrongs or offenses	12/31/2018
14-925 Criminal sexual contact of a minor in the [third] [second] degree; child under thirteen (13); essential elements	12/31/2018	14-5034 Admission or confession used for impeachment	12/31/2018
14-926 Criminal sexual contact of a minor in the [third] [second] degree; use of coercion by person in position of authority; essential elements	12/31/2018	14-5035 Impeachment of defendant by inadmissible evidence	12/31/2018
14-927 Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; personal injury; essential elements	12/31/2018	14-5132 Escape from jail or penitentiary; duress defined	12/31/2018
14-928 Criminal sexual contact of a minor in the third degree; threats of force or coercion; personal injury; essential elements	12/31/2018	14-5160 Entrapment; unfair inducement; not predisposed	12/31/2018
14-929 Criminal sexual contact of a minor in the third degree; victim unconscious, asleep, or physically or mentally helpless; personal injury; essential elements	12/31/2018	14-5161 Entrapment; law enforcement unconscionable methods and illegitimate purposes	12/31/2018
14-930 Criminal sexual contact of a minor in the [third] [second] degree; force or coercion; personal injury; essential elements	12/31/2018	14-5180 Defense of property	12/31/2018
14-931 Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; aided or abetted by another; essential elements	12/31/2018	14-5181 Self defense; nondeadly force by defendant	12/31/2018
14-932 Criminal sexual contact of a minor in the [third] [second] degree; threats of force or coercion; aided or abetted by another; essential elements	12/31/2018	14-5182 Defense of another; nondeadly force by defendant	12/31/2018
14-933 Criminal sexual contact of a minor in the [third] [second] degree; victim unconscious, asleep, physically or mentally helpless; aided or abetted by another; essential elements	12/31/2018	14-5183 Self defense; deadly force by defendant	12/31/2018
14-934 Criminal sexual contact of a minor in the [third] [second] degree; force or coercion; aided or abetted by another; essential elements	12/31/2018	14-5184 Defense of another; deadly force by defendant	12/31/2018
14-935 Criminal sexual contact of a minor in the [third] [second] degree; deadly weapon; essential elements	12/31/2018	14-5185 Self defense against excessive force by a peace officer; nondeadly force by defendant	12/31/2018
14-936 Criminal sexual contact of a minor in the third degree; force or coercion; essential elements	12/31/2018	14-5186 Self defense against excessive force by a peace officer; deadly force by defendant	12/31/2018
14-945 Criminal sexual penetration of a 13 to 18 year old in the second degree; use of coercion by person in position of authority; essential elements	12/31/2018	14-5190 Self defense; assailed person need not retreat	12/31/2018
14-1673 Defense of notice to payee that check is worthless	12/31/2018	14-6019B Conspiracy; multiple objectives; special verdict	12/31/2018
14-2810 Conspiracy; single or multiple objectives; essential elements	12/31/2018		
14-2810A Conspiracy; multiple objectives; unanimity	12/31/2018		
		<b>Rules Governing Admission to the Bar</b>	
		15-401 Board of Bar Examiners	12/31/2018
		<b>Rules of Professional Conduct</b>	
		16-501 Responsibilities of partners, managers, and supervisory lawyers	12/31/2018
		16-704 Communication of fields of practice and specialization	12/31/2018
		<b>Rules Governing Discipline</b>	
		17-203 Assessment of attorneys; child support compliance	12/31/2018
		17-206 Types of discipline	12/31/2018
		17-210 Reciprocal discipline	12/31/2018
		17-214 Reinstatement	12/31/2018
		17-313 Hearings	12/31/2018
		17-315 Disciplinary Board decision	12/31/2018

## Rules Governing the Client Protection Fund

17A-006	Commission meetings	12/31/2018
17A-010	Eligible claims	12/31/2018

## Rules for Minimum Continuing Legal Education

18-102	Minimum continuing legal education board	12/31/2018
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## Rules of Legal Specialization (Withdrawn)

Rule Set 19	Withdrawn	12/31/2018
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## Supreme Court General Rules

23-107	Broadcasting, televising, photographing, and recording of court proceedings; guidelines	12/31/2018
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## Local Rules for the First Judicial District Court

LR1-404	Family court services and other services for child-related disputes	09/01/2018
LR1-405	Safe exchange and supervised visitation program	09/01/2018

## Local Rules for the Second Judicial District Court

LR2-203	Electronic filing authorized	01/14/2019
LR2-309	Electronic filing authorized	01/14/2019
LR2-401	Court clinic mediation program and other services for child-related disputes	09/01/2018
LR2-403	Safe exchange and supervised visitation	09/01/2018
LR2-Form 709	Court clinic referral order	09/01/2018

## Local Rules for the Third Judicial District Court

LR3-401	Domestic relations mediation and safe exchange and supervised visitation programs	09/01/2018
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## Local Rules for the Fourth Judicial District Court

LR4-401	Safe exchange and supervised visitation, and domestic relations mediation	09/01/2018
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## Local Rules for the Fifth Judicial District Court

LR5-401	Safe exchange and supervised visitation; domestic relations mediation	09/01/2018
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## Local Rules for the Sixth Judicial District Court

LR6-213	Electronic filing authorized	09/01/2019
LR6-401	Safe exchange and supervised visitation, and domestic relations mediation	09/01/2018
LR6-404	Withdrawn	09/01/2018

## Local Rules for the Seventh Judicial District Court

LR7-401	Domestic relations; mediation	09/01/2018
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## Local Rules for the Eighth Judicial District Court

LR8-401	Safe exchange and supervised visitation; domestic relations mediation	09/01/2018
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## Local Rules for the Ninth Judicial District Court

LR9-405	Domestic relations mediation	09/01/2018
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## Local Rules for the Eleventh Judicial District Court

LR11-402	Domestic relations mediation; safe exchange and supervised visitation	09/01/2018
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## Local Rules for the Twelfth Judicial District Court

LR12-201	Electronic filing authorized	01/14/2019
LR12-201	Electronic filing authorized	09/01/2019
LR12-301	Electronic filing authorized	01/14/2019
LR12-401	Domestic relations mediation	09/01/2018

## Local Rules for the Thirteenth Judicial District Court

LR13-124	Fees non-refundable	09/01/2018
LR13-208	Electronic filing authorized	09/01/2019
LR13-401	Domestic relations alternative dispute resolution (ADR); advisory consultation	09/01/2018
LR13-402	Domestic Relations Mediation Act; safe exchange and supervised visitation	09/01/2018

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

From the New Mexico Supreme Court

**Opinion Number: 2019-NMSC-005**  
No. S-1-SC-35427 (filed December 20, 2018)

STATE OF NEW MEXICO ex rel.  
CHILDREN, YOUTH AND FAMILIES  
DEPARTMENT,  
Petitioner-Petitioner,  
v.

JANET MERCER-SMITH and  
JAMES MERCER-SMITH,  
Respondents-Respondents.

**ORIGINAL PROCEEDING ON CERTIORARI**  
Barbara J. Vigil, District Judge

JERRY A. WALZ  
WALZ AND ASSOCIATES  
Albuquerque, New Mexico  
for Petitioner

LARRY D. MALDEGEN  
WILLIAM PHELPS TEMPLEMAN  
STEPHEN J. LAUER  
COMEAU, MALDEGEN, TEMPLEMAN  
& INDALL, LLP  
Santa Fe, New Mexico

DANIEL ROBERT CRON  
DAN CRON LAW FIRM, P.C.  
Santa Fe, New Mexico  
for Respondents

## Opinion

### Petra Jimenez Maes, Justice

{1} While the parties in this case litigated contempt proceedings over the course of seven years, the children at the center of the case aged out of the system and became peripheral to a nearly \$4,000,000 judgment in favor of Respondents Janet and James Mercer-Smith (the Mercer-Smiths), who had pleaded no contest to allegations of abuse against their two minor daughters Julia and Rachel. This case was initiated in 2001 as an abuse and neglect proceeding and turned into a dispute over whether the Children, Youth and Families Department (CYFD) had violated the district court's decision that Julia and Rachel could not be placed with former employees of a group home where they had been residing. After protracted litigation, the district court held CYFD in contempt for violating its placement decision and, almost four years later, imposed the sanction for the violation,

ordering CYFD to pay the Mercer-Smiths more than \$1,600,000 in compensatory damages and more than \$2,000,000 in attorney fees and costs. The award was based on the district court's determination that the violation of the placement decision resulted in the loss of the Mercer-Smiths' chance of reconciliation with Julia and Rachel. We hold that the purpose for which the district court exercised its contempt power was not remedial in nature and therefore cannot be upheld as a valid exercise of civil contempt power. Accordingly, we reverse the contempt order and vacate the award in its entirety.

#### I. BACKGROUND

{2} This case began in early 2001 and was not fully resolved until January 2012, when the final judgment was entered. The record indicates that nearly every aspect of the proceeding was heavily litigated and highly contentious. What follows is the background information most relevant to the issues before this Court. Additional factual development will be done, as needed, in the context of our discussion

of those issues.

{3} In February 2001, James (Father) and Janet (Mother) Mercer-Smith's three daughters—Julia, 13; Rachel, 12; and Alison, 8—were taken into CYFD custody based on allegations of sexual abuse of Julia and Rachel at the hands of Father. The abuse and neglect petition also alleged that Mother knew or should have known of the abuse but failed to protect her daughters. {4} Six months later on August 30, 2001, Father pleaded no contest to allegations that he “touched his children Julia and Rachel in a way that made them feel uncomfortable and which they reasonably perceived as sexual.” Mother pleaded no contest to allegations that she “knew or should have known that her husband . . . touched their children Julia and Rachel in a way that made them feel uncomfortable and which they reasonably perceived as sexual and she did not take reasonable steps to protect the children from further harm.” Based on the pleas, the district court entered a judgment and disposition adjudicating the children to be abused pursuant to NMSA 1978, Section 32A-4-2(B)(2) (1999). The Mercer-Smiths were ordered to comply with a treatment plan approved by the district court. Among other things, the plan contemplated family therapy and visitation, if appropriate, at the daughters' discretion. Although both Julia and Rachel expressed that they had no desire to return to their parents' home, the goal of the treatment plan at that time was reunification. Alison, the youngest daughter, was returned to her parents' custody in November 2001 and was later dismissed from the case.

{5} The initial judicial review hearing was held on November 7, 2001. The district court found that it was in Julia's and Rachel's best interests to remain in the legal custody of CYFD. The court ordered CYFD to obtain a report from Julia's psychiatrist and Rachel's therapist in anticipation of the next hearing, addressing “why Julia and Rachel are refusing to go home and not wanting visits and what is in their best interests in those regards.” The order memorializing the November 7, 2001 hearing was filed on March 21, 2002. At the next hearing on December 10, 2001, the district court ordered that Julia and Rachel begin individual sessions with Dr. Charles Glass, a psychologist retained by CYFD, who would submit a detailed report for the next hearing regarding their progress in therapy. The order memorializing the December 10, 2001 hearing was filed on March 22, 2002.



# 2019

## State Bar of New Mexico Board of Bar Commissioners



● **President**  
**Gerald G. Dixon**

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Jerry was born and raised in Santa Fe. He is a shareholder at Dixon•Scholl•Carrillo•P.A. and practices in the areas of professional malpractice defense, licensing, commercial and construction litigation and real estate. He is a frequent speaker to professionals on

ethics, professional liability and risk management issues. Jerry is admitted to practice law in Colorado and New Mexico. He attended Texas Tech University (BBA 1977, JD 1981). Jerry was President of the Albuquerque Bar Association in 1994 and has served as a Trustee for the Texas Tech School of Law Foundation since 2005. He has participated in the New Mexico high school mock trial program as a coach or judge since 1988. Jerry was named Outstanding Attorney of the Year by the Albuquerque Bar Association in 2014 and received the 2014 Distinguished Service Award from Texas Tech School of Law. He provides pro bono services through New Mexico Christian Legal Aid. Jerry served as a Visiting Professor of Law in 2012 at the University of National and World Economy in Sofia, Bulgaria and in 2015 at South-West University in Blagoevgrad, Bulgaria. Jerry represents the First Bar Commissioner District.



● **Secretary-Treasurer**  
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Carla C. Martinez is a native New Mexican and a 1998 graduate of the New Mexico School of Law. Martinez currently serves as the Chief Administrative Officer for the Second Judicial District Attorney's Office. Prior to joining the 2nd DA's Office, Martinez

was Chief of Staff for Operations for the New Mexico Office of the Attorney General. She served in this capacity for approximately two years. Immediately preceding, Martinez was the Deputy State Auditor for the New Mexico Office of the State Auditor for eight years. She also served for four years as a Board Member and Chair of the New Mexico Gaming Control Board. Previously, Martinez has worked for an insurance defense law firm and an international accounting firm. Martinez is also a Certified Public Accountant and a Certified Fraud Examiner. Carla represents the First Bar Commissioner District.



● **Immediate Past President**  
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Wesley Pool is the principal and owner of Pool Law Firm, P.C., in Clovis. He is a graduate of Texas Tech University, B.A., and Texas Wesleyan University School of Law, J.D. He is admitted to practice in New Mexico and Texas, The United States District Court for the

District of New Mexico, the United States Bankruptcy Court for the District of New Mexico, The United States Bankruptcy Court for the Northern District of Texas, and the United States Court of Appeals for the Tenth Circuit. The firm focuses on commercial litigation in addition to real estate, bankruptcy, probate, wills and estate planning, personal injury and domestic relations. Pool is a member of the Curry/Roosevelt Bar Association, the American Bar Association, and the American Trial Lawyers Association. He has served on the Board of Directors of the Business Law Section and as the BBC liaison to the Minimum Continuing Legal Education Board. Wesley represents the Fifth Bar Commissioner District.



● **President-Elect**  
**Ernestina R. Cruz**

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Ernestina R. Cruz is a solo practitioner and the owner of Cruz Law Office in Taos. Her practice is primarily focused in the areas of civil rights, employment law, and personal injury. She is a graduate of the University of New Mexico (B.A. 1996 and J.D. 2001) and

the University of Notre Dame (M.A. 1998). In addition to her law practice, she is currently attending the Straus Institute for Dispute Resolution at Pepperdine University School of Law where she is completing coursework to obtain a LL.M. in Dispute Resolution with a concentration in Mediation. She is a past chair of the State Bar Young Lawyers Division and Employment and Labor Law Section. She currently serves on the Commission on Access to Justice and represents the Fourth Bar Commissioner District.



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## ● First Bar Commissioner District



### Joshua A. Allison

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Joshua A. Allison has been a shareholder and director at Sheehan & Sheehan, P.A. since 2013, where his practice is focused in legal malpractice defense, complex business disputes, and construction litigation. Allison graduated from the University of New Mexico School of Law in 2008 and clerked for

then-Chief Justice Edward L. Chávez for one year. After practicing in Southern California, he returned to New Mexico in 2010 with his wife and children to build his practice at Sheehan. Allison is also a member of the State Bar Lawyers Professional Liability and Insurance Committee. He is also a member of the Disciplinary Board. When he is not practicing law, he is spending time with his wife of 16 years, Michelle, and their four kids.



### Aja Nicole Brooks

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Aja Nicole Brooks is a native New Mexican, born in Hobbs. She is a graduate of Wake Forest University in Winston-Salem, North Carolina, where she received her Bachelor of Arts in English and Spanish. She attended the University of New Mexico School of Law and graduated with her juris doctorate in 2008.

Thereafter, she worked as a criminal defense attorney in Albuquerque for the Law Office of the Public Defender in its metropolitan and felony divisions from 2008 until 2014. From 2014 until January 2019, she served as the Statewide Pro Bono Coordinator for New Mexico Legal Aid's Volunteer Attorney Program where she helped provide pro bono opportunities for low-income individuals. She is currently employed as the Director for the Second Judicial District Court's Center for Self-Help and Dispute Resolution. Brooks is involved in many legal groups and activities, including the Young Lawyers Division, the Committee on Diversity in the Legal Profession and the Bridge the Gap Mentorship Program. She is the President of the New Mexico Black Lawyers Association and a member of the Iota Xi Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated.

### Gerald G. Dixon

See page 1.



### Hon. Kevin L. Fitzwater (ret.)

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Hon. Kevin L. Fitzwater (ret.) is a retired Metropolitan Court judge. On the bench for 18 years hearing criminal and civil cases, he also served a term as Chief Judge. He founded the first Mental Health Court in the state of New Mexico. Previous to that, he served as a Deputy District Attorney in

charge of the Metropolitan Court division, having handled a broad range of cases from misdemeanors to violent crimes. Fitzwater came to the DA's office after leaving active military service. He served in the United States Marine Corps as a combat arms officer,

having graduated from UNM in 1981, and was one of four selected to attend law school, coming home to attend UNM School of Law. He returned to active duty as a criminal defense attorney, and worked in appellate law. He retired after a 30-year career as a colonel in the reserves.

### Carla C. Martinez

See Page 1.



### Clara Moran

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Clara Moran is a 2005 graduate of the University of New Mexico School of Law. She is currently the Division Director of Special Prosecutions Division of the Office of the Attorney General. Moran has been a prosecutor her whole career, prosecuting Violent Crimes, Crimes Against Children,

Sex Crimes, and Public Corruption cases state-wide. She was named the 2014 Jurisprudence Prosecutor of the Year by the New Mexico District Attorneys Association, received the 2009 Outstanding Young Lawyer of the Year Award from the State Bar of New Mexico and the 2007 Spirit Award from the New Mexico Coalition Against Domestic Violence. Moran is a past chair of the State Bar Prosecutors Section and a former board member of the Criminal Law and Trial Practice sections, the Supreme Court Uniform Jury Instruction Committee from 2010 to 2014 and the Young Lawyers Division.



### Ben Sherman

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Ben Sherman is the founder of Ben Sherman Law LLC, located in Albuquerque. His practice is focused on representing injured workers in workers' compensation cases. Prior to opening his own law firm, he enjoyed serving the public as a prosecutor with the 2nd Judicial District Attorney's Office and as

an assistant city attorney with the City of Albuquerque's litigation department. Sherman is a proud 2008 graduate of the University of New Mexico School of Law and has been fortunate to practice law in New Mexico for the past ten years. A fluent Spanish-speaker, he enjoys representing people from all communities and appreciates New Mexico's unique diversity and rich traditions. Sherman is a past chair and board member of the State Bar of New Mexico Young Lawyers Division and currently sits on the University of New Mexico School of Law Alumni Board. In his free time, he enjoys volunteering, playing soccer, kayaking, hiking, music, reading, and spending time with family and friends.

*Note: A vacancy exists in the First Bar Commissioner District at the time of printing.*

## ● Second Bar Commissioner District



### Joseph F. Sawyer

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Joseph F. Sawyer is Deputy County Attorney for San Juan County. A Farmington native, he attended the University of New Mexico (B.A., 1995) and Notre Dame Law School (J.D., 1999). Prior to working for San Juan County, Sawyer spent several years in private practice and worked for the 11th Judicial

District Attorney's Office in Farmington. He served as president of the San Juan County Bar Association in 2011 and was on the State Bar of New Mexico Young Lawyers Division Board of Directors from 2006 to 2007. Sawyer and his wife Ana enjoy backpacking, mountain biking, traveling and spending time with their two daughters.

## ● Third Bar Commissioner District



### Constance G. Tatham

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Constance (Connie) G. Tatham, is an Assistant General Counsel in the Office of General Counsel for the State of New Mexico Human Services Department. She is a graduate of the James E. Rogers College of Law, University of Arizona, J.D. and of Arizona State University, B.S. Geography.

She is admitted to practice in New Mexico, Arizona, Navajo Nation, United States District Court District of New Mexico, and United States Court of Appeals for the Tenth Circuit. Her work focuses on contracts, bid protests, IPRA, administrative proceedings and appeals, civil trials and litigation, and health law. Ms. Tatham served on the Arizona State Bar Mentorship Advisory Committee as member, secretary and chair. She also served on the New Mexico First Judicial District's Pro Se Family Law Committee as member and chair, for the New Mexico Risk Management Division as the Attorney General's representative, and on the New Mexico State Bar's Domestic Violence Hotline as a founding member. Her community service activities include serving as a law school and high school mock trial judge and pro bono representation through a variety of voluntary legal service programs.



### Elizabeth J. Travis

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Elizabeth J. Travis is a deputy general counsel with the New Mexico Department of Transportation, serving as counsel for the Department's construction, operations and finance organizations, a practice which includes construction, environmental, procurement and contract law. Prior to

working for the State, Travis served as an assistant county attorney for Santa Fe County. As a private practice attorney her clients included a privately held ski area, a local public entity hospital, various non-profit organizations, and small businesses. In addition to her new role on the BBC representing District 3, Travis also serves on the State Bar Ethics Advisory Committee. She is also an active member of the ABA, participating in the public contract law section and the construction industry forum. Travis is licensed to practice in state and federal court in New Mexico and California.



### Carolyn A. Wolf

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Carolyn A. Wolf is an attorney in Santa Fe. She is a graduate of Rice University and the University of New Mexico School of Law. In more than 20 years in state government, she was in-house counsel for the Human Services Department, Health and Environment Department, and Taxation and Revenue Department, and was

counsel for other agencies, boards and commissions as an attorney in the Civil Division of the Attorney General's office. Wolf served as general counsel for the Department of Finance and Administration and Taxation and Revenue Department. She was named Public Lawyer of the Year in 2017. Wolf was also a shareholder and of counsel with Montgomery & Andrews, P.A. She is the Board of Bar Commissioners representative on the Appellate Rules Committee. She is also a member of the Compilation Commission Advisory Committee.

## ● Fourth Bar Commissioner District

### Ernestina R. Cruz

See page 1.

## ● Fifth Bar Commissioner District

### Wesley O. Pool

See page 1.

## ● Sixth Bar Commissioner District



### Erinna M. "Erin" Atkins

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Erinna Atkins is an attorney in Alamogordo, where she practices law with her father, S. Bert Atkins. Specializing in criminal defense and children's law, she works in and lives in the Twelfth Judicial District. She proudly serves as the Guardian ad Litem in abuse and neglect cases and mental health guardianships.

Atkins is active in her local community and currently serves as a commissioner for the NM Commission for Community Volunteerism, the Children's Law Section, the Twelfth Judicial District Pro Bono Committee, and a state-wide non-profit service organization, as well as the substitute Adult Drug Court judge. Atkins was awarded the 2016 Young Lawyer of the Year Award for the Twelfth Judicial District and is a 2009 graduate of the University of New Mexico School of Law. Atkins received the 2018 Outstanding Service Award from the Young Lawyer's Division of the State Bar for her years of service.



### Parker B. Folsie

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Parker Folsie is a partner in the Roswell office of Hinkle Shanor LLP. He is a graduate of University of Texas at Dallas, B.A. Political Science, and the University of Oklahoma School of Law, J.D. Parker primarily assists commercial clients in litigation matters in both State and Federal Courts at both the district and

appellate levels. Parker was admitted to practice law in New Mexico in 2011 and is a member of the New Mexico State Bar Trial Practice Group,



the Chaves County Bar Association, the New Mexico Defense Lawyer's Association, and the Defense Research Institute. Parker also serves on the Board of the Roswell Museum and Art Center Foundation and enjoys camping and hiking in New Mexico's mountains. Parker and his wife, Robin, recently welcomed their first child, daughter Evelyn, and are busy convincing their three dogs of their demotions in the pack hierarchy.



### Jared G. Kallunki

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Jared G. Kallunki is a Public Defender in Roswell. He attended the University of Alabama (B.A. 2001 and M.A. 2004) and Thomas Jefferson (J.D. 2007). Previously, he was the Managing Attorney of the Roswell office of New Mexico Legal Aid and served on the board of the Young Lawyers Division

of the State Bar of New Mexico. Kallunki is a past recipient of the Robert H. LaFollette Pro Bono Award for his work with the less fortunate. He lives in Roswell with his wife, Tiesha, and his three children, Detroit, Joaquin and Cedric.

## ● Seventh Bar Commissioner District



### Mick I. R. Gutierrez

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Mick graduated from the UCLA School of Law in 1980. He was awarded a post-doctorate community lawyer fellowship from Howard University, 1980-82. Gutierrez began his legal career at Southern NM Legal Services in Las Cruces which lasted four years. He then moved on to become a Special Assistant AG

for two years, an ADA for four years at the Third Judicial DA's office, spent about four years with Miller, Stratvert, Torgerson and Schlenker, and twenty-one years with the Department of Justice (DOJ). Through the DOJ Gutierrez had two overseas assignments: West Africa and the Caribbean. He was a Bar Commissioner in the 90s and has served on numerous professional committees and community boards. Mick is married to Lizabeth, they have three adult daughters, and five grandkids.



### David P. Lutz

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David P. Lutz is a Las Cruces attorney at Martin & Lutz, P.C. He practices law with his father and focuses primarily on civil and domestic relations matters. He has been with the firm since 2004. He was born in Las Cruces, New Mexico and graduated from Ocate High School. He attended Claremont

McKenna College (B.A. 1997) and Cornell Law School (J.D. 2000). He has appeared and practices regularly in the Third, Sixth, and Seventh Judicial Districts. He served on the Young Lawyers Division Board as a Regional Director from 2007 through 2011. When he is not working, he enjoys playing soccer and going with his family to cultural and/or sporting events at New Mexico State University.

## ● Senior Lawyers Division Delegate

*Vacant at the time of publication.*

## ● Young Lawyers Division Chair



### Sonia R. Russo

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Sonia Raichur Russo is a law clerk for New Mexico Court of Appeals Judge J. Miles Hanisee. She previously clerked for U.S. Magistrate Judge Gregory Fouratt in the District of New Mexico and New Mexico Court of Appeals Judge Henry Bohnhoff. She also serves as the American Bar Association Young

Lawyers Division's Public Service Director. Prior to clerking, Sonia prosecuted violent felonies, including homicides and domestic violence, at the Second Judicial District Attorney's office in Albuquerque, NM. Sonia started her career as a litigation associate at Modrall Sperling, also in Albuquerque. Sonia earned her Bachelor of Arts degree in Political Science from Brown University and her law degree from Boston College Law School. At her law school commencement ceremony, Sonia was awarded the Susan Grant Demarais Award for Excellence in Clinical Work for her work as a student attorney in the BC Law Prosecution Clinic. Her interests include going on adventures with her adopted shelter dog, Milo, travel, and tennis.

## ● Paralegal Division Liaison



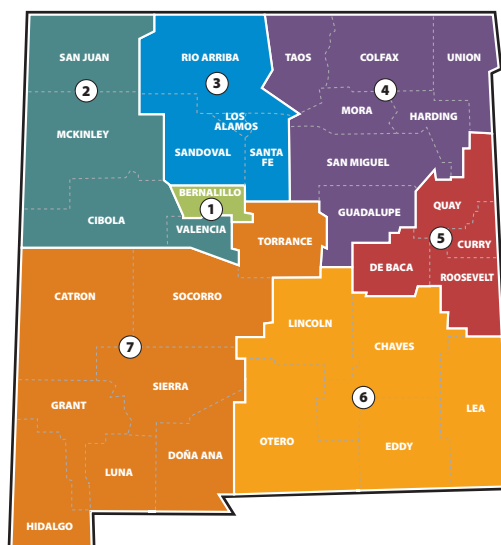
### Lynette Rocheleau

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Lynette Rocheleau is a full time Paralegal at National Technologies & Engineering Solutions of Sandia (Sandia National Laboratories) in the Legal Technology Transfer Center, where her primary focus is Non-Disclosure Agreements, Waivers and Copyrights. She has been with Sandia for over 17 years. Prior to that, she was a

paralegal for 10 years, primarily in civil litigation. Lynette is the 2019 Chair of the Paralegal Division for the State Bar of New Mexico. She has been a member of the division since 2013 and has also served on the board of directors and as a CLE Chair during that time. She has an A.A.S. in Legal Assistant Studies (1989), a Bachelor's in Information Technologies (2003) and a Master of Business Administration (2010). Lynette lives in Albuquerque and in her spare time is a volunteer with Project Linus.

## ● Board of Bar Commissioners District Map



{6} The district court also ordered Julia and Rachel to participate in mediation with the Mercer-Smiths, which occurred on April 5, 2002. The mediator's memorandum of understanding submitted to the court shortly thereafter reflects that the mediation process had yet to be completed. Therefore, on April 9, 2002, the parties stipulated that the "permanency plan should remain reunification until the mediation process is completed by the parties." However, in May 2002, CYFD filed a report with the district court indicating that reunification was "no longer a viable plan." The report also recommended that individual sessions between the daughters and Dr. Glass cease due, in part, to a breach of confidentiality by Dr. Glass. On July 11, 2002, CYFD filed another report with the court, reiterating its position that reunification was "no longer a viable plan." The report also indicated that the mediation process had been completed, "with no change in the prognosis for reunification" and recommended a change in the permanency plan to planned permanent living arrangements (PPLA) for Julia and Rachel. According to the social worker, the recommended change to PPLA was a result of the Mercer-Smiths' failure to "address the issues that have been at hand since the inception of this case." Specifically, Father refused to acknowledge the factual basis of his no contest plea and instead focused on convincing case workers that "he [was] not responsible for any problems that his family has experienced and that the girls' allegations of sexual abuse [were] the result of confusion and false memories that have been created by one or more of their therapists." Additionally, Mother purportedly took the position that Father was not guilty of the abuse alleged by Julia and Rachel. The social worker reported that Julia and Rachel "continue to be adamant about not wanting to reunify with their parents." At that time, CYFD reported that Julia and Rachel were living at the Casa Mesita Group Home in Los Alamos.

{7} At a highly contentious hearing on August 15, 2002, the attorney for the Mercer-Smiths insisted that reunification had not been successfully attempted. The district court noted that all attempts to get Julia and Rachel to participate in therapy had failed and that there had been no progress at all toward reunification. Counsel for CYFD stated that Julia and Rachel did not want any involvement with their parents because they felt that they were being accused of wrongdoing

and because their parents had not taken responsibility for the abuse inflicted upon them. The district court acknowledged that the daughters' best interests and "perspective" were "paramount." Counsel for the Mercer-Smiths asked the court to order that Julia and Rachel participate in ten family therapy sessions for the purpose of resolving issues between them and the Mercer-Smiths. The guardian ad litem (GAL) insisted that Julia and Rachel were "adamantly opposed to continued therapy" and reiterated CYFD's position—Julia and Rachel felt as though they were on trial and the proceedings had become about what they had done, rather than the abuse their parents had inflicted. Counsel for CYFD stated that it was CYFD's position that it was not in Julia's and Rachel's best interests to go forward with family therapy since the purpose of it was unclear, given that they were adamant about not wanting to reunify with the Mercer-Smiths. Counsel for CYFD also reminded the court that the summary treatment plan adopted on August 30, 2001, specified that Julia and Rachel would not be required to visit with the Mercer-Smiths unless they wished to do so and that reunification would occur only "if appropriate." Julia and Rachel were permitted to address the court and read statements that they had prepared. Excerpts from those statements follow.

Julia: . . . I have not had the opportunity as yet to speak with you face to face about the issues in our case. I do not think the mediation helped in the least . . . I for one came out of the sessions angrier with [the Mercer-Smiths] than before. . . . As far as I'm concerned our family will never be able to be repaired. Mainly for two reasons. One because Jan and James are unwilling to let the past go and concentrate on the future and two, because I'm not ready to listen to them tell me how my memories are planted and that everything is my fault. My hate toward them has become far worse over the last couple of months. . . . If I had my way, I would want their parental rights terminated, but I'm not sure that will happen. . . . I hope this letter will bring some insight to our case from one of the people the court seems to have forgotten.

Rachel: . . . I have recently participated in mediation sessions with my parents and

during these sessions I felt as though I was not, what I was saying was not really being heard. It seemed to me as though Janet and James are still not taking responsibility. They said that my memories are not accurate. This caused me to leave the sessions feeling more angry and more hurt than I was before. I know that family therapy has been suggested, but I don't think that this would be beneficial unless they are able to accept things and take responsibility. I don't think that there is a purpose in therapy. . . . And I know returning to my [parents'] home is not what I want, it simply wouldn't work and it would be impossible unless they were able to take responsibility and I think that under the plan of [PPLA], I would be able to begin to have a life that is as close to normal as it could be under the circumstances.

{8} Attempting to find a middle road through the morass, the district court ordered that the permanency plan be changed to PPLA but also ordered family therapy "to attempt to resolve and bring some closure to some of these issues between the girls . . . and their parents." To that end, Julia and Rachel were ordered to participate in ten therapy sessions each with Mother only. The change in the permanency plan to PPLA meant that reunification was no longer a viable option and therefore not a goal of any treatment plan. See 8.10.9.7(L) NMAC ("Planned permanent living arrangement (PPLA)" is a permanency plan established by the court for a youth in [CYFD] custody who is age 16 or older once reunification, adoption, permanency guardianship and placement with a fit and willing relative have been ruled out."). On April 30, 2004—almost two years after the August 15, 2002 hearing—the court reduced to writing its findings, reflecting a change in the permanency plan from reunification to PPLA.

{9} In the judicial review and/or permanency hearing report filed with the district court in July 2003, CYFD reported that having completed the more structured therapy living situation at Casa Mesita Group Home, Julia and Rachel were ready to transition into regular non-relative foster homes in the Los Alamos area. CYFD sent the Mercer-Smiths a letter dated June 5, 2003, informing them that Rachel would be placed with Gay and Dwain Farley and Julia would be placed with Jennifer and Eric Schmierer after both couples had become licensed as foster parents. On June 30, 2003, the Mercer-Smiths filed an



objection to these placements, arguing that they would be inappropriate because Gay Farley and Jennifer Schmierer had been therapists at Casa Mesita Group Home where Julia and Rachel had been residing. {10} The district court held four hearings over the course of three months in 2003 to determine the propriety of the proposed placements. At one of those hearings on August 19, 2003, the district court affirmatively stated that CYFD had no duty to support reconciliation between Julia and Rachel and the Mercer-Smiths. Although the district court acknowledged that reconciliation may be, in a broader sense, in the best interests of Julia and Rachel, the court nonetheless concluded the following:

I understand that reconciliation of the parents is not part of the permanency plan. I can accept that as [an] uncontroverted fact. It's clear to me that reconciliation with the parents is not something, a goal of [CYFD] in the [PPLA].

...

There's no duty on the part of [CYFD] to support reconciliation with the parents at this point and I find that as a fact.

{11} At the last of the three hearings on September 9, 2003, the district court ruled that the proposed placements would be inappropriate in light of the therapeutic relationships between Gay and Jennifer and the children. The court entered its findings of fact and conclusions of law and decision on November 3, 2003 (Placement Order). In part, the district court found that Gay and Jennifer, who were both licensed clinical counselors, served as therapists for Julia and Rachel while they lived at Casa Mesita Group Home. Because of the patient-therapist relationships that formerly existed, the court determined that the proposed placements would constitute "dual relationships," which are prohibited by the code of ethics that governs clinical counselors in New Mexico. Accordingly, the court concluded that the proposed placements constituted an abuse of discretion and would not be permitted.

{12} Because Julia and Rachel could not be placed with the Farleys and Schmierers as a result of the Placement Order, CYFD placed them with Martin and Jeanne Ritter. However, on April 27, 2004, during the annual permanency and presentment hearing, counsel for CYFD reported that because it could not find suitable foster parents for Julia and Rachel in Los Alamos, the children had transitioned into a

semi-independent living arrangement in February 2004 and were renting a room from Melissa Brown and her husband. Upon inquiry from the Mercer-Smiths' attorney about the Browns, counsel for CYFD explained that Melissa Brown was the daughter of Gay and Dwain Farley, was a licensed foster parent, and had not been previously involved in the case. The district court judge responded, "So [CYFD] found a way to get around my ruling?" Counsel for CYFD apologized and stated that it was not CYFD's intent to disrespect the court or the court's Placement Order and explained that the Ritters requested that Julia and Rachel be moved because the placement was not working out as a result of transportation issues. The GAL added that she asked the daughters for the names of friends and other people that they knew who might be willing to become licensed so that they could remain in Los Alamos. While there were many people with whom the daughters had contact in Los Alamos, it was the opinion of the GAL that because of the Mercer-Smiths' status in the community, people did not want to get involved since everyone the daughters approached had turned them down. The only people who came forward were the Farleys' daughter and her husband. Thus, the issue became whether to ftnlmove Rachel and Julia from Los Alamos to find a different placement. The district court responded:

I can't imagine [t]hat the Mercer-Smiths are [of] such status in the community . . . that there is not a family in the community that's healthy, willing and able to take care of these children. It's just truly amazing to me. I've never seen anything quite like it and find it quite disturbing, the efforts [CYFD] made to try to circumvent the decision that this court made in my decision.

{13} Three months later on July 30, 2004, the Mercer-Smiths filed a motion to initiate civil and criminal contempt proceedings. The motion named several individuals and CYFD as an entity as alleged contemnors. The Mercer-Smiths alleged that Rachel and Julia had been, for all practical purposes, placed with the Farleys and Schmierers despite the district court's ruling that doing so was an abuse of discretion. Their motion indicated that the Mercer-Smiths had hired a private investigator to observe their daughters' comings and goings from the Farley and

Schmierer households and to observe their daily activities. Based on the information gathered, the Mercer-Smiths contended that "CYFD created a sham to mask the true caretaker relationships between the girls [and] the Farleys and the Schmierers in contravention" of the district court's Placement Order.

{14} While the parties litigated the contempt proceedings, Julia and Rachel reached the age of majority and aged out of the system—Julia in 2005 and Rachel in 2006. After legal custody of both daughters ended and was no longer an issue, this case remained unresolved for almost six more years.

{15} On July 10, 2006, CYFD filed a motion to dismiss both the civil and criminal contempt proceedings. The district court entered an order on August 29, 2006, dismissing several named individuals from the contempt proceedings and ruling that criminal and civil contempt would proceed only as to counsel for CYFD and CYFD as an entity. On November 6, 2006, the district court entered an order dismissing all claims of criminal contempt. The order notes that there remain "civil contempt remedies which can be granted based on the actions of the parties."

{16} The bench trial on the civil contempt issues occurred on November 9, 2006. On January 3, 2008, the district court entered its findings of fact, conclusions of law, and order holding CYFD in contempt of court. The district court found that the Farleys had a significant and ongoing relationship with Rachel such that Rachel was "placed" into their home by CYFD and the Farleys were Rachel's foster parents. Similarly, with respect to Julia, the district court found that the Schmierers had a significant and ongoing relationship with Julia such that Julia was "placed" into their home by CYFD and the Schmierers were Julia's foster parents. Accordingly, the district court concluded that CYFD's conduct was in direct violation of the court's Placement Order and held CYFD in contempt. The district court did not hold counsel for CYFD in contempt.

{17} The district court commenced a five-day bench trial to determine damages on May 31, 2011, and also held a hearing on October 19, 2011, where additional evidence and argument was considered. On December 9, 2011, the district court entered its findings of fact and conclusions of law on contempt damages. The court concluded that the Mercer-Smiths were injured by CYFD's contemptuous

conduct and awarded Father damages of \$616,000—\$100,000 for past emotional distress, \$200,000 for future emotional distress, \$200,000 for loss of enjoyment of life, \$56,000 for past psychological expenses, and \$60,000 for future psychological expenses. Mother was awarded damages of \$1,000,000—\$200,000 for past emotional distress, \$400,000 for future emotional distress, and \$400,000 for loss of enjoyment of life. Additionally, the district court awarded the Mercer-Smiths \$1,859,096 in attorney fees plus \$152,213 in tax and \$175,826 in litigation expenses. In total, the award equaled \$3,803,135.

{18} The Court of Appeals affirmed the district court's contempt order and award of damages, attorney fees, and costs. *State ex rel. Children, Youth & Families Dep't v. Mercer-Smith*, 2015-NMCA-093, ¶ 1, 356 P.3d 26. CYFD filed a petition for writ of certiorari in this Court, asserting that the Court of Appeals erred in: (1) upholding the district court's determination of contempt contrary to legal authority; (2) upholding the district court's award of emotional distress damages for civil contempt in violation of CYFD's sovereign immunity; (3) upholding the district court's decision to deem admitted two requests for admission contrary to legal authority, public interest, and the integrity of the judicial process; (4) concluding that the contempt damages are analogous to tort damages but refusing to limit the damages pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015); (5) not reversing the damages award based on the doctrine of unclean hands; (6) affirming the award of attorney fees, tax, and costs to counsel for the Mercer-Smiths for work performed in post-contempt proceedings; and (7) upholding a decision that is contrary to public interest. All seven contentions relate to two overarching issues that we address in this opinion—whether CYFD was properly held in contempt and, if so, whether the resulting award of damages, attorney fees, and costs was proper. We granted CYFD's petition for certiorari pursuant to Article VI, Section 3 of the New Mexico Constitution and NMSA 1978, Section 34-5-14(B) (1972).

## II. DISCUSSION

### A. Standard of Review

{19} Whether the district court exercised its contempt power consistent with the purposes of civil contempt is a mixed question of fact and law that we review de novo. See *Papatheofanis v. Allen*, 2009-

NMCA-084, ¶ 8, 146 N.M. 840, 215 P.3d 778. Where there is an appropriate civil contempt, the sanction itself is reviewed for an abuse of discretion. *Tue Thi Tran v. Bennett (Tran)*, 2018-NMSC-009, ¶ 30, 411 P.3d 345. "An abuse of discretion occurs when the court's ruling is clearly against the logic and effect of the facts and circumstances of the case or is based on a misunderstanding of the law." *Id.* (internal quotation marks and citation omitted).

### B. Overview of Contempt Law in New Mexico

{20} Courts have inherent power and statutory authority to impose remedial or punitive sanctions for contempt of court. *Concha v. Sanchez*, 2011-NMSC-031, ¶¶ 21-26, 150 N.M. 268, 258 P.3d 1060; see also NMSA 1978, § 34-1-2 (1851). Contempts of court can be civil or criminal, and the "major factor" in determining how to classify a particular contempt "is the purpose for which the power is exercised." *Tran*, 2018-NMSC-009, ¶ 33 (internal quotation marks and citation omitted). "Criminal contempt proceedings are instituted to punish completed acts of disobedience that have threatened the authority and dignity of the court and are appropriate even after the contemnor is no longer acting contemptuously." *Concha*, 2011-NMSC-031, ¶ 26. Civil contempt, on the other hand, is remedial in nature and serves "to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court." *Tran*, 2018-NMSC-009, ¶ 33 (internal quotation marks and citation omitted).

{21} Consistent with the various purposes for which a court may exercise its contempt power, a court may impose punitive sanctions for criminal contempt, remedial sanctions for civil contempt, or both. The court may not, however, impose criminal penalties on a person who has not been afforded the protections of the criminal law, "including the requirement that the offense be prove[n] beyond a reasonable doubt." *Concha*, 2011-NMSC-031, ¶ 26 (quoting *Hicks v. Feiock*, 485 U.S. 624, 632 (1988)); cf. *id.* ("[C]riminal contempt is a crime in the ordinary sense; it is a violation of the law." (internal quotation marks and citation omitted)). Acts that constitute criminal contempt can take a variety of forms, including (1) any sort of disturbance that "actually obstructs or hinders the administration of justice or tends to diminish the court's authority," (2) "misconduct of court officers," and (3)

disobedience of an order of the court. Rule 1-093(B)(1) NMRA.

{22} "Civil contempt sanctions may be imposed by honoring the most basic due process protections—in most cases, fair notice and an opportunity to be heard." *Concha*, 2011-NMSC-031, ¶ 25. If a court is exercising its civil contempt power, it may impose compensatory sanctions or coercive sanctions, as both are remedial in nature. *Tran*, 2018-NMSC-009, ¶ 35. "Compensatory sanctions may include damages or attorney's fees and are imposed for the purpose of compensating a party for pecuniary losses sustained due to the contempt." *Id.* ¶ 36; see also *State ex rel. Dep't of Human Servs. v. Rael*, 1982-NMSC-042, ¶ 6, 97 N.M. 640, 642 P.2d 1099 ("With civil contempt, remedial punishment for the benefit of the plaintiff is measured in some degree by the pecuniary injury caused by the acts of disobedience." (internal quotation marks and citation omitted)). "Coercive sanctions may include fines, imprisonment, or other sanctions designed to compel the contemnor to comply in the future with an order of the court." *Tran*, 2018-NMSC-009, ¶ 37 (internal quotation marks and citation omitted). "Because the purpose of [this type of] civil contempt sanction[] is to compel compliance with the court's orders and not to punish, the continuing contempt sanctions end when the contemnor complies." *Concha*, 2011-NMSC-031, ¶ 25.

### C. The District Court Did Not Exercise Its Contempt Power Consistent With the Purposes of Civil Contempt

{23} The classification of contempt in this case is not based on the initiation of the contempt proceedings in the context of a civil case, the dismissal of the criminal contempt portion of the Mercer-Smiths' motion, or all parties proceeding since that time as if dealing with civil contempt. See *Tran*, 2018-NMSC-009, ¶ 34 (stating that this Court is not "bound by the parties' characterization of the contempt as civil or criminal"). Instead, as set forth above, "we look to the nature and purpose of the punishment, rather than the character of the acts to be punished, as a controlling factor." *Concha*, 2011-NMSC-031, ¶ 32 (internal quotation marks and citation omitted).

{24} The district court awarded the Mercer-Smiths compensatory damages for past and future emotional distress, loss of enjoyment of life, and past and future psychological expenses. In support of the

award, the district court found that “there continued to be viable prospects for reconciliation between [the Mercer-Smiths] and their daughters Julia and Rachel” before the hearing that resulted in the district court’s Placement Order. Additionally, the district court found that because of CYFD’s contempt of the Placement Order, “the likelihood of any meaningful form of reconciliation . . . was greatly reduced to the point of being remote and effectively eliminated.” Based on the district court’s findings, the intended purpose of the contempt proceedings was to preserve and enforce the Mercer-Smiths’ chance of reconciliation with Julia and Rachel, which was allegedly undermined by CYFD’s violation of the Placement Order. However, at the time that the contempt proceedings were initiated, the district court had already “accept[ed] . . . as an uncontroverted fact” that CYFD had “no duty . . . to support reconciliation.” Thus, as we explain in further detail below, because efforts toward reunification and reconciliation were no longer being required by the district court, the contempt proceedings were not, in fact, instituted for the remedial purpose of preserving and enforcing the Mercer-Smiths’ chances of reconciliation. Therefore, the resulting contempt order and award of damages, attorney fees, and costs cannot be upheld as a valid exercise of civil contempt power.

{25} In their motion to institute contempt proceedings, the Mercer-Smiths noted that they had objected to the proposed placements with the Farleys and Schmierers on three grounds: first, that placing their daughters with Gay and Jennifer would result in “dual relationships” in violation of ethics rules that bind counselors and therapists; second, that the Farleys and Schmierers were not supportive of the Mercer-Smiths’ attempts to achieve reconciliation with their daughters; and third, that the possibility of future reconciliation would be undermined by the placement. The district court’s Placement Order reflects its findings that the placements would constitute dual relationships as contemplated by relevant ethics rules. However, the district court made no findings indicating that the placements were inappropriate for any other reasons, including that they might undermine future prospects for reconciliation between Julia and Rachel and the Mercer-Smiths. In fact, although the Mercer-Smiths tendered proposed findings based on its arguments that the proposed placements would undermine

reconciliation, the district court refused them. The court’s refusal to adopt these particular findings is tantamount to a finding against the Mercer-Smiths on those issues. *Jones v. Beavers*, 1993-NMCA-100, ¶ 18, 116 N.M. 634, 866 P.2d 362; *see also Sanchez v. Mem’l Gen. Hosp.*, 1990-NMCA-095, ¶ 33, 110 N.M. 683, 798 P.2d 1069 (“[R]efusal of a requested finding has the legal effect of a finding against the party who submitted the request.”). Therefore, the district court’s subsequent ruling that CYFD’s violation of the Placement Order resulted in the loss of the Mercer-Smiths’ chances of reconciliation was an abuse of discretion and cannot be sustained.

{26} Additionally, by the time that the Placement Order was entered, the treatment plan in place, which was approved by the district court, no longer required Julia and Rachel to have any contact whatsoever with their parents via visitation or family therapy. In fact, the treatment plan required no action at all with respect to either Father or Mother, except for the requirement that they pay child support. In August 2002, prior to approving that treatment plan, the district court had already changed the permanency plan from reunification to PPLA and ordered additional therapy sessions between Julia and Rachel and Mother for the purpose of attempting to resolve the ongoing issues between them. However, the district court apparently accepted CYFD’s recommendation not to continue therapy between Father and the daughters, which is tantamount to a finding that it was not in their best interests. Subsequently, on July 1, 2003, when the annual permanency hearing took place, the therapy between the daughters and Mother had been completed and no additional therapy sessions were ordered. Testimony from Dr. Glass subsequently established that after family therapy ceased, it was clear that efforts at reconciliation had failed. By not requiring additional therapy—or any contact whatsoever—between Julia and Rachel and the Mercer-Smiths, there was no mechanism by which reconciliation might be achieved, thus eliminating any chance of reconciliation that CYFD could have had a duty to support. In short, as of July 2003, no efforts at either reunification or reconciliation were being ordered by the district court. The district court’s oral remark that there was “no duty on the part of [CYFD] to support reconciliation with the parents” at the August 19, 2003 hearing is consistent with this conclusion. Therefore, when the

contempt proceeding was initiated in July 2004, it could not have been for the purpose of preserving or enforcing any chance of reconciliation that the Mercer-Smiths had—that opportunity had passed.

{27} Because the contempt proceedings could not have been for the purpose of preserving or enforcing any right that the Mercer-Smiths had, the only other possible remedial purpose would have been to coerce CYFD into compliance with the Placement Order. *See El Paso Prod. Co. v. PWG P’ship*, 1993-NMSC-075, ¶ 28, 116 N.M. 583, 866 P.2d 311 (“[C]ivil contempts are those proceedings instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court[.]” (emphasis, internal quotation marks, and citation omitted)). It is clear, however, that coercion was not the intended purpose either. When the district court learned at the April 27, 2004 hearing that Julia and Rachel had been placed with Melissa Brown, the court expressed its disappointment that CYFD had “found a way to get around [its] ruling” but did not order a change in placement. Even three months later, when the Mercer-Smiths moved to initiate civil and criminal contempt proceedings based on CYFD’s violation of the Placement Order, the district court did not order CYFD to find an alternate placement. Instead, the district court allowed Julia and Rachel to remain in the independent living situation with Melissa Brown until they aged out of the system. Only then did the district court finally hold CYFD in contempt. It took the district court over three and one-half years to adjudicate the contempt proceedings once it was apprised of the placement in April 2004. It took another almost four years for the district court to impose a sanction for the violation of the Placement Order. Because of the inordinate amount of time that it took to adjudicate the contempt proceedings, placement of Julia and Rachel was no longer an issue and CYFD never had an opportunity to cure its non-compliance. By the time that the district court entered the almost \$4,000,000 award in favor of the Mercer-Smiths, the sanction imposed could no longer be fashioned in such a way to compel CYFD to comply with the Placement Order. The time for the opportunity to impose a coercive sanction had already lapsed.

{28} Based on the foregoing, we conclude that the contempt proceedings in this case were not instituted either to



preserve and enforce the rights of the Mercer-Smiths or to compel obedience to the district court's Placement Order. Accordingly, the almost \$4,000,000 award could not have been remedial and was, therefore, purely punitive in nature. The punitive nature of the award in this case seems obvious—once remedial sanctions were no longer available to the district court, the purpose of the award was “to punish [a] completed act[] of disobedience that . . . threatened the authority and dignity of the court.” *Concha*, 2011-NMSC-031, ¶ 26. Punitive sanctions, however, can only be imposed for criminal contempt of court and only if the alleged contemnors were afforded adequate due process. *See id.* (“A criminal contempt defendant is . . . entitled to due process protections of the criminal law, . . . including the requirement that the offense be prove[n] beyond a reasonable doubt.” (internal quotation marks and citation omitted)). There is nothing in the record below indicating that the district court afforded CYFD these protections once the criminal contempt portion of the proceedings was dismissed. Accordingly, the district court's contempt order cannot be affirmed as a valid exercise of civil or criminal contempt power.

{29} As we have done in the past, we remind courts of their duty to exercise their contempt powers cautiously. *Int'l Minerals & Chem. Corp. v. Local 177, United Stone & Allied Prods. Workers*, 1964-NMSC-098, ¶ 18, 74 N.M. 195, 392 P.2d 343; *accord Concha*, 2011-NMSC-031, ¶ 30. Because the “power of a court is so broad[,]” it is “uniquely liable to abuse.” *Concha*, 2011-NMSC-031, ¶ 29 (internal quotation marks and citation omitted). When the purpose for exercising the contempt power is punitive in nature, it should not be stretched to fit some sort of remedial motivation. A court should determine, from the outset, the purpose for which it is exercising its contempt power so that it can fashion an appropriate remedy. *Id.* ¶ 45 (“A judge's exercise of the contempt power must be tailored to the contemptuous conduct, exerting just enough judicial power to right the wrong; no more, no less.”). The district court in this case failed to abide by these mandates.

### III. CONCLUSION

{30} The district court did not exercise its contempt power for the purpose of preserving the Mercer-Smiths' chance of reconciliation with Julia and Rachel or for the purpose of coercing CYFD into compliance with its Placement Order.

Therefore, the contempt order cannot be upheld as a proper use of civil contempt power; accordingly, we reverse the contempt order. Because the compensatory damages and award of attorney fees and costs cannot stand under an improper contempt ruling, we vacate the entire award. For the same reason, we deny the Mercer-Smiths' request for attorney fees incurred as a result of the proceedings in this Court.

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

**PETRA JIMENEZ MAES, Justice**

**WE CONCUR:**

**JUDITH K. NAKAMURA, Chief Justice**

**EDWARD L. CHÁVEZ, Justice, retired**  
**Sitting by designation**

**JENNIFER E. DELANEY, District Judge**  
**Sitting by designation**

**JOHN J. ROMERO JR., District Judge**  
**Sitting by designation**



From the New Mexico Court of Appeals

**Opinion Number: 2019-NMCA-002**

No. A-1-CA-35346 (filed September 24, 2018)

MARCY BRITTON,  
Plaintiff-Appellant,  
v.  
OFFICE OF THE ATTORNEY GENERAL  
OF NEW MEXICO,  
Defendant-Appellee.

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

C. Shannon Bacon, District Judge

JOHN W. BOYD  
FREEDMAN BOYD HOLLANDER  
GOLDBERG  
URIAS & WARD, PA  
Albuquerque, New Mexico  
for Appellant

SCOTT FUQUA  
FUQUA LAW & POLICY, PC  
Santa Fe, New Mexico  
for Appellee

DENISE M. CHANEZ  
RODEY, DICKASON, SLOAN, AKIN &  
ROBB, P.A.  
Albuquerque, New Mexico  
for Amici Curiae New Mexico  
Foundation for Open Government

**Opinion**

**J. Miles Hanisee, Judge**

{1} At issue in this appeal is the appropriate damages available to Plaintiff under the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2018), when she successfully proved that the New Mexico Attorney General's Office (AGO) failed to produce all nonexempt records in response to her request to inspect public records and further failed to provide her with an explanation of why she was denied the right to inspect those records. In *Faber v. King*, 2015-NMSC-015, ¶ 1, 348 P.3d 173, decided two months before the district court ruled in this case, our Supreme Court addressed what damages are available under Section 14-2-12 of IPRA when a public body affirmatively denies an IPRA request and it is later determined that the denial was wrongful. *Faber* held that in an action brought under Section 14-2-12 to enforce a "wrongful denial,"

successful plaintiffs may only recover actual damages, costs, and attorney fees, but not statutory or punitive damages. *Faber*, 2015-NMSC-015, ¶¶ 15, 31, 41. Relying on *Faber*, the district court here reasoned that because the AGO timely provided "some responsive records" to Plaintiff's request, Plaintiff's case is a "wrongful denial" case "that proceeds under Section 14-2-12, not under Section 14-2-11." Thus, the district court ruled that Plaintiff is entitled only to actual damages, attorney fees, and costs under Section 14-2-12, and is foreclosed from recovering Section 14-2-11's statutory damages of up to \$100 per day. Concluding that the district court misapplied *Faber* and misinterpreted the damages provisions of IPRA in a manner inconsistent with the legislation's overarching purpose, we reverse.

**BACKGROUND**

**Historical Facts**

{2} Plaintiff is a long-time animal welfare activist in New Mexico who, in 2007, learned about raids being conducted by the AGO's newly formed Attorney

General's Animal Cruelty Task Force (AGACT). Among other things, Plaintiff became concerned that AGACT was engaging in "killing animals unnecessarily, inhumanely and unlawfully[.]" Plaintiff was also concerned that reports of animal cruelty that were made to the AGACT Hotline were going unanswered, and that Heather Ferguson, a private citizen who was appointed "coordinator" of AGACT, "was mishandling cruelty cases while exercising some sort of law enforcement authority derived from her status as 'coordinator' of the AGACT."

{3} After writing to the AGO to express concerns regarding the hotline, Ferguson, and the failure to prosecute cases of animal cruelty and being told by the AGO that its "jurisdiction and authority [to investigate and prosecute complaints of animal cruelty] is, in fact, limited by state statute[.]" Plaintiff sought the assistance of sheriffs, district attorneys, the FBI, and state legislators among others. Because "[n]ot one agency investigated or took any action[.]" Plaintiff "decided to launch [her] own investigation through letters and IPRA requests directly to the AGO."

**Plaintiff's IPRA Requests and the AGO's Responses**

{4} In March 2009 Plaintiff began submitting requests to inspect public records related to AGACT to the AGO. Specifically, Plaintiff was "trying to find out how ordinary citizens had acquired law enforcement and dispatch authority from the AGO." On June 30, 2009, Plaintiff served the request at issue in this appeal (June 2009 request)—her fifth request in total to the AGO—in which she sought to inspect:

[a]ny and all electronic communications . . . sent and/or received by or between any persons employed by or associated with the [AGO,] including but not limited to . . . Steve Suttle, . . . and all persons on or associated with the Attorney General's Animal Cruelty Task Force/Hotline . . . , including but not limited to Heather Ferguson[,] . . . Sherry Mangold, etc. in connection to all activities . . . involving in any way the above-referenced parties for the time period of July 1, 2007 through June 30, 2009[.]

After initially informing Plaintiff on July 1, 2009, that the AGO would respond to Plaintiff's request no later than July 15, 2009, the AGO's records custodian later wrote to Plaintiff on July 14, 2009, to in-

form her that “[t]his request is excessively burdensome and broad and we need additional time to respond.” The AGO told Plaintiff it would “gather the records into year groupings and allow inspection on an on-going basis.”

{5} On August 1, 2009, having not been permitted to inspect any of the public records responsive to her June 2009 request, Plaintiff wrote to Chief Deputy Attorney General Albert Lama and asked the AGO to “immediately comply with IPRA and provide all requested public records to [her] by Friday, August 14, 2009.” In a letter dated August 6, 2009, Lama’s assistant provided Plaintiff with the following updates regarding the AGO’s efforts to respond to her request: (1) the AGO had “completed [its] search for responsive records created in 2007” and had “located no responsive records for that year”; (2) the AGO anticipated “be[ing] able to provide [Plaintiff] with records for 2008 on or before September 8, 2009”; and (3) the AGO “will then continue [its] efforts to identify and make available for inspection the responsive 2009 records.” The letter further stated that the AGO “believe[s] that there are potentially 10,000 records responsive to [Plaintiff’s] request” and asked Plaintiff to provide additional specificity as to the particular records she wished to inspect. Plaintiff responded by letter on August 9, 2009, commenting that the AGO’s August 6 letter had “brought to light the startling and unexpected fact that, by [the AGO’s] estimation, there have been potentially 10,000 e-mails exchanged between members of [AGACT] and staff members of the [AGO] within th[e] last year and a half.” She then informed the AGO that “[b]ecause of this new information, instead of tightening the scope of [her] public records request . . . , [she] must now expand it to include all of the records [the AGO] mentioned.”

{6} On September 4, 2009, the AGO wrote to Plaintiff, informing her that “the first batch [of emails were] available and ready for inspection” and that the standard copying fee of \$0.25 per page would apply. Plaintiff sent the AGO a check for \$75, and the AGO provided copies of records on September 18, 2009. After Plaintiff sent another check for \$19.50, the AGO provided Plaintiff with additional records on October 15, 2009, and advised her that those records constituted “the last batch of emails available for inspection[.]” In total, Plaintiff received 378 records from the AGO in response to her June 2009 request.

{7} On October 17, 2009, Plaintiff wrote to the AGO, asking it to “explain the discrepancy between the 10,000 emails that [the AGO] wrote would be responsive to [her] public records request and the 378 records that were actually provided to [her].” Plaintiff also said that she believed she had “evidence . . . to support [her] theory that the [AGO] has willfully withheld approximately 9,600 public records, includ[ing] a previously sent email that was not provided with the subject batches.” She further expressed her surprise that Steve Suttle, an AGO attorney affiliated with AGACT and named in Plaintiff’s June 2009 request, had recently and publicly stated at the State Humane Conference, “‘Our emails are private and confidential. We are not going to release them.’”

{8} Lama responded on November 9, 2009, that the AGO had advised Plaintiff that her request could “*potentially* produce” up to 10,000 responsive records, “but at that time, a definite number had not yet been established.” Lama informed Plaintiff that “[t]he request produced approximately 1000 emails, [of] which [Plaintiff has] been given 378[.]” and that “[s]ome documents retrieved were duplicative or were not within the scope of [Plaintiff’s] request.” Lama also explained that “[o]f the volume of documents reviewed, there is a small number, relating to information subject to non-disclosure under . . . the law enforcement exception to [IPRA].” Lama then concluded, “[a]t this time [the AGO’s] office has fully responded to [Plaintiff’s June 2009] request for inspection of public records that were identifiable based on [her] request.”

{9} Over the next two months, Plaintiff continued to “dispute [the AGO’s] assertion that [it] . . . has fully complied with [Plaintiff’s] request for inspection of public records.” In a letter to Lama, Plaintiff explained that she believed the AGO was not in compliance with IPRA for two reasons: first, because it had not produced all responsive records to her request, and second, because it had issued a “blanket denial of records using the ‘law enforcement’ exception[.]” which Plaintiff contended IPRA did not allow. On February 3, 2010, Lama sent Plaintiff a letter and “copies of documents subject to inspection for your review.” Lama informed Plaintiff that “the copies provided are duplicative of what [she was] previously provided in [her] original inspection of public records request” and that “[t]his completes all records requests

received by this office from [Plaintiff].” Plaintiff “continued to be convinced that the AGO had withheld many emails that were responsive to [her] request” but felt that she “was at a ‘dead end.’”

#### **Plaintiff’s Discovery of Additional Responsive Records and Filing of the Instant Action**

{10} Nearly two years later, in January 2012, Plaintiff served an IPRA request on the State Auditor—who, by then, had conducted his own audit of AGACT—seeking inspection of all records in the State Auditor’s custody related to AGACT. Upon receiving a response to her request from the State Auditor, Plaintiff “could see immediately that there were documents within the scope of [her June 2009] IPRA request that the AGO had provided to the [State] Auditor but had withheld from [her].” For example, Plaintiff received from the State Auditor, but not the AGO, an email dated February 10, 2009, sent by Sherry Mangold to a list of recipients that included three individuals employed by the AGO’s office—including Steve Suttle—with a rough draft of minutes from the January 14, 2009, AGACT meeting.

{11} Also in January 2012, Plaintiff filed suit in the instant action, alleging that “[t]o date, almost two and a half years after receiving [Plaintiff’s] IPRA request, the AGO has not provided all of the public documents in its possession that are responsive to [Plaintiff’s] request.” Through the use of depositions, Plaintiff learned that “the initial search” the AGO conducted in responding to Plaintiff’s June 2009 request “was itself artificially limited and not reasonably calculated to identify many of the documents [Plaintiff] was seeking.” Because Plaintiff’s counsel was also counsel in separate litigation against the AGO, through which it had obtained documents from the AGO during discovery, Plaintiff additionally and by pure happenstance obtained further proof that there were “many documents” that the AGO had not provided to Plaintiff that were responsive to her June 2009 request. The AGO agreed to “run a new search of emails, with search criteria that were consistent with [Plaintiff’s June 2009] IPRA request and that [the parties] believed would actually locate the documents that [Plaintiff] had originally sought through [her] IPRA request.” On May 9, 2013, the AGO produced “at least 350 [emails] that were called for by [Plaintiff’s June] 2009 IPRA request and that had not been produced earlier.”

### Summary Judgment Proceedings and the District Court's Rulings

{12} Plaintiff thereafter moved for summary judgment on her IPRA complaint based on what she contended were the AGO's two distinct violations of IPRA. Plaintiff first argued that the AGO violated IPRA by failing to "produce[] all of the responsive records before declaring that it had completed responding to [Plaintiff's] request." Plaintiff next argued that the AGO violated IPRA by failing to "comply with the procedures for denied requests outlined in Section 14-2-11(B)." In addition to requesting attorney fees and costs under Section 14-2-12(D), Plaintiff sought statutory damages of up to \$100 per day as provided for in Section 14-2-11 of IPRA.

{13} In its response to Plaintiff's motion, the AGO did not dispute that "the initial search to locate documents responsive to Plaintiff's [June 2009] IPRA request was incomplete" but contended that "[t]he failure to initially produce [responsive] documents was inadvertent" and, "at worst, negligent." While the AGO repeatedly noted that Plaintiff had failed to establish that the AGO's failure to produce responsive records was done intentionally or in bad faith, it also contended that "it is ultimately irrelevant whether" Plaintiff proffered evidence that the AGO withheld records in bad faith. The AGO's primary argument that the portion of Plaintiff's motion seeking Section 14-2-11 damages should be denied focused on the timeliness of the AGO's response. The AGO argued that because it was undisputed that it had "responded to Plaintiff's IPRA request within fifteen days of receiving it[,] Section 14-2-11(C)'s statutory damages provision—which provides that "[a] custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of [IPRA]"—"has no application here." The AGO argued that Plaintiff's action to enforce the alleged IPRA violations was one arising under Section 14-2-12 of the Act, which, according to the AGO, provides a "separate mechanism for enforcing a [s]tate agency's wrongful denial of records" through which only attorney fees and costs are recoverable.

{14} The district court denied Plaintiff's motion "with respect to the applicability of [Section] 14-2-11" statutory damages but concluded that "Plaintiff is entitled to a reasonable attorney[] fee" under Section 14-2-12. With respect to its denial of Plain-

tiff's request for Section 14-2-11 damages, the district court reasoned:

IPRA establishes two potential violations of its provisions and also establishes two separate remedies for the enforcement of those violations. The first violation—the failure to timely respond to an IPRA request—is remedied through the provisions described above and found in Section 14-2-11. The second violation—the wrongful withholding of documents in response to a request—is remedied through the provisions of [Section] 14-2-12.

...

Plaintiff's case is one that proceeds under Section 14-2-12, not under Section 14-2-11. The [AGO] responded to Plaintiff's IPRA request within the statutorily-mandated time period and provided some responsive records approximately two months later. Plaintiff believed, correctly, that the [AGO] had not fully responded to her request and brought this lawsuit in an effort to obtain those documents that she believed had been withheld. Her action is thus an enforcement action under Section 14-2-12, and she is limited to those damages made available in Section 14-2-12(D).

Relying on our Supreme Court's then-recently issued opinion in *Faber*, 2015-NMSC-015, the district court concluded that Plaintiff was entitled not to statutory damages but only to "a reasonable attorney[] fee."

{15} The district court subsequently denied Plaintiff's motion for reconsideration and granted the AGO's motion for summary judgment. In its opinion and order, the district court further elaborated on its reading of *Faber* and the reasons it concluded that Plaintiff's action was an action under Section 14-2-12 rather than Section 14-2-11. The district court explained that its ruling was "[i]n light of *Faber*" and reiterated its belief that "under IPRA there are 'two different sets of actions.' . . . One is where the agency completely ignores an IPRA request or doesn't respond in a timely fashion[,] and the other is 'the more traditional fight' under Section 14-2-12 where a requestor sues over what an agency should have produced." The district court described the instant case

as one where "Plaintiff was suing over a wrongful denial" and rejected Plaintiff's argument that the AGO's failure to either provide her with all responsive records or inform her of the basis for withholding responsive documents constituted a failure to timely respond to an IPRA request and, therefore, a violation of Section 14-2-11. Accordingly, the district court granted the AGO's motion for summary judgment.

### The Arguments on Appeal

{16} Plaintiff argues that the district court's decision reflects a misunderstanding of both IPRA and *Faber*. She points to the district court's statement that Section 14-2-11 damages apply only in cases "where the agency completely ignores an IPRA request or doesn't respond in a timely fashion" as evidence of that misunderstanding. According to Plaintiff, under the district court's ruling, "no matter how flagrantly an agency violates [Section 14-2-11's] procedural provisions, there is no liability for statutory penalties if the agency has gone through the formality of providing some sort of response, whatever it is, to the IPRA request." Such a ruling, contends Plaintiff, "does violence to IPRA and to [our] Supreme Court's decision in *Faber*."

{17} Amicus Curiae New Mexico Foundation for Open Government (NMFOG), which filed a brief in support of Plaintiff, goes further in its condemnation of the district court's decision, arguing that "[t]he district court's ruling encourages deceptive responses to IPRA requests" and that "[a]bsent the deterrent effect of an award of statutory damages in situations like these, government entities have little incentive to behave openly and transparently by disclosing the existence of responsive documents." NMFOG specifically faults the district court for "focusing on the [AGO's] partial production of responsive documents rather than the [AGO's] failure to produce other responsive documents" and argues that the district court's ruling "undermines the overarching policy behind IPRA" by allowing public bodies that provide any response—no matter how inadequate, so long as it is timely—to an IPRA request to avoid the possibility of per-day statutory damages.

{18} The AGO admits that its response to Plaintiff's request was "inadequate" but argues that the district court correctly concluded that statutory damages are not available to Plaintiff because the AGO's admittedly inadequate response was timely. The AGO's argument rests on its reading



of IPRA as “establish[ing] two separate obligations for government agencies and two concomitantly separate remedies for violations of each.” According to the AGO, a public body’s two obligations under IPRA are: (1) to “promptly reply to IPRA requests[.]” and (2) to “respond to IPRA requests by providing all non-exempt responsive documents in their possession.” The AGO argues that a public body’s failure to comply with the first obligation is enforceable under Section 14-2-11(C), which provides for statutory damages of up to \$100 per day, while a public body’s failure to comply with its second obligation is only enforceable under Section 14-2-12, which allows for actual damages, attorney fees, and costs, but not statutory damages. Relying on *Faber* and arguing that the AGO’s failure in this case, like the one in *Faber*, was in meeting only the second obligation, the AGO defends the district court’s determination that Plaintiff may only recover the damages allowed under Section 14-2-12.

#### DISCUSSION

{19} The question to be resolved in this appeal is whether the district court erred in concluding that Plaintiff’s action is exclusively “one that proceeds under Section 14-2-12” and limiting the damages Plaintiff can recover to actual damages under Subsection (D) of that provision. To answer this question requires that we interpret IPRA, making our review de novo. See *Faber*, 2015-NMSC-015, ¶ 8 (“Interpretation of the language of a statute is a question of law that we review de novo.”). Because the facts relevant to our analysis are not in dispute, see *Carangelo v. Albuquerque-Bernalillo Cty. Water Util. Auth.*, 2014-NMCA-032, ¶ 16, 320 P.3d 492 (explaining that “[s]ince summary judgment was granted, we presume the district court found no material facts in dispute”), we apply de novo review to the district court’s legal conclusion that Plaintiff is foreclosed from the possibility of recovering Section 14-2-11 damages under the facts of this case. See *City of Albuquerque v. BPLW Architects & Engrs, Inc.*, 2009-NMCA-081, ¶ 7, 146 N.M. 717, 213 P.3d 1146 (explaining that “if no material issues of fact are in dispute and an appeal presents only a question of law, we apply de novo review”). Ordinarily, we would begin with a discussion of IPRA itself; however, because the district court concluded that *Faber* directly controls the disposition of this case and because the AGO contends on appeal that *Faber* “forecloses” the

possibility of Plaintiff recovering Section 14-2-11 statutory damages, we begin by considering *Faber*’s applicability and the extent to which it controls the outcome of this case.

#### I. Whether *Faber* Controls

{20} *Faber* involved an action by attorney Daniel Faber against then-Attorney General Gary King in which Faber alleged that the AGO had “wrongfully denied” Faber’s request to inspect public records. 2015-NMSC-015, ¶¶ 2, 4. Faber represented three assistant attorneys general in a federal employment lawsuit against the AGO. *Id.* ¶ 2. He filed an IPRA request for employment data on former AGO attorneys after the federal district court had entered an order staying proceedings, including discovery, in that case. *Id.* ¶¶ 2-3. The AGO denied the request on the basis that “these records involve a current lawsuit and appear to circumvent the discovery process and the current [o]rder [s]taying [d]iscovery.” *Id.* ¶ 3. Less than two weeks later, Faber filed an IPRA enforcement action in state district court. *Id.* ¶ 4.

{21} The district court determined that the federal court’s stay of discovery “did not preempt the statutory rights granted to New Mexico citizens by IPRA, and that the Attorney General violated IPRA by denying Faber’s . . . request.” *Id.* Having succeeded in his enforcement action, Faber later moved for an award of damages and specifically sought “damages of \$100 per day.” *Id.* ¶ 5 (internal quotation marks omitted). Noting that Section 14-2-11(C) allows courts to “award damages of [up to] \$100 per day for failure to timely respond to an IPRA request[.]” Faber argued that “the same per diem damages should apply for wrongful denial of requests under Section 14-2-12(D).” *Faber*, 2015-NMSC-015, ¶ 5. In addition to costs, the district court awarded Faber “\$10 per day from the date of the wrongful denial to the date the stay was lifted and thereafter damages of \$100 per day until the records are provided[.]” *Id.* (internal quotation marks omitted).

{22} Our Supreme Court reversed the district court’s award of per-day damages and held that in “post-denial enforcement” actions brought, as Faber’s was, under Section 14-2-12, the only damages available are actual damages, costs, and attorney fees. *Faber*, 2015 NMSC-015, ¶¶ 17, 32 (emphasis added). The issue decided in *Faber* was narrow: “what type of damages a court is permitted to award under Section

14-2-12(D).” *Faber*, 2015-NMSC-015, ¶ 7. Our Supreme Court rejected the argument advanced by Faber that Section 14-2-11’s per-day damages could and should be read into Section 14-2-12’s damages provision. *Faber*, 2015-NMSC-015, ¶¶ 5, 13, 15. In so doing, it discussed the different remedies available under Sections 14-2-11 and -12 to illustrate why it was inappropriate—and violative of statutory construction rules—to read Section 14-2-11’s statutory damages into Section 14-2-12. *Faber*, 2015-NMSC-015, ¶¶ 12, 14-16, 29-32. Specifically, it explained that “Sections 14-2-11 and 14-2-12 create separate remedies depending on the stage of the IPRA request.” *Faber*, 2015-NMSC-015, ¶ 12. It described Section 14-2-11’s per-day damages as being available “when the custodian fails to respond to a request or deliver a written explanation of the denial” and designed to meet “the goal of prompt compliance” by the public body. *Faber*, 2015-NMSC-015, ¶¶ 16, 29. By contrast, it described Section 14-2-12 damages as “ensur[ing] that IPRA requests are not wrongfully denied.” *Faber*, 2015-NMSC-015, ¶ 29. Explaining that the AGO—which had undisputedly provided a good-faith written explanation of denial—“was entitled to present its reasons for nonproduction to the district court” and that the AGO “was in compliance with IPRA” up to the time of decision by the district court, our Supreme Court held that Section 14-2-11’s statutory damages are unavailable in “wrongful denial” enforcement actions under Section 14-2-12. *Faber*, 2015-NMSC-015, ¶¶ 3, 29, 30.

{23} Importantly, *Faber* neither considered nor addressed the issue presented here: whether a public body that incompletely and inadequately responds to a request is “in compliance[.]” 2015-NMSC-015, ¶ 29, with its obligations under IPRA so as to avoid the possibility of statutory damages. *Faber*’s statements regarding Section 14-2-11 and the statutory damages provided therein must be understood in the context of the facts of that case and the resolution of the particular arguments advanced therein. Cf. *State v. Lucero*, 2017-NMSC-008, ¶ 31, 389 P.3d 1039 (rejecting as unpersuasive the defendant’s reliance on a case “that presented very different legal and factual issues than his own” and that “did not squarely address” the issue he was raising). Critically, the parties in *Faber* did not dispute that there had been a “wrongful denial” of Faber’s request, i.e., that the AGO had complied with its obligations under Section 14-2-11 by informing Faber



of its “good-faith basis for denying the request,” and that Faber’s action was one brought strictly under Section 14-2-12. *Faber*, 2015-NMSC-015, ¶¶ 1, 31. Here, however, Plaintiff sued over the AGO’s “fail[ure] to produce the public records . . . requested by . . . Plaintiff” in response to her June 2009 IPRA request and the fact that the AGO had *not* issued a written explanation of denial in conformance with Section 14-2-11(B). In other words, Plaintiff never conceded—and, in fact, continues to hotly contest—that the AGO had complied with its Section 14-2-11 obligations, yet the district court summarily concluded that Plaintiff’s case is one that proceeds *only* under Section 14-2-12.

{24} As characterized above, the district court based its conclusion on the fact that “the AGO responded timely to Plaintiff’s IPRA request and provided some responsive records, but did not fully respond to Plaintiff’s request.” But the district court’s own reasoning illustrates the important yet overlooked factual distinction between this case and *Faber*: that here, by the district court’s own acknowledgment, the AGO “did not fully respond to Plaintiff’s request.” *But see Faber*, 2015-NMSC-015, ¶¶ 3, 30 (explaining that the AGO’s written explanation of denial, which provided a good-faith reason for withholding requested records, in that case rendered the AGO “in compliance with IPRA”). The question to be decided here—not considered or answered by *Faber*—is whether the failure to *fully* respond renders a public body potentially subject to statutory damages. Thus, because cases are not considered authority for propositions not considered, we conclude that *Faber* does not control the outcome of this case and that the district court erred in concluding otherwise. *See Sangre de Cristo Dev. Corp., Inc. v. City of Santa Fe*, 1972-NMSC-076, ¶ 23, 84 N.M. 343, 503 P.2d 323 (“The general rule is that cases are not authority for propositions not considered.”).

{25} But that alone does not mandate reversal. Because the district court based its conclusion on *Faber* and not an independent construction of IPRA, we next turn to IPRA itself to determine what damages the Legislature intended to be recoverable under the facts of this case.

## II. Interpreting IPRA

{26} The issue of first impression with which we are presented is whether the Legislature intended to subject a public body that issues a perfunctory response and eventually allows inspection of some, but

not all, nonexempt public records to the possibility of Section 14-2-11’s statutory damages. Before turning to the parties’ specific arguments about the applicability of Section 14-2-11 damages in this case, however, we begin by reviewing IPRA and its purpose in order to provide context, which is key to any IPRA analysis. *See Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 8, 287 P.3d 318.

### A. Applicable Rules of Statutory Construction

{27} Courts must “construe IPRA in light of its purpose and interpret it to mean what the Legislature intended it to mean, and to accomplish the ends sought to be accomplished by it.” *Faber*, 2015-NMSC-015, ¶ 8 (internal quotation marks and citation omitted). When construing individual statutory sections contained within an act, courts examine the overall structure of the act and consider each section’s function within the comprehensive legislative scheme. *See id.* ¶ 9. “To determine legislative intent, we look not only to the language used in the statute, but also to the purpose to be achieved and the wrong to be remedied.” *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69. “A construction must be given which will not render the statute’s application absurd or unreasonable and which will not defeat the object of the Legislature.” *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 9, 90 N.M. 790, 568 P.2d 1236, *superseded on other grounds by statute as stated in Republican Party of N.M. v. N.M. Taxation and Revenue Dep’t*, 2012-NMSC-026, 283 P.3d 853.

{28} “We should not attribute to the [L]egislature an undue precision in drafting and thereby frustrate legislative intent when we construe a statute.” *Jeffrey v. Hays Plumbing & Heating*, 1994-NMCA-071, ¶ 10, 118 N.M. 60, 878 P.2d 1009. That is particularly so because “[t]he Legislature often enacts laws with a broad sweep, and cannot be fairly expected to expressly address every eventuality.” *Cerrillos Gravel Prods., Inc. v. Bd. of Cty. Comm’rs of Santa Fe Cty.*, 2004-NMCA-096, ¶ 15, 136 N.M. 247, 96 P.3d 1167. “Although [appellate courts] will not read into a statute language which is not there, we do read the act in its entirety and construe each part in connection with every other part in order to produce a harmonious whole.” *Gen. Motors Acceptance Corp. v. Anaya*, 1985-NMSC-066, ¶ 15, 103 N.M. 72, 703 P.2d 169.

### B. The Purpose of IPRA

{29} The starting point for any court tasked with resolving an IPRA challenge is to place into statutory context the

particular arguments made vis-à-vis the Legislature’s declared purpose in enacting IPRA. Unlike many statutes, for which the Legislature has provided no express statement of intent, IPRA contains a clear declaration of the public policy the Legislature intended to further by enacting IPRA. Section 14-2-5 provides:

Recognizing that a representative government is dependent upon an informed electorate, the intent of the [L]egislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that *all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees*. It is the further intent of the [L]egislature, and it is declared to be the public policy of this state, that *to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees*.

(Emphasis added.) As our Supreme Court has explained, “IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve.” *San Juan Agric. Water Users Ass’n v. KNME-TV (San Juan)*, 2011-NMSC-011, ¶ 16, 150 N.M. 64, 257 P.3d 884. “New Mexico’s policy of open government is intended to protect the public from having to rely solely on the representations of public officials that they have acted appropriately.” *City of Farmington v. The Daily Times*, 2009-NMCA-057, ¶ 17, 146 N.M. 349, 210 P.3d 246, *overruled on other grounds by Republican Party of N.M.*, 2012-NMSC-026, ¶ 16.

{30} What constitutes “the greatest possible information” varies depending on the facts of a given case. Generally, providing “the greatest possible information” will consist of a public body permitting inspection of *all* public records that are responsive to a request and do not fall within one of IPRA’s enumerated exceptions. *See* §§ 14-2-1(A), -6(C) (granting “every person . . . a right to inspect public records” and defining “inspect” as meaning “to review *all* public records that are not excluded in Section 14-2-1” (emphasis added)). Where the public body does so, it is not subject to a claim for any type of damages because it has fulfilled its substantive obligation to

provide “the greatest possible information” to the requester. See *Derringer v. State*, 2003-NMCA-073, ¶¶ 1, 6, 11, 133 N.M. 721, 68 P.3d 961 (holding that the plaintiff did not have a cause of action under IPRA where the public body, which initially “did not fully comply” with IPRA, “had furnished or provided access to all of the documents in its possession that [the p]laintiff had requested” prior to the plaintiff bringing his claim). In cases where a public body believes requested records are exempt from inspection based on one of IPRA’s exceptions, “the greatest possible information” may initially—and in some cases, only—consist of a written explanation of denial issued by the custodian. See § 14-2-11(B) (providing that “[i]f a written request has been denied, the custodian shall provide the requester with a written explanation of the denial”). As this Court recently explained, IPRA is focused on providing “the greatest possible information[,]” not merely tangible documents, and “[d]enials are valuable information-gathering tools” because “the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.” *Am. Civil Liberties Union of N.M. v. Duran*, 2016-NMCA-063, ¶ 38, 392 P.3d 181. Thus, when a public body issues a conforming written explanation of denial, it is considered to have provided valuable information—upon which a requester can rely—sufficient to satisfy its substantive obligation under IPRA. See *Faber*, 2015-NMSC-015, ¶ 30 (explaining that “[r]ight or wrong, the [AGO] was entitled to present its reasons for nonproduction to the district court for a decision under Section 14-2-12” and that “up to the time of decision, the [AGO] was in compliance with IPRA”).

{31} Importantly, nowhere does IPRA expressly contemplate or provide for “incomplete” or “inadequate” responses, i.e., ones in which the public body has failed to permit inspection of all nonexempt responsive records. The expectation established by IPRA is that records custodians will diligently undertake their responsibility to process and fully respond to requests, including determining what public records are responsive to the request and what records or portions thereof may be exempt from disclosure, communicating the status of a request to the requester, and ultimately providing for inspection of all nonexempt records. See, e.g., §§ 14-2-5, -6(C), -7, -8(D), -9(A), (C)(6); *San*

*Juan*, 2011-NMSC-011, ¶ 36 (explaining that “[p]ublic bodies have a statutory duty to respond *diligently* to all records requests” (emphasis added)). The only basis IPRA provides for a public body to deny a person the right to inspect a public record is the body’s reasonable, good-faith belief that the record falls within one of IPRA’s enumerated exemptions. See §§ 14-2-1, -11. Thus, as *Faber* explained, IPRA “obligates” public bodies “to either (1) permit the inspection . . . , or (2) deny the written request[.]” 2015-NMSC-015, ¶ 11 (internal quotation marks and citation omitted). A public body that permits only partial inspection—i.e., inspection of some but not all nonexempt responsive records—plainly has not complied with its obligation to provide “the greatest possible information” to the requester.

{32} Other provisions of IPRA further suggest that inadequate, incomplete, or partial responses to IPRA are not in compliance with IPRA. Section 14-2-10, for example, provides records custodians with “an additional reasonable period of time” to “comply” with a request that is deemed “excessively burdensome or broad[.]” By granting “an additional reasonable period of time” to custodians, the Legislature indicated the primacy of the completeness of a response even over the Legislature’s express desire for timely responses. If all IPRA required public bodies to do to be deemed compliant was to quickly provide for inspection of *some* records that are within the purview of a given IPRA request, the Legislature would not have granted custodians additional time to respond to requests. The grant of additional time “to comply” with “excessively burdensome or broad” requests effectively eliminates as a possible defense by the public body that it could not adequately and fully respond to a request because of time considerations.

{33} In light of not only the express purpose of IPRA but also the entirety of IPRA’s provisions and what they evince regarding the Legislature’s intent, we conclude that when a public body provides an incomplete or inadequate response to a request to inspect public records, that body is not in compliance with IPRA. Because the undisputed facts establish that the AGO’s response to Plaintiff’s June 2009 request was “incomplete,” we hold as a matter of law that the AGO was not in compliance with IPRA at the time Plaintiff brought her IPRA enforcement action. We next turn to what damages the AGO is potentially

subject to given its noncompliant response.

### C. IPRA’s Damages Provisions Vis-à-Vis Its Purpose

{34} As our Supreme Court has explained, “IPRA includes remedies to encourage compliance and facilitate enforcement.” *San Juan*, 2011-NMSC-011, ¶ 12. IPRA’s two provisions providing for damages—Sections 14-2-11(C) and -12(D)—“create separate remedies depending on the stage of the IPRA request.” *Faber*, 2015-NMSC-015, ¶ 12. In cases where a request has been “deemed denied,” Section 14-2-11 provides a statutory penalty of up to \$100 per day when a public body’s failure to respond to a request is determined to be “unreasonable[.]” Section 14-2-11(A), (C); see *Faber*, 2015-NMSC-015, ¶ 16 (“It is when the custodian fails to respond to a request or deliver a written explanation of the denial that the public [body] is subject to Section 14-2-11 damages.”). Section 14-2-11 thus “encourage[s] compliance,” *San Juan*, 2011-NMSC-011, ¶ 12, by public bodies during the operative stage of an IPRA request—i.e., in responding to a request—by creating a financial disincentive to failing to respond in a way that fulfills the public body’s substantive obligation under IPRA. Section 14-2-12(D), by contrast, serves a different purpose. Section 14-2-12(D) requires courts to “award damages, costs and reasonable attorneys’ fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of [IPRA].” Section 14-2-12 thus “facilitate[s] enforcement,” *San Juan*, 2011-NMSC-011, ¶ 12, after a request has been denied—whether “deemed denied” or affirmatively denied based on an exception later determined to be inapplicable—by encouraging individuals to pursue an enforcement action and lawyers to take cases involving alleged violations of IPRA. See *Faber*, 2015-NMSC-015, ¶¶ 17, 30-31 (explaining that “the enforcement and damages provisions under Section 14-2-12 apply” in “post-denial enforcement” actions); *Rio Grande Sun*, 2012-NMCA-091, ¶ 19. In other words, Section 14-2-11 is focused on deterring nonresponsiveness and noncompliance by public bodies in the first instance, while Section 14-2-12 is focused on making whole a person who, believing his or her right of inspection has been impermissibly denied, brings a successful enforcement action.

{35} The respective remedies established in Sections 14-2-11 and -12 can also be understood as addressing the separate and distinct “wrongs” that can occur

under IPRA. Section 14-2-11 addresses the “wrong” done *by* a public body, i.e., a public body’s failure to respond to a request, which, as concluded above, includes everything from a complete failure to respond at all, to failing to permit inspection of all nonexempt responsive records, to failing to issue an explanation of denial in conformance with Section 14-2-11(B) when records are being withheld from inspection. Section 14-2-12, however, is designed to correct the “wrong” done *to* the requester when his or her right of inspection is improperly denied. *See* § 14-2-12(B), (D) (providing both equitable relief and compensatory damages to a requester to ensure that the right of inspection is enforced). As such, and contrary to the AGO’s contention otherwise, we view it to be possible for an IPRA enforcement action to proceed—and for an IPRA plaintiff to recover—under both Sections 14-2-11 and -12. In other words, Section 14-2-11 and Section 14-2-12 damages are not mutually exclusive insofar as a public body may first occasion wrong to the requester and a requester may be separately and subsequently injured by the ensuing inaccessibility of records obtainable under IPRA. Indeed, an IPRA plaintiff who succeeds in an action based on a public body’s noncompliance, i.e., a Section 14-2-11-based action, necessarily also succeeds in proving the “wrong” that Section 14-2-12 is intended to remedy and is, thus, eligible for the damages provided by both sections. That the same is not true for plaintiffs who prove only a “wrongful denial”—i.e., the circumstances in *Faber*—in no way forecloses the possibility that a differently situated IPRA plaintiff may be able to recover both statutory and actual damages.

{36} Here, the undisputed facts establish that the AGO failed to permit inspection of approximately 350 records that were responsive to Plaintiff’s request and for which no claim of exemption was ever asserted or written explanation of denial issued.<sup>1</sup> Thus, unlike in *Faber*, Plaintiff’s request is not one that was “denied” in a way that limits her to Section 14-2-12 damages; rather, the AGO’s failure to either produce for inspection or “deliver or mail a written explanation of denial” regarding the 350 documents more properly brings

Plaintiff’s action within the purview of Section 14-2-11. Because the AGO committed the type of “wrong” that Section 14-2-11’s statutory penalty seeks to remedy, we conclude that the district court erred by summarily concluding that Plaintiff is foreclosed categorically from recovering damages under Section 14-2-11. We, therefore, reverse the district court’s order denying Plaintiff’s motion for summary judgment “with respect to the applicability of [Section] 14-2-11” statutory damages and remand for further proceedings.

### III. Whether the District Court Must Assess the Statutory Penalty Against the AGO and Award Plaintiff Statutory Damages in This Case

{37} Plaintiff contends that the evidence in this case establishes that the AGO’s failure to provide her with all responsive records and/or an explanation as to why certain records were withheld was “certainly ‘unreasonable’ within the meaning of [Section 14-2-11(C)].” She, therefore, asks this Court to “remand to the district court with instructions to assess statutory damages against the [AGO] in an amount appropriate in light of the nature of the violation and the goal of . . . IPRA to encourage full disclosure of public records.” The AGO argues that “[i]f the per[-]day penalties in Section 14-2-11(C) were applied every time an agency produced some but not all of its responsive documents, every requester who obtained in litigation those documents that had been withheld would be entitled to recover per[-]day damages.” We next address why (1) the AGO’s concern about automatic liability is misplaced, and (2) this Court cannot grant Plaintiff the relief she seeks.

{38} Section 14-2-11 does not entitle a requester to statutory damages in every case where the public body has failed to comply with IPRA. Section 14-2-11 merely creates the possibility of statutory damages and only mandates their award where the district court has determined that the public body’s failure is “unreasonable.” Section 14-2-11(C)(1). If a district court determines that a public body’s failure to allow for inspection of responsive records was reasonable, it may properly refuse to award statutory damages. *See id.* If, however, the facts of a case support the conclusion that the public body’s failure

was “unreasonable,” the district court must award statutory damages. *Id.* And even under that circumstance, the Legislature has afforded district courts broad discretion in determining the amount of the award. {39} Unlike other statutory damages provisions that establish a sum certain to be paid in the event of a statutory violation, *see, e.g.,* NMSA 1978, § 57-12-10(B) (2005) (providing for recovery of “actual damages or the sum of one hundred dollars (\$100), whichever is greater[.]” where a person has suffered a loss resulting from a violation of the Unfair Practices Act), Section 14-2-11 establishes the penalty as a “not to exceed” amount of up to \$100 per day. This reflects the Legislature’s understanding of the potential for IPRA noncompliance violations to vary widely in degree and kind and the concomitant need to allow district courts to employ their discretion to award statutory damages that will, as awards must do, effect “the objective of such an award[.]” *Cent. Sec. & Alarm Co. v. Mehler*, 1996-NMCA-060, ¶ 17, 121 N.M. 840, 918 P.2d 1340. In the case of an intentional, bad faith withholding, the award should reflect the dual objectives of both punishing the underlying violation and deterring future noncompliance, meaning the award might be towards the higher end of the allowable range. In the case of an inadvertent, but objectively unreasonable, nondisclosure, the award serves a different purpose—to acknowledge the violation and admonish the public body for its failure to diligently respond to the request—and the damages awarded might then be calculated accordingly. In light of this sensible scheme that provides for the exercise of factually informed judicial discretion, we are unpersuaded by the AGO’s argument that subjecting public bodies to the *possibility* of Section 14-2-11 liability leads to an absurd result.

{40} Regarding Plaintiff’s request that we instruct the district court on remand to assess statutory damages against the AGO, the question of the reasonableness of a public body’s failure to comply with its IPRA obligations is one that must be answered as a matter of fact and is, therefore, not one for this Court to decide. *Cf. Bober v. N.M. State Fair*, 1991-NMSC-031, ¶ 17, 111 N.M. 644, 808 P.2d 614 (explaining that whether a defendant has

<sup>1</sup>Notably, in response to Plaintiff’s motion for summary judgment, the AGO admitted its “failure to initially produce those documents”—though it attempted to excuse that failure as “inadvertent”—and never contended that its failure with respect to at least certain documents was purposeful, i.e., based on a claimed exemption.



breached the duty of exercising ordinary care “is a question of the reasonableness of [the defendant’s] conduct, and thus a fact question” (internal quotation marks and citation omitted)); *South v. Lujan*, 2014-NMCA-109, ¶ 11, 336 P.3d 1000 (explaining that appellate courts “will not originally determine . . . questions of fact” (internal quotation marks and citation omitted)). We, therefore, remand this case to the district court to determine whether the AGO’s failure to permit inspection of all nonexempt responsive records was unreasonable. *See* § 14-2-11(C)(1). If the district court determines that the AGO’s failure to produce nearly half of the records responsive to Plaintiff’s request was reasonable, it may properly deny Plaintiff an award of statutory damages. *See* § 14-2-11(C). If, however, the AGO’s failure in this case is deemed unreasonable, the district court must award Plaintiff damages up to \$100 per day accruing from the date the district court determines the AGO was in noncompliance until it came into compliance. *Id.*

#### CONCLUSION

{41} In the absence of the potential applicability of Section 14-2-11’s per-day penalty, there exists no incentive for a public body to do anything more than provide a perfunctory “response” to a request no matter how incomplete and inadequate. Contrary to the district court’s and the AGO’s interpretation, such a “response” is, in fact, not a response at all

under IPRA. We agree with Plaintiff and NMFOG that to uphold the district court’s ruling would be to incentivize incomplete responses in direct contravention of the legislative purpose that underpins IPRA. We, therefore, reverse the district court’s grant of summary judgment to the AGO and remand for proceedings in accordance with this opinion.

**{42} IT IS SO ORDERED.**  
**J. MILES HANISEE, Judge**

**I CONCUR:**  
**JULIE J. VARGAS, Judge**

**LINDA J. VANZI, Chief Judge (specially concurring).**

**VANZI, Chief Judge (specially concurring)**

{43} I concur in the result. The undisputed facts of record establish that the “public body” at issue (the AGO), failed to respond to a written request for “public records” by providing “all public records that are not excluded in Section 14-2-1,” Section 14-2-6(C), (F), (G), and did not “deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection,” Section 14-2-11(C). Under such circumstances, the request is deemed to have been denied without a legal basis for doing so. Because the district court ruled that Section 14-

2-11 is inapplicable, it did not determine whether “the failure to provide a timely explanation of denial” was “unreasonable,” Section 14-2-11(C)(1), and thus, whether Plaintiff is entitled to the damages afforded by Section 14-2-11(C). Remand is therefore necessary to permit the district court to make the required determination.

{44} The holding in *Faber*—that Section 14-2-11 does not apply when the public body has timely answered the request with a written explanation of denial following the denial procedures set out in Section 14-2-11, *see Faber*, 2015-NMSC-015, ¶ 17, does not control the result in this case because it is undisputed that the AGO neither produced for inspection all documents responsive to Plaintiff’s request nor provided a written explanation why other responsive documents were being withheld. Further, contrary to the AGO’s argument, our decision in *Derringer* makes clear that “in the event that a plaintiff is forced to take [enforcement] action, damages or costs or both can be awarded” 2003-NMCA-073, ¶ 13 (citing §§ 14-2-11, -12). No statutory text or precedent precludes Plaintiff from seeking the damages available under Section 14-2-11(C) and ultimately obtaining an award of such damages upon the district court’s determination of whether the AGO’s “failure to provide a timely explanation of denial” is “unreasonable.”

**LINDA M. VANZI, Chief Judge**



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In 2015, Jun received the prestigious Sandra Day O'Connor Award for Professional Service by the American Inns of Court at the Supreme Court of the United States. He has authored several articles published by The Benchers, the flagship publication of the American Inns of Court. Jun was previously selected as a Super Lawyer Rising Star®.

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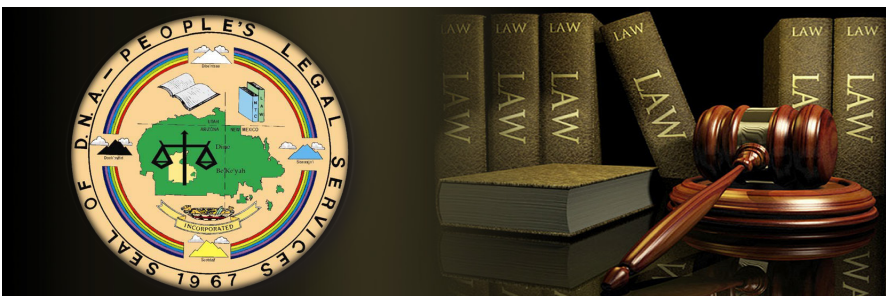


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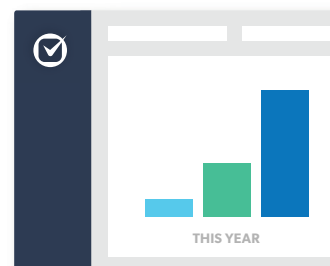
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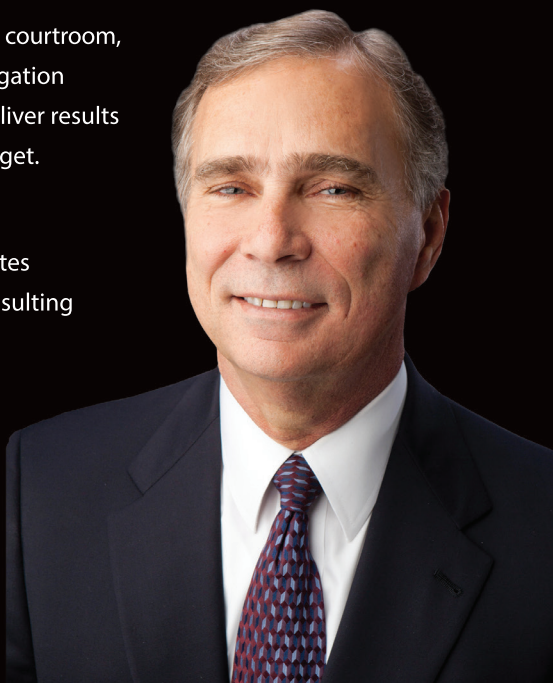
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The Federal Public Defender for the District of New Mexico is seeking a full time, experienced trial attorney for the main office in Albuquerque. More than one position may be filled from this posting. Federal salary and benefits apply. Applicant must have three years minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. ' 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org). Reference 2019-01 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by March 22, 2019. Position will remain open until filled and is subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

### Environmental Attorney

National firm with an Albuquerque office is seeking an experienced environmental attorney for the rocky mountain region. The candidate should, at a minimum, be licensed in New Mexico (with bar membership in Texas, Colorado, or Wyoming being a plus) and have experience before the New Mexico Environment Department, with bonus points for experience dealing with oil and gas production facilities. Submit letter of interest and resume to [NM.Environmental.Attorney@gmail.com](mailto:NM.Environmental.Attorney@gmail.com)

### 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](mailto:snorth@da.state.nm.us).

### Contract Personnel Hearing Officer

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at <https://www.cabq.gov/dfa/procurement-division/solicitations> or by contacting Iris Cordova, Purchasing Program Specialist via email at [icordova@cabq.gov](mailto:icordova@cabq.gov). Proposals are due no later than April 1, 2019 @ 4:00pm Local Time.

### Business Litigator

We are Slingshot, and we are growing rapidly under a number of successful law brands, including Business Law Southwest and Law 4 Small Business. We're growing quickly, because we are doing things a bit differently than the traditional law firm. We value our people. We value our clients. We are paperless, technically savvy, and compete in ways most firms cannot even dream of. Our clients are busy business leaders, larger and small, who need rapid turnaround, competent advice and strategic thinking. The ideal candidate cannot get flustered with clients who sit on a complaint for 29 days, then urgently request representation and a thorough answer with detailed counterclaims filed the next day. We seek an experienced litigator who despises sales, marketing and office management – who can simply handle small and moderately-sized litigation involving business and commercial-related matters. Strong preference for seasoned litigators in business – accounting, tax, intellectual property, debt collection, HR, bankruptcy or other area of focus desired (but not required). We are very entrepreneurial, and want to entertain the best fit. Tired of the grind at the large law firm, and looking for a more rewarding and entrepreneurial challenge? Contact us and let's talk. Please see our website at <https://www.slingshot.law/seeking/>. We have great benefits. Email references, resume and cover letter to [LearnMore@slingshot.law](mailto:LearnMore@slingshot.law).

### **New Mexico Court of Appeals Law Clerks in Albuquerque and Santa Fe**

The New Mexico Court of Appeals is hiring for multiple Law Clerk positions that will begin in September 2019. This is an exciting opportunity to work closely with an appellate judge to draft opinions and resolve cases involving all areas of the law. You must have outstanding legal writing skills and be a graduate of an ABA accredited law school. One year of experience performing legal research, analysis and writing, while employed or as a student, is required. Please send resume, writing sample, law school transcript and two letters of recommendation to: AOC, Attn: Nathan Hale, aocneh@nmcourts.gov, 237 Don Gaspar, Room 25, Santa Fe, NM 87501.

### **Associate Attorney**

Holt Mynatt Martinez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 1-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Prefer attorney licensed in New Mexico and Texas but will consider applicants only licensed in Texas. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@hmm-law.com.

### **Associate Attorney Position Offering Excellent Pay, Benefits & Advancement**

The Albuquerque firm of Fadduol, Cluff, Hardy & Conaway PC, a plaintiff's law firm, seeks an associate litigation attorney. Opportunity to join a highly successful and growing law practice. Preference given to individuals with experience in areas including investigation, pleading, discovery, motion practice and trial. Spanish bilingual ability is a plus, but not required. Individuals with experience in multiple trials will be recognized in salary offered. Full benefits. Salary at, or above, competition as base with a generous, discretionary bonus program awarded. Must be willing to travel both in and out of state, work hard, and be a conscientious team player. Must care about clients and winning. Send resumes to kvaselli@fchclaw.com.

### **Assistant County Attorney Position**

Sandoval County is seeking applications from licensed New Mexico attorneys for an Assistant County Attorney position. Minimum qualifications include two years of experience in the practice of law including litigation and appellate experience. Municipal/local government experience preferred. This position's primary responsibility will be reviewing and responding to Inspection of Public Record Act (IPRA) requests. Salary based on qualifications and experience. The position remains open until filled, but the first review of applications will be conducted on Friday, March 29, 2019. For detailed job description, full requirements, and application procedure visit <http://www.sandovalcountynm.gov/departments/human-resources/employment/>

### **Attorney**

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

### **Staff Counsel Attorney**

Office of Superintendent of Insurance is seeking a Staff Counsel Attorney III. Applicant must have at least five (5) years of experience. Insurance law, administrative law, and/or civil litigation experience preferred. For more information and to apply please visit: [www.spo.state.nm.us](http://www.spo.state.nm.us). The deadline to submit an application is March 27, 2019.

### **Associate Attorney**

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

### **CYFD Attorney**

The Children, Youth and Families Department is seeking to multiple vacant Children's Court Attorney Senior Positions. Salary range is \$58,000-\$93,000 annually, depending on experience and qualifications. The attorneys will represent the department in abuse/neglect and termination proceedings and related matters. The ideal candidates will have experience in the practice of law totaling at least three years and New Mexico licensure is required. Children's Court Attorney Senior positions will be located in Los Lunas, New Mexico. Benefits include medical, dental, vision, paid vacation, and a retirement package. Please contact the following for information on how to apply and to ascertain the closing date for the position. David Brainerd (505) 795-2760 or [david.brainerd@state.nm.us](mailto:david.brainerd@state.nm.us). The state of New Mexico is an EOE. To apply for this position go to [www.state.nm.us/spo/](http://www.state.nm.us/spo/) and click on JOBS, then click on Apply for a Job Online Job order #102399.

### **Attorney**

The Jeff Diamond Law Firm, a well-established law firm with 4 offices, seeks an attorney with 1-5 years experience for its Albuquerque, Carlsbad, and Roswell offices. Practice areas are Social Security Disability and Appeals, LTD Benefits, and Personal Injury. Excellent working environment, competitive pay and benefits. All replies will be held in strict confidence. Please send your resume and a note of interest to Brian Grayson at [brian@graysonlawoffice.net](mailto:brian@graysonlawoffice.net).

### **Deputy Director, Title IX & ADA, AA: Office of Institutional Equity**

New Mexico State University (NMSU) seeks to hire a highly qualified Deputy Director for its Office of Institutional Equity. This position will serve as NMSU's Deputy Title IX Coordinator and is responsible for assisting the Director in managing all functions related to investigation and resolution of internal discrimination complaints and working closely with campus administrative offices to ensure compliance with federal and state laws, NMSU policies regarding equal opportunity, affirmative action and ADA. The candidate must be highly organized, productive and able to multi-task. Proficient writing and interpersonal skills are essential. NMSU is an equal opportunity and affirmative action employer. Women, minorities, people with disabilities and veterans are strongly encouraged to apply. All applications must be submitted online. The full position posting is available online <https://jobs.nmsu.edu/postings/34239>; Requisition No. 1901467S.



### Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Litigation Division. The department's team of attorneys represent the City in litigation matters in New Mexico State and Federal Courts, including trials and appeals, and provide legal advice and guidance to City departments. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please submit resume and writing sample to attention of "Legal Department Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or [amaragon@cabq.gov](mailto:amaragon@cabq.gov).

### Senior Litigation Attorney

The New Mexico Risk Management Division seeks full-time attorneys to advise and represent State agencies in civil matters. Applicants will need good people skills, ability to negotiate cases, ability to research and write, and an interest in public service. Experience with the NM Tort Claims Act, civil rights, employment law, and IPRA are preferred. These positions are located in Santa Fe, but may require travel throughout the State. These positions are Governor-Exempt and open until filled. Qualified applicants should email a resume to [clinton.nicley@state.nm.us](mailto:clinton.nicley@state.nm.us).

### Chief Deputy District Attorney and a Deputy District Attorney

Immediate opening for a Chief Deputy District Attorney and a Deputy District Attorney with the Sixth Judicial District Attorney's Office. Salary depends on experience, w/ benefits. Please send resume to Francesca Estevez, District Attorney, [FMartinez-Estevez@da.state.nm.us](mailto:FMartinez-Estevez@da.state.nm.us) Or call 575-388-1941.

### Experienced Litigation Attorney

Do the words gritty, passionate, gets it done, or innovative describe you? Do you want to be a part of a team dedicated to excellent results? We strategically attack challenges and win! Machol & Johannes, LLC, is a World Class law firm operating in Colorado and 7 other states. We offer representation and customer service in the Collection, Bankruptcy, and Creditor rights arenas. We are seeking an experienced Litigation Attorney licensed in NM who is interested in being part of a team with: leadership that truly listens; inspiration that brings out your best; culture that values you. Please contact Lorena.Wiant@mjfirm or visit us at [www.mjfirm.com](http://www.mjfirm.com) for more information or to submit a resume. We are looking forward to hearing from you!

### Entry-level attorney position available in Las Vegas, New Mexico

Excellent opportunity to gain valuable experience in the courtroom with a great team of attorneys. Requirements include J.D. and current license to practice law in New Mexico. Please forward your letter of interest and resumé to Richard D. Flores, District Attorney, c/o Mary Lou Umbarger, District Office Manager, P.O. Box 2025, Las Vegas, New Mexico 87701 - or via e-mail: [mumbarger@da.state.nm.us](mailto:mumbarger@da.state.nm.us) Competitive Salary!

### Paralegal

Small, friendly, plaintiffs' personal injury firm seeks experienced litigation paralegal. Applicant must be able to handle all parts of case management from beginning through trial. Good communication, computer and organizational skills required. We offer a pleasant work environment and excellent salary opportunity for qualified applicant. Non-smokers preferred. Send resume to: [legalapp19@gmail.com](mailto:legalapp19@gmail.com)

### Paralegal

Hinkle Shanor, LLP's Santa Fe office is seeking a paralegal to join its medical malpractice defense team. 3-5 years litigation experience is preferred, but not required. Ideal candidates will have experience in medical negligence matters, including preparation of medical chronologies and summaries. Past experience in civil practice handling pre-trial discovery through trial preparation is also a plus. Undergraduate degree or paralegal certificate is preferred, but work experience may be considered in lieu thereof. Competitive salary and benefits; all inquiries will be kept confidential. Please e-mail resume resumes to [gromero@hinklelawfirm.com](mailto:gromero@hinklelawfirm.com) and [ztaylor@hinklelawfirm.com](mailto:ztaylor@hinklelawfirm.com).

### Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, and setting up and maintaining a calendar with deadlines. Excellent organization skills and the ability to multitask are necessary. Competitive pay and benefits available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>. Position posting closes April 5, 2019.

### Transactional Paralegal

We are Slingshot, and we are growing rapidly under a number of successful law brands, including Business Law Southwest and Law 4 Small Business. We're growing quickly, because we are doing things a bit differently than the traditional law firm. We value our people. We value our clients. We are paperless, technically savvy, and compete in ways most firms cannot even dream of. Our Law 4 Small Business brand is competing on a national basis with LegalZoom, RocketLawyer and the other unlicensed legal providers. We are seeking an experienced paralegal who can join our team to help with company formations, trademark registrations and more. This is a transactional position. It is critical you are extremely comfortable on the phone talking to clients and potential clients, working in a paperless work environment, and have excellent computer skills - including Microsoft Office and E-filing. We pay competitively for well qualified candidates, and offer an amazing benefits package to our full-time team members. Degree required, with paralegal certification and at least 2-3 years of paralegal experience. Contact us and let's talk. Please see our website at <https://www.slingshot.law/seeking/>. Email references, resume and cover letter to [LearnMore@slingshot.law](mailto:LearnMore@slingshot.law).

### Administrative Assistant

Moses, Dunn, Farmer & Tuthill, P.C., a well-established Albuquerque law firm, has an immediate opening for a full-time administrative assistant with at least two years of experience in an administrative or accounting role. Candidates must have knowledge of basic bookkeeping principles; billing experience; strong computer skills; and the ability to prioritize and perform multiple tasks. Experience with TABS3 and QuickBooks desirable. The Firm offers a competitive compensation and benefits package. Please send your letter of interest, resume and salary requirements to Stephanie Reinhard, [stephanie@moseslaw.com](mailto:stephanie@moseslaw.com).

### Paralegal

The law firm of Butt Thornton & Baehr PC has an opening for an experienced litigation Paralegal (5+ years). Excellent organization, computer and word processing skills required. Must have the ability to work independently. Generous benefit package. Salary DOE. Please send letter of interest and resume to, Gale Johnson, [gejohnson@btblaw.com](mailto:gejohnson@btblaw.com)

### Legal Secretary & Paralegal

Mid-sized law firm is currently seeking motivated FT professionals. Excellent opportunities for growth. Strong interpersonal skills, attention to detail, able to multitask & handle pressure. Good time management skills needed. We will train right applicants! Great benefits, including flex scheduling after training. High School/GED required. Resume to [resume@roselbrand.com](mailto:resume@roselbrand.com)

### Legal Assistant/Paralegal

We are seeking a detail-oriented experienced assistant or paralegal in our Santa Fe office. We have a busy civil litigation and plaintiffs= personal injury and wrongful death practice. The following qualifications are a must: ability to work with minimal supervision; word processing skills; good Apeople skills"; document management and organizational skills; ability to draft documents independently. Spanish speaking is a plus, as is a good sense of humor. We need to fill a full-time position in the immediate future. Please submit your resume to Almanzar & Youngers, PA via email to [kris@ay-law.com](mailto:kris@ay-law.com).

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### 620 Roma N.W.

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## Miscellaneous

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